(2004) 07 AHC CK 0113

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6346 of 1986

Kewal Chandra and Ors. APPELLANT

Vs

Addl. District Judge (Special Judge),Lalitpur & Ors. RESPONDENT

Date of Decision : 23-07-2004

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 21(1)(a), 21(3)(G)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 — Rule 16(1)(a)

Citation : (2004) 07 AHC CK 0113

Hon'ble Judges : Tarun Agarwala, J

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—This writ petition is directed against the order and judgment dated 3131986 passed by the appellate Court whereby the landlord''s appeal was allowed and the premises in question was released in favour of the landlord.

2. The brief facts are that the landlord filed an application under Section 21(1)(a) of UP. Act No. 13 of 1972 in the capacity of a Karta of a joint Hindu undivided family for the release of the accommodation in question showing the need for his two brothers, namely, Sudhir Kumar and Sushil Kumar for their business purposes. It was contended that the shop in question was let out by the landlord''s father to the petitioner''s father with the understanding that the tenancy of the original tenant would come to an end upon his death. The original tenant died and his heirs are using the shop though they should have vacated the premises. It was also alleged that pursuant to a family partition, the shop in question came into the share of the landlord. The landlord further alleged that he alongwith his two brothers are also coowners of the shop in question. It was alleged that the shop was required in order to set up the business of Sudhir Kumar and Sushil Kumar who have completed their studies and are also unemployed. It was also alleged that they wanted to start their own independent business. It was contended that the landlord had no other accommodation

except the shop in question and, therefore, the shop in question was bonafidely required. The landlord further alleged that he had constructed a marketing complex at Station Road and had offered a shop 10'' x 10'' to the tenant plus two years rent as compensation which the tenant had refused. The landlord contended that the said offer still stood and that the tenant could easily shift into this alternate accommodation. Lastly, the landlord contended that the rear portion of the tenanted shop in question had fallen down and, therefore, the shop required reconstruction. The landlord submitted that necessary permission from the municipal authorities had been granted for demolition and for reconstruction and that the landlord had the requisite funds for reconstruction.

3. The tenant contested the application and submitted that the landlord had several buildings in the city which were also vacant and that any one of these buildings could be utilized to set up the business of the two brothers. It was also contended that another shop was recently released which could be utilized by the brothers. It was submitted that the release application filed by the landlord was wholly mala fide and was neither bona fide nor genuine. The tenant contended that the brothers of the landlord are involved in the family business and do not require the shop nor are interested in setting up an independent business.

4. The tenant further denied that any family partition took place in the landlord''s family, but admitted that the rent was being paid by the tenants to him alone. The tenant further contended that the building was not in a dilapidated position nor the rear portion of the 1st floor of the premises in question had fallen down. The petitioners further denied that their father had given any assurance of his tenancy coming to an end upon his death. The tenant further denied that any shop was offered by the landlord on Station Road and submitted that the shop constructed on Station Road could be used by the brothers of the landlord to set up their business. The petitioners submitted that the release application was not bona fide and should be rejected.

5. The Prescribed Authority after considering the various points for determination, dismissed the application of the landlord. The prescribed authority held that Sunil Kumar Taraiya was the landlord and was competent to file an application under Section 21(1)(a) in his capacity as a Karta as well as a coowner of the shop in question for the release of the shop in favour of his brothers. The Prescribed Authority also held that the building in question was neither in a dilapidated condition nor the rear portion of the 1st floor had fallen down and that the premises in question was being used as a shop by the tenants/ petitioners. The prescribed authority, however, found that the landlord possessed other buildings which were vacant and which could be utilized to set up the business of the two brothers and, therefore, came to the conclusion that the application for the release of the premises in question was not bona fide. In view of this finding that the landlord possessed other buildings, the prescribed authority also held that comparative hardship was in favour of the petitioner and that the tenant would suffer more than the landlord. Accordingly, the prescribed

authority rejected the release application.

