



2025:AHC:166250

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 8877 of 2014

Mahadev Prasad Agarwal

.....Petitioner(s)

Versus

Ram Niwas Gupta And Another

.....Respondent(s)

Counsel for Petitioner(s) : Archit Mehrotra, Manish Goyal
Counsel for Respondent(s) : Aneeta Tripathi, Tripathi B.G. Bhai

Court No. - 37

Reserved on 19.08.2025

Delivered on 17.09.2025

HON'BLE CHANDRA KUMAR RAI, J.

1. Heard Sri Manish Goel, learned Senior Counsel assisted by Sri Archit Malhotra, learned counsel for petitioner/landlord and Sri Tripathi B.G. Bhai, learned counsel for respondents/tenants.

2. Brief facts of the case are that petitioner is owner of shop no. 88 (new no. 146) and shop no. 89 (new no. 147) situated at Mandi Shreeganj (Gudmandi) Bada Bazar, Qasba Shikohabad, District-Firozabad. The aforementioned shops in question were originally in the tenancy of one Lala Bhadra Sen (father of respondent no. 1) and Lala Chandra Sen (father of respondent no. 2). After death of Lala Chandra Sen and Lala Bhadra Sen, the tenancy of the shops in question devolved upon their respective sons, who are respondent nos. 1 and 2 in the instant petition. Petitioner sent notice dated 23.04.2010 to the respondents terminating their tenancy. Respondents filed their reply to the notice dated 23.04.2010. Petitioner filed a release application in respect to the shop in question on 31.05.2010 under Section 21 (1) (a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (herein after referred to as U.P. Act No. 13 of 1972) before the Prescribed Authority, which was registered as P.A. Case No. 8 of 2010. In the aforementioned P.A. Case respondents filed a joint written statement on 22.08.2010. Petitioner filed a replication on 09.08.2011. An amendment application was filed on behalf of respondents to amend their written statement before the Prescribed Authority. Petitioner adduced oral and documentary evidence in support of his case. The commission was also issued for inspection of the property in question, accordingly a report dated 11.07.2010 was submitted by

Amin before Prescribed Authority. Respondents have also adduced evidence in support of their case, but respondent no. 2 neither filed any affidavit nor entered into witness box before the Prescribed Authority. Prescribed Authority vide judgment and order dated 22.12.2011 allowed the release application filed by the petitioner/landlord directing the respondents/tenants to vacate the shops in question within a period of two months and to hand over vacant possession of the shop to the petitioner/landlord subject to payment of rent of two years to the respondents/tenants. Against the judgment and order of Prescribed Authority dated 22.12.2011, an appeal under Section 22 of U.P. Act No. 13 of 1972 was filed by respondent nos. 1 and 2 before District Judge, which was registered as P.A. Appeal No. 4 of 2012. In the aforementioned P.A. Appeal, an application for amendment dated 24.09.2012 was filed on behalf of tenants to amend their written statement. Against the aforementioned amendment application an objection was filed on behalf of petitioner/landlord. Appellate Court rejected the amendment application filed by tenants vide order dated 16.02.2013. Against the order dated 16.02.2013 respondents/tenants filed a Writ Petition No. 14173/2013, which was allowed vide judgment dated 10.07.2013 permitting the tenants to add the pleadings to their written statement, but the respondents were refrained from leading any evidence in the matter. Thereafter, petitioner has filed replication to the amendment written statement. Respondents/ tenants filed another application (paper no. 16 Ga) for filing additional evidence, which was rejected by appellate Court vide order dated 5.9.2012 and the same was not challenged by tenants before any Court. On the basis of the amendment in the written statement, the respondents/tenants also made a prayer to amend the grounds of appeal accordingly, appellate Court vide order dated 26.7.2013 allowed the amendment with cost of Rs.15,00/-. Thereafter, Appellate Court/Additional District Judge, Court No. 5, Firozabad vide order dated 18.12.2013 allowed appeal in part maintaining the order of prescribed authority in respect to the shop no. 88 (new no. 146) and set aside the order of prescribed authority with respect to shop no. 89 (new no. 147). Hence, this petition for following reliefs:-

"a) issue a writ, order or directing in the nature of certiorari calling for the record of the case and quashing the judgment and order dated 18.12.2013, passed by the Court of Additional District Judge Court No. 5, Firozabad in Prescribed Authority Appeal No. 4 of 2012 arising out from Prescribed Authority Case No. 8 of 2010 under Section 21(1) (a) of the U.P. Act No. 13 of 1972 (Annexure-1 to the writ petition).

b) issue any other writ, order or directing as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

c) allow this petition with costs."

