

**Naveen Kumar Vs. Additional District Judge/F.T.C. Court No. 3 and ors.**

**Naveen Kumar Vs. Additional District Judge/F.T.C. Court No. 3 and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/493797](http://sooperkanoon.com/493797)

**Court :** Allahabad

**Decided On :** Aug-10-2007

**Reported in :** 2008(1)AWC725

**Judge :** Rakesh Tiwari, J.

**Appellant :** Naveen Kumar

**Respondent :** Additional District Judge/F.T.C. Court No. 3 and ors.

**Disposition :** Petition allowed

**Judgement :**

**Rakesh Tiwari, J.**

1. List has been revised. The counsel for the petitioner is present. None has appeared on behalf of the respondents tenants. Heard counsel for the petitioner and perused the record.

2. This writ petition has been filed for quashing the judgment and order dated 12.9.2006 in Misc. Appeal No. 341 of 1998 passed by the Additional District Judge, Fast Track Court No. 3, Meerut and the judgment and order dated 12.8.1998 in P.A. Case No. 59 of 1995 passed by the Prescribed Authority/Addl. Judge, Small Causes Court, Meerut.

3. Brief facts of the case are that the petitioner landlord filed an application under Section 21(1)(a) of U. P. Act No. 13 of 1972 before the prescribed authority for release of ground floor of house No. 249 situate at Teli Mohalla Kabari Bazar, Meerut Cantt. under the tenancy of the respondents tenants alleging that they had been given the accommodation in dispute on rent for residential purposes and it was being used by them as a godown ; that house No. 247 in which the landlord is living with his family has been insufficient due to increase in family ; and that the respondents tenants have purchased their own house No. 415/416 in the same locality where the house in dispute is situated, hence it may be released in favour of the landlord on grounds of bona fide need and comparative hardship.

4. The respondents tenants filed their objection denying the relationship of landlord and the tenants asserting that the accommodation in possession of the landlord is sufficient for his family ; that he is residing in the disputed accommodation and not using it as a godown ; that house No. 415/416 was purchased by his wife 40 years back by her stridhan before the U. P. Act No. 13 of 1972 came into force and that aforesaid house is a two storied building having four shops on the ground floor wherein his sons are doing business and on the first floor his two sons are living with their families and he alongwith his wife is living in the disputed accommodation ; that apart from the aforesaid disputed house the tenant has no residential house in Kaseru Khada and Rajban Bazar ; that the landlord of the disputed accommodation is Shanker Lal and not the applicant Navin Kumar ; and that the need of the landlord is not bona fide and the release application is liable to be rejected.

5. The prescribed authority vide order dated 12.8.1998 dismissed the release application of the petitioner landlord holding that the need of the landlord-petitioner is not bona fide and the property in the name of the wife of the tenant, i.e., house No. 415/416 is excluded from consideration of Exception under Section 21 (1) (a) of U. P. Act No. 13 of 1972.

6. Aggrieved by the aforesaid order dated 12.8.1988 the petitioner landlord preferred Misc. Appeal No. 341 of 1998 before the appellate court which too was dismissed vide judgment and order dated 12.9.2006 confirming the findings of the

trial court, hence this writ petition.

7. The counsel for the petitioner landlord submits that the petitioner adduced evidence before the prescribed authority that besides house No. 415/416 Teli Mohalla the tenants respondents have another residential house No. 284 situate in Kasheru Khada Meerut in the name of the wife of the original tenant Nihal Chand. This fact according to the petitioner is admitted by the tenant that he had purchased the aforesaid property in the name of his wife for business of junk or 'kabar' and it is not a residential property and in the assessment receipt it is shown as a room of 8 x 10 ft. therefore, it cannot be treated as junk or 'kabar' shop but the prescribed authority has not taken into consideration the aforesaid property while deciding the release application.

8. He also submits that the tenant has admitted in his para 4 of the objection that he resides with his wife in the disputed accommodation No. 249 while his children reside in house No. 415/416 Teli Mohalla Kabari Bazar, Meerut Cantt. Meerut and after the death of original tenant Nihal Chand on 15.7.2001 his wife Smt. Vidyawati is residing with her sons and therefore, the disputed accommodation has become useless for the tenant since as per their own admission they were using it for residential purposes.

