

**Ramjilal Keshav Dutt and ors. Vs. Smt. Devki Devi and anr.**

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**Court :** Uttaranchal

**Decided On :** Aug-20-2004

**Reported in :** 2005(1)ARC218

**Judge :** Rajesh Tandon, J.

**Acts :** Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1), 22 and 41; [Constitution of India](#) - Articles 226 and 227; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 16 and 16(2)

**Appeal No. :** Civil Petition No. 445 of 2004 (M/S)

**Appellant :** Ramjilal Keshav Dutt and ors.

**Respondent :** Smt. Devki Devi and anr.

**Advocate for Def. :** J.C. Belwal, Adv.

**Advocate for Pet/Ap. :** Sarvesh Agrawal, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**Rajesh Tandon, J.**

1. Heard the Counsel for the parties.

2. By the present Writ Petition the petitioner has prayed for quashing the order dated 28.10.2002 passed by the Prescribed Authority as well as order-dated 7.5.2004 passed in Rent control Appeal No. 8 of 2002.

3. Briefly stated an application was filed under Section 21 (1) (a) U.P. Act No. 13 of 1972 stating therein that the petitioners are the tenants at the rate of Rs. 500/- per month of a shop situate at Moh. Lohara, Kesara Line, Ramnagar.

3. Respondent No. 1 has submitted that Km. Kamla Sati wants to do the business of Lady readymade Garment and there in no place to accommodate her. Further the Petitioners have locked the shop and is doing the business of hotel 'carbet jungle resort' near Almora apart from that there is a restaurant and bar at Moh Ranikhet, Ramnagar.

4. The petitioners therefore, absolutely have no requirement and the shop has been unnecessarily locked by the petitioners. Written statement was filed by the petitioners and the petitioners in Paragraph 24 has admitted regarding running of the hotel business.

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5. The Prescribed Authority after considering requirement of the landlord has released the premises in favour of the Respondent No. 1. Aggrieved by the aforesaid order, the petitioners have preferred an appeal before the Distt. Judge. The district Judge has dismissed the appeal. Hence the present Writ Petition has been filed.

6. Prescribed Authority has considered the affidavits filed on behalf of both the parties. On behalf of the Respondent No. 1 the affidavit of Devki Devi, Affidavit of Km. Kumud Sati. Rejoinder Affidavit of Devki Devi paper No. 28 (ga) were filed. All have been taken into consideration by the Prescribed Authority.

7. On behalf of the petitioners affidavit of Anil Kumar Sharma, Arun Sharma have been taken into consideration.

8. Prescribed Authority has recorded a finding that there has been no denial on the part of the tenant that he is running a hotel business whereas Respondent No. 1 requires the premises for opening the ladies readymade garments and as such the requirements the landlord was held to be bona fide.

9. So far as the comparative hardship is concerned, the same lies in favour of the Respondent No. 1 than the Petitioners as the Respondent No. 1 wants to get her daughter engaged in the business where as the petitioners have got numerous business and has not even searched any other accommodation during the pendency of the present proceedings.

10. The appellate authority has also considered the need of the Respondent No. 1 for establishing her daughter in the business of ladies garment whereas the petitioners are having various hotel business as will appear from the findings of the appellate Court. The findings are quoted below:-

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11. So far as the hardship concurrent

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13. Both the Courts below have recorded of concurrent findings of facts regarding the bona fide need and comparative hardship in favour of the landlord. Since both the Courts below have recorded the findings that the Respondent No. 1 requires the premises for her use and occupation and the tenant has a lucrative business, I find no infirmity in the order passed by both the Courts below. So as to interfere under Article 226/227 of the [Constitution of India](#).

