
(2015) 12 AHC CK 0126
In the Allahabad High Court
Case No : Rent Control No. 112 of 2009

Janki Prasad Sharma

APPELLANT

Vs

Additional District Judge Court No. 2 Barabanki and Others

RESPONDENT

Date of Decision : 10-12-2015

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 11(1)(h), 13(3)(a)(ii), 21(1)(a)

Citation : (2015) 12 AHC CK 0126

Hon'ble Judges : Anil Kumar, J.

Bench : Single Bench

Advocate : Adil Khan and Aslam Khan, for the Appellant; B.K. Saxena and R.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Shri Mohd. Arif Khan, learned Senior Advocate assisted by Shri Mohd. Aslam Khan, learned counsel for the petitioner, Shri B.K. Saxena, learned counsel for the contesting respondent and perused the record.

2. Facts in brief of the present case as submitted by learned counsel for the petitioner are that the opposite parties/landlords", namely, Shri Anoop Kumar, Shri Mudit Kumar and Smt. Savitri Devi are owner of the shop situated at Naka Satrikh, Pargana and Tehsil, Nawabganj, District-Barabanki, bounded as East by shop of applicant in tenancy of Mohd. Haroon; West, room of applicant; North, house of Tulsiram Jaiswall and South, road and the same has been let out to the petitioner/tenant on a monthly rent of Rs. 130/-. Opposite parties/landlords moved an application on 23/24.12.1996, for release of the shop under Section 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as Act, 1972).

3. Need as set up by the landlords in the release application is that opposite party No. 2/Shri Anoop Kumar is required the shop in order to carry out his independent business and maintain his family consisting of wife and two

daughters as he is unable to earn livelihood of his family. In the release application, it is also pleaded that Smt. Renu Sharma/wife of the tenant/petitioner has already constructed market complex situated at Munshiganj near disputed shop in which several shops are lying vacant in which tenant can carry to his own business.

4. Accordingly, a P.A. Case No. 2/96 registered before the Prescribed Authority/Civil Judge (J.D.), Court No. 13, Barabanki in which tenant/petitioner filed written statement/taking a plea that shop in question has been let out in the year 1977 on a monthly rent of Rs. 130/- by Shri Nand Kishore (now deceased)/father of opposite party No. 2 and 3.

5. It is also pleaded in the written statement that Smt. Renu Sharma/wife of the tenant has got the land from her father on which she has constructed four shops situated at Mohalla, Munshiganj, District-Barabanki, are already let out. It is further pleaded in the written statement that opposite party Nos. 2 and 3 are owner of seven shops out of which three shops have been let out including the shop of the tenant/petitioner and four shops are still lying vacant.

6. On 17.04.1997, an application has been moved for issuing of Commission on the ground that four shops in the same premises are still lying vacant. Accordingly, Commissioner has visited the shop in question and submitted his reply on which the prescribed authority has passed an order that the said matter shall be considered after both the parties, lead their evidence.

7. On 15.06.1997, two shops situated on the eastern side of the shop in dispute in occupation of Mohammad Haroon fallen vacant and landlords have taken the possession over the same. Thereafter they plastered and white washed the wall and started using the said portion for his personal use.

8. By order dated 01.10.2003, the Prescribed Authority has dismissed the release application moved by the landlords under Section 21 (1) (a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 holding therein that there is no genuine and bona fide need on the part of landlords in order to get the shop released in their favour in comparison to the need of the tenant.

9. Aggrieved by the order dated 01.10.2003 passed by the Prescribed Authority dismissing the release application, the landlords filed an appeal registered as Rent Control Appeal No. 5 of 2003 "Smt. Poonam Gupta & Ors. v. Janki Prasad Sharma" in the Court of Additional District Judge (Court No. 2), Barabanki.

