
(2011) 03 AHC CK 0243

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 912 of 2010 & C/W C.M.W.P. Nos. 1956, 1867 and 2535 of 2010

Onkar Nath Kesarwani (Since Deceased) & Another APPELLANT
Vs

Kusum Singh & others RESPONDENT

Date of Decision : 25-03-2011

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a), 21(1)(b)

Citation : (2011) 03 AHC CK 0243

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Disposed Of

Judgement

Rakesh Tiwari, J.—rd learned counsel for the parties and perused the records.

2. Writ petition No.912 of 2010 has been filed challenging the validity and correctness of order dated 19.11.2009 passed by the Additional District Judge, Court No.9, Allahabad in Rent Control Appeal No.7 of 2006 (Annexure 7 to the writ petition) and order dated 15.2.2007 passed by the Prescribed Authority/ Additional Civil Judge (Senior Division), Court No.13, Allahabad in P.A. Case No.13 of 1996 (Annexure 6 to the writ petition).

3. Writ Petition No.1956 of 2010 has been filed challenging the validity and correctness of order dated 19.11.2009 passed by the Additional District Judge, Court No.9, Allahabad in Rent Control Appeal Nos.5 of 2006, Mahavir Prasad Vs. Smt. Kusum Singh & others, 6 of 2006, Shyam Lal & others Vs. Smt. Kusum Singh & others and 10 of 2006, Sita Ram Vs. Smt. Kusum Singh & others, (Annexure 9 to the writ petition) and order dated 19.12.2005 passed by the Prescribed Authority/Additional Civil Judge (Senior Division), Court No.13, Allahabad in P.A. Case No.24 of 1996, P.A. Case No.20 of 1996 and P.A. Case No.22 of 1996 (Annexure 3 to the writ petition).

4. Writ Petition No.1867 of 2010 has been filed challenging the validity and correctness of the order dated 19.11.2009 passed by the Additional District &

Sessions Judge, Court No.9, Allahabad and order dated 19.12.2005 passed by the Prescribed Authority/Additional Civil Judge, (Senior Division), Court No.13, Allahabad in M.P.A. Case No.39 of 2009, Smt. Kusum Singh and others Vs. Virendra Kumar Kushwaha (Annexure no.1 to the writ petition) and for a writ of mandamus to stay further proceedings.

5. Writ Petition No.2535 of 2010 has been filed challenging the validity and correctness of order dated 19.11.2009 (Annexure 4 to the writ petition) passed by the Additional District Judge, Court No.9, Allahabad in Rent Control Appeal No.9 of 2006 and order dated 19.12.2005 (Annexure 3 to the writ petition) passed by the Prescribed Authority/Civil Judge (Senior Division), Court No.13, Allahabad in P.A. Case No.15 of 1996.

6. The aforesaid writ petitions have been preferred by the tenants of shops in building bearing Municipal No.84/137 (New no.137), Tilak Road, Bansmandi, Muththiganj, Allahabad. The aforesaid building is a building consisting of ground floor first floor and second floor in which there were twelve tenants. Out of these, six tenants are the tenants of shops situated on the ground floor and remaining six tenants occupied the residential portion situated on the first floor. Out of six tenants on the ground floor four of them are the tenants of shops and two are tenants of Chabutara over the drain.

7. The landlord initially filed a release application under Section 21(1)(b) of the U.P. Act No.13 of 1972 against all the 12 tenants on the ground that the building was a very old construction and in a dilapidated condition having been constructed prior to year 1892; that the families of the applicants/landlord were residing on part of the first floor and second of the same building, but due to its dilapidated condition they were compelled by the circumstances to vacate the portions in their occupation; that at present the family members of the landlords are living in tenanted accommodations in Kydganj and Allahpur localities of Allahabad; that intention of the landlord for demolition and reconstruction of the building was genuine and their need is also established from the record as most of the part of the building has already collapsed; that as a result thereof 6 tenants, who were residing on the first floor i.e. the residential portion, have vacated the same during the pendency of the release application before the Prescribed Authority, but the landlord could not reconstruct the shops of the building as the ground floor is still under the occupation of the tenants preventing reconstruction by the present petitioners as it cannot be reconstructed without being demolished.

