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**(1975) 02 AHC CK 0031**

**In the Allahabad High Court**

**Case No : Civil Miscellaneous Writ No. 236 of 1972**

Motilal and others

APPELLANT

Vs

State of U.P.and others

RESPONDENT

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**Date of Decision : 13-02-1975**

**Acts Referred:**

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3, 7F

**Citation : (1975) 02 AHC CK 0031**

**Hon'ble Judges : R.L.Gulati, J**

**Final Decision : Allowed**

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## Judgement

Gulati, J.

This petition arises out of proceedings under the U.P. (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter referred to as the Act).

The petitioner Nos. 1 and 2 are the sons of Late Sri Shyamlal and the petitioner No. 3 is their mother. Late Shyam Lal was a tenant of a shop on the ground floor in house No. 8, Dharawala, Dehradun, where he carried on the business of Sarrafa since 1927. In the year 1964 the building was purchased by the second respondent, Shrimati Ram Sami Devi. In the meantime Shyam Lal died in the year 1969 and his business was carried on by his sons and his widow, the present petitioners. The landlady applied under Section 3 of the Act for permission to file a suit for ejectment of the petitioners on the ground that she needed the shop for the use of her son, who was in service but was not satisfied with his job. The Rent Control and Eviction Officer rejected the application holding that her need was not bona fide and genuine. Her revision petition was dismissed by the Commissioner, Meerut Division, Meerut on the ground that the same was barred by time. She then approached the State Government under Section 7F of the Act. The State Government has allowed her representation and has set aside the order of the Rent Control and Eviction Officer and has granted permission to her to file a suit for ejectment of the petitioners. The petitioners have now approached this Court under Article 226 of the Constitution.

It has been argued on behalf of the petitioners that the State Government has set aside the order of the Commissioner without recording a finding that the revision petition was within time and was not barred by time. The Commissioner had dismissed the revision only on the ground of limitation and unless the State Government found the order to be erroneous it could not set it aside. I do not find any force in this contention because the State Government has very wide power under Section 7F and can call for the records and set aside the order of the Rent Control and Eviction Officer even if there is no revision before the Commissioner. However, this point is of no consequence because the petitioners are entitled to succeed on another ground.

This court has repeatedly held that whenever a landlord wants to evict a sitting tenant he has to prove two things:

(i) that he needs the accommodation for his own use; and (ii) that his need is greater than that of the tenant.

In other words, the Rent Control and Eviction Officer when dealing with an application under Section 3 of the Act has first to find that the need of the landlord is genuine and then to compare his need with that of the tenant. He can grant permission to the landlord to evict a tenant only if the need of the landlord is found to be greater than that of the tenant. In the instant case the Rent Control and Eviction Officer approached the question from a right angle and gave the following finding with regard to the need of the petitioners:

"The O.Ps. are carrying on the old ancestral Sarrafa business in the shop in question. It is pleaded that regular Sarrafa business is being carried on in the disputed shop and in case permission is granted to the applicant the source of the livelihood of the O.Ps. will be greatly affected and great irreparable loss would be deemed. Their need for the shop in suit is more weighty in view of the circumstances of the case, overbalancing the need of the applicant. There is acute shortage of suitable business accommodation at Dehradun. It would be extremely hard to throw them out on the road, deprive them of the business premises which is the source of their livelihood; undue hardship would be caused to them."

The State Government has not reversed this finding. Indeed, it has not even adverted to this aspect of the matter at all. It has merely taken into consideration the bona fide nature of the landlord's need. It appears that she had forwarded to the State Government a letter from the office of the Oil and Natural Gas Commission, Dehradun showing that the resignation of her son had been accepted. This letter in the opinion of the State Government conclusively established that she wanted the shop for the use of her son, who had resigned his job. It has not said even a word about the need of the petitioners and, the hardship to which they would be exposed if they were evicted. The approach of the State Government is clearly erroneous and vitiates the order of the State Government. See: Jagannath Prasad Snavastava v. State of U. P. and others 1973

A.W.R. 622.

The learned counsel for the petitioners also made a grievance of the fact that the State Government has taken into consideration the letter of the Oil and Natural Gas Commission sent by the landlady sometime in September, 1973 after the petitioner had already filed his reply to the application. This letter was never brought to the notice of the petitioners and they had no occasion to rebut this additional evidence. This grievance of the petitioner even though technical appears to be correct. But as the petition succeeds on a more vital point, nothing further needs to be said about this point.

In the result, the petition succeeds and is allowed. The order of the State Government dated December 17, 1971 (Annexure "C" to the writ petition) is quashed. However, I make no order as to the costs.