

**A.F.R.**  
Neutral Citation No. - 2024:AHC:54550  
Reserved on 19.01.2024  
Delivered on:01.04.2024

**Court No. - 5**

**Case :- WRIT - A No. - 20193 of 2023**

**Petitioner :- Shiv Sewak Kashyap**

**Respondent :- Veerendra Singh And 3 Others**

**Counsel for Petitioner :- Prakhar Tandon**

**Counsel for Respondent :- Deepak Singh, Shreya Gupta**

**Hon'ble Ashutosh Srivastava, J.**

1. Heard Sri Prakhar Tandon, learned counsel for the petitioner and Ms. Shreya Gupta along with Sri Deepak Singh, learned counsels for the contesting plaintiff-respondents.

2. The writ petition at the instance of the tenant petitioner has been filed assailing the judgment and order dated 18.10.2023 passed by the learned Additional District and Sessions Judge, Court No. 19, Kanpur Nagar in Rent Appeal No. 80 of 2022 (Virendra Singh (since deceased) & others vs. Shiv Sewak Kashyap) whereby and whereunder the Rent Appeal has been allowed and the judgment and order dated 01.07.2022 passed by the Prescribed Authority/Civil Judge (Sr. Div.) Kanpur Nagar in Rent Case No. 02 of 2014 rejecting the release application under Section 21(1) (a) of the U.P. Act No. 13 of 1972 has been set aside and the release application has been allowed, the petitioner has been directed to handover the actual physical vacant possession of the shop in dispute to the respondent landlords. The respondent landlords in turn have

been directed to compensate the petitioner with a sum equivalent to two years rent.

**3.** The admitted facts shorn of unnecessary details essential for deciding the controversy between the parties is that the petitioner is a tenant in a shop number 33-A situate on the ground floor of a building no. 33 Lakhanpur, Kanpur Nagar at monthly rent of Rs. 400/-. A release application under Section 21(1)(a) of the U.P. Act No. 13 of 1972 was filed by one Virendra Singh the predecessor in interest of the respondent no. 1/1 to 1/3 herein setting up a bona fide need for the shop under the tenancy of the petitioner. In the release application, it was averred that the original landlord of the building no. 33C on the ground floor of which the shop under the tenancy of the petitioner is situate was Smt. Kamla Devi. On the death of Smt. Kamla Devi the building devolved upon her 3 sons (respondent Virendra and his two brothers). A mutual partition took place amongst the co-owners and the applicant Virendra Singh became the owner of the portion under which the shop under the tenancy fell. It was also averred in the release application that he has superannuated from the U.P. Power Corporation, Lucknow on 30.06.2013 and wants to set up his own business in the shop under the tenancy of the petitioner. It was also stated that the rent of the shop is Rs. 800 per month but the tenant has not paid rent since August 2013. In Para 9 of the release application, it was specifically stated that if the shop is released in his favour, the same would be utilized for carrying on business by self and would not be let out to any third party. It was further stated that the tenant

petitioner is not carrying on business in the shop in question and infact is carrying on the business of his father in another shop.

**4.** The release application was opposed by the tenant petitioner primarily on the ground that on the own showing of the landlord respondent no. 1 the building no. 33C came to their share but the shop of the petitioner was 33A which came to the share of other co-owners and as such there existed no landlord-tenant relationship between him and the landlords. The tenant-petitioner filed the GST registration of the shop as also the electricity bills of the shop to demonstrate that the shop under his tenancy was numbered 33A.

**5.** During the pendency of the rent case before the Prescribed Authority the landlord Virendra Singh expired on 11.09.2018 and his heirs and legal representatives (respondent nos. 1/1 to 1/3 herein) were brought on record. Though the release application was amended but it was alleged by the tenant petitioner that no amendment regarding the need of the substituted heirs was done and consequently no need of the shop for the heirs was claimed. The respondent no. 1/1 however filed an affidavit before the Prescribed Authority clearly stating that the premises was required for starting a cosmetic business.

**6.** The learned Prescribed Authority on the materials on record rejected the release application vide its order dated 01.07.2022. It proceeded to record specific findings that there existed a relationship of landlord and tenant between the

tenant petitioner and the landlord respondents. The Prescribed Authority took note of the fact that the relationship of landlord and tenant had not been disputed as was evident from para 1 of the written statement (paper no. 14) as also in the evidence affidavit (paper no. 38A). On the question of bona fide need the learned Prescribed Authority taking note of the fact that the applicant/landlord at whose instance the release application was filed had expired and the heirs could get themselves substituted under Section 21(7) of the Act and press their own need for the premises under the tenancy relying upon the law laid down in **2004 (8) SCC 76 and 2013 (3) ARC 247 (SC)** came to the conclusion that though the heirs had got themselves impleaded in the place of the original applicant/landlord but did not plead their bona fide need for the premises under the tenancy of the petitioner. It also took note of the fact that the heirs after getting themselves substituted filed an affidavit stating that the premises was required for starting a cosmetic business in the shop in question but the same could not be looked into in the absence of any pleading. It accordingly proceeded to conclude that there was no bona fide need of the landlord/respondents for the shop under the tenancy of the petitioner and rejected the release application.

