

Krishna Chandra Gupta Vs. Kalyani Devi and ors.

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SooperKanoon Citation : sooperkanoon.com/494902

Court : Allahabad

Decided On : Oct-10-2006

Reported in : 2007(2)AWC1527

Judge : Rakesh Tiwari, J.

Appellant : Krishna Chandra Gupta

Respondent : Kalyani Devi and ors.

Disposition : Petition dismissed

Judgement :

Rakesh Tiwari, J.

1. Heard learned Counsel for the parties and perused the record.
2. The petitioner-tenant has filed this writ petition challenging the validity and correctness of the impugned order dated 27.8.2005 passed by the Additional District Judge, Court No. 1, Allahabad in Rent Control Appeal No. 135 of 1997 allowing the appeal and releasing the shop in dispute in favour of the landlords.
3. The facts of this case in a short compass are that the parties to the dispute were earlier members of the same joint family. After partition in their family in the year 1960, the shop in dispute fell in the share of the father of the respondent-landlords 1 to 3. Both families are engaged in the same business of paper flower decoration.

The petitioner claims to be the tenant of the disputed shop in House No. 55, Chowk, Allahabad on rent at the rate of Rs. 400 per month since 1960 alleged to have been let out to him by late Sri Gulab Chandra, father of respondent-landlords 2 and 3 and husband of respondent-landlord 1.

4. Late Sri Gulab Chandra filed P.A. Case No. 56 of 1989 under Section 21(1)(a) of U.P. Act No. XIII of 1972 for release of the shop in dispute to establish his son Rajeev Gupta, respondent No. 2, who was unemployed at the age of 21 years on the ground that his own shop in House No. 57 was available to the petitioner to do his business besides the shop at his residence at 484 Shahganj, Allahabad.

5. The petitioner filed written statement denying the plaint allegations including the allegation that either shop in House No. 57, Chowk, Allahabad or as his residential house at Shahganj, Allahabad was available to him, It was further stated in the written statement that initially the father of the petitioner was the tenant of the shop in dispute at the rate of rent of Rs. 40 per month and upon a suit instituted by late Sri Gulab Chandra before the Judge Small Cause Court the rent was enhanced to Rs. 400 per month during the pendency of the suit in pursuance of a compromise.

6. It is alleged that it was the habit of Sri Gulab Chandra to get a shop vacated and thereafter to get the same allotted either to the same tenant or the other on higher rent and because of business rivalry also he had filed the release application against the petitioner and that after the death of the father of the petitioner Sri Gulab Chandra, the tenancy right devolved upon him.

7. The prescribed authority rejected the release application on the ground that the need of the deceased landlord Sri Gulab Chandra was neither genuine nor bonajvde and that the tenant has got no other shop except the shop in dispute and that there is no shop in his residential house at 484 Shahganj, Allahabad.

8. Aggrieved, Rent Control Appeal No. 135 of 1997 under Section 22 of the Act was filed by Sri Gulab Chandra. He died during pendency of the appeal. The R.C.A. aforesaid was allowed by the learned Additional District Judge, Court No. 1, Allahabad vide judgment and order dated 27.8.2005 holding that:

(a) Rajiv Gupta, son of the landlord (since deceased) is unemployed and, therefore, his need for the shop in dispute is bona fide.

(b) In case the disputed shop is not released in favour of the landlord, he will suffer greater hardship, as his unemployed son cannot be compelled to do business jointly with other members of the family.

(c) The learned lower appellate court further held that there is no suitable alternative accommodation available to the landlord for setting up his son Rajeev Gupta in independent business and, therefore, comparative hardship also lies in his favour.

(d) The petitioner-tenant has an alternative accommodation at his residential House No. 484 Shahganj, Allahabad where he can do the business in view of the nature of the business.

9. Aggrieved by the impugned judgment and order of the lower appellate court, the petitioner-tenant has filed this writ petition praying for the following reliefs:

(i) to issue a writ, order or direction in the nature of certiorari by quashing the impugned order dated 27.8.2005 passed by the learned Additional District Judge, Court No. 1, Allahabad as contained in Annexure No. 1 to this writ petition.

(ii) to issue a writ, order or direction in the nature of mandamus directing the respondents not to give effect the impugned order dated 27.8.2005 passed by the learned Additional District Judge, Court No. 1, Allahabad.

(iii) to issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(iv) to award the costs of the petition in favour of the petitioner.