3. This Court entertained the matter on 14.02.2014 and issued notice to the respondents. In pursuance of the order dated 14.02.2014 parties have exchanged their pleadings.

4. Learned Senior Counsel for the petitioner submitted that Prescribed Authority has rightly exercised the jurisdiction under Section 21 (1) (a) of the U.P. Act No. 13 of 1972 allowing the release application in respect to shop no. 88 and 89. He further submitted that each and every aspect of the matter was properly dealt by the Prescribed Authority, as such there was no occasion to modify the judgment of Prescribed Authority in appeal releasing one shop to the landlord and refusing to release another shop. He placed the release application filed by petitioner/landlord showing the bona fide need of the landlord at the relevant point of time, written statement filed by the tenants and evidence adduced before the Prescribed Authority in order to demonstrate that need set up by the landlord was bona fide and comparative hardship in respect to both the shops in question was in favour of landlord in comparison to the tenant. He next submitted that the order passed by appellate Court should be set aside and order passed by Prescribed Authority be maintained. He placed reliance upon the following judgments in support of his arguments:-

"(i) Civil Appeal No.00322 of 2025, arising out of S.L.P. No.021965/2022, decided on 25.2.2025, Kanahaiya Lal Arya vs. Md. Ehshan and Others;

(ii) Writ A No.2462 of 2022, decided on 28.3.2022, Gopal Krishna Shankdhar @ Krishna Gopal Shankdhar vs. Shri Manoj Kumar Agarwal and Others;

(iii) 2023 SCC Online All 2640, Vijay Kumar Banswar vs. Awadhesh Kumar Jaiswal;

(iv) 2008 (71) ALR 857, Harish Bhatia vs. Smt. Johra Begum;

(v) 2010 (2) ARC 373, Manohar Lal Sharma vs. Umesh Chandra Verma and Others;

(vi) 2011 (85) ALR 285, Gulam Hussain and Others vs. Addl. District Judge;

(vii) 2007 (3) ARC 564, Vijai Kumar and Others vs. Ashok Kumar and Others;

(viii) 2007 (2) ARC 360, Raj Kumar vs. 3rd Addl. District Judge, Meerut and Others;

(ix) 2025 SCC Online SC 915, Murlidhar Aggarwal vs. Mahendra Pratap Kakan and Others;

(x) 2016 SCC Ohnline All 3003, Dharmendra Singh Sonkar vs.

Addl. District and Sessions Judge, Lucknow and Others;

(xi) 2006 (1) ARC 65, Hasmat Ali vs. 6th Addl. District Judge, Kanpur Nagar and Others;

(xii) 2008 (73) ALR 177, Ram Kumar Barnwal vs. Ram Lakhan and Others;

(xiii) 2007 (3) ARc 579, Syed Nafisul Hassan and Others vs. 4th A.D.J., Kanpur Nagar and Others, and

(xiv) 2009 (76) ALR 548, Satish Chandra Agarwal vs. Hariraj Saran Agarwal."

5. On the other hand, learned counsel for respondents/tenants submitted that both the shop nos. 88 and 89 were jointly occupied by respondent nos. 1, 2 & 3 as there was no partition between them. He further submitted that answering respondents were paying the rent regularly, to the landlord but in order to terminate the tenancy the petitioner landlord has refused the rent paid by the tenant. He submitted that answering respondents are depositing the rent regularly in the Court. He next submitted that respondent no. 2 has handed over the possession of one shop to petitioner and it is wrong to say that respondent no. 2 has sublet the shop no. 89 to respondent no. 1. He submitted that two sons of petitioner are living at Shikobad and doing the business of cloth, as such there is no bonafide need of the landlord, as set up by him before the Prescribed Authority. He further submitted that Prescribed Authority has illegally allowed the release application in respect the both the shop in question. He further submitted that appellate Court has rightly allowed the appeal filed by the respondents/tenants and modified the judgment of Prescribed Authority in proper manner. He next submitted that respondents are operating their business from time of their ancestor and they had gained good reputation in their business, as such the Prescribed Authority has committed illegality in allowing the release application in respect to the shop in question. He submitted that if both the shops are directed to be vacated, the business of respondent will be highly affected. He further submitted that the stand taken by the petitioner that his two educated sons are unemployed is absolutely misconceived. He next submitted that sons of petitioner have also purchased new shop along with their old operating business accommodation for operating business. He submitted that in compliance of the judgment of appellate Court the answering the respondents have vacated the shop no. 88 (new no. 146) on 8.07.2014 after payment of rent of the shop no. 88. He submitted that no interference is required against the order impugned passed by the appellate Court. He further placed sale deed dated 24.02.2021, which is annexed as annexure no. SA-1 to the Supplementary Affidavit dated 02.08.2022 filed on behalf of respondents in order to demonstrate that sale deed has been executed in favour of wife of