7. The landlord/respondents assailed the order of the Prescribed Authority in Rent Appeal No. 80 of 2022. At the stage of the appeal they moved an amendment application seeking amendment in the release application which amendment was allowed on an ex parte motion when the tenant/petitioner did not appear nor filed any objections to the

amendment despite time having been granted. The tenant petitioner was however permitted to file his additional objections.

**8.** The Appellate Authority proceeded to frame the following points & determination for disposal of the appeal.

- i. Whether the provisions of the U.P. Act No. 13 of 1972 are applicable to the premises in question.
- ii. Whether the amendment allowed at the appellate stage would relate back or be read from the date being allowed.
- iii. Whether the need of the applicants is pressing and bona fide.
- iv. Comparative hardship lies in whose favour.
- v. What relief the appellants/applicant are entitled to.

**9.** The Appellate Authority on the appreciation of the material on record returned a finding that the provisions of the U.P. Act No. 13 of 1972 were applicable and the tenant-petitioner failed to prove otherwise. On the question as to whether the amendment granted at the appellate stage would relate back to the date of filing of the release application the Appellate Authority ruled that in the absence of any observation that it would relate from the date the amendment stood allowed, it would relate back to the date of the release application relying upon the ratio of the decision of the Apex Court reported in ***2002 SAR (civil) 854 (SC) Sumpath Kumar Vs. Auja Kannu and others (2002 (7) SCC 559)***.

**10.** On the question of bona fide need the Appellate Authority took note of the fact that the original applicant Virendra Singh

who had set up a need of the premises in question for starting a business as he had retired from U.P. Power Corporation expired during the pendency of the release application. His legal representatives got substituted and amended the release application by substituting their need for the shop in question. The Appellate Authority found that an affidavit (paper no. 95) was filed by the landlord respondent 1/1 before the prescribed authority. The Appellate Authority further found that in the objection filed to the evidence affidavit of the respondent no. 1/1 in the court below the tenant petitioner had filed his objections (paper No. 100) and did not controvert the averments made in para 3 and 4 of the evidence affidavit (paper no. 95) which clearly set out the need for starting cosmetic business in the shop in dispute. The Appellate Authority relying upon the ratio of the Case laws **2013 (97) ALR 184, 1993 UPTC 407, 1995 UPTC 1035, AIR 1999 SC 1125 and AIR 2004 SC 1239** being of the view that no useful purpose would be served to remand the matter back for consideration by the Prescribed Authority afresh as the materials to evaluate /consider the bona fide need and comparative hardships of the parties were very much on record, considered the materials and returned a finding upholding the bona fide need on the ground that the bona fide need of the landlord respondent 1/1 has not been controverted and further the tenant petitioner cannot dictate the landlord in what manner he may put to use the premises relying on the ratio of the decision of the Apex Court in the Case reported in **2013 (97) ALR 817 (SC), 2010 (83) ALR 809, 2007 (2) ARC 851, 2001 SCFBRC 397 and 1999(6) SCC 222.**

**11.** On the question of Comparative hardship, the Appellate Authority found that besides the shop under his tenancy the tenant petitioner is possessed with two other commercial accommodations in which the tenant/petitioner carrying on his business while the respondent/landlords have no other accommodation to carry on their business. Accordingly the Appellate Authority held that the respondent landlords would suffer greater hardship as compared to the tenant petitioner if the shop is not released. Consequently, the Appellate Authority proceeded to allow the appeal and the release application.

**12.** Sri Prakhar Tandon, learned counsel for the tenant petitioner has vehemently argued that the order of the Appellate Authority allowing the appeal of the landlord respondents suffers from manifest illegality on the ground that:

I. The appellate authority failed to decide the question whether the landlord tenant relationship existed between the parties before proceeding to consider the question of bona fide need in the admitted facts and failed to adhere to the ratio of the decision reported in **2020 (1) ADJ 766 (Shri Shiv Prakash Vs. ADJ, Court No. 24, Kanpur Nagar & others)**.

II. The Appellate Authority proceeded on the erroneous assumption that the tenanted shop existed in the house No. 33C Lakhnpur, Kanpur Nagar though it was established that the shop number under the tenancy of the petitioner was 33A.