The Court on 2.9.2005 passed the following interim order:

Unless ordered otherwise, petitioner shall not be evicted from the shop in dispute provided that w.e.f. September, 2005 petitioner pays rent to the landlord-respondent at the rate of Rs. 1,500 per month by seventh of each succeeding

month through money order after deducting money order charges. In case of two defaults, this stay order shall stand automatically vacated.

Non-payment of this amount may also be a ground for dismissing the writ petition.

Sd/- S.U. Khan, J.

2.9.2006.

10. The learned Counsel for the petitioner firstly contends that the release application is not bona fide as Sri Gulab Chandra deceased had been in the habit of filing release applications and suits for ejectment and thereafter to enter into a compromise on enhancement of rent. In the same way, Suit No. 82 of 1990 was filed for ejectment against Sri Kaushal Kishore Pandey from his shop in House No. 55, Chowk, Allahabad and thereafter he entered into a compromise and got the suit decided in terms of compromise vide order dated 9.5.1994 contained in Annexure-1 to the supplementary rejoinder affidavit. Similarly, he filed Suit No. 285 of 1987 against Sri Amar Nath Chaurasia for his ejectment and entered into a compromise and got the suit decided in terms of compromise whereby the rent was enhanced to Rs. 75 from Rs. 30. Again P.A. Case No. 33 of 2004 Smt. Kalyani Devi and Ors. (respondents) v. Smt. Renu Chaurasia (heirs of Sri Amar Nath Chaurasia) under Section 21(1)(a) is pending wherein also the need of Sri Rajeev Gupta has been set up.

11. Likewise is in the present case he filed release application in the year 1989 and subsequently a suit for ejectment in the year 1990 and thereafter entered into a compromise on enhancement of rent from Rs. 40 to Rs. 400 per month.

12. It is vehemently urged by the learned Counsel for the petitioner that Sri Kaushal Kishore Pandey and Sri Amar Nath Chaurasia were inducted as tenants in the year 1989 without allotment order and as such there was deemed vacancy and the landlord could have easily got the shops released from their possession after getting vacancy declared, but the suits and release applications filed against them had been got decided in terms of compromise while the release application against the petitioner was filed as P.A. Case No. 56 of 1989 whereas Suit No. 36

of 1990 for ejectment was filed subsequently in the year 1990 and the suit had been got decided in terms of compromise vide order dated 27.11.1998. Therefore, the purpose was not the need but enhancement of rent and the need of the landlord was not genuine and bona fide in the year 1989 as the petitioner was permitted to continue under the compromise whereby the rent was enhanced from Rs. 40 to Rs. 400 per month.

13. In the release application Sri Gulab Chandra stated that he was occupying the shop alongwith his younger son Sri Pankaj Gupta and wanted that both of his sons should settle in their business independently in separate shops, but as their shop is not available to them Sri Rajeev Gupta has to do his business alongwith his brother Sri Pankaj Gupta in compelling circumstances. In support of this, the petitioner filed receipts duly signed by Sri Rajeev Gupta. It was also stated in the written statement that the alleged alternative shop in the residential house was not the shop and could not be used as a shop; that there are no other shops in that Gali and this fact was also admitted by the landlord that there is no other shops in that Gali.

14. In regard to bona fide and genuine need of the landlord, the learned Counsel for the petitioner-tenant contends that the lower appellate court has not considered the documentary evidence filed by the petitioner before the prescribed authority as well as before the lower appellate court and that the lower appellate court has not recorded any finding on this score.

15. In support of his contentions, the learned Counsel for the petitioner relied upon the decision rendered by Hon'ble Supreme Court in Deena Nath v. Pooran Lal 2002 (48) ALR 259, wherein it has been held:

14. The legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory mandate is that there must first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, which requirement must be bona fide which is intended to avoid a mere whim or desire. The 'bona fide requirement' must be in praesenti and must be manifested in actual need which would evince the Court that it is not a mere fanciful or whimsical desire.

16. He then relied upon a decision rendered in *T. Sivasubramaniam and Ors. v. Kasinath Pujari and Ors.* 1999 (37) ALR 752, wherein it has been held that when a landlord desires release of a premises, the requirement of law is that the landlord must set out his need for the premises in his petition and establish that such a need is bona fide and genuine, honest and conceived in good faith and that landlord's desire to live separately is not a valid ground for eviction of the tenant from the premises/shop in dispute.