9. He next submits that the finding of the appellate court is also silent about the number of accommodation in the ownership and possession of the tenant. The appeal of the landlord was dismissed on the ground that he has got 8 rooms in his occupation and therefore, he has no bona fide need of the accommodation in dispute ; that the courts below have misinterpreted the Commissioner's report dated 6.12.1997 and have not considered the objection of the petitioner landlord wherein he explained that Sanehi Lal had no issue and therefore, he adopted the petitioner who is son of nephew of Sanehi Lal, Sri Shanker Lal and that since the life time of Sanehi Lal Shanker Lal is also living in house No. 247 and the accommodation in his possession and use cannot be presumed to be in the occupation and use of the petitioner.

10. He also submits that even if it assumed that Shankar Lal real father of the petitioner was also residing in house No. 247 then also the accommodation on the

ground floor would be needed by the landlord since the children have now become major and requirement of space for the family has increased now with passage of time ; that the need of the accommodation by the landlord depends upon the various factors like the social status, age of the members of the family ; and that hence the tenant cannot take the defence that the accommodation in the possession of the landlord is sufficient for his need moreso, when the tenant himself has more than required accommodation in the same city for his residence.

11. Neither respondent No. 5 nor any one has put in appearance on his behalf inspite of service of notice and no counter-affidavit has been filed rebutting the averments made in the writ petition. Affidavit of service has been filed showing that service has been effected on respondent Nos. 3, 4, 6 and 7 through publication in local Newspaper 'Amar Ujala' which is on the record. It is therefore, deemed to be sufficient.

12. The averments made in the writ petition in the circumstances are taken to be as correct in view of the decisions in Choksi Tube Company Limited v. Union of India : 1998(97)ELT404(SC) and Naseem Bano v. State of U.P. and Ors. : (1994)ILLJ84SC .

13. It is admitted fact that the tenants respondents have their own house No. 415/416 in Teli Mohalla besides another residential house No. 284 situate in Kasheru Khada, Meerut which is in the name of respondent No. 6, Smt. Vidyawati, widow of original tenant late Nihal Chand. Late Nihal Chand the original tenant had admitted that he had purchased the aforesaid house No. 284 for the business of 'kabar' and it is not a residential property. It is nowhere averred that the said property is still being used for junk business after the death of Nihal Chand. Rather it is on record that room No. 415/416 has 4 shops on ground floor in which the sons of the tenant are doing their independent business. The courts below have not taken into consideration the aforesaid property while deciding the release application and the fact that sons and daughters in the family of the landlord have now become major and the family has increased with the passage of time, hence the need of the landlord for more space is genuine, bona fide and he is suffering greater hardship than the tenants who have their own houses.

14. Once the tenant or any member of his family acquires the house in a vacant state, they have no right to keep the house of the landlord in their possession. In the instant case, the admitted fact is that the tenants have their own house and they have got an alternative accommodation in their possession, hence in view of Explanation (i) to Section 21 (1) (a) of U. P. Act No. XIII of 1972, which provides that if any of member of tenant's family has acquired an alternate accommodation, the tenant cannot contest the claim of need of the landlord on the ground that there is no bona fide need of the landlord. Explanation (i) to Section 21 (1) of the Act No. XIII of 1972 as under automatically applies to the facts of the instant case:

Explanation.-In the case of a residential building-(i) where the tenant or any member of his family who has been normally residing with him 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.

15. In my opinion, the approach of the courts below is not correct and the courts below have committed a gross illegality in rejecting the release application of the landlord by failing to consider the bona fide and comparative hardship in its correct perspective.

16. Admittedly, the tenants have their own house and they have got an alternative accommodation which is said to be a room of 8 x 10 ft. His wife is also now admittedly living with the sons, but it appears that the tenant is living in the accommodation in dispute all alone only for the purpose of harassment of the landlord for ulterior motives.

17. The findings of the courts below that the bona fide need and comparative hardship of the tenants are greater than the petitioner landlord are against the evidence on record and are not sustainable in the aforesaid circumstances.

18. For the reasons stated above, the writ petition is allowed. The impugned orders of the courts below are quashed. The respondents tenants are directed to handover vacant and peaceful possession of the disputed accommodation to the

landlord within a period of two months from the date of production of a certified copy of this order.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**