III. The learned Prescribed Authority had returned finding that the landlord/respondent though moved amendment consequent to the death of the original landlord applicant but did not amend the bona fide need, yet the Appellate Authority proceeded to allow the appeal and the release application.

IV. The Appellate Authority committed grave illegality by not affording opportunity to tenant petitioner to file evidence in support of his amended pleadings and relied upon the amended

para of the release application which was not supported by affidavit in evidence.

V. The Appellate Authority ought not to have read the amendment in the release application retrospectively.

VI. The findings of the Appellate Authority on the question of Comparative hardship and the tenant petitioner having alternate shops and running his business is misleading and could not form the basis of the finding as both shops have different registration and distinct proprietorships.

VII. The release application of the landlord respondents would tantamount to a second release application on new bona fide need pleaded at the appellate stage and thus barred under Section 18 of the U.P. Urban Buildings (Regulations of Letting, Rent and Eviction) Rules, 1972. The Appellate Authority has not applied its mind to this aspect of the matter.

13. Per contra, Ms. Shreya Gupta, learned counsel for the plaintiff/ respondents has supported the impugned orders passed by the Appellate Authority by submitting that the Appellate Authority has appreciated the materials on record in the correct perspective and noticed the errors committed by the Prescribed Authority in rejecting the release application and has rightly proceeded to set aside the order, allow the Appeal as also the Release Application. She submits that the question of title to the tenanted premises is not germane for the decision of the eviction proceedings and what is to be established is the relationship of landlord and tenant between the parties and the grounds on which the eviction has been sought under the rent Act. Reliance has been placed upon the decision reported in ***Neutral Citation No. 2019 :AHC:19470 and 2019 (7) ADJ 784.***

14. It is next contended that the Appellate Authority was perfectly justified to have treated the Amendment Application



to have related back to the date of the release application by placing reliance upon the decision reported in **2002 (7) SCC 559**. It is further contended that after the death of Virendra Singh the Original Applicant in the release application the learned Prescribed Authority permitted amendment of the Release Application and the word 'Wadi' wherever occurring in the Release Application was permitted to be replaced by the word 'Wadigan'. Thus the need for the demised property for starting business was made and there was no necessity to indicate what business was to be undertaken in the demised property. Reliance has been placed upon the decision reported in **1997 (11) SCC 411**.

15. I have heard the learned counsels for the parties and have perused the record and have also gone through the decisions cited by the respective counsels in support of their cases.

16. So far as the submission of learned counsel for the petitioner as regards non adherence to the ratio of the decision reported in **2020 (1) ADJ 766** by the Appellate Authority is concerned the Court finds no merit in the submission. The petitioner has admitted that he is a tenant in the shop in dispute in the written statement filed by him (paper no. 14) as also in the Additional Evidence Affidavit (Paper No. 38-A). The learned Prescribed Authority also took note of the said admission and returned a finding that there existed landlord tenant relationship between the petitioner and the respondent landlords. It appears that while contesting the Appeal the Tenant petitioner did not press this point in as much as no point of determination in this regards was framed. In the

opinion of the Court the point cannot now be agitated before this Court.

17. There is also no merit in the submission that the Appellate Authority proceeded on the assumption that the demised property existed in House No. 33 C whereas it existed in 33A. The records particularly the Additional Evidence affidavit filed by the tenant/ petitioner before the Prescribed Authority (Paper No. 38A) clearly reveals that the tenancy in House No. 32 was admitted. Para 1 of the affidavit (Paper No. 38A) is being reproduced hereunder:

"यहकि शपथकर्ता भवन सं० - 33 सी लखनपुर कानपुरनगर के भूमिखण्ड पर स्थित एक दुकान का वैधानिक किरायेदार है, दौरान विचारण वाद याची भवनस्वामी का देहान्त दिनांक-11-09-2018 को हो गया है।"

18. The Court further finds that the Release Application under Section 21 (1) (a) of the UP Act No. 13 of 1972 was filed in respect of a shop 9x8 feet situate in House No. 33 C, Jakhanpur, Police Station-Kalyanpur, Kanpur Nagar, on the ground floor. The averments made in the release application clearly states how the building no. 33 Jakhanpur, Kanpur Nagar, earlier owned by Shri Shivpal Singh S/o Gurdayal Singh devolved upon Smt. Kamla Devi and after her death on 20.06.2007 that part of the Building No. 33, containing the shop in question which fell to the share of the plaintiff/ respondent and was numbered as 33-C and fully described in Schedule A x B of the Release Application. In para 3 of the Release Application it was specifically stated that the shop under the tenancy of the petitioner has come to the share of

the Release Applicant which is situated on the main road and the residential portion is behind the shop in dispute. The averments in para 3 of the Release Application has not been specifically denied by the tenant petitioner. In the wake of the above the submissions do not merit consideration.

