

**Munni Lal Vs. Smt. Vimla Devi**

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**Court :** Allahabad

**Decided On :** Jul-01-2005

**Reported in :** 2005(4)AWC3227

**Judge :** Anjani Kumar, J.

**Acts :** Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1) and 22; [Constitution of India](#) - Article 226

**Appeal No. :** C.M.W.P. No. 10741 of 2005

**Appellant :** Munni Lal

**Respondent :** Smt. Vimla Devi

**Advocate for Def. :** Rakesh Kumar and ;Vishnu Gupta, Adv.

**Advocate for Pet/Ap. :** Ravi Kant and ;P.K. Gupta, Adv.

**Judgement :**

ORDER

**Anjani Kumar, J.**

1. This writ petition filed by the petitioner who is the tenant of a portion on the ground floor and two rooms, latrine and bathroom and two rooms on the first floor of the shop in dispute, under Article 226 of the [Constitution of India](#) challenges the

order passed by prescribed authority dated 15.1.2002 and the order of the appellate authority dated 9.11.2004 under the provisions of U.P. Act No. 13 of 1972 (in short 'the Act').

2. The facts leading to filing of the present writ petition are as under :

That the respondent-landlady filed an application under Section 21(1)(a) of the Act for the release of the accommodation in question for her bona fide need. The aforesaid application was contested by the petitioner on the ground that the landlady does not have any requirement and further that the tilt of the comparative hardship is also in favour of the tenant. The prescribed authority after exchange of the pleadings and evidence on record by the parties allowed, the release application filed by the landlady by its order dated 15.1.2002 and directed for release of the accommodation in dispute in favour of the landlady. Aggrieved thereby the petitioner preferred an appeal under Section 22 of the Act. The appellate authority after considering the material available on record dismissed the appeal filed by the petitioner affirming the findings recorded by the prescribed authority on the question of bona fide need of the landlady and also on the question of tilt of comparative hardship. Thus, this writ petition.

3. Learned Counsel for the. petitioner has argued that the findings recorded by the prescribed authority as affirmed by appellate authority with regard to bona fide need and comparative hardship suffers from manifest error of law. I have gone through the orders passed by the prescribed authority as well as the appellate authority but I do not find any error much less of law either in the order of the prescribed authority or appellate authority.

4. In this view of the matter, the findings of the prescribed authority as well as the appellate authority do not warrant interference by this Court.

5. Lastly, it is submitted by learned Counsel for the petitioner that in view of the phraseology used under Section 21(1)(a) the prescribed authority should also have considered the question of part release of the accommodation in question which he did not consider, therefore, the orders passed by the prescribed authority as well as the appellate authority deserve to be quashed.

6. Learned Counsel for the petitioner has relied upon the decision in Pratap Narain Tandon v. Abdul Mukatadir, 2005 (1) AWC 921 : 2005 (1) ARC 555 in support of his argument. As against this, learned Counsel for the respondent has submitted that since this plea was not raised either before the prescribed authority or the appellate authority therefore, petitioner should not be allowed to raise this question for the first time before this Court. Similar objection was raised in the case of Pratap Narain (supra), which has been rejected by this Court relying upon the decisions of the Apex Court.

7. In view of what has been stated above and in view of the law laid down by the Apex Court and this Court, this writ petition is allowed in part. The order of the appellate authority is quashed. The matter is remanded back to the appellate authority with the direction to decide the question of part release within three months from the date of presentation of certified copy of this judgment before him.

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