

**Reserved on 05.03.2022**

**Delivered on 28.03.2022**

**Court No. - 10**

**Case :-** WRIT - A No. - 2426 of 2022

**Petitioner :-** Gopal Krishna Shankdhar @ Krishna Gopal Shankdhar

**Respondent :-** Shri Manoj Kumar Agarwal And 2 Others

**Counsel for Petitioner :-** Adya Prasad Tewari

**Counsel for Respondent :-** Shahnawaz Akhtar,Rama Goel

Bansal,Shahnawaz Akhtar

**Hon'ble Rohit Ranjan Agarwal,J.**

1. Heard Sri A.P. Tewari, learned counsel for the petitioner and Ms. Rama Goel Bansal, learned counsel for the respondents.
2. This petition has been filed under Article 226 of the Constitution of India assailing the order dated 21.12.2021 passed by Prescribed Authority/ Additional District Judge, Court No.7, Badaun allowing the release application filed by the respondents no.1 to 3 and setting aside the order dated 23.04.2011 passed by Prescribed Authority/Civil Judge (Senior Division), Badaun dismissing the release application of the landlord-respondents.
3. Case, in nutshell, is that the landlord-respondents no.1 to 3 filed Rent Case No.03 of 2009 (Sri Manoj Kumar Agrawal and others Vs. Sri Gopal Krishna Shankdhar @ Krishna Gopal Shankdhar, Advocate Collectorate, Badaun) under Section 21(1)(a) of The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act No. 13 of 1972 (*hereinafter called as "Act No.13 of 1972"*) for releasing the accommodation in dispute which is a residential portion purchased by the landlord-respondents on 06.06.2006 from its previous owner Arun Kumar Tondon.

4. The landlord-respondents claimed themselves to be the grand-sons of one Lala Brij Lal. The entire family of Late Brij Lal consists of 27 members. The landlord-respondents are the sons of one Anand Prakash Agrawal. Lala Brij Lal had a double storey ancestral house at Mohalla Khandsari, District Badaun which consists of one gallery, verandah, two rooms on ground floor and three rooms on the first floor. As the family of the landlord-respondents was growing up, there stood personal need for the landlord and their family members, as each one of them required separate room for living. The accommodation in dispute is in the tenancy of the tenant-petitioner who is a practising lawyer at Badaun.

5. The said release application was filed on 03<sup>rd</sup> July, 2009 and the same was contested by the tenant-petitioner by filing his objection/reply, wherein it was denied that there existed any need of the landlord and they were having other accommodation, wherein their need could be satisfied.

6. After exchange of pleadings and affidavits, the trial Court on 23.04.2011 found that the need of the landlord-respondents was not genuine and bona fide and the comparative hardship tilted in favour of the tenant. The release application filed under Section 21 (1) (a) of U.P. Act No.13 of 1972 was rejected.

7. Aggrieved by the order of the Court of first instance, a Rent Appeal No.16 of 2011 was filed by the landlord-respondents, wherein, the appellate Court found that the Court of first instance had wrongly recorded finding that the landlord had other accommodation in their possession and the said fact having been conceded, the release application was wrongly rejected and the need of the landlord was genuine and bona fide and comparative hardship tilted in favour of the landlord as no effort was made by the tenant-petitioner to search alternative accommodation during the pendency of the release application.

**8.** Vide order impugned dated 21.12.2021, the appeal was allowed and the order passed by the Court of first instance was set aside, hence this writ petition.

**9.** Sri A.P. Tewari, learned counsel for the petitioner submitted that the appellate Court had wrongly reversed the finding recorded by the Prescribed Authority and without examining the material on record held the need of the landlord as genuine and bona fide. He further contended that the trial Court had recorded categorical finding that the landlord had concealed material fact that they were having other accommodation and the trial Court had recorded categorical finding to the effect relying upon the affidavit filed in favour of the tenant-petitioner. He then contended that while re-appreciating the evidence the appellate Court was duty bound to meet the finding returned by the Court of first instance and also while deferring from the finding and conclusion drawn by Court of first instance, specific finding should have been recorded, but the appellate Court failed to do so.

**10.** He next contended that the landlord had purchased the western portion of the accommodation in the year 2013 and was residing in the same and the trial Court had rightly repelled the argument of the landlord and rejected his application on the ground that there was genuine and bona fide need.

**11.** Sri Tewari, learned counsel next tried to impress the Court upon the finding of the trial Court that landlord-respondents were having alternative accommodation with them, wherein their need could be satisfied and these facts were deliberately concealed by the landlord while filing the release application and only averment, to the extent that there was an ancestral house at Mohalla Khandsari, Badaun, was made in the release application.