8. After appreciating the oral and documentary evidence and hearing the parties, the release application under Section 21(1)(a) and (b) of the Act was allowed by the Prescribed Authority by order dated 19.12.2003. It is averred in paragraph 13 of the release application as well as in the writ petition that the landlord made an offer to the tenants that after reconstruction of the building he will provide shops to them, but this offer has been rejected by the tenants in paragraph 13 of their written statement before the courts below as well as in the counter affidavit

to the writ petition.

9. The release application under Section 21(1)(b) of the said Act remained pending for about 9 years and during this period the circumstances of the family of the landlord changed. An amendment application was, therefore, moved on 10.01.2005 by the landlord to incorporate the plea of bona fide need under Section 21(1)(a) in respect of the sons of the applicants as well as other colandlords on the ground of changed circumstances and subsequent developments in their families during the pendency of the release application. It is claimed that the sons of the landlords have become major who were not good in the studies; that one Sushant Singh son of one of the landlords who was doing business of brick kiln had to close it down due to loss incurred in that business.

10. By amendment to the release application, the respondentlandlords pleaded that there was family settlement amongst them by metes and bounds. It was alleged that back portion of the building had gone into the share of applicant nos.1 to 4, while the front portion had come into the share of applicant nos.2 and 3; and that the effect of partition amongst cosharers in such circumstances was considered with approval by this Court in its judgment reported in AIR 1946 All. 200 wherein it was held:

"The question whether a private arrangement could operate as a partition between the cosharers has been the subject of several decisions of this court the earliest of which is reported in AIR 1946 All 200 (Abdul Haq V. Mohd. Hashin) in which a some what similar contention was disposed of by the Bench as follows:

"The cosharers in a mahal have a right to effect a partition by private arrangement. Partition among the cosharers once effected either through court or by private treaty puts an end to the joint ownership of the parties. Thence forward the parcels of land allotted to different cosharers are absolutely distinct in the eyes of law and one has nothing whatsoever to do with the others."

11. It will thus be seen that the private arrangement set up by the plaintiff operated as a partition for all practical purpose, it had the effect of breaking the jointness of the ownership of the parties. The result of such an arrangement is that one cosharer cannot claim to interfere with the right and possession over the parcel of land allotted to the other. It will be noticed that this legal incidence does not depend for its effectiveness on the division of the rent insofar as the right to enjoy the properties allotted to each cosharer at such a partition is concerned. Division of rent is, to my mind, not a condition precedent for the effectiveness of a private partition."

12. The present writ petition has been preferred by the petitioner/tenants praying for reliefs as stated earlier that this Court has no jurisdiction to interfere with the finding of facts given by the Court below as has been held by the Supreme Court in the judgment, rendered in 2008 SC FBRC, Shamshad Ahmad and others Vs. Tilak Raj Bajaj and others.

13. The petitioner tenant contested the proceeding by filing written statement as well as additional written statement to the effect that during pendency of the proceedings, the respondentlandlords have constructed a business complex with ten shops at Bazar Sarai Akil in District Kaushambi; that the said fact was admitted by the respondentlandlords in paper no.99Ga on affidavit (Annexure 11 of the writ petition); that respondentlandlords owned 50 to 60 bighas of agricultural land and they are having good agricultural income from the said land; that respondentlandlords claimed to have sufficient amount of cash apart from gold and silver for reconstruction; that respondentlandlords in the aforesaid affidavit also admitted that during the pendency of the proceedings they have sold a shop to Sri Azad Kumar Rastori and another shop to Smt. Bittan Devi in Bazar Sarai Akil, Kaushambi. Therefore, being owners of shops in District Kaushambi and having alleged need for the shops of the petitioners was not bona fide as otherwise they would not have sold the aforesaid two shops. It is also averred that during the pendency of the proceedings, respondentlandlords also succeeded in getting vacant possession of three adjoining shops and apart from thus the landlords already have four vacant shops in their possession in the same building which is apparent from the map appended as Annexure 8 to the writ petition.