10. During the pendency of the said appeal, Appellate Authority had issued a commission and learned Commissioner had submitted report. Appellate authority after considering the material on record by order dated 18.08.2009 allowed the appeal with the following finding:--

"It would be germane to consider Advocate Commissioner's report (Ga-59) who has annexed two maps for site Nos. 1 and 2 with his report. Commissioner has observed that the distance of the store and shop is 750 metres. The first and

second floors of sweetmeat shop are being used for manufacturing of sweets. Even though some manufacturing materials were found, the space was constructed, which gives impetus to the case of the applicants that they needed store for their joint sweetmeat shop, which was elaborated by removing the partition wall of the shop vacated after demise of Virendra Kumar Verma. Other alleged shop towards west of the disputed shop is used as Baithak, which is not suitable for commercial purposes of the landlord. The choice of accommodation lay with the landlord. It is not for the tenant or the Court to thrust upon its choice on the needy. The greater period of tenancy of more than three decades cannot invariably be sole criterion for determining hardship. The inaction of the tenant to make a quest for alternative accommodation also tilt the balance of hardship in favour of landlord. The bona fide need to settle Anoop Kumar in independent business by co-landlords appears to be bona fide and genuine. The Prescribed Authority was swayed away by irrelevant considerations in dismissing the release application. The order under scanner is not sustainable in law and washes away. The appeal is liable to be allowed and costs."

11. Shri Mohd. Arif Khan, learned Senior Advocate while challenging the order dated 18.08.2009 passed by the Appellate Authority submits that there is no bona fide need on the part of the landlords to get the shop in question released in their favour, rather need created by them in the matter is artificial one. In this regard, he further submits that once in the same premises, an ample accommodation is available with the landlord in the shape of two shops from which opposite party No. 2 can start his independent business. So there should be an actual bona fide need on the part of the landlords and they have to establish the same in the present matter, the landlords failed to prove and establish the said need by way of evidence and there is no justification or reason in support of the Appellate Authority to allow the appeal and set aside the judgment passed by the Prescribed Authority, as such, the same is liable to be set aside.

12. Mohd. Arif Khan, learned Senior Advocate further submits that taking into consideration the provisions as provided under Rule 16 (2) (C) of 1972, the need of the landlords are not a bona fide and genuine because in the premises in question, two other shops are vacant and opposite party No. 2 can start his independent business from the said shop.

13. Mohd. Arif Khan, learned Senior Advocate also submits that so far as the business complex situated at Mohalla, Munshiganj, District-Barabanki is concerned, it is not in dispute that his wife has shops there but the same are let out to the petitioner cannot be taken into consideration in the present case, while deciding the comparative need and hardship between the parties.

14. Lastly, it has been argued by Shri Mohd. Arif Khan, learned Senior Advocate that as the judgment and order dated 18.08.2009 passed by the appellate authority is an order of reversal, so it is incumbent upon the appellate court to record a finding thereby reversing the finding given by the Prescribed Authority.

As the said action has not been done in the present case, rather on the point in issue, the appellate court had not given any cogent reason while reversing the finding given by the Prescribed Authority, so the order dated 18.08.2009 is contrary to law, liable to be set aside. In support of his argument, he has placed reliance on the following judgments:--

"1. Kedar Nath Agrawal (Dead) and Another Vs. Dhanraji Devi (Dead) by LRs. and Another,

2. Atma S. Berar Vs. Mukhtiar Singh,

3. Commissioner of Wealth Tax, Gujarat Vs. Lov S. Kinariwala,

4. Mohd. Azeem Vs. District Judge, Aligarh and Others,

5. Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others, "

15. Accordingly, he submitted that the impugned judgment and order dated 18.08.2009 passed by the appellate authority is liable to be set aside.

16. Shri Brijesh Kumar Saxena, learned counsel for the respondent while supporting the judgment and order dated 18.08.2009 passed by the appellate authority submits that from the bare perusal of the release application, the position which emerges out is that in order to establish the business of opposite party No. 2/Shri Anoop Kumar had moved the release application and the same had been considered. However, while passing the judgment, Prescribed Authority has failed to take into consideration the said fact and has proceeded to dismiss the release application taking into consideration the fact that other shop which exists in the premises in question is vacant.

17. The said fact is contrary to law as in the premises in question, there is no other shop is vacant which is clearly established from the report submitted by the learned Commissioner.