17. The next case relied upon by the learned Counsel for the petitioner is *Maqboolunnisa v. Mohd. Saleha Quaraishi* 1999 (35) ALR 331, wherein the learned Supreme Court has held:

It is an admitted case of the parties that during the pendency of the proceedings in the trial court, a shop adjacent to the demised premises, also measuring 10 ft. x 15 ft. was vacated by one Shri Sukumaran. The appellant did not amend the pleadings to assert that the shop which had been vacated by Shri Sukumaran was not sufficient for her son to shift his business. Even at the trial no such plea was raised. The fact position is that the shop from which the son of the appellant was to shift measured only 4 ft. x 4 ft. while the shop which had been vacated by Shri Sukumaran measured 10 ft. x 15 ft. At the trial, during her evidence, the appellant went on to say that by breaking the wall between the suit shop and the shop vacated by Shri Sukumaran the entire area can be converted into one big shop to enable the son to carry on his business. That such evidence should not have been allowed to be let in since it was beyond the pleadings admits of no exception. But even if we ignore that infirmity, we find that the assertion itself does not establish a genuine bona fide need. It is not stated by the appellant in her evidence that the shop vacated by Shri Sukumaran was not sufficient accommodation to enable her son to carry on the business. The 'desire' to have a very large shop cannot be equated with a 'genuine bona fide need' to have the premises.

18. The learned Counsel also relied upon the decision of this Court in *Bhupendra Kumar Jain v. 1st Additional District Judge, Bijnor and Anr.* 2005 (1) ARC 115 : 2005 (1) AWC 47, wherein (in para 4) it has been held:

4. Learned Counsel appearing on behalf of the petitioner-landlord repeated the same arguments before this Court as found favour before the prescribed authority, but reversed by the appellate authority. Particularly, emphasis was on the letter written by the elder son of the landlord. The appellate authority has given cogent reasons with which I do not see any reason to defer that the view of the appellate authority that the prescribed authority has overlooked the very important document i.e. Paper No. 55/C which is a letter written by Anil Kumar, the elder son of the landlord. The said letter 55/C says that the rent of Rs. 150 was fixed about 10 years back and the enhancement of the rent was demanded at least at Rs. 1,500 per month. The letter goes to say that in case the enhancement is not agreeable, then the accommodation may be vacated. This letter Paper No. 55/C was written on 3rd February, 1982 and the present application of release was filed on 16th September, 1982. The appellate authority, therefore found that the findings of prescribed authority required to be set aside and appellate authority found that the need of the landlord in this view of the matter cannot be said to be bona fide. In this view of the matter and in view of the law laid down by the Apex Court in the case in *Surya Dev Rai v. Ram Chander Rai and Ors.* : AIR 2003 SC3044 , which has been relied upon by learned Counsel appearing on behalf of the landlord-respondent. The Apex Court has held in para 38, Sub-para (8) of the aforesaid judgment, which is reproduced below:

38. Such like matters frequently arise before the High Courts. We sum of our conclusion is a nutshell, even at the risk of repetition and state the same as thereunder:

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a Court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

19. The learned Counsel then relied upon the decision of this Court in *Khaild Noor Khan v. Illrd A.D.J. and two Ors.* 2006 (1) ARC 146 : 2006 (2) AWC 1098, wherein (in paras 3 and 4) it has been held:

3. The next and more important point argued on behalf of the tenant before the lower appellate court was that during pendency of release application in September, 1989 another tenant of the landlord i.e., Shakil Ahmed vacated the shop and the landlord let out the same to one Salim at the rent of Rs. 200 per month (Shakil Ahmed was paying rent of Rs. 125 per month). This fact was not denied by the landlord. However, the landlord put forward a strange theory to the effect that Shakil Ahmad had illegally handed over possession of the shop directly to Salim hence landlord had no option except to accept Salim as his tenant. In this regard the lower appellate court has observed that the argument of tenant's counsel that landlord should have initiated proceedings against Salim is not acceptable as litigation in itself has not got much value. The Court is unable to understand the import of this observation. It has come in evidence that landlord is quite a rich person and he owns several buildings, shops and agricultural land. A man of good means and status is not expected to be helpless if one of his tenants illegally delivers possession to another person. Landlord had earlier filed release application in respect of another shop for the need of his other son which ended in a compromise. Against petitioner also he was taking legal proceedings. It cannot, therefore, be said that landlord was stranger to legal proceedings. In any case if a tenant has vacated and delivered possession illegally to another person then the property can very well be got declared vacant and released under Section 16 of U.P. Act No. 13 of 1972. It is much more easier to get a building released under Section 16 of the Act than under Section 21 of the Act. Under Section 16 of the Act there is not sitting tenant while under Section 21 of the Act there is a sitting tenant like the present case. In proceedings under Section 16 of the Act neither authorized occupant nor prospective allottee is entitled to oppose the bona fide need of the landlord. Landlord did not show that he ever objected to the possession of Salim of the shop which was vacated by Shakil Ahmad. He did not bring on record either any notice or F.I.R. or complaint in respect thereto.