14. Contention of the learned counsel for the petitioner is also that a perusal of the amendment application by which plea of family partition was set up would demonstrate that it is absolutely vague and does not specify in whose share the disputed shop has come; that under Section 21(1)(a) of the Act the shop can only be released in favour of the person who is/are its owners and in absence of any pleading or any finding on this question in the judgments of the courts below, they are liable to be quashed.

15. It is submitted that after amendment of the release application, the amendment became a part of the application moved under Clause (a) and (b) of Sub Section (1) of Section 21 of the Act. The sanctioned plan according to which the respondentlandlord proposed to construct the new building is dated 1.3.1996 whereas the alleged family settlement was pleaded for the first time in application dated 10.1.2005 without disclosing any date of the alleged family settlement. Since after the family settlement it was mandatory for each of the cosharer to show that in case the building is demolished, he is in a position to ensure compliance of Section 24 of the Act. Therefore, in order to achieve this purpose, a new sanctioned plan ought to have been submitted by each of the cosharer in respect of the portion falling to his share and only then, the Court could assess the need of the landlord with regard to compliance of the provisions of Section 24 of the Act. Reliance in this regard has been placed by the counsel upon a decision reported in Karamat Ullah Vs. District Judge, Kanpur and others, 2000(2) ARC 212 wherein it has been held that while directing release of building under Section 21(1)(b), provisions of Section 24 cannot be overlooked and that it is the duty of the authority concerned to ensure that the sanctioned plan does not defeat the tenant's right of reentry. The relevant extract of the judgment

relied upon by the counsel for the petitioner is reproduced below:

"Therefore, before an application under Section 21(1)(b) is to be allowed it becomes the duty of the authority concerned to examine minutely the sanctioned plan submitted by the landlord for the construction of new building in order to ensure that the tenant's option of reentry as safeguarded under sub section (2) of Section 24 will not be defeated or frustrated. Where in a given case if no such provision is made in the plan submitted by the landlord for reconstruction, it would follow that the tenant's right of reentry as guaranteed to him under Section 24(2) of the Act has not been secured and where he is deprived of that valuable right which he could exercise on completion of new building, no order under Section 21(1)(b) of the Act can lawfully be made."

16. Thus, after partition by metes and bounds each applicant became exclusive owner of the portion coming to his share. The other applicant/landlord cannot seek release of the portion which had fallen to the share of the other co-sharers. Consequently, it was necessary for the respondent/landlords to specify the person in whose share the disputed shop had fallen. Release on ground of personal need can only be maintained by the co-sharer in whose share the disputed shop had fallen. It is then stated that in instant case that after partition of the property no sanctioned plan was submitted by the landlords as to in whose portion the shops in dispute would come as such the courts below erred in allowing the release application under Section 21(1)(a) and (b) of the Act. It is also stated that the respondent/landlords had submitted a building plan of the existing building (appended as Annexure 8 to the writ petition) in which only four adjoining shops were shown in their possession as such the tenant filed an application (Annexure 16 to the writ petition) before the appellate court for issuance of a Commission as facts stated in the application were not disputed by the respondent/landlord. It is argued that during the pendency of the proceedings, six of the tenants in the same building have vacated the respective portions in their tenancy. Out of these five tenement were shops, which came in actual physical possession of the respondent/landlords who have not disputed the said fact as is evident from the order of the appellate authority dated 15.1.2009 by which it has been held that the effect of vacant shops in possession of respondent/landlords would be considered while deciding the appeal. The appellate court by order dated 15.1.2009 (appended as Annexure 17 to the writ petition) came to the conclusion that inspection by Advocate Commissioner is not required as facts are not disputed. However, while deciding the appeal failed to take into consideration the effect of the four vacant shops in possession of the respondent/landlords as well as the aforesaid subsequent events having material bearing on the alleged personal need of the respondent/landlord hence nonconsideration of these vital aspects vitiates the impugned judgment and consequently, which for these reasons cannot be sustained. Judgment of the Apex Court in *Mohd. Ismail Vs. Dinkar Vinayakrao Dorlikar*, 2009 (77) ALR (Supreme Court) 629 has been cited by the counsel for the petitioner wherein it has been held that in case of shops coming in possession of the landlord during pendency of the proceedings which

fact having not been taken into consideration, would vitiate the finding on the question of bona fide need of the landlord.