18. He further submits that from the perusal of the report submitted by learned Commissioner, it is clearly established that opposite party No. 3/landlord/Shri Mudit Kumar is being started separate business of Sweatmeat shop at City Clock Tower, Nawabganj, District-Barabanki and in the premises in question, shops which are said to be vacant are used by the landlord for the purpose of storage of sweats. In this regard, he has placed reliance on the report submitted by learned Commissioner and on the basis of which, he has submitted that in the premises where the shop is situated, there is no factory at the first and second floors for manufacturing of sweets, so finding given by the Prescribed Authority that in the premises, there is no vacant ship, is totally incorrect and in this regard, he has placed reliance on the finding given by the appellate court while reversing the judgment given by the Prescribed Authority. On the basis of the material and facts on record, the position which emerges out is that only shop which is available for starting the business by the opposite party No. 2 is under

the tenancy of the petitioner, so keeping in view the said facts and considering the need that the shop of the landlord is genuine, the order dated 18.08.2009 passed by the appellate authority is perfectly valid.

19. Shri Brijesh Kumar Saxena, learned counsel for the respondents/landlords submits that so far as the finding given by the Prescribed Authority in regard to conversion of shop by landlord in Baithka is concerned, the same is contrary to the facts of the case. As it is not in dispute that petitioner's wife/Smt. Renu has occupied the shop and filed the release application, no effort has been made by way of landlord.

20. Accordingly, he submits that there is no illegality or infirmity in the appellate order passed in the appeal, so the writ petition is liable to be dismissed.

21. After hearing learned counsel for the parties and going through the records, it is not in dispute in the present case that an application for release under Section 21 (1) (a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 has been moved on the plea that shop in question, under the tenancy of the petitioner is required for doing independent business of landlord/opposite party No. 2 in order to earn livelihood of his family which consists of his wife and two daughters.

22. Keeping in view the material on record, the first and foremost question which is to be decided in the present case whether need of the landlord/opposite party No. 2 is bona fide or not?

23. In the case of Akhileshwar Kumar and Others Vs. Mustaqim and Others, , Hon"ble the Apex Court held as under:

"3. In our opinion, the approach adopted by the High Court cannot be countenanced and has occasioned a failure of justice. Overwhelming evidence is available to show that the Plaintiff No. 1 is sitting idle, without any adequate commercial activity available to him so as to gainfully employ him. The Plaintiff No. 1 and his father both have deposed to this fact. Simply because the Plaintiff No. 1 is provisionally assisting his father in their family business, it does not mean that he should never start his own independent business. What the High Court has over-looked is the evidence to the effect, relied on by the trial Court too, that the husband of Plaintiff No. 4, i.e. son-in-law of Ram Chandra Sao, was assisting the latter in his business and there was little left to be done by the three sons.

4. So is the case with the availability of alternative accommodation, as opined by the High Court. There is a shop in respect of which a suit for eviction was filed to satisfy the need of Plaintiff No. 2. The suit was compromised and the shop was got vacated. The shop is meant for the business of Plaintiff No. 2. There is yet another shop constructed by the father of the Plaintiffs which is situated over a septic tank but the same is almost inaccessible inasmuch as there is a deep ditch in front of the shop and that is why it is lying vacant and unutilized. Once it has

been proved by a landlord that the suit accommodation is required bon fide by him for his own purpose and such satisfaction withstands the test of objective assessment by the Court of facts then choosing of the accommodation which would be reasonable to satisfy such requirement has to be left to the subjective choice of the needy. The Court cannot thrust upon its own choice on the needy. Of course, the choice has to be exercised reasonably and not whimsically. The alternative accommodation which have prevailed with the High Court are either not available to the Plaintiff No. 1 or not suitable in all respects as the suit accommodation is. The approach of the High Court that an accommodation got vacated to satisfy the need of Plaintiff No. 2, who too is an educated unemployed, should be diverted or can be considered as relevant alternative accommodation to satisfy the requirement of Plaintiff No. 1 another educated unemployed brother, cannot be countenanced. So also considering a shop situated over a septic tank and inaccessible on account of a ditch in front of the shop and hence lying vacant cannot be considered a suitable alternative to the suit shop which is situated in a marketing complex, is easily accessible and has been purchased by the Plaintiffs to satisfy the felt need of one of them."

24. In the case of *Ragavendra Kumar v. Firm Prem Machinery and Company* (2000) 1 SCC 67, it has been held:

"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."

25. Following the decision of *Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others*, , in the case of *Joginder Pal Vs. Naval Kishore Behal*, and *FB, Rent Cases 388*, the Apex Court has held as under:

"5. In *Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another*, this Court emphasized the need of social legislations 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 tenant 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 legislation 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 justice but may also result in constitutional invalidity.