**12.** Ms. Rama Goel Bansal, learned counsel appearing for the landlord-respondents submitted that the appellate Court had recorded a categorical

finding of fact that the other accommodation as disclosed by the trial Court was not in the exclusive ownership of the respondents-landlord and, in fact, was owned and in possession of father of the landlord. She further contended that in the house situated at Mohalla Khandsari, the landlord-respondents were only having ancestral right and it was a small house wherein the legal heirs of late Brij Lal were residing and all of them had share in it.

**13.** Ms. Bansal, further contended that a house adjoining the ancestral house was purchased by the father of the landlord and in the said house Anand Prakash was carrying on business of manufacturing of edible products. She further contended that the house which was willed in favour of the father of the landlord by one Vedwati, a civil litigation is going on before the Civil Judge (Senior Division), Badaun.

**14.** As far as the house situated at Bhurji Vali Gali is in the name of Anand Prakash from where he is carrying out his business and having a godown, the landlord-respondents have no concern with the same. Further, the said house is in a dilapidated condition.

**15.** According to Ms. Bansal, the description of the property given by the tenant to be of the landlord was, in fact, neither owned nor possessed by the respondents-landlord and in fact, the ownership is with the father of the landlord who is in possession of the same and is running his business in the said accommodation. She then contended that the property as claimed by the tenant to be situated in Purana Bazar being in possession of the respondents is, in fact, a shop which has been taken on rent by the landlords, whereas the need of the respondents are for residential purpose and not for starting business. She has relied upon the decision of the Apex Court in case of **Prativa Devi (Smt.) Vs. T.V. Krishnan 1996 (5) SCC 353, Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, 1999 (6) SCC 222, Ragavendra Kumar Vs. Firm Prem Machinery & Co., 2000 (1) SCC 679, Joginder Pal Vs. Naval Kishore**

**Behal 2002 (5) SCC 397, Balwant Singh alias Bant Singh and another Vs. Sudarshan Kumar and another 2021 SCC OnLine SC 114.**

16. I have heard rival submissions of the parties and perused the material on record.

17. It is not in dispute that the accommodation in question was let out to the tenant-petitioner and the same was purchased by the respondents-landlord on 06.06.2006. The release application filed under Section 21 (1) (a) of U.P. Act No.13 of 1972, in detail, disclosed the pedigree of the landlord-respondents and the number of family members which is 27 had been living in their ancestral double storey house situated at Mohalla Khandsari, District Badaun. As the family of Lala Brij Lal grew up, the requirement also arose as the house consisted of one gallery, verandah, two rooms on the ground floor and three rooms on the first floor.

18. Looking to the genuine and bona fide need of the growing family, the respondents-landlord purchased the accommodation in question on 06.06.2006. The release application was contested hotly by the tenant-petitioner who is a practising advocate at District Badaun. In his objection/reply, he came up with the case that the landlord-respondents have not come up before the Court with clean hands and were having number of alternate accommodation with them in the city of Badaun, wherein their need could be satisfied.

19. Affidavits were filed in his support and the Court at first instance considering the objection/reply rejected the release application of the landlord on 23.04.2011 on the ground that the application was filed concealing the fact that landlord-respondents had other accommodation available with them and their need was not genuine and bona fide, while the comparative hardship tilted in favour of the tenant.

20. The appellate Court while re-appreciating the evidence reversed the finding of the trial Court and held that the findings recorded were totally in disregard with the evidence on record which conclusively proves the

facts that the alternative accommodation shown to be with the landlords was not in his exclusive ownership and was in fact, the properties purchased by the father of the petitioner and in the ancestral property, the landlord-respondents were having share.

**21.** In one of the property, the appellate Court found that the Will which was executed in favour of the landlords as well as their father, a civil litigation is going on between the parties in regard to the genuineness of Will.

**22.** The appellate Court further recorded a categorical finding that no effort was made by the tenant during the pendency of the matter in searching alternative accommodation and only a publication in a newspaper, which was not in much circulation in the District Badaun, was made on 27.05.2008. After that no effort was made for getting alternate accommodation as such, the comparative hardship tilted in favour of the landlords. The appeal was allowed on 21.12.2021 setting aside the order dated 23.04.2011 and allowing the release application.

**23.** The argument raised by Sri Tewari as to non-recording of finding by the appellate Court while reversing the finding of the trial Court does not hold ground, and from the perusal of the judgment of the appellate Court, it is clear that specific finding has been recorded on each and every aspect of the case specially in regard to the alternate accommodation as held by the trial Court being with the landlord.

**24.** The appellate Court had recorded specific finding that the landlord-respondents were only having share in the ancestral house, and the other three accommodations shown at different places were actually in the ownership and possession of their father Anand Prakash, and not in the ownership and possession of the landlords.