6. Aggrieved, the landlord filed an appeal which was allowed and the premises in question was released in favour of the landlord. The appellate Court held that the brothers are also coowners and that the application was maintainable and that the Karta could file an application for the release of the premises in question. The appellate Court also found that the brothers have a need to do an independent business and that the brothers could not be forced to do the family business. The appellate Court found that even though the landlord had other buildings in question which were also vacant, the same could not be used for business purposes as these buildings were residential buildings. The appellate Court found that House No. 33, Mohalla Ravpura had sufficient accommodation but the same was not fit for business purpose, and was also not located in a market area. The appellate Court also found that the petitioner could easily do his business from the shop at Station Road, but the brothers of the landlord could not do their cloth business from this shop inasmuch as Katra bazar is the place where wholesale trading of cloth business is conducted. The appellate Court, therefore, found that the need of the landlord was genuine and bona fide and also came to the conclusion that the need of the landlord was greater than the need of the tenants and that the landlord would suffer greater hardship in the event the premises was not released. The appellate Court directed that the premises be released in favour of the landlord subject to the condition that the landlord pays compensation to the tenant equal to two years rent plus provide a shop on Station Road, where the tenant could shift his business.

7. Aggrieved by the decision of the appellate Court, the tenant has now filed the writ petition assailing the correctness of the judgment given by the appellate Court.

8. Heard Sri Dinesh Kakkar, Senior counsel for the petitioners assisted ably by Sri Siddhartha Singh, Advocate and Sri K.K. Dubey, the learned counsel for the landlord.

Sri Dinesh Kakkar has raised the following arguments, namely,

(a) The release application was filed by the landlord showing the need for his brothers. The premises could be released for the landlord''s personal need or for his family members but could not be released in favour of the brothers under Section 21(1)(a) of the Act inasmuch as the landlords brother does not come within the meaning of a family member as defined under Section 3(g) of U.P. Act No. 13 of 1972.

(b) Admittedly the landlord has sufficient accommodation which are also vacant and such premises could be utilized to set up the business of the brothers. Therefore, there was no need to uproot the petitioners who have been carrying on their business for the last 50 years or so and have also earned a goodwill. The learned counsel also contended that there is no embargo upon the landlord to use a residential building for a commercial or for a business purpose. On this basis, the learned counsel for the petitioners contended that the release application was neither genuine nor bona fide but was wholly mala fide.

(c) The shops constructed by the landlord at Station Road being a commercial complex could be used to settle the brothers and there was no need to uproot the petitioners or direct them to shift their business to Station Road. In any case, the shop at Station Road is not suitable to the petitioners'' business.

(d) If the need of the landlord was found to be bona fide and genuine, the appellate Court should have made an effort to release only a portion of the building rather than releasing the entire building. In support of his submission the learned counsel placed reliance on Rule 16(1)(d) of the Rules which contemplates that where the tenant''s need could be adequately met by leaving with him a part of the building and the landlord''s need could be served by releasing the other part, the prescribed authority should release only the latter part of the building.

(e) The appellate Court judgment is liable to be set aside on the ground that it has upset the judgment of the prescribed authority without setting aside the findings given by the prescribed authority.

(f) Subsequent events should be taken into consideration which will show that now the need of the landlord does not exists any longer.

9. Taking the first submission of the learned counsel for the petitioners it would be appropriate to refer to certain provisions of the Act.

Section 21(1)(a) of the Act reads 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;?.

10. Section 3(g) of the Act defines ?family?, as under:

?family?, in relation to a landlord or tenant of a building, means, his or her

(i) spouse,

(ii) male lineal descendants,

(iii) such parents, grandparents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant, as may have been normally residing with him or her,

and includes, in relation to a landlord, any female having a legal right of residence in that building;?

11. Admittedly, the brother does not come within the meaning of the world ''family'' as defined under Section 3(g) of the Act. Thus, an application for the release of the premises in question under Section 21(1)(a) of U.P. Act No. 13 of 1972 could only be filed where the building is bonafidely required for the occupation by the landlord himself or for any member of his family. ?Brother? will not come in the definition of a family member.

12. However, in the present case, the application has been filed by Sri Sunil Kumar Taraiya, claiming himself to be the Karta and head of a joint Hindu family. It has also come on record that the property in question is the ancestral property and the landlord and his younger brothers are coowners.

13. In Kishori Lal v. Additional District Judge, Ghazibad, 1979 ARC 1, it was held:

?It is true that an application can be filed under Section 21(1)(a) of the Act by a landlord for the need of himself or for the need of his family members. In the present case the property in dispute belonged to a joint family consisting of Kishori Lal, the petitioner and Krishna Nand and Basu Dey. Although the application was essentially made for the need of the son of Kishori Lal but even if it was assumed that it was required for the purpose of Krishna Nand as well, the Court below has not justified in holding that the same was not maintainable. The maintainability of the application for the need of Krishna Nand was not justified on the basis that he was a member of the family but on the ground that he was also coowner along with the petitioner. Krishna Nand being a coowner was as much as a owner of the property as the petitioner himself. That being so, the first ground given by the learned Additional District Judge fails''''.