4. In my opinion the lower appellate court committed an error of law in holding that the shop vacated by Shakil Ahmad was not available to the landlord. It was clearly available to the landlord and he let that out to Salim. In view of this it cannot be said that the need of the landlord was bona fide. In this regard if the theory of the landlord that as possession had directly been delivered by Shakil to Salim is

accepted then no purpose will be served by passing order of eviction in his favour in the instant case also for the reason that landlord will feel similar helplessness in case petitioner delivers possession to another person.

20. The last decision relied upon by the learned Counsel for the petitioner is of this Court in *Chhetriya Sri Gandhi Ashram, Meerut v. IInd Additional District Judge, Meerut and Ors.* 1998 (2) ARC 373.

21. The learned Counsel for the respondent landlords submits that the petitioner-tenant alleged that the landlord wants only enhancement of rent from Rs. 40 to Rs. 400. The respondent landlords in paragraph 19 of counter affidavit categorically denied the said fact. It is categorically stated that the rent was Rs. 400 per month, which the petitioner-tenant has admitted in Suit No. 36/90. Thus, the said argument has also no basis. He states that even at the time of hearing of the arguments of the learned Counsel for the petitioner on 23.8.2006 that the landlords are only interested in enhancement of the rent and they have no genuine and bona fide need of the shop in dispute, suggestion for enhancing rent to Rs. 3,000 per month was given by the Court till the decision of the writ petition which was refused by the petitioner-tenant.

22. The learned Counsel for the respondent landlords firstly contends that the impugned judgment and order of the learned lower appellate court allowing the release application is in accordance with law. He submits that the judgment on the question of bona fide need and comparative hardship recorded by the learned lower appellate court cannot be said to be perverse or based on no evidence. In such circumstances, the said finding cannot be interfered with in exercise of writ jurisdiction under Article 226 of the Constitution of India as has been held by the Hon'ble Supreme Court in *Muni Lal and Ors. v. Prescribed Authority and Ors.* : AIR 1978 SC29 and *Ranjit Singh v. Ravi Prakash* 2004 f55J ALR 319 : 2004 (3) AWC 1721 (SC).

23. The learned Counsel secondly contends that as far as the argument of letting out of two adjoining shops by the landlord to Sri Amar Nath Chaurasia and Sri Ram Kishore Pandey during the pendency of the release application is concerned, the same is factually incorrect. In paragraph 4 of his release application the

landlord stated that two adjoining shops are not vacant and are in possession of tenants Amar Nath Chaurasia and Ram Kishore Pandey. Thereafter, the petitioner-tenant has made the following assertions:

24. That two other shops in House No, 55, Chowk, Allahabad have been let out to Shri Amar Nath Chaurasia and Shri Ram Kishore Pandey after taking handsome Pagri without any allotment order.

24. In fact, both Shri Amar Nath Chaurasia and Shri Ram Kishore Pandey are tenants for the last more than 50 years. The petitioner knew the said fact and, therefore, he deliberately did not disclose the date or year of alleged letting out of adjoining shops to these persons. Even then, the petitioner in his rejoinder affidavit filed before the prescribed authority categorically stated that these persons are tenant for last more than 50 years (Annexure-CA-7). The relevant paragraph is quoted below:

8. That the contents made in para 24 of the counter affidavit are totally false, incorrect and are denied. In fact for Amar Nath Chaurasia and Shri Ram Kishore Pandey are tenants since more than 50 years in the said building.

