

**AlimuddIn Vs. Xiith Additional District and Sessions Judge and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/486995](http://sooperkanoon.com/486995)

**Court :** Allahabad

**Decided On :** Mar-31-2005

**Reported in :** 2005(3)AWC2457

**Judge :** Mukteshwar Prasad, J.

**Acts :** Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21 and 21(1); Indian Soldiers (Litigation) Act, 1925

**Appeal No. :** C.M.W.P. No. 18184 of 1987

**Appellant :** Alimuddin

**Respondent :** Xiith Additional District and Sessions Judge and ors.

**Advocate for Def. :** R.C. Singh, Adv. and ;N.S. Singhal, S.C.

**Advocate for Pet/Ap. :** Pankaj Mithal, ;Shiv Sagar Singh and ;Shubham Agarwal, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**Mukteshwar Prasad, J.**

1. This is tenant's petition. The petitioner has prayed for quashing the judgment and order dated 20.11.1981 (Annexure-4) and the judgment and order dated

28.8.1987 (Annexure-6) to the writ petition passed by respondent Nos. 2 and 1 respectively.

2. Heard Sri Shiv Sagar Singh, holding brief of Sri Pankaj Mithal, learned counsel for the petitioner and Sri Kunwar R.C. Singh, learned counsel for respondent No. 3 and perused the entire material on record.

3. It appears that an application under Section 21(1)(a) of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as 'the Act') was moved by the landlords for release of half portion of the house in question under tenancy of the petitioner mainly on the ground that the applicant-respondent No. 4 (Iqbal) one of the landlords along with his family resided in the northern half portion of the disputed house as a tenant and the remaining half portion was in occupation of the tenant-petitioner on a monthly rent of Rs. 10. The respondent Nos. 3 and 4 purchased the whole house through a sale deed. Nizamuddin, who had strained relations with his father, resided in the city of Meerut and paid income-tax also. His family consisted of four members, including two children. The accommodation in possession of Iqbal was inadequate to meet the requirements of his family. The landlords needed the portion in possession of the tenant for their residence and their need was bona fide and genuine. The tenant had a house within the municipal limits and he got the house vacated from his tenant and took over possession.

4. The tenant contested the petition mainly on the ground that need of the landlords was neither genuine nor bona fide. He was residing in disputed premises for the last 28 years with his wife and six children and he had no other place to settle down. The application was moved by the landlords with a view to enhance the rent of the house.

5. The parties filed affidavits and other evidence in support of their case.

6. After having heard learned counsel for the parties, learned Prescribed Authority found that the need of the landlords was bona fide and they required the accommodation in question for their residence. Moreover, they would suffer more hardship than the tenant in case the application was rejected. With these findings,

the learned prescribed authority allowed the application.

7. The tenant filed an Appeal No. 242 of 1981 which was dismissed and the judgment of the prescribed authority was confirmed.

8. Learned counsel for the petitioner has assailed the impugned judgments solely on the ground that the petitioner had his ancestral house in the city of Meerut which was in occupation of a tenant. He got the accommodation vacated and took over possession. The petitioner, however, sold the house to one Mohd. Yamin through a sale deed dated 2.7.1981 in order to pay the loan amounting to Rs. 4,000 sanctioned by Punjab National Bank, Meerut. According to learned counsel for the petitioner, both the prescribed authority and the appellate court also committed error of law in rejecting the contention of the petitioner that after sale of the house, the petitioner had no other accommodation and he would suffer more hardship than the landlords in case the application was allowed. He has drawn my attention to the statement of account issued by the Bank to show that the loan of Rs. 4,000 was sanctioned to the petitioner and the loan account was finally closed on 16.3.1982.

9. On the other hand, learned counsel for the respondent has supported the impugned judgments and has contended that admittedly the petitioner got his house vacated from the tenant and took over possession also. He, however, sold the house in the month of July, 1981, with a view to frustrate the provisions of law in this regard. He has drawn my attention to the Explanation to subsection (1) of Section 21 of the Act. The Explanation runs as under :

Explanation.-In the case of a residential building :-

(i) where the tenant or any member of his family [(who has been normally residing with or is wholly dependent on him)] has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this sub-section shall be entertained ;

(ii) [\* \* \* \*]

(iii) where the landlord of any building is-

(1) a serving or retired Indian Soldier as defined in the Indian Soldiers (Litigation) Act, 1925 (IV of 1925), and such building was let out at any-time before his retirement, or

(2) a widow of such a soldier and such building was let out at any time before the retirement or death of her husband, whichever, occurred earlier,

and such landlord needs such building for occupation by himself or the members of his family for residential purposes, then his representation that he needs the building for residential purposes for himself or the members of his family shall be deemed sufficient for the purposes of clause (a), and where such landlord owns more than one building this provision shall apply in respect of one building only.]

(iv) [\* \* \* \*]

10. According to him, the application for release was filed on 23.6.1978 and the petitioner sold his house in the month of July, 1981. Therefore, both the courts below rightly concluded that requirement of the landlords was real and genuine and the petition is liable to be dismissed.

11. I have considered the rival contention of the learned counsel for the parties and perused the entire record carefully, including counter-affidavit.

12. After having considered the submissions made on behalf of the petitioner, I find that the contention is not well founded and cannot be accepted. As mentioned above, the application for release was moved in the month of June, 1978 and the house which came into possession of the petitioner was sold by him in the month of July, 1981. It is noteworthy that a loan of Rs. 4,000 was sanctioned to the petitioner on 14.7.1980 and the petitioner deposited Rs. 1,000 on 2.1.1981. He again deposited Rs. 700 on 10.1.1981. It means, he had paid Rs. 1,700 to the Bank in the month of January, 1981. He again deposited a sum of Rs. 2,000 on 7.11.1981. The petitioner must have received the sale consideration in the month of July, 1981 but he did not repay the remaining loan amount in the month of July, 1981, or in the next month. He deposited Rs. 794.80p. and then account was

closed. In this view of the matter, the conduct of the petitioner cannot be said to be natural and bona fide.

13. The Explanation to Section 21 of Act provides in clear words that when an application for release of a residential building is moved and it is found that the tenant or any member of his family has built or has otherwise acquired in a vacant state, a residential building in the same city, no objection by the tenant against an application under this sub-section shall be entertained.

14. In the instant case, there is concurrent finding of fact recorded by the courts below to the effect that the requirement of the landlords was real and genuine. Moreover, the landlords would suffer more hardship than the tenant in case the application was rejected. I see no valid ground to take a different view.

15. It was held by the Supreme Court of India in Ashok Kumar and Ors. v. Sita Ram, : [2001]3SCR101 , that a finding of fact recorded by the final court of fact should not ordinarily be interfered with by the High Court in exercise of writ jurisdiction, unless the Court is satisfied that the finding is vitiated by manifest error of law or is patently perverse. The High Court should not interfere with a finding of fact simply because it feels persuaded to take a different view on the material on record. The Court should bear in mind that it is not acting as yet another appellate court in the matter. In the instant case, I find that the orders impugned in this petition do not suffer from any illegality.

16. No point has been pressed in this petition.

17. For the aforesaid reasons, I find that this petition is devoid of substance and there is no merit. Consequently, the petition is liable to be dismissed.

18. The petition fails and is hereby dismissed. The stay order dated 12.10.1987, stands vacated. However, no order is made as to costs.