**25.** The appellate Court had also recorded finding from the evidence filed before the trial Court that from the accommodation which was in the

exclusive ownership of Anand Prakash, he was carrying on his own business of edible products and was also using as a godown.

26. Further, the house alleged to have come in the share of the landlords through Will executed by one Vedwati, a civil litigation is going on in respect of genuineness of Will. As far as the shop which has been taken on rent by the landlord, their need cannot be satisfied as the release application has been filed for the accommodation for residential purpose.

27. The Apex Court in **Prativa Devi (Smt.) (Supra)** has held that landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the Courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The Apex Court further held that there is no law which deprives the landlord of beneficial enjoyment of his property.

28. In **Shiv Sarup Gupta (Supra)**, the Apex Court considered the scope of bona fide and genuine need of a landlord, which is as under:-

*“13. Chambers 20th Century Dictionary defines bonafide to mean 'in good faith : genuine'. The word 'genuine' means 'natural; not spurious; real: pure: sincere'. In Law Dictionary, Mozley and Whitley define bonafide to mean 'good faith, without fraud or deceit'. Thus the term bonafide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required bonafide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejection of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bonafides would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself .in the arm chair of the*

*landlord and then ask the question to himself-whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bonafide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bonafides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one. but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.*

*14. The availability of an alternate accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to bonafides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the Court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. Secondly, another principal ingredient of Clause (e) of Sub-section (1) of Section 14, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available than the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternate residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in*



*demonstrating objectively to exist. Needless to say that an alternate accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come.*

*20. In Sarla Ahuja v. United India Insurance Co. Ltd., this Court has held that the Rent Controller should not proceed on the assumption that the landlord's requirement is not bonafide. When the landlord shows a prima facie case a presumption that the requirement of the landlord is bonafide is available to be drawn. It is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without giving possession of the tenanted premises. While deciding the question of bonafides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”*

**29.** In **Raghvendra Kumar (Supra)**, the Apex Court dealt with a situation, wherein the landlord had made a statement that the house and shop were not vacant and the suit premise is suitable for his business, the Court found that such statement of the landlord cannot be faulted. Relevant para-10 is extracted here as under:-

*“10. The learned Single Judge of the High Court while formulating first substantial question of law proceeded on the basis that the plaintiff-landlord admitted that there were number of plots, shops and houses in his possession. We have been taken through the judgments of the courts below and we do not find any such admission. It is true that the plaintiff-landlord in his evidence stated that there were number of other shops and houses belonging to him but he made a categorical statement that his said houses and shops were not vacant and that suit premises is suitable for his business purpose. It is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. (See: Prativa Devi (Smt.) v. T.V. Krishnan). In the case in hand the plaintiff-landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted.”*

**30.** In **Joginder Pal (Supra)**, the Apex Court while dealing with the social legislations like Rent Control Act held that there should be a balance maintained between the need of a tenant and the landlord. The legislation does not bend in favour the tenant, nor is against the landlrod. Relevant paras 6, 7, 8 and 9 are extracted here as under:-

*“6. In Malpe Vishwanath Acharya and Ors. v. State of Maharashtra and Anr., this Court emphasized the need of social legislation like the Rent Control Act striking a balance between rival interests so as to be just to law. "The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society". While the shortage of accommodation makes it necessary to protect the tenants to save them from exploitation but at the same time the need to protect tenants is coupled with an obligation to ensure that the tenants are not conferred with a benefit disproportionately larger than the one needed. Socially progressive legislation must have a holistic perception and not a shortsighted parochial approach. Power to legislate socially progressive legislations is coupled with a responsibility to avoid arbitrariness and unreasonability. A legislation impregnated with tendency to give undue preference to one section, at the cost of constraints by placing shackles on the other section, not only entails miscarriage of just (SIC) but may also result in constitutional invalidity.*

*7. In Arjun Khiamal Makhijani v. Jamnadas C. Tuli (SIC) and Ors., this Court dealing with Rent Control Legislation observed that provisions contained in such legislations are capable of being categorized into two : those beneficial to the tenants and those beneficial to the landlord. As to a legislative provision beneficial to landlord, an assertion that even with regard to such provision an effort should be made to interpret it in favour of the tenant is a negation of the very principle of interpretation of a beneficial legislation.*

*8. The need for reasonable interpretation of Rent Control Legislation was emphasized by this Court in Mst. Bega Begum and Ors. v. Abdul Ahad Khan (dead) by Lrs. and Ors.. Speaking in the context of reasonable requirement of landlord as a ground for eviction the Court guarded against any artificial extension entailing stretching or straining of language so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. The Court warned that such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. In Kewal Singh v. Lajwanti, this Court has*

*observed, while the rent control legislation has given a number of facilities to the tenants it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance one of the grounds for eviction which is contained in almost all the Rent Control Acts in the country is the question of landlord's bona fide personal necessity. The concept of bona fide necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical. Recently in Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta, the Court has held that the concept of bona fide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.*