17. Counsel for the petitioner then argues that the alleged need set up in the amendment to the release application was only for three persons, namely, Kunwar Ritu Raj, Kunwar Kandarp Singh and Sri Sushant Singh and in case, their alleged need is assumed to be bona fide then in that case also the respondentlandlord will at the best would require three shops, whereas the existing building consist of about ten shops; that the sanctioned building plan for reconstruction shows that apart from residential portion only five shops will be reconstructed by the landlords after demolition of the building. It is stated that under Section 21(1)(a) of the Act while assessing the need of the landlord the Prescribed Authority is bound to apply its mind as to whether the alleged need set up by the landlord could be satisfied by release of a part of the disputed shop. According to him, the question of part release of the building assumes greater importance in these circumstances, therefore, the Courts below erred in allowing the release application in toto and that in the circumstances, the Courts could not have allowed release of entire building on the ground of personal need of the landlords and for this reason also it was necessary for the respondentlandlords to have specified the specific portion coming into possession of each of them after the family settlement so that the personal need of that very person is taken into consideration in whose share the shop(s) in dispute had came but as no such exercise having been undertaken by the respondentlandlord, and in the absence of any findings in this regard the impugned judgments cannot be sustained.

18. Support in this regard is drawn from decision rendered in R.K.Mittal and others Vs. State of U.P. and others, 2002(2), ARC 298; Alok Brothers (Tax) Pvt. Ltd., Kanpur Vs. VIIIth ARC 99; 1980 ARC 311 wherein it has been held that (to be detected)

19. Counsel for the petitioner next contends that the Courts below have failed to take into consideration the admission of the landlord in his affidavit paper no.99Ga (appended as Annexure 11 to the writ petition) that he had constructed a business complex with ten shops at Bazar Sarai Akil in District Kaushambi which are lying vacant. According to the counsel for the petitioner, the landlord had sufficient accommodation there to satisfy his alleged need of shops and that the shops under the tenancy of the petitioner were not bona fide required by them but neither there is any pleading that aforesaid shops are not suitable nor any finding in this regard has been recorded by the Courts below as such the courts below have erred in allowing the release application. It is stated that there is a difference between "need" and "desire" as held by the Apex Court in its judgment reported in T. Sivasubramaniam and others Vs. Kasinath Pujari and others, 1999 (7) SCC 275. It is stated that in the instant case, there is no bona fide need of the shops in dispute by the landlord and the release application on ground of personal need is in fact a mere desire for establishing the sons and

family members in business; that the respondent landlords after dispossessing the petitioners want to demolish the building and in fact reconstruct a market complex for inducting new tenants after taking a substantial amount of pagri which is forbidden by law. Therefore, the process of court cannot be permitted to be abused by the landlords.

20. Attention of the court has been drawn to the fact that one of the shops was taken on rent by Jagannath Prasad grandfather of the petitioner. He had six sons, all of whom got married and were having their own families. These facts have been detailed in paragraph 14 of the written statement and in paragraph 22 of the additional written statement it is averred that now there are in all 38 members in the tenants' family. The petitioners have no other alternative shop or business with them but the Courts below ignoring the aforesaid facts have recorded vague findings regarding alleged alternative accommodation in possession of the petitioners. It is stated that from the averments in the rejoinder affidavit it is abundantly clear that the tenants do not possess any other shop for their business except the shop in dispute. The counsel for the petitioner has further relied upon Tilak Ram (deceased) through his legal heirs and legal representatives Vs. Om Prakash and others, 1992 (2) ARC 486 wherein it has been held that alternative accommodation in possession of tenant is not sufficient to hold that the need of the landlord is bona fide and that the Apex Court in para 4 of its judgment in 2008 (1) ARC 539 has held that Explanation 1 to Section 21 will not apply to a nonresidential building, hence in such a circumstance, the respondents without establishing their bona fide need cannot seek release of the premises under the tenancy of the petitioner.