8. The need for reasonable interpretation of rent control legislations was emphasized by this Court in *Bega Begum* (Supra). 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 the 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. The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble.

30. In providing key to the meaning of any word or expression the context in which it is set has significance. Colour and content emanating from the context may permit sense being preferred to mere meaning depending on what is sought to be achieved and what is sought to be prevented by the legislative scheme surrounding the expression. Requirement of landlord for his own use, is an expression capable for attributing an intention to the legislature that what was intended to be fulfilled is such requirement as would persuade the landlord to have the premises vacated by the tenant, to forego the rental income and to put the premises to such use as the landlord would deem to be his own use and in the given facts and circumstances of a case the Court too would hold it to be so in contradistinction with a mere ruse to evict the tenant. The legislature

intending to protect the tenant also intends to lift the protection when it is the requirement of the landlord to put the accommodation to such use as he intends, away from leasing it out.

31. If we do not meaningfully construe the concept of requirement the provision may suffer from the risk of being branded as unreasonable, arbitrary or as placing uncalled for and unreasonable restrictions on the right of the owner to hold and use his property. We cannot place a construction on the expression "for his own use" in such a way as to deny the landlord a right to evict his tenant when he needs the accommodation for his own son to settle himself well in his life. We have to give colour and content to the expression and provide the skin of a living thought to the skeleton of the words, which the Legislature has not itself chosen to define. The Indian society, its customs and requirements and the context where the provision is set in the legislation are the guides leading to acceptance of the meaning which we have chosen to assign to the words "for his own use" in Section 13(3)(a)(ii) of the Act.

32. (v). In the present case, the requirement of landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord "for his own use" within the meaning of Section 13(3)(a)(ii) ."

26. In the case of Prem Prakash Gupta and Others Vs. II Additional District Judge and Others, , it has been held that no doubt true that the tenant will have to be ousted from a house, if a decree of eviction has been passed, yet such an event by itself will not be a valid ground for refusing a decree for eviction. The observation in the case of Prem Prakash Gupta (supra) is quoted as below:

"As observed by this Court in its decision in the case of Rajeshwari Prasad v. Fateh Bahadur Chaturvedi and Ors. reported in , 1984 (1) A.R.C. 387 , the bona fide need is the foundation of application for eviction of a tenant without which it cannot be allowed. Hardship is relative word"....

27. The Apex Court in G.C. Kapoor Vs. Nand Kumar Bhasin and Others, held as under:

"9. 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 Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde and Another, , 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.

10. In Raghunath G. Panhale (Dead) By Lrs. Vs. M/s. Chaganlal Sundarji and Co., 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 not 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."

28. In the case of *Gaya Prasad Vs. Sh. Pradeep Srivastava*, , the Apex Court has observed in para 15 as under:

"15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused."

29. In view of the aforesaid facts and circumstances, I decide this point in favour of the landlord. The need is bonafide.

Comparative Hardship

30. So far as the Comparative Hardship is concerned, the petitioner/tenant has failed to show that they have made any efforts to search out any accommodation.

31. Moreover, every landlord and every adult member of landlord's family is entitled to do separate business and he cannot be compelled to do business with his father, mother, brother or join in family business and if he is assisting in family business, it is irrelevant, vide *Akhileshwar Kumar and Others Vs. Mustaqim and Others*, , (under Bihar R.C. Act) *Sushila Vs. IInd Addl. District Judge, Banda and Others*, *Rishi Kumar Govil Vs. Maqsoodan and Others*, and *Yadvendra Arya and Another Vs. Mukesh Kumar Gupta*, .

32. In view of the above said facts, while deciding the bona fide need to the parties coupled with the fact that from the material on record, it is clearly established that no effort has been made by the tenant/petitioner to search out any accommodation since 1996 when an application for release was moved.