14. In Dwarika Prasad v. Niranjan and another, (2003) 4 SCC 549, it was held that the application was maintainable by the landlord for settling his younger brother in business who was dependent on the landlord for the purpose of resident or for economic consideration. The Supreme Court held:

?...Normally, the rent legislations are meant for the benefit of the tenants but the rent statutes contain exceptions in favour of the landlord which give him a right to evict the tenant, the most important being to ensure that he gets payment of rent regularly and promptly and that in case the tenanted premises is required by him for his personal need, he is able to get its possession from the tenant. So the provision regarding eviction of tenant to meet the personal requirement of the landlord with respect to the premises is a provision for the benefit of the landlord. The question arises that should such a provision be construed strictly so as to confine it to the requirement of the landlord alone or can it be extended to include the requirement of members of the landlord''s family? In the present case, the plaintiff has pleaded right from the beginning that he constitutes a joint family with his mother and brothers and sisters. It is also in evidence that the plaintiff holds the property for the benefit of the entire family. Even when the plaintiff is the sole owner of the property, it is open to him to use the property for the benefit of his larger family which includes his brothers and sisters. The respondent tenant cannot dispute the fact about the plaintiffs constituting a joint family because it is specifically provided in the lease deed which is an admitted document. Moreover, the defendant had not led any evidence to contradict or dispute this plea. The way the case has been argued before the Courts below also clearly suggests that the only objection raised on behalf of the tenant was a legal objection that the need of the brothers and sisters of the landlord cannot be considered under clause (g). The fact that the plaintiff constituted a joint family with his brothers and sisters was never disputed.?

15. In India Umbrella Manufacturing Co. and others v. Bhagabandei Agarwalla (dead) by LRs. Savitri Agarwalla (Smt.) and others, 2004(1) JCLR 392 (SC) : (2004)3 SCC 178, the Supreme Court held as follows:

?Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the coowners can file a suit for eviction of a tenant in the property generally owned by the coowners. This principle is based on the doctrine of agency. One coowner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other coowners. The consent of other coowners is assumed as taken unless it is shown that the other coowners were not agreeable to eject the tenant and the suit was filed in spite of their disagreements.?

16. From the aforesaid it is clear that the landlord being the Karta and head of the family and being a coowner could file an application for the release of the premises showing the need of his brothers, and, such application would be clearly maintainable. Thus, the argument of the learned counsel is misconceived. The application of the landlord is maintainable not on the ground that the brother is a member of the family but on the ground that the brother is a coowner along with the landlord and that the landlord could file the application on behalf of his brothers.

17. The second argument of the learned counsel is that the landlord has sufficient accommodation of its own which could be utilized to set up the business of the brothers. In this regard the learned counsel has invited my attention to various buildings which were vacant and which were in the possession of the landlord and submitted that these buildings could be utilized by the landlord in order to settle his brothers. The learned counsel further submitted that in view of the fact that the landlord possessed several buildings, the application of the landlord for release of the building was not bona fide. The buildings which are in possession of the landlord are:

(a) Lavkush Kutir, which is in the immediate vicinity of the shop in question.

(b) premises No. 33, Ravpura

(c) premises No. 40, Ravpura

18. The trial Court rejected the application of the landlord on the ground that he had sufficient accommodation of his own which can be utilized to settle his brothers. The appellate Court found that these buildings in possession of the landlord are residential buildings and cannot be utilized for business purposes and, therefore, reversed the findings of the trial Court. The learned counsel for the petitioners submitted that there is no embargo for the landlord to use the residential building for business or commercial purposes.

19. Admittedly, all the premises which has been mentioned aforesaid are residential buildings. The premises known as Lavkush Kutir was earlier, released in favour of the landlord by the prescribed authority for the residential purpose of the landlord pursuant to which the landlord and his family are residing in this premises. The finding of the prescribed authority that one room was being used as a shop is incorrect. This is a residential premises and as per the inspection made by the appellate Court, this building was being used for residential purposes. So far premises No. 33, Ravpura is concerned, there is evidence to show that it is a posh bungalow being used for residential purposes by the family members of the landlord. Premises No. 40 Ravpura was being used for tethering of cattles and, therefore, it was not found fit for business purposes. Thus, all the buildings, as stated aforesaid, are residential buildings and not commercial buildings.