25. It is urged that no evidence was brought on record by the petitioner to demonstrate that the aforesaid two tenants were ever let out the said adjoining shops during pendency of the release application, as such the prescribed authority had given an absolutely perverse finding believing the vague assertions of the petitioner in his written statement:

i=koyh ds ifj'khyu ls ,slk dksbZ lqlaxr izys[kh; lk{; miyC/k ugha ik;k tkrk gS fd ftlds vk/kkj ij fu;r izkf/kdkjh }kjk vafdr fj'd'kZ dks leFkZu izklr gks lds fd Hkou Lokeh }kjk nkSjku eqdnek dfFkr nqdku fdjk, ij mBk;h x;h bl laca/k esa 'kiFk&lk;= esa fd;s x;s dFkuksa dk 'kiFk&lk;= }kjk gh fo[k.Mu fd;k x;k g SA vr% esjs er esa fu;r izkf/kdkjh }kjk mijksDr of.kZr fu'd'kZ izdj.k dh ifjfLFkfr;ksa esa U;k;ksfpr ugha g SA

26. It is then urged that apart from the above it is settled law that a tenant cannot dictate terms to the landlord and it is upon the landlord to decide about his bona fide requirement and suitability of accommodation. It is submitted that it is

consistent view of the Courts that this cannot act as rationing authority while judging the need of the landlord. Reliance in this regard has been placed by him upon the judgment of this Court rendered in Shiv Murti Sharma and Anr. v. VIth Additional District Judge, Kanpur Nagar and Ors. 1999 (1) ARC 449 : 1999 (2) AWC 997 and Gaya Prasad Rastogi v. VIII Additional District Judge, Kanpur Nagar and Ors. 1990 (2) ARC 313 : 1990 (2) AWC 1330.

27. On the strength of the aforesaid decision, the learned Counsel for the respondents submits that in such circumstances, the plea of the petitioner-tenant that there are two other shops available to the landlords which have been let out and, therefore, their need is not bona fide is neither factually correct nor legally sustainable.

28. Rebutting the arguments of the learned Counsel for the petitioner-tenant that his residence at 484 Shahganj, Allahabad is situate in a narrow street (Gali) is incorrect. He states that it is evident from the statement of the petitioner-tenant (Annexure-1 to the supplementary rejoinder affidavit) that House No. 484 Shahganj, Allahabad is connected to a Gali which is 30 ft. wide. The relevant portion of his testimony is quoted below:

edku u0 484 dk njoktk mRrj o nf{k.k dh fn'kk esa g SA mRrj rjQ IM+d ugha g SA xyh g SA xyh 30 f QV pk SM+h g SA

29. The learned Counsel for the respondent-landlords in support of his contentions has relied upon the decisions in Muni Lal and Ors. v. Prescribed Authority and Ors. : AIR 1978 SC29 ; Ranjeet Singh v. Ravi Prakash 2004 (55) ALR 319; Shiv Murti Sharma and Anr. v. VIth Additional District Judge, Kanpur Nagar and Ors. 1999 (1) ARC 449 : 1999 (2) AWC 997 and Gaya Prasad Rastogi v. VIII Additional District Judge, Kanpur Nagar and Ors. 1990 (2) ARC 313 : 1990 (2) AWC 1330.

CONCLUSION

30. After hearing the learned Counsel for the parties and on perusal of the record, I am of the opinion that the contention of the learned Counsel for the petitioner that Sri Gulab Chandra was in the habit of litigation for enhancement of rent after

entering into compromise is not germane to the facts of this case. It is apparent from the record that Gulab Chandra wanted to settle his two sons independently for which he tried to get other shops vacated but could not succeed, hence in the circumstances entered into a compromise with them. The compromise entered into by Gulab Chandra was only with the intention of enhancement of rent and has to be seen in the context that he wanted to settle his sons for whom he tried to get some of the shops vacated which were in the tenancy of old tenants. After failing in his attempts due to long drawn litigation with the tenants, it appears that Gulab Chandra fell back upon the shop of the petitioners which came in his share by way of family settlement long back.