14. Relying upon the Judgment of Surya Dev Rai v. Ram Chandra, 2003 (6) SCC 675 : 2003 SCFBRC 512, the Apex Court in Ranjeet Singh v. Ravi Prakash, 2004 (3) SCC 682 : 2004 SCFBRC 256, has held as under:-

14. Relying upon the Judgment of Surya Dev Rai v. Ram Chandra, 2003 (6) SCC 675 : 2003 SCFBRC 512, the Apex Court in Ranjeet Singh v. Ravi Prakash, 2004 (3) SCC 682 : 2004 SCFBRC 256, has held as under: -

'As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the [Constitution of India](#) also, it has been held in Surya Dev Rai that the jurisdiction was not available to be exercised for indulging in reappreciation or

evaluation of evidence or correcting the errors in drawing inferences like a Court of appeal.'

15. In *Sushila v. Ind A.D.J. Banda and Ors.*, 2003 A.I.R. SCW 2002: 2003 SCFBRC 109, it has been held that release of the shop on the ground of bona fide need having obtained on technical education shall be given due credit, while considering the factors prescribed under Rule 16 Sub-rule (2) of U.P. Act No. 13 of 1972. The Apex Court has observed as under:-

'So far as the petitioner is concerned, she has no other shop where she can establish her married son who is unemployed. In such circumstances, the only fact that the shop in question is in possession of the tenant since long will have no material bearing in deciding the question of comparative hardship. To say that son of the petitioner-landlady may remain unemployed but the shop in question must continue to remain in occupancy of the tenant to whom yet another shop is available in Chowk Bazar would not withstand the guidelines and tests laid down in Sub-rule (2) of Rule 16 of the Rules of 1972'.

'A bare perusal of Rule 16 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, makes it clear that the rule only prescribes certain factors which have also to be taken into account while considering the application for eviction of a tenant on the ground of bona fide need. Sub-rule (2) of Rule 16 quoted earlier relates to the cases of eviction from an accommodation for business use. Clause (a) of Sub-rule (2) provides, greater the period of tenancy less the jurisdiction for allowing the application; whereas according to Clause (b) in case tenant has a suitable accommodation available to him to shift his business, greater the justification to allow the application. Availability of another suitable accommodation to the tenant, waters down the weight attached to the longer period of tenancy as a factor to be considered as provided under Clause (a) of Sub-rule (2) of Rule 16. Yet another factor which may in some cases be relevant under Clause (c) is where the existing business of the landlord is quite huge and extensive leaving aside the proposed business to be set up, there would be lesser justification to allow the application. The idea behind Sub-clause (c) is apparent i.e. where the landlord runs a huge business eviction may not be restored to for

expansion or diversification of the business by uprooting a tenant having a small business for a very long period of time. In such a situation if eviction is ordered it is definitely bound to cause greater hardship to the tenant.'

'It may be mentioned that we are not taking into account of Clause (d) of Sub-rule (2) of Rule 16 of the Rules; where yet another factor is to be borne in mind, in favour of releasing the shop, if the person has some technical education to his credit but not employed in any Government service and wants to engage in self-employment. The petitioner had shown that her son Prem Parkash had undergone a training course in household electrical wiring and had obtained a certificate from Industrial training Institute, Banda. He did not get any Government job and wanted to be self-employed by starting a shop of electrical goods and utensils. The Prescribed Authority considered this factor but we find that the appellate Court expressed doubt on the fact that the certificate related to Prem Parkash being lead by the fact that his residence was shown as village Lukhtara, undisputedly that village also falls in the district of Banda. It was also observed by the Appellate Court that it could not be shown as to what Government job Prem Parkash could get by virtue of the certificate he had obtained from Industrial Training Institute, Banda. The whole approach to the point was misdirected. Be that as it may, we make it clear that even by excluding the factor of Prem Parkash being technically educated. Otherwise as well as find that the need and requirement of the landlady is bona fide even after considering the same in the light of Rule 16 of the Rules and in the background of comparative hardship which we find would be more to the landlady, in the event of disallowing the application for eviction.'