*9. The Rent Control Legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The Legislative intent has to be respected by the Courts while interpreting the laws. But it is being uncharitable to Legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants go to the extent of being unfair to the landlords. The Legislature is fair to the tenants and to the landlords - both."*

**31.** In **Balwant Singh (Supra)**, the Apex Court reiterated that a tenant cannot dictate how much space is admitted for the landlord. Relevant paras 11 and 13 are extracted here as under:-

*"11. On the above aspect, it is not for the tenant to dictate how much space is adequate for the proposed business venture or to suggest that the available space with the landlord will be adequate. Insofar as the earlier eviction proceeding, the concerned vacant shops under possession of the landlords were duly disclosed, but the case of the landlord is that the premises/space under their possession is insufficient for the proposed furniture business. On the age aspect, it is seen that the respondents are also senior citizens but that has not affected their desire to continue their business in the tenanted premises. Therefore, age cannot be factored against the landlords in their proposed business.*

*13. On consideration of the above aspects, the genuine need of the appellants to secure vacant possession of the premises for the proposed business is found to be established. According to us, the adequacy or otherwise of the space available with the landlord for the business in mind is not for the tenant to dictate. The special procedure for NRI landlord was deliberately*

*designed by the Legislature to speedily secure possession of tenanted premises for bona fide need of the NRI landlords and such legislative intent to confer the right of summary eviction, as a one time measure cannot be frustrated, without strong reason.”*

**32.** Thus, this Court finds that as the appellate Court had recorded a categorical finding to the effect that landlord-respondents were in fact, not having any alternative accommodation in their exclusive possession and the alternative accommodation as has been brought on record by the tenant-petitioner was, in fact, in the exclusive ownership of Anand Prakash, father of the landlord-respondents and one of the accommodation was under the dispute.

**33.** This Court finds that the finding recorded by the appellate Court cannot be re-appreciated and the evidences cannot be re-assessed by this Court exercising extraordinary jurisdiction under Article 226 of the Constitution of India.

**34.** No material irregularity has been pointed out by the petitioner to demonstrate that there was any failure on the part of the appellate Court while considering the appeal of the respondents. The argument raised at the bar was only to the effect that the finding returned by the appellate Court was not specific while reversing the finding of the trial Court.

**35.** From the careful analysis of the judgment of the appellate Court, it is clear that on each and every aspect, the appellate Court has dealt with the matter as regards the alternate accommodation alleged to be with the landlord-respondents by the tenant. The appellate Court had recorded specific finding on each aspect and found the need of the landlord-respondents to be genuine and bona fide as the family are growing up and consisted of 9 members, while in his possession only the western portion of the accommodation which was purchased in the year 2013 was there and accommodation was needed for the family members. The finding recorded by the Court below is the finding of fact which needs no interference by this Court.

36. As far as the finding recorded as to the comparative hardship is concerned, this Court finds that the tenant-petitioner had only got published an advertisement on 27.05.2008 in a local newspaper in Badaun, for which, finding has been recorded that it does not have much circulation in the city, otherwise, no effort has been made for searching an alternate accommodation. Thus, the comparative hardship tilts in favour of the landlords. The finding recorded as to the comparative hardship also needs no interference by this Court.

37. Considering the facts and circumstances of the case, this Court finds that no interference is required in the finding recorded by the Court below in the order dated 21.12.2021.

38. The writ petition fails and is, hereby **dismissed**.

39. However, considering the facts and circumstances the facts that the tenant-petitioner is a practising lawyer at Badaun and residing in the disputed accommodation since long, this Court grants six months' time to vacate the premises in question subject to the following conditions:-

(a) The tenants-petitioner shall file an undertaking before court below that they shall hand over peaceful possession of the premises in question to the landlord-respondents on or before 28.09.2022;

(b) The said undertaking shall be filed before the court below within two weeks from today;

(c) The tenant-petitioner shall pay entire decretal amount within a period of one month from today;

(d) The tenant-petitioner shall pay damages at the rate of Rs.2000/- per month by 7th day of every succeeding month and continue to deposit the same in the Court below till 28.09.2022, or till the date he vacates the premises, whichever is earlier and the landlord is at liberty to withdraw the said amount;

(e) In the undertaking, the tenant-petitioner shall also state that he will not create any interest in favour of the third party in the premises in dispute;

(f) It is made clear that in case of default of any of the conditions mentioned herein-above, the protection granted by this Court shall stand vacated automatically.

(g) In case the premises is not vacated as per the undertaking given by the tenant-petitioner, he shall also be liable for contempt.

**Order Date :- 28.3.2022**  
SK Goswami