31. It has not been disputed by the petitioners that the sons of Gulab Chandra were employed and were working in a small shop together. It is settled law that every adult member of the landlord's family has a right to settle his business independently and for this reason can get the shop or accommodation vacated which is under the tenancy of any old tenant. The prescribed authority, therefore, wrongly rejected the release application of the respondent-landlords on the ground that the need of the respondent-landlord Gulab Chandra was neither genuine nor bona fide. In fact the prescribed authority did not look into the facts of the case and came to the wrong conclusion that the petitioner-tenant had no other alternative shop. In the back ground that there had been a family partition earlier it was incumbent upon the petitioner to have handed over the possession of the shop in dispute to the respondents which had come in their share and shifted his business to his residential House No. 484 Shahganj, Allahabad regarding which finding has been given by the lower appellate court as under:

vr% esjs er esa Hkou la0 484 'kkgxat] bykgkckn esa Hkwry ij fLFkr nqdku foi{kh dks oSdfYid rkSj ij miyC/k gS ,oa foi{kh fdjk;snkj }kjk fd;s tk jsg o;kikj dh izd`fr dks n`fVxr j[krs gq, esjs er esa ;g O;kikj foi{kh }kjk Hkou la0 484 'kkgxat] bykgkckn esa miyC/k nqdku ij Hkh fd;k tk ldrk g SA

32. The lower appellate court has further recorded a finding that Rajeev Gupta, son of the landlord, was unemployed and his need for a shop to do his independent business was bona fide and rightly came to the conclusion as under:

vr% jktho xqlrk ds csjstxkj gksus ds rF; dks fopkj es yrsr gq, esjs fu'd'kZ esa iz'uxr nqdku ds laca/k esa Hkou Lokeh dh vko';drk ln~Hkkoukiw.kZ g SA blds foijhr fo}ku fu;r izkf/kdkjh }kjk vafdr fu'd'kZ lk=koyh ij miyC/k lkexzh ,oa fof/k ds vuq:l u gksus ds dkj.k =qfViw.kZ gksuk ik;k tkrk g SA----

;g fofnr fLFkfr Li'V gksrh gS fd Hkou Loeh ds ifjokj ds izR;sd Inl; dks viuk Lora= O;kikj djus dk vf/kdkj izklr gS ,oa fdlh Hkh Inl; dks blls ck/; ugha fd;k tk ldrk gS fd og ifjokj ds iwoZ ls pys vk jgs O;kikj esa Hkh Hkkx ysaA ;g Hkh Li'V gksrk gS fd ek= fdjk;snkj dks gkus okyh vloqfo/kk ds vk/kkj ij vFkok fdjk;snkj ds ikl LFkku dh oSdfYid O;olFkk u gksus ds vk/kkj ij fuZeQf izkFkZuk&lk;= fujLr fd;k tkuk mfpr ugha g SA----

Hkou Lokeh e`rd ds lkq= jktho xqlrk ds fo'k; esa ,slk dksbZ lk{; lk=koyh ij izLrqr ugha d;k x;k gS fd og vU; dksbZ O;kikj dj jgk gS vFkok muds ikl LorU= O;kikj djus gsrq dksbZ vU; LFkku miyC/k gS m ifjfLFkfr;ksa esa esjs fu'd'kZ esa rgyukRed dfBukbZ dk larqyu Li'V :lk ls Hkou lokeh ds lk{k esa gksus ik;k tkrk g SA fuZeQf izkFkZuk&lk;= fujLr fd, tkus dh n'kk esa jktho xqlrk LorU= O;kikj djus ds vius vf/kdkj ls oafpr gks tk;sxA

33. As regards the arguments of the learned Counsel for the petitionertenant regarding letting out of the adjoining two shops to Sri Ram Kishore Pandey and Sri Amar Nath Chaurasia during the pendency of release application is concerned, it has rightly been pointed out by the respondent-landlords that the same is factually incorrect. In paragraph 4 of his release application the landlord had denied stated that two adjoining shops are vacant being in possession of tenants Amar Nath Chaurasia and Ram Kishore Pandey who were tenants for the last more than 50 years and the aforesaid shops had not been let out to them during the pendency of dispute as claimed by the petitioner. He has not disclosed the date or year of alleged letting out of adjoining shops to these persons temporarily.

34. The lower appellate court has on the basis of evidence on record rightly set aside the finding of the prescribed authority which was perverse and against the pleadings and record.

35. It is the consistent view of the Court that it was not for the tenant to decide about the bona fide requirement and need of the landlord and the suitability of the accommodation sought by him for release. The plea of the petitioner-tenant regarding availability of two adjoining shops under the tenancy of Sri Ram Kishore Pandey and Sri Amar Nath Chaurasia is factually incorrect and not sustainable in the facts and circumstances of the case.