petitioner in respect to another property, as such there is no need to petitioner/landlord in respect to the shop no. 89 (new no. 147). He placed reliance upon the judgment reported in **1998(2)All WC 1580, Remington Rand of India Ltd. Versus Vth Addl. Dist.& Session Judge, Meerut.**

6. I have considered the arguments advanced by the learned counsel for parties and perused the record.

7. There is no dispute about the fact that Prescribed Authority has allowed the release application filed by petitioner/landlord in respect to shop nos. 88 and 89, but appellate Court has allowed the appeal in part and set aside the judgment of Prescribed Authority in part allowing the release application of landlord in respect to shop no. 88, but in respect to plot no. 89 the release application was rejected.

8. In order to appreciate the controversy involved in the matter the perusal of Section 21 (1) (a) of U.P. Act No. 13 of 1972 and Rules 16 (1) and 16 (2) of the Rules of 1972 will be relevant which are as under:-

"21. Proceedings for release of building under occupation of tenant.—(1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely—

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust;"

"16. Application for release on the ground of personal requirement [Sections 21 (1) (a) and 34 (8)].—1[(1) In considering the requirements of personal occupation for purposes of residence by the landlord or any member of his family, the prescribed authority shall, also have regard to such factors as the following :

(a) Where the landlord already has adequate and reasonably suitable accommodation having regard to the number of members of his family and their respective ages and his means and social status, his claim for additional requirements shall be construed strictly ;

(b) Where a residential building was let out at the time when the sons of the landlord were minors and subsequently one or more of them has married, the additional requirement of accommodation for the landlord's sons shall be given due

consideration;

(c) Where the tenant has, apart from the building under tenancy, other adequate accommodation, whether owned by him or held as tenant of any public premises, having regard to the number of members of his family and their respective ages and his social status, the landlord's claim for additional requirements shall be construed liberally :

(d) Where the tenant's needs would be adequately met by leaving with him a part of the building under tenancy and the landlord's needs would be served by releasing the other part, the Prescribed Authority shall release only the [other] part of the building;

(e) Where there are a number of tenants separately occupying a block of tenements and the landlord desires their eviction on ground of his personal need the Prescribed Authority shall consider whether suitable alternative accommodation is likely to be available to such tenants;

(f) Where the landlord offers to the tenant alternative accommodation reasonably suitable to the needs of the tenant and his family the landlord's claim for release of the building under tenancy shall be construed liberally;

(g) Where the landlord was engaged in any employment in the same city, municipality, notified area or a town area in which the buildings is situate and was in occupation of other-accommodation by reason of such employment or where the landlord is the wife or minor son or unmarried daughter of a person, who was engaged in any profession, trade, calling or employment away from the city, municipality, notified area or town area within which the building is situate and was living with such person, and by reason of the cessation of such engagement, the landlord needs the building for occupation by himself for residential purposes, such need shall ordinarily be deemed sufficient."

(2) While considering an application for release under clause (a) of sub-section (1) of Section 21 in respect of a building let out for purposes of any business, the Prescribed Authority shall also have regard to such facts as the following :-

(a) the greater the period since when the tenant opposite party, or the original tenant whose heir the opposite party is, has been carrying on his business in that building, the less the justification for allowing the application;

(b) where the tenant has available with him suitable accommodation to which he can shift his business without substantial loss there shall be greater justification for allowing the application;

(c) the greater the existing business of the landlords own, apart from the business proposed to be set up in the leased premises, the less the justification for allowing the application, and even if an application is allowed in such a case, the Prescribed Authority may on the application of the tenant impose the condition where the landlord has available with him other accommodation (whether subject to the Act or not) which is not suitable for his own proposed business but

may serve the purpose of the tenant, that the landlord shall let out that accommodation to the tenant on a fair rent to be fixed by the Prescribed Authority;

(d) where a son or unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant 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."