16. Similar view have been taken in the case of G.C. Kapoor v. Nand Kumar Bhasin and Ors., 2001 SC. Full Bench Rent Cases 541, the observations are quoted blow:

'Clause (a) of Sub-section (1) of Section 21 of the Act inter alia provides that the Prescribed Authority may, on an application of the landlord; order eviction of a tenant from the building under tenancy on the grounds mentioned in the said sub-section. Clause (a) is relevant for our purpose which inter alia provides that an application for eviction can be filed by the landlord if the building is bona fide

required by the landlord for occupation by himself or by any member of the family or by any person for whose benefit the premises is held by him, either for residential purposes or for purposes of any profession, trade or calling. Section 41 of the act empowers the State Government to make rules to carry out the purposes of the Act. Exercising powers under the said provision, Government has framed a set of rules viz. the Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) Rules 1972. Rule 16 is the relevant rule for release of a premises on the ground of personal requirement. Sub-rule (2) lays down that while considering an application for release under Clause (a) of Sub-section (1) of Section 21 in respect of building let out for purposes of any business, the Prescribed Authority shall also have due regard to the facts stated in the clause in the sub-rule. We are concerned with Clause (d) which runs as follows:-

'(d) Where a son or unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendants of the landlord has, after the building was originally let out, completed his or her technical education and is not employed in Government service, and wants to engage in self-employment, his or her need shall be given due consideration'. It is settled position of law that bona fide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In *Dattaraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde and Anr.*, 1994 (4) SCC 1 : 1999 SCFBRC 292, this Court while considering the bona fide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for 'presuming that his need is not bona fide'. It was also held that while deciding this question, Court would look into the broad aspects and if the Court feels any doubt about bona fide requirement, it is for the landlord to clear such doubt.

'In *Raghunath G. Panhale (D) by Lrs. v. Chaganla Sundarji and Co.*, 1999 (8) SCC 1 : 1999 SCFBRC 440, this Court inter alia held that it was not necessary for landlord to prove that he had money to invest in the new business contemplated nor that he had experience of it. It was a case for eviction on the ground of bona fide requirement of the landlord for non-residential purpose, as he wanted to start a grocery business in the suit premises to improve his livelihood.'

17. In *Surya Dev Rai v. Ram Chander* SCC 2003 Vol-6 675 : 2003 SCFBRC 512, the Apex Court has held as under:-

'In *Surya Dev Rai v. Ram Chander Rai* that the jurisdiction was not available to be exercised for indulging in reappreciation or evaluation of evidence or correcting the errors in drawing inferences like a Court of appeal. The High Court has itself recorded in its judgment that-'considering the evidence on the record carefully' it was inclined not to sustain the judgment of the Appellate Court. On its own showing the High Court has acted like an Appellate Court which was not permissible for it to do under Article 226 or Article 227 of the Constitution.'

'Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.'

'Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) The error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.'

'A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate Court has chosen to take one view, the error cannot be called gross or patent.'

'The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when

any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or correction is yet capable of being corrected at the conclusion of the proceedings is an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and or early disposal of the suit of proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that every moment, may become incapable of correction at a later stage and refused to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.'

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

18. The findings on bona fide need and comparative hardship being findings of fact, no interference is required under Article 226 of the [Constitution of India](#) in view of the various Judgments of the Apex Court. In *Radha Kant Dubey v. Vth A.D.J. Kanpur Nagar and Ors.*, 2001 (1) ARC 642, it has been observed as under:-

'The respondent No. 3 filed a petition under Section 21 (1) (a) Act No. 13 of 1972 which was allowed by the Prescribed Authority by order dated 2.3.1992. Against this order the present petition preferred on Appeal No. 131 of 1992 under Section 22 of the Act which, was dismissed on 18.1.2001.