33. In the case of *Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others*, , the Apex Court has observed that in case of eviction in every case the tenant has to suffer hardship and that cannot be a ground for refusing the release application. The observations of the Apex Court are quoted below:

"13. Moreover, Section 11(1)(h) of the Act uses the words reasonable requirement which undoubtedly postulate that there must be an element of need as opposed to a mere desire of wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the term "need" or "requirement" should not be artificially extended to its language so unduly stretched or strained so as to make

it impossible or extremely difficult for the landlord to get a decree for eviction. 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. This appears to us to be the general scheme of all the Rent Control Acts, prevalent in other States in the country. This Court has considered the import of the word "requirement" and pointed out that it merely connotes that there should be an element of need.

9. In this connection our attention was drawn to the evidence led by the Defendants that the main source of their income is the hotel business carried on by them in the premises and if they are thrown out they are to likely to get any alternative accommodation. The High Court has accepted the case of the Defendants on this point, but does not appear to have considered the natural consequences, which flow from a comparative assessment of the advantages and disadvantages of the landlord and the tenant if a decree for eviction follows. It is no doubt true that the tenant will have to be ousted from the house if a decree for eviction is passed, but such an event would happen whenever a decree for eviction is passed and was fully in contemplation of the legislature when Section 11 (1)(h) of the Act was introduced in the Act. This by itself would not be valid ground for refusing the Plaintiffs a decree for eviction.

26. Thus, on careful comparison and assessment of the relative advantage and disadvantages of the landlord and the tenant it seems to us that the scale is tilted in favour of the Plaintiff. The inconvenience, loss and trouble resulting from denial of a decree for eviction in favour of the Plaintiffs far outweigh the prejudice or the inconvenience which will be caused to the Defendants. The High Court has unfortunately not weighed the evidence from that point of view."

34. In the case of *Shushila v. IInd Additional District Judge Banda and Ors.* reported in 2003 (1) A.R.C. 256, it has been held as under:

"A bare perusal of Rule 16 of the UP. Urban Building (Regulation of Letting, Rent and Eviction) Rules, 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 (1) of Sub-rule (2) provides greater the period of tenancy less the justification for allowing the application; where as 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

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

35. In the case of Arvind Kumar v. IInd ADJ Etawah reported in Allahabad Rent Cases 1997 (1) ARC 304, Rule 16(2)(a) has been interpreted and it has been held as under:

"It admits of no doubt that according to Clause (a), Sub-rule (2) of Rule 16, greater the period since when the tenant has been carrying on his venture in the building, less the justification for allowing the application but at the same time, having regard to over all facts and circumstances of the case, I am persuaded to the view that the findings recorded by the Authorities under the Act in relation to bona fide requirements of the landlord cannot be assailed and whittled down merely because the Petitioner had been carrying on his business in the shop in question since the year 1977. It is explicitly postulated in Clause (b), Sub-rule (2) of Rule 16 that where the tenant has available with him suitable accommodation to which he can shift his business without the peril of substantial loss there shall be greater justification for allowing the application. The expression "available with him" in this sub-rule does not necessarily mean actual physical availability. A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and circumstances of the case, it has been held that the Petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched."

36. In the case of Bhagwan Das Vs. Smt. Jiley Kaur and another, , the Apex Court has held as under:

"Thirdly, it was a case where was even this additional circumstance that the Appellant had brought no material on record to indicate that at anytime during the pendency of this long drawn out litigation he made any attempt to seek an alternative accommodation and was unable to get. In Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others, , it was held that in deciding the extent of the hardship that may be caused to one party or the other, in case a decree for eviction is passed or is refused, each party has to prove its relative advantages or disadvantages and the entire onus cannot thrown on the Plaintiffs to prove that lesser disadvantages will be suffered by the Defendants and that they were remediable."

37. Rule 16 of the Act No. XIII of 1972 has been interpreted in the case of Munni Lal Gupta (decd.) through L.Rs. Vs. VIth Addl. District and Sessions Judge and Others--> . After relying upon the judgment of Rajendra Kumar and others Vs. Gopal Krishna and others, , it has been held that suitable alternative accommodation, which may become available on an effort being made in that direction is also a factor to be considered and want or earnest efforts in looking

for suitable alternative accommodation, disentitles protection given to the tenant while considering the comparative hardship of the parties. The observations in the decision of Munni Lal Gupta (supra) are quoted below:

"A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and circumstances of the case, it has been held that the Petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar and others Vs. Gopal Krishna and others, , it has been held by Sudhir Narain, J. and I concur with the view taken therein that "one of the principles for considering comparative hardship of the parties is to find out as to whether the tenant had made a sincere efforts to find out alternative accommodation and had placed materials before the authorities to come to their conclusions that he made such an effort". The fact that earlier application for release, met the fate of rejection some 10 years ago, could not be projected backward to operate as an obstacle in the way of the release application being allowed as with the passage of time, the situation has undergone considerable change. Indubitable, landlord Sanjai Gupta did his M.A. after rejection of the earlier applications and his failure to secure employment for himself, lends cogency to his moving the present application."