19. In respect of the contention of learned counsel for the tenant petitioner that the Appellate Authority did not afford any opportunity to the tenant petitioner to file evidence in support of his amended pleadings and relied upon the amended para of the release application which was not supported by affidavit, it is borne out from the order sheet of the proceedings of the Rent Appeal which has been brought on record as Annexure 12 to the writ petition that the amendment application (paper no. 24-C) dated 30.05.2023 was filed on which the order was passed to file reply and 01.07.2023 was fixed for its disposal. On 01.07.2023 one more opportunity was granted to petitioner to file reply and 04.07.2023 was fixed. On 04.07.2023 the Tenant petitioner did not appear nor filed reply and the Appeal was directed to proceed exparte. The amendment was allowed exparte vide detailed order dated 08.08.2023 taking note of the fact that copy of the amendment had been served upon the petitioner on 30.05.2023 but till date no objections/ reply had been filed. Time was granted to the tenant petitioner to file additional written statement by 18.08.2023. On 18.08.2023 the Appellate Authority noted that additional reply had not been filed and after closing the opportunity fixed the Appeal for arguments on 31.08.2023. The order dated 18.08.2023 was however subsequently recalled vide

order dated 25.09.2023 and the additional reply of the petitioner was taken on record. Thereafter the Appeal was adjourned at the instance of the Tenant petitioner and final arguments were advanced on 09.10.2023 and the order was delivered on 18.10.2023. There was thus ample time for the tenant petitioner to file evidence but he choose not to do so and advanced his arguments. In the opinion of the Court the tenant petitioner in the above circumstances cannot insist that time to file evidence was liable to be afforded to him and the order of the Appellate Authority is bad on that count.

20. The submissions of learned counsel for the petitioner that the Appellate Authority ought not to have read the amendment in the release application retrospectively does not merit consideration and the Court finds that the reasoning adopted by the Appellate Authority in reading the amendment in the release application retrospectively relying upon the ratio of the Apex Court's decision reported in **2002 (7) SCC 559** is perfectly justified and does not suffer from any infirmity.

21. The last submission of learned counsel for the tenant petitioner that the release application of the landlord respondents would tantamount to a second release application on new bonafide need pleaded at the Appellate Stage and thus barred under Rule 18 of the Rules is thoroughly misplaced. The Rule 18 of the Rules in the opinion of the Court would be attracted only when the first release application of the landlord has been rejected on merits and the second Release Application is filed on the same grounds within one year of the rejection of the earlier Release Application. In the case at hand it is not

the case. The Release Application had not been rejected on merits or otherwise and as such there is no question of filing a second Release Application. The amendment made in the pending release application on the death of the original release applicant cannot be construed to give rise to a second release application so as to attract Rule 18 (2) of the Rules particularly in view of Section 21 (7) of the act which permits the heirs and legal representatives of the deceased landlord to prosecute the release application further on the basis of their own need in substitution of the need of the deceased. The contention is liable to be rejected and is hereby rejected as misconceived.

22. In view of the above the Court finds that the learned Prescribed Authority had committed patent illegality in rejecting the Release Application of the landlord respondents. The Appellate Authority, however on a thorough consideration of all aspects has found that the need of the premises under the tenancy of the petitioner is bonafide, genuine and pressing and has rightly allowed the Appeal after setting aside the order of the learned Prescribed Authority dated 01.07.2022 and has directed the release of the shop in favour of the landlord respondents. No illegality or perversity has been committed by the learned Appellate Authority while passing the order dated 18.10.2023 warranting any interference by this Court under Article 226 of the Constitution of India. The writ petition is devoid of merits and is accordingly *dismissed*.

23. Learned counsel for the tenant petitioner submits that the petitioner has been a tenant in the shop in question since the year 1990 and considering the length of the tenancy some

reasonable time be granted to vacate the premises. A period of 1 year to vacate has been prayed for.

24. Ms. Shreya Gupta, learned counsel for the respondent landlords has opposed the prayer for grant of time to vacate. She however submits that a period of 2 months would be sufficient. The Court has considered the request of the petitioner for time to vacate and finds that a period of 4 months from today would be more than sufficient for the petitioner to look for alternate accommodation and handover vacant possession of the shop to the landlord respondents within 4 months from today i.e. on or before **31<sup>st</sup> July, 2024**. The petitioner shall continue to deposit the rent of the premises @ of Rs. 800/- per month till the date of handing over of the possession and shall not sublet the shop or change its nature.

25. Parties to bear their own costs.

**Order Date :-1.4.2024**

**Deepak**