Sh. K.K. Tripathi learned Counsel for the petitioner urged that the Prescribed Authority as well as the learned Appellate Court have misread the evidence and have recorded findings which do not flow from the evidence on record. Sh. Rajesh Tandon pointed out that it is well established proposition of law that finding with regard to the bona fide need of the landlord as well as that of the hardship is a finding of fact which cannot be disturbed in writ jurisdiction under Article 226 of the [Constitution of India](#), in support of his submission he placed reliance on some decision in the case of *Kamla Sarin v. Shyam Lal and Ors.*, 1984 (2) ARC 344, in the case of *Munni Lal and Anr. v. Prescribed Authority and Anr.*, AIR 1978 SC 29 : 1981 ARC 470 in the case of *Nathulal v. Radhey*, AIR 1974 SC 1696, in the case

of Babhutmal Rai Chand v. Laxmibai, AIR 1975 SC 1296, in the case of Smt. Labhkumar Bhagwani Sinha v. Janardan Mahedeo Kalan, AIR 1983 SC 535, in the case of Ram Rakesh Pal and Anr. v. Ist Additional District Judge and Ors., 1967 UPRC 376, in the case of Jagan Prasad v. District Judge and Anr., 1976 UPRCC 342, in the case of Laxmi Narain v. IInd Additional District Judge and Anr., 1977 UPRCC 230, in the case of Smt. Nirmala Tandon v. Xth Additional District Judge, Kanpur Nagar, 1996 (2) ARC 490, and in the case of Kamleshwar Prasad v. Praduman Ju Agarwal, 1997 (1) ARC 627.

From the decisions aforesaid it is well embedded proposition of law that extraordinary jurisdiction of this Court under Article 226 of the [Constitution of India](#) cannot be invoked for disturbing the concurrent finding of fact with regard to the bona fide need of the landlord as well as that of the hardship. In view of the firm legal position I am not inclined to interfere in the matter. The writ petition is dismissed.

After the above order was passed Sh. K.K. Tripathi learned Counsel for the petitioner urged that sometime may be allowed to the petitioner to shift to another accommodation by making alternative arrangement Sh. Rajesh Tandon learned Counsel for the landlord respondent No. 3 states that if some reasonable time is allowed to the petitioner the landlord shall have no objection.

With a view to mitigate the hardship of the petitioner which is likely to occasion on account of displacement pursuant to the order of release and with a view to balance the rights of the parties, I feel that it would be proper and in the interest of justice if the order of release which has been affirmed by the Appellate Court is deferred from being implemented till 30th November 2001. The petitioner shall furnish an undertaking on affidavit to be filed before the Prescribed Authority with in a month from today. After the undertaking is filed, the possession of the petitioner over the disputed accommodation which has been released shall not be disturbed till 30th November 2001. In case the petitioner does not deliver vacant possession of the released accommodation by 30th November 2001, the order of release shall become executable. In the event of failure of the petitioner to furnish undertaking on affidavit within time as specified above, the concession granted to

him to continue to occupy the accommodation till 30th November 2001 shay stand withdrawn.'

19. In support of his submission he placed reliance on some decisions:

In the case of Kamla Sarin v. Shyam Lal and Ors., 1984 (2) ARC 344, in the case of Munni Lal and Anr. v. Prescribed Authority and Anr., AIR 1978 SC 29 : 1981 ARC 470, in the case of Nathu Lal v. Radhye, AIR 1974 SC 1696, in the case of Babhutmal Rai Chand v. Laxmibai, AIR 1975 SC 1296, in the case of Smt. Labhkumar Bhagwani Sinha v. Janardan Mahedeo Kalan, AIR 1983 SC 535, in the case of Ram Rakesh Pal and Anr. v. 1st Additional District Judge and Ors., 1967 UPRC 376, in the case of Jagan Prasad v. District Judge and Anr., 1976 UPRCC 342, in the case of Laxmi Narain v. IInd Additional District Judge and Anr., 1977 UPRC 230, in the case of Smt. Nirmala Tandon v. Xth Additional District Judge, Kanpur Nagar, 1996 (2) ARC 490, and in the case of Kamleshwar Prasad v. Praduman Ju Agarwal, 1997 (1) ARC 627.

20. However, time is granted up to January 2005 to vacate the premises provided undertaking is given within a period of one month and further the entire arrears of rent be deposited.

21. Consequently, the writ petition is dismissed. No order as to costs.

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