9. The perusal of the issues framed before the Prescribed Authorities will be relevant which is as under:-

"प्रस्तुत प्रकरण के निस्तारण हेतु निम्न निर्धारण वाद बिन्दु विरचित किये जाते हैं।

1-क्या आवेदक को विवादित दुकान की सद्भाविक आवश्यकता है?

2-क्या आवेदक की तुलना में विपक्षीय को कठिनाई अधिक है?

3-आवेदक किस अनुतोष को पाने का अधिकारी है?"

10. The issues framed by the Prescribed Authority has properly been considered in the light of the evidence adduced by the parties and finding of fact has been recorded to the effect that needs set up by the landlord is bonafide and genuine. The finding of fact has also been recorded by the Prescribed Authority while deciding the issue no. 2 that tenants have failed to discharge his duty to make attempt for any another accommodation for his business purpose, as such comparative hardship is in favour of landlord in comparison to tenant. There was no illegality in the exercise of jurisdiction by prescribed authority. The finding of fact recorded by the prescribed authority has been illegally interfered by the appellate Court modifying the judgment of Prescribed Authority releasing one shop and refusing the release in respect to another shop.

11. On the question of bona-fide need of the landlord, the Apex Court in the case reported in **2025 (3) ADJ 308, Kanahaiya Lal Arya vs. Md. Ehshan & Others** has held that the landlord is a best judge to decide which of his property should be vacated for satisfying his particular need and tenant has no role in dictating as to which premises of the landlord should get vacated for his need alleged in

the suit for eviction. Paragraph nos.11,15 & 16 of the judgement of Apex Court rendered in **Kanahaiya Lal Arya (supra)** will be relevant, which are as under:-

"11. In the case at hand, the appellant-landlord may be having some other properties under tenancy of various persons but once he has decided to get the suit premises vacated for the bona fide need of establishing an ultrasound machine for his two unemployed sons, he cannot be forced to initiate such a proceeding against the other tenants. It is for the appellant-landlord to take a decision in this regard and once he has decided to get the suit premises vacated, no error or illegality could be pointed out in his decision. Secondly, it has come on record by clear finding of the court of first instance that the suit premises is the most suitable accommodation for establishing an ultrasound machine. The reason being that it is situated adjacent to a medical clinic and a pathological centre and is the most appropriate place for establishing any medical machine. Moreover, the appellant-landlord has also proved his capacity to invest in purchasing/establishing an ultrasound machine and that his two sons are unemployed and as such the suit premises is required to establish them in business and to augment the family's income. Therefore, the bona fide need of the appellant-landlord stands duly established.

15. As would be evident from the above compromise, the decree for partial eviction from the premises occupied by the respondents-tenant was partially decreed in Second Appeal No.40/1983 on 31.03.1988 for the bona fide need of the appellant-landlord to establish his brother-in-law. The said need was altogether a different need. The said decree of the year 1988, even if not used for the purpose intended, it would not affect the rights of the appellant- landlord which accrues to him in the year 2001. The need of the appellant-landlord for getting the suit premises vacated for establishing his two sons has to be seen on the date of filing of the suit i.e., 28.11.2001. On the said date, the need of the appellant-landlord stands established. The said need would not get eroded by any earlier decree of eviction of the year 1988.

16. Accordingly, in view of the facts and circumstances of the case, the appellant-landlord has proved his bona fide need for

the suit premises. The appeal is allowed and the impugned judgment and order dated 18.08.2022 and 25.09.2006 of the High Court and the First Appellate Court respectively are set aside. The suit of the appellant- landlord stands decreed."

12. Considering the ratio of law laid down by Apex Court in ***Kanhaiya Lal Arya (Supra) as well as the provisions contained under Rules 16 (2) of the Rules of 1972***, there was no illegality in the judgment / order passed by Prescribed Authority releasing both the shops in favour of landlord, but appellate Court has illegally allowed the appeal of tenant in part refusing the release in respect to one shop without considering the ratio of law laid down by the Apex Court in ***Kanhaiya Lal Arya (Supra)*** as well as the provisions contained under **Rule 16(2) of the Rules of 1972**, as such the impugned appellate judgment dated 18.12.2013 passed by Additional District Judge, Court No. 5, Firozabad in P.A. Appeal No. 4 of 2012 is liable to be set aside and the same is hereby set aside.

13. The writ petition is **allowed** and the judgment dated 22.12.2011 passed by Prescribed Authority in P.A. Case No. 8 of 2010 is hereby affirmed.

14. No order as to costs.

September 17, 2025

Neetu

(Chandra Kumar Rai,J.)