

**Smt. Gulab Devi Vs. Additional District Judge and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/487333](http://sooperkanoon.com/487333)

**Court :** Allahabad

**Decided On :** Sep-18-2008

**Reported in :** 2008(4)AWC3720

**Judge :** S.U. Khan, J.

**Appellant :** Smt. Gulab Devi

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

**Judgement :**

**S.U. Khan, J.**

1. At the time of hearing, no one appeared on behalf of the respondent, hence only the arguments of learned Counsel for the petitioner were heard.
2. Hearing of this writ petition had been expedited by the Supreme Court through order dated 28.1.2008 passed in Civil Appeal No. 717 of 2008.
3. This is landlady's writ petition, whose release application on the ground of bona fide need has been rejected by both the courts below. Release application filed under Section 21 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 was registered as P.A. Case No. 36 of 1994. Prescribed Authority A.C.J.M. VIII, Allahabad rejected the release application through order dated 9.11.1998. Against the said order, landlady petitioner filed R.C. Appeal No.

302 of 1998. A.D.J., Court No. 18, Allahabad dismissed the appeal through judgment and order dated 8.3.2001, hence this writ petition.

4. Property in dispute is residential in nature and situate on the ground floor. On the first floor, landlady is residing. She asserted that she required additional accommodation and the said need could be fulfilled by release of the ground floor in tenancy occupation of tenant respondent No. 3, Vijai Singh Rathor. Landlady stated that her family consisted of 15 persons and accommodation in her possession on the first floor consisted of only four rooms and a baithak/drawing room. Landlady stated that he had five sons, aged in between 35 years to 20 years, out of whom two were married when release application was filed. Landlady had two daughters also. During pendency of release application, both the daughters and two more sons of the landlady were married. Property in dispute is situate in Mohalla Badshahi Mandi, Allahabad and its number is 238. Landlady herself stated that the two adjoining houses numbered as 240 and 240A also belonged to her. However, it was stated that litigation regarding said houses was pending in the High Court.

5. In the tenanted accommodation in dispute on the ground floor, there are six big rooms, court-yard, kitchen, latrine and bathroom. It was also pleaded by the landlady that tenant had another house available to him in the same mohalla, which was numbered as 214/254. Both the courts below found that houses No. 252 and 237 situate in the same locality were available to the landlady. Before shifting to the first floor accommodation in dispute landlady was residing in House No. 252. House in dispute was purchased by the landlady in the year 1970 along with another house bearing No. 237. The first floor portion of house No. 238 was in tenancy occupation of another tenant. Landlady filed release application on the ground of bona fide need against the said tenant also. In appeal, parties compromised and the said tenant handed over possession of the said portion to the landlady.

6. I do not agree with the observation of the lower appellate court that delivery of possession of first floor of house No. 238 to the landlady was not proper and legal as no finding regarding bona fide need was recorded. Parties can always

compromise any matter. The said dispute was in between landlady and other tenant. In any case, the fact that the landlady got possession of the first floor of house No. 238 clearly proved that need of the landlady for the said accommodation was bona fide.

7. In view of availability of so much accommodation with landlady (three houses), both the courts below rightly held that she had absolutely no bona fide need. I do not find least error in the said finding.

8. As far as House No. 214/254, available to the tenant is concerned, both the courts below held that it was ancestral house not containing much accommodation and tenant's brothers etc. were residing therein.

9. In any case, landlady completely failed to prove her bona fide need, hence there was no need to decide the question of comparative hardship in detail.

10. Accordingly, writ petition is dismissed.

#### Enhancement of Rent

11. Existing rent of the accommodation in dispute is Rs. 25 per month. Through interim order dated 5.10.2006 passed in this writ petition, it was directed that w.e.f. October, 2006, rent must be paid @ Rs. 5,350 per month. Against the said order, S.L.P. No. 717 of 2008 was filed before the Supreme Court, which was allowed on 28.1.2008. In a landlord's writ petition, rent cannot be enhanced by interim order. However the question is as to whether while finally dismissing the writ petition of the landlord, rent may be enhanced or not.

12. I have held in *Khursheeda v. A.D.J. 2004 (2) ARC 64 : 2004 (1) AWC 851* and *H.M. Kichlu v. A.D.J. 2004 (2) ARC 652*, that while granting relief against eviction to the tenant in respect of building covered by Rent Control Act or while maintaining the said relief already granted by the courts below, writ court is empowered to enhance the rent to a reasonable extent.