36. It may also be noted that the cases cited by the learned Counsel for the petitioner, i.e., Deena Nath v. Pooran Lal 2002 (48) ALR 259; T. Sivasubramaniam and Ors. v. Kasinath Pujari and Ors. 1999 (37) ALR 752; Maqboolunnisa v. Mohd. Saleha Quaraishi 1999 (35) ALR 331; Bhupendra Kumar Jain v. 1st Additional District Judge, Bijnor and Anr. 2005 (1) ARC 115 : 2005 (1) AWC 47; Khalid Noor Khan v. Illrd A.D.J. and two Ors. 006 (1) ARC 146 : 2006 (2) AWC 1098 and Chhetriya Sri Gandhi Ashram, Meerut v. IInd Additional District Judge, Meerut and Ors. 1998 (2) ARC 373 are concerned, they are not applicable to the facts and circumstances of the case and clearly distinguishable.

37. In the case of Deena Nath and T. Sivasubramaniam (supra), the Hon'ble Supreme Court has held that the statutory mandate is that there must first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him.

38. In the instant case admittedly Rajeev Gupta is working with his brother and father in a small shop. His requirement of an independent shop for his business or even to expand his business cannot be said to be whimsical or mere fanciful desire. It is a requirement of every adult member of a family to have an independent business. The lower appellate court has rightly come to the conclusion that the need of the respondent-landlords was bona fide. The landlords have set out their bona fide need.

39. As regards the case of Maqboolunnisa (supra) is concerned, in that case it was an admitted case between the parties that some shop admeasuring 10 ft. x 15 ft. was got vacated and the appellant did not amend his pleadings that the shop which has been vacated was not sufficient for his son to establish his business.

40. In the instant case it is evident from the record that the respondent-landlord tried to get the shops vacated which were in the tenancy of old tenants and when he could not succeed he had to compromise in the situation. The shop of which the petitioner is in possession fell in the share of the landlord in family partition. The petitioner is cousin brother of the respondent-landlords. Under their family settlement he was also given a shop which still is vacant though it is said to be in a Gali. As appears from the record the shop is not in a Gali and it is wrong to say that the shop in the possession of the petitioner is in a Gali. Per contra, it appears that it is a 13 ft. wide road. It is not a mere assertion in the instant case that the respondents' need is bona fide as it is admitted to the petitioner that Rajeev Gupta is doing business with his brother in his shop and has no independent shop.

41. In so far as the case of Bhupendra Kumar Jain (supra) is concerned, in that case the prescribed authority overlooked a very important document, i.e. Paper No. 55/C which was a letter written by one Anil Kumar, the elder son of the landlord. The said letter 55/C said that the rent of Rs. 150 was fixed about 10 years back and enhancement of the rent was demanded at least at Rs. 1,500 per month which means that in case the enhancement is not agreeable the accommodation was to be vacated and as such the need was not found bona fide in that case. In paragraph 8 of the aforesaid judgment in Bhupendra Kumar Jain (supra), it was held that the High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a Court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character. In this view of the matter, this Court is not inclined to reappreciate any evidence, but the Court has to see whether any illegality or infirmity has been committed which this Court finds that there is no illegality or infirmity in the impugned order by the appellate court.

42. In the case of Khalid Noor Khan (supra) the landlord was a man of good means. He owned several shops and buildings. In that case the tenant illegally delivered possession to another person. It was held by the Court that in the circumstances the landlord could have got the shop declared vacant which was not done by him.

The facts of this case are therefore different as in the instant case no shop is available to the respondent-landlord.

43. The last decision relied upon by the learned Counsel for the petitioner is of this Court in Chhetriya Sri Gandhi Ashram (supra). In this case the landlord of the tenant was a partnership firm and thus this decision is clearly distinguishable on facts of the instant case.

44. The lower appellate court has rightly interfered in the findings of the prescribed authority and has recorded a finding that the need of the landlords was bonafide and it has not exceeded its jurisdiction as it is settled law that the lower appellate court has jurisdiction and authority to interfere where the prescribed authority/trial court has committed an error in law apparent on the face of the record. As already stated above and is apparent from the judgment of the lower appellate court quoted in extenso the prescribed authority has committed error apparent on the face of the record and has not appreciated the evidence in its correct perspective hence there is no illegality or infirmity committed by the lower appellate court.

45. Thus, the cases cited by the learned Counsel for the petitioner in support of his contention has no force and the writ petition is liable to be dismissed.

46. For the reasons stated above, the writ petition is accordingly dismissed. No order as to costs.

Since the petitioner has already available alternative shop he shall shift his business therein within one month from today.