38. Further there being no material on record to indicate that the tenant/petitioner has made any efforts to search out the accommodation during the pendency of the case, this factor also goes against the tenant/petitioner.

39. In view of the above, the comparative hardship lies in favour of the landlord.

40. Lastly, it is argued by learned counsel for the petitioner that in the present case, no cogent reason has been given by the appellate court while reversing the judgment passed by the Prescribed Authority, as such, the same is liable to be set aside and the matter may be remanded to the appellate court to decide the same afresh. The argument in question advanced by learned counsel for the petitioner has got no force.

41. Keeping in view the above said facts stated herein above as well as fact that in the present case, release application has been filed in the year 1996 and the present writ petition has been filed in the year 2009, since then, no effort has been made by the tenant/petitioner for search out the accommodation or made an effort to get the shop owned by his wife in a market complex. So the remand of the case at this stage will not be suitable because the remand of the case is not necessary in every case particularly when the matter is pending for long and in the present case, more than 19 years have elapsed since the release application was filed.

42. In the case of Mohd. Arif v. Hired Addl. District Judge Pilibhit reported in 2005 (2) ARC 793, relying upon the various judgments of the Hon"ble Supreme Court, it was held in para 7 as under:

"7. When both the Courts below have rejected the release application of the landlord and judgments are found to be erroneous in law by writ Court, matter is normally remanded. However, that formula is not to be necessarily followed in every case particularly when the matter is pending for long. Release application in the instant case was filed in the year 1984 and this writ petition is pending since 1989. The Supreme Court, in G.C. Kapoor Vs. Nand Kumar Bhasin and Others, allowed the release application out rightly which had been rejected by the Prescribed Authority, lower appellate Court as well as High Court. In my opinion, it is a fit case where ultimate relief shall be granted to the landlord. Supreme Court has also held in 2004 SCFBRC 66 : 2004 (1) ARC 137 : 2004 ACJ 304 (SC) R.E.V. Gounder v. V.V.P. Temple and 2002 (2) ARC 298 (SC) R.C. Kesharwani v. Dwarika Prasad that when the matter is pending for long, remand must be avoided. Supreme Court in its authority reported in Shail v. Manoj Kumar 2004 ACJ 1213 , placing reliance upon Surya Dev Rai Vs. Ram Chander Rai and Others, , has held that in exercise of writ jurisdiction High Court has the jurisdiction also to pass itself such a decision or direction as the inferior Court or tribunal should have made."

43. The same view has been taken in the case of Kelawati (Smt.) v. Special Judge (EC Act) Moradabad and Ors. reported in , 2006 (1) ARC 78 , wherein in para 5 it was held as under:

"5. When both the Courts below have rejected the release application of the landlord and judgments are found to be erroneous in law by writ Court, matter is normally remanded. However, that formula is not to be necessarily followed in every case particularly when the matter is pending for long. Release application in the instant case was filed in the year 1991. The Supreme Court in G.C. Kapoor Vs. Nand Kumar Bhasin and Others, allowed the release application out rightly which had been rejected by the Prescribed Authority/Lower Appellate Court as well as High Court. The Supreme Court in R.E.V. Gounder v. V.V.P. Temple 2004 ACJ 204 (SC) has held that when the matter is pending for long, remand must be avoided."

44. Accordingly, I do not find any good ground in the argument in question raised by Shri Mohd. Arif Khan, so the same is rejected.

45. For the foregoing reasons, the writ petition lacks merit and is dismissed with a direction to the tenant/petitioner to vacate the shop in question on or before 30.04.2016, provided he pays the monthly rent and other charges to be paid by him to the landlords on or before 7th day of each and every month. In this regard, he files an affidavit within a period of four weeks from the delivery of judgment before the Prescribed Authority.