13. In the aforesaid authority of *Khursheeda (supra)*, I placed reliance upon the Supreme Court authority of *M.V. Acharya v. State of Maharashtra AIR 1998 SC*

602, where it was held that it was essential to provide for periodical enhancement of rent under the Rent Control Acts. The Supreme Court has further held that frozen rents are giving rise to lawlessness and landlords out of frustration are approaching muscle man to get the premises vacated and courts of law are becoming redundant in this sphere. This authority has recently been followed by the Supreme Court in *Satyawati Sharma (Dead) by L.Rs. v. Union of India and Anr.* : AIR 2008 SC3148 of which are quoted below:

29. It is trite to say that legislation which may be quite reasonable and rationale at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equity and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent.

34. In *Malpe Vishwanath Acharya and Ors. v. State of Maharashtra and Anr.* (supra), the Court found that the criteria for determination and fixation of rent by freezing or by pegging down of rent as on 1.9.1940 or as on first date of letting, had, with the passage of time become irrational and arbitrary but did not strike down the same on the ground that extended period of Bombay Rent Act was coming to an end on 31.3.1998.

14. Under U.P. Rent Control Act, there is no provision of enhancement of rent after October, 1972 [Except where landlord is public charitable or public religious institution (Section 9A) or Government is tenant (Section 21(8))]. In the aforesaid authority of *Khursheeda*, I have also placed reliance upon the authority of Supreme Court in *Shangrila Food Products Ltd. v. Life Insurance Corporation of India* : AIR 1996 SC2410 of which is quoted below:

It is well-settled that the High Court in exercise of its Jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This Jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a

party priorly, before invoking the jurisdiction of the High Court, the Court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief.

15. Thereafter in Para 8 of the aforesaid authority of Khursheeda, I held as under:

Rent Control Act confers a reasonable advantage upon the tenant of protection against arbitrary eviction. Tenant under the Rent Control Act cannot be evicted except on specific grounds like bona fide need of the landlord, arrears of rent, subletting and material alteration etc. This advantage is also coupled with the advantage of immunity from enhancement of rent. The latter advantage cannot be said to be either reasonable or equitable. The Supreme Court in the aforesaid authority of S.F.P. v. L.I.C. : AIR 1996 SC2410 , has laid down that while granting relief to a party the writ court can very well ask the said party to shed the unfair advantage which it gained under the impugned order. By slightly extending the said doctrine it may safely be held that while granting the reasonable advantage to the tenant conferred upon him by the Rent Control Act the tenant may be asked to shed the unreasonable arbitrary advantage conferred upon him by the said Rent Control Act. The writ court therefore while granting or maintaining the relief against arbitrary ejection to the tenant can very well ask the tenant to shed the unreasonable benefit of the Rent Control Act granted to him in the form of immunity against enhancement of rent, however inadequate the rent might be. Tenant will have to shed the undue advantage of immunity from enhancement of rent under the Rent Control Act to barter his protection from arbitrary eviction provided for by the said Act.

16. Thereafter in H.M. Kitchlu v. A.D.J. 2004 (2) ARC 652, I have held that the same principle of enhancement of rent to a reasonable extent may be made applicable while dismissing the writ petition of the landlord for the reason that by doing so writ court approves the protection of Rent Control Act granted to the tenant by the courts below.

17. Accommodation in dispute is situate on the ground floor in the city of Allahabad and contains six rooms and verandahs along with kitchen, latrine and bathroom. Rent of Rs. 25 per month is virtually as well as actually no rent. It is

rather ridiculous. Market rent may be the same rent, which was determined through the interim order dated 5.10.2006, i.e., Rs. 5,350 per month. However, current market rent may not be directed to be paid by the tenant as purpose of the Act is to regulate the rent also. Accordingly, in such situation, the proper course is to direct the tenant to pay about 50% of the current market rent.

Accordingly, it is directed that w.e.f. October, 2008 onwards tenant respondent shall pay rent @ Rs. 2,500 per month. No further amount as water tax etc. shall be payable over and above Rs. 2,500 per month.

18. Supreme Court in Lachoo Mal v. Radhey Shyam AIR 1971 SC 2213, has held that benefit of Clause of exemption from operation of Rent Control Act can be waived by the landlord. Similarly, the Court while enhancing the rent to more than Rs. 2,000 per month can waive the application of exemption Clause provided under Section 2(1)(g) of the Act.

19. As no one appeared on behalf of tenant respondent, hence landlord shall send a certified copy of this judgment through registered post to the tenant respondent.

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