20. It may be stated here that the third proviso to Section 21(1)(a) contemplates:

?Provided also that no application under clause (a) shall be entertained

(ii) in the case of any residential building, for occupation for business purposes;?

21. From the aforesaid, it is clear, that a landlord cannot file an application for the release of a residential building for business purposes. Thus, the appellate Court was justified in holding that since the premises in possession of the landlord were residential buildings, the same could not be utilized for business purposes. In any case the landlord cannot be forced or coerced in utilizing a residential building for commercial purposes. In Madhusudan Kumar v. District Judge, Allahabad and others, 1990 (2) ARC 363, this Court held:

?...If an applicant seeking release of commercial accommodation is otherwise found entitled to the grant of his application, he cannot be deprived of the relief merely on the ground that the landlord has some spare residential accommodation at his disposal.?

22. Thus, the second argument of the learned counsel for the petitioners is devoid of any merit and fails. Consequently the application of the landlord for the release of the building was bona fide. The appellate Court has given a clear finding after appreciating the evidence that the brothers of the landlord after graduation were unemployed and that there was a bona fide need to settle the

younger brothers of the landlord. These findings, being based on facts requires no interference in a writ jurisdiction. Even otherwise, I find that their exists a bona fide need of the accommodation in question for the brothers of the landlord.

23. Sri Dinesh Kakkar, learned counsel for the petitioners submitted that the marketing complex constructed by the landlord at Station Road has a number of vacant shops which are commercial in nature and which could be utilized by the landlord in order to settle his brothers in the business and, therefore, there was no need to uproot the petitioners from the premises in question which were in their tenancy for the last 50 years. The petitioners submitted that they have also earned a goodwill and, therefore, the petitioners could not be deprived of the premises in question. The petitioners further submitted that the offer of the landlord requesting the petitioners to shift in the newly constructed shop at Station Road is not suitable for their purpose and, therefore, the petitioners cannot be compelled to shift in a new premise, which is not suitable for their need. The appellate Court found that the business which the landlord''s brothers were going to start was best suited from the premises in which the petitioners were occupying for their business purposes and that the petitioners who were doing the business of general merchant from the premises in question could easily shift their business in the shop located at Station Road. This finding had been given on the basis of the appreciation of the evidence brought on record. Such findings cannot be disturbed in a writ jurisdiction. The petitioners cannot blow hot and cold at the same time. On one hand the petitioners alleged that the shop at Station Road was not suitable for their business purpose and in the same breath they are contending that the landlord could use the said shop for their business purposes, meaning thereby that the shops would be suitable for the landlord''s purposes but will not suitable in so far as the petitioners are concerned. In Daya Shanker v. Xth Additional District Judge, Kanpur and others, 1998 UPRCC 211, this Court held:

?When an accommodation as per the own case of the tenant petitioner was not suitable for business purposes, on the same test that would also not be suitable for the landlord and the claim of the landlord to have the accommodation in question for carrying on his business cannot be defeated on the ground of availability of alternative accommodation.?

24. In M/s. Bata India Limited & Ors. v. Vth Additional District Judge, Agra & Ors., 1999(1) JCLR 718 (All) : 1999 (1) ARC 464, it was held that the tenant had not accepted the alternate shop on the ground that it was not suitable, the tenant could not urge that the said premises would be suitable for the landlords need. Thus, it is no longer open to the petitioners to contend that the shops at Station Road could be used by the landlord to set up the business of his brothers. In any case the Courts below have given a categorical finding that the shops at Station Road was not suitable for the business that would be set up for the brothers of the landlord. The Court below had also found that the petitioners could easily shift their business in the shops offered by the landlord at Station

Road. These findings given by the Court below requires of interference.

25. In every case of eviction some discomfort is involved. If, the ground of discomfort or the ground that the tenant would have no place to do business is considered, then, in such cases no release application could ever be allowed, because in every order of release some discomfort is involved. Merely by making a bald averment that the tenant would suffer greater hardship cannot render the release application nugatory. The mere fact that the tenant had been in accommodation for a long time could not deprive the need of the landlord nor can the need be ignored or sacrificed.

