

**Jitendra Kumar Agarwal and anr. Vs. Brigadier Daya Krishna Rastogi**

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**SooperKanoon Citation :** [sooperkanoon.com/493765](http://sooperkanoon.com/493765)

**Court :** Allahabad

**Decided On :** Dec-05-2007

**Reported in :** 2008(1)AWC660

**Judge :** Sunil Ambwani, J.

**Appellant :** Jitendra Kumar Agarwal and anr.

**Respondent :** Brigadier Daya Krishna Rastogi

**Disposition :** Petition allowed

**Judgement :**

**Sunil Ambwani, J.**

1. Heard Shri Som Narain Mishra for the petitioner and Shri Ashutosh Srivastava for the respondents.

2. The petitioner retired from Indian Army and filed an application for release of two shops in the tenancy of the respondent for setting up business of distributing liquefied petroleum gas or any other agency. The application was rejected by the trial court on 5.11.1992 on the ground that the applicant has not started living at Hasanpur. He has houses at Dehradun and N.O.I.D.A. The house at N.O.I.D.A. has been let out and it appears that the applicant is living in Dehradun. In the circumstances, it was found that he has not established the bona fide need for

establishing business in the disputed shops.

3. The order of the prescribed authority was challenged in R.C. Appeal No. 36 of 1994. The appellate court, while discussing the evidence with regard to bona fide need, called in aid the provisions of the Explanation (iii) to Section 21 (1) (a) of U. P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (in short, the Act) and relying upon *Mahendra Pal Singh v. IInd Additional District Judge* 1993 (1) ARC 210 : 1993 (2) AWC 1175, in which it was held that the subject Explanation is also applicable to the building used for non-residential purposes, proceeded to release the shops without recording finding of need and comparing the hardship between the landlord and the tenant.

4. The bona fide need in the case of *Mahendra Pal Singh* (supra) was set up both for lodging house business and for the residential purposes inasmuch as Mussoorie being a home town of the landlord, he wanted to settle there permanently. The Court, while discussing Explanation (iii) to Section 21 (1) (a) of the Act, relied upon the words 'any building' in the opening part of the Explanation and held that it would embrace within its sweep any building whether falling within the purview of the Act or not any other building whether residential or non-residential and sought support from the judgments in *Purushottam Saran v. IIIrd Additional District Judge* 1981 ARC 524 and *Col. Brown Cambridge School, Dehradun v. Additional District Judge, Dehradun and Anr.* 1988 (2) ARC 183. The Court then proceeded to hold that having regard to the object and purpose of the Act, it would not be a non-sequitur to hold that landlords's claim for eviction against a tenant must be a bona fide one whether the eviction is sought under Sub-section (1) or Sub-section (1A) or Sub-section (2) of Section 21 of the Act, but it holds equally true that in the case of eviction sought under Sub-section (1) or Sub-section (2) the landlord has to prove his bona fide requirement. He will also have to prove that the likely hardship in refusing the application will be greater to him than the tenant.

5. A close reading of the judgment in *Mahendra Pal Singh*'s case would show that the building in the case was sought to be released both for residential and non-residential purposes and in case of the residential purposes Explanation (iii) did

not require bona fide need to be established, if the landlord had retired from Indian Army and that the building was let out by him at any time before his retirement.

6. In the present case, the need was set up only for non-residential purposes. In his application the landlord stated that he did not have sufficient income and that he wanted to set up a business in two shops.

7. The object of Explanation (iii) to Section 21 (1) (a) of the Act is to provide a residence to the retired Indian Soldier who has let out the building before he retired. The Legislature did not give this benefit for the purposes of rehabilitation for augmenting the income. The word 'any building' in Explanation (iii) is qualified by the words 'needs such building for occupation by himself or the members of his family for residential purposes.' It is only in such case his need shall be deemed to be sufficient and he may not prove the bona fide need. The appellate court in my opinion committed an error in releasing the building without recording the findings of bona fide need and comparing the hardship between the landlord and the tenant. It may be useful to state here that like every presumption in law, the presumption in this case is also rebuttable if evidence is led by the tenant to the satisfaction of the Court, that the requirement is fanciful or whimsical.

8. There is no protest to the rent fixed by this Court in its order dated May 5, 2007. The tenant will continue to pay the same rent till disposal of the appeal.

9. The writ petition is allowed. The judgment and order dated 3.8.2001 passed by Additional District Judge, Moradabad, Court No. 3 in Rent Control Appeal No. 36 of 1994, Brig. Daya Krishna Rastogi v. Shri Jitendra Kumar Agarwal and Ors. is set aside. The appellate court is directed to decide the matter afresh with liberty to allot the parties to lead additional evidence only with regard to the subsequent developments, which may have taken place during the period the writ petition was pending in this Court within a period of three months without granting any unnecessary adjournments. Both the parties will enter appearance before the appellate authority on 18.12.2007 alongwith certified copy of this judgment.