26. The learned Counsel for the petitioners contended that they had been in possession for the last 50 years and had earned a goodwill and, therefore, the release application should not be allowed. In my view, this ground by itself is not sufficient to sacrifice the need of the landlord. The landlord cannot be deprived of his legitimate right to have his own property for his personal use. The petitioners has made no sincere effort to obtain any other accommodation since the proceedings had started and merely by making a bald averment that he was unable to get an alternate accommodation, is not sufficient evidence by itself.

27. The contention of the learned counsel for the petitioners that the petitioners have earned a goodwill and, therefore, they should not be deprived of the premises, is devoid of any merit. No foundation had been laid by the petitioners either before the prescribed authority or before the appellate Court. Merely because the petitioners were in occupation and doing business for the last 50 years does not mean that they have earned a goodwill. The goodwill must be proved and established by the tenant. In any case, the business which the petitioners were doing and the goodwill which they have earned, if any, could always be compensated but, in my view, the release application cannot be rejected merely on the ground that the tenant has earned a goodwill.

28. The learned Counsel for the petitioners submitted that the Courts below failed to consider the provisions of Rule 16(1)(d) of the Rules and that a portion of the premises in question could have been released in favour of the landlord rather than releasing the entire premises. Rule 16(1)(d) of the Rules states as under:

?Rule 16. Application for release on the ground of personal requirement (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:

(i) 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 latter part of the building;?

29. Admittedly, the Courts below have not considered this aspect of the matter.

This Court directed the parties to compromise the matter and explore the possibilities as to whether a portion of the premises in question could be released. The petitioners agreed to vacate a portion of the premises, provided he got a small portion of the frontage on the ground floor. This was, however, not agreeable to by the landlord who submitted that he required the entire premises in order to set up the business for both his brothers and, therefore, releasing only a portion of the premises would not be sufficient for both the brothers. Consequently, the effort of a compromise failed and the matter was dealt on merit. I find, that there is some strength in the contention raised by the landlord. In the first place, the application for release is to settle the two brothers. The landlord has come out with a clear case that after demolition he would make a new construction on the ground floor as well as on the first floor in order to settle his two brothers. Therefore, releasing a portion of the premises in question would not be sufficient for the bona fide need of the landlord to settle his two brothers. Further Rule 16(1)(d) of the Rules contemplates consideration of a partial release of the premises in question where the premises is required for residential purposes. This provision will not apply to a building which is being released for a commercial purposes. I am of the view that Rule 16(1)(d) is not applicable to the present premises and is only applicable to a building which is being released for residential purposes. Thus, I find no merit in the argument raised by the learned counsel for the petitioners.

30. The learned Counsel for the petitioners further contended that the judgment of the appellate Court was liable to be set aside on the ground that it has upset the judgment of the prescribed authority without setting aside the findings given by the prescribed authority. In support of his contention, the learned counsel has placed reliance upon the various decisions of this Court, namely, Heera Lal Agarwal v. II Addl. District Judge, Farrukhabad, 2002 (2)ARC 703, Shyam Bihari Lal Sharma v. Rent Control & Eviction Officer, Mathura and others, 2000 (1) ARC 314, Himanshu Chaudhary v. IInd Addl. District Judge, Moradabad and others, 2001(2) JCLR 537 (All) : 2001(2)ARC 300, Haji Manzoor Ahmed and another v. State of U.P. and others, AIR 1970 AM 467 and Ram Murti Saran v. State of U.P. and others, AIR 1971 All 54.

31. There is no quarrel with the aforesaid proposition but the arguments raised by the learned counsel is devoid of any merit. The appellate Court has considered the findings of the prescribed authority in depth and has given cogent reasons for setting aside those findings. The prescribed authority had found that since the landlord had several buildings in his possession, the release Application was not bona fide. This finding had been reversed by the appellate Court on the ground that the building in possession of the landlord was a residential building which could not be utilized for the business purposes. The appellate Court considered various factors and came to the conclusion that the premises in question was more suitable for the business to be set up for the brothers of the landlord. The appellate Court after considering the evidence came to a positive conclusion that the need of the landlord was bona fide. This finding of bona fide need and

genuine requirement was based on material evidence on record. Thus, in my view, the appellate Court rightly reversed the finding of the prescribed authority. Thus the contention raised by the learned counsel cannot be sustained.

32. At the time of hearing of the petition the learned Counsel for the petitioners filed a supplementary affidavit bringing on record the subsequent events that took place during the pendency of the writ petition before the High Court. The filing of the supplementary affidavit and taking it on the record of the case was strongly opposed by the learned counsel for the opposite party. Vide order dated 642004,I had permitted the learned counsel for the respondent to file a counter affidavit and the question whether the supplementary affidavit should be taken on record would be considered at the time of the hearing of the petition.

33. The learned Counsel for the petitioner submitted that subsequent events can be considered and in support of his submission has relied upon a decision of the Supreme Court in Om Prakash Gupta v. Ranbir B. Goyal, 2002 (2) SCC 256, wherein it has been held:

?The ordinary rule of civil law is that the rights of the parties stand crystallized on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the Court promptly is not taken by surprise.?

34. On the other hand, the learned Counsel for the respondent has placed reliance upon the judgment of the Supreme Court in Gaya Prasad v. Pradeep Srivastava, 2001(1) JCLR 109 (SC) : 2001 UPRCC 81, in which it was held:

?We have no doubt that the crucial date for deciding as to the bona fide of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists. During 23 years after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, least, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional length longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an appellant just on the even of his reaching the finale, after passing through all the previous levels of the litigation, merely, on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.?

35. The learned Counsel also relied upon the decision of the Supreme Court in Gaya Prasad Sharma v. Om Prakash and others, 1996(1) JCLR 502 (All) : 1996 ARC (2) 304.

36. The crucial date for considering the bona fides of the need of the landlord is the date when the application for the release is filed. The right of the parties are crystallized on the date of the institution of the suit but this is subject to an exception. Whenever a subsequent event, which has a material bearing on the entitlement of the parties, the Court would not be precluded from considering the subsequent events and moulding the relief accordingly. In the light of the aforesaid, the petitioners have filed a supplementary affidavit stating that one of the brothers is now running a business of granite and, therefore, his need has come to an end. The petitioners have also alleged that one room in Lavkush Kutir was being used as a shop and that the municipal assessment register also shows that one room was being used as a shop. The respondents in their counter affidavit denied the allegations made in the supplementary affidavit and stated that Sudhir Kumar one of the brothers did start his business in granite but the said business failed and ultimately the business in granite was closed. It was further submitted that both the brothers. Sushil Kumar and Sudhir Kumar, are still unemployed and they are still interested in doing the cloth business. Thus, the subsequent events brought out by the petitioners does not make any material difference. The bona fide need of the landlord still exists. The subsequent events cannot over shadow the genuineness of the need of the landlord for the premises in question. The contention of the learned counsel for the petitioners that the entry in the municipal assessment register clearly indicates that one room in Lav Kush Kutir was being shown as a shop and, therefore, this shop could be utilized by the landlord to set up the need of the brothers is not correct. In my view, a mere entry in the assessment register by itself is not sufficient evidence. In Baleshwar Tewari(dead) by LRs. and others v. Sheo Jatan Tiwary and others, 1997(5) SCC 112 and Vishal Singh and another v. State of Madhya Pradesh, AIR 1998 SC 308, the Supreme Court held that entries in the revenue records are not sufficient evidence to prove a particular fact. In addition to the entries in the municipal register, there must be other evidence. In the present case, the appellate Court had made a personal inspection and found that the premises in question was being used for residential purpose by the landlord himself. The respondent in reply to the supplementary affidavit has

denied specifically that the room was being used, as a shop in question. Thus, the submission made by the learned counsel fails and is rejected.

37. In the result, the writ petition fails and is dismissed. However, the judgment of the appellate Court is modified to the extent that the petitioner will vacate and hand over peaceful possession of the premises in question within three months from today. In the event the petitioners want to shift in the shop offered by the landlord at Station Road, they could do so. The petitioners will inform the landlord within four weeks from today that they are interested in the shop at Station Road. The landlord will give possession of the shop to the petitioners. The rent of the shop would be Rs. 500/ per month. In the event the petitioners shift in this premises the landlord would also pay a sum of Rs. 30,000/ as compensation and towards loss of goodwill etc. caused to the petitioners within three weeks from the date when the petitioners shift into the shop at Station Road. The rent which has been fixed by this Court will remain static for the next five years and thereafter it would be open to the parities to negotiate the rent.