21. It is lastly submitted that without taking into consideration the aforesaid facts and the legal position. The Prescribed Authority allowed the release application by its order dated 19.12.2005. Aggrieved by the aforesaid order, the petitioners filed an appeal under Section 22 of Act No. XIII of 1972 which was also dismissed by the judgment dated 19.11.2009. The aforesaid judgments were challenged by filing instant writ petition.

22. Per contra the learned counsel for the respondent submits that it was proved by the landlord before the Courts below that the building in which the shops are situated is in fact in a dilapidated; that most parts of the building have already collapsed which is now in almost ruinous condition and due to this fact six of the tenants occupying the first floor of the premises in question as well as the landlords above the ground floor themselves were compelled to vacate the entire floors in their possession during the pendency of the release application. It is stated that the landlord has been served with a notice by Nagar Nigam, twice which are part of record of the Court below and remained uncontroverted directing them to immediately demolish the building in question in public interest as it is falling down and is in danger to life of the tenants and public being situated on the front and on the sides of the building that during the pendency of the release application before the Prescribed Authority, the applicant landlords

also filed an application paper no.44B praying for a commission to report on the actual condition of the building. This application was at that time strongly objected by the tenants. Therefore, the Prescribed Authority rejected the application no.44B moved by the landlords and that it is an admitted position in between the parties that the building is in very dilapidated, ruinous condition and beyond repairs.

23. As regards the question of bona fide need of the landlord is concerned it is submitted that initially the landlord had filed the application under Section 21(1) (b), but by the year, 2005 the family members of the landlords have considerably increased. The sons of the respondent nos. 2, 3 and 4 have also attained majority and as they are not good in studies, they could not get employment. Therefore, the applicants have moral responsibility as parents to settle down them in life. They have also filed affidavits Paper nos.124, 124B, 142 and 159B on record in court below which are appended as Annexures 7, 8 and 9 with the counter affidavit. Along with these affidavits, the applicant landlords have filed marksheets of the sons to establish that they have been barely able to clear their examination with very poor marks and they could not get employment because of this reason that they have no interest in studies. Hence an amendment was moved for incorporating personal need of the building for them also under Section 21(1)(a) of the Act No.13 of 1972. By the amendment application the pleading of bona fide need for setting the sons in business was also incorporated by the applicants after it was allowed by the Prescribed Authority. In paragraph nos.19 and 20 of the amendment application filed by the landlords it is averred that the income of the landlords from all sources pooled together has decreased considerably due to the reason that some of their businesses had to close down due to loss sustained in that business and the agricultural land is giving little yield as the lands with the landlords are mostly "Banjer" and income from holding the cattle market has also gone down though the income of the landlord hardly makes two ends meet. It is stated that after the amendment of the landlord was allowed by which the plea under Section 21(1)(a) of personal need was allowed to be incorporated. The tenants filed additional written statement. In paragraphs 13 and 14 of the additional written statement the tenant took a plea that in the family of the applicants no person has ever been employed or has ever done any business and the members of the family of landlords have been sitting idle living like "Raja Mahraja" on the property of their ancestors and these averments of the tenant in paragraphs 13 and 14 is itself proof of bona fide of the landlord as at no point of time even a single whisper has been made by the tenants that any member of the family of the landlords for whom the plea of bona fide need had been set up is employed anywhere hence the bona fide need of the landlords stand proved.

24. It is urged that the matter was heard by the Prescribed Authority, which has allowed the release application by its order dated 19.12.2005 deciding both the grounds i.e. of bona fide need and comparative hardship in favour of the landlords. Aggrieved by the order the tenant preferred appeal under Section 22

of Act No.XIII of 1972. In the grounds of appeal (appended as Annexure no.9) the tenants also have not stated anywhere that the persons for whom the need is set up by the landlord are in any business or are earning members. The appellate court, too, after hearing the matter has found that the need set up by the landlord is genuine, bona fide and pressing. It has affirmed the finding of fact recorded by the Prescribed Authority that need of the sons of the applicants as well as the applicants as mentioned in paras 3 and 4 of the amendment application is bona fide; that the tenant has merely alleged that Sushant Singh is already doing business of brick kiln in District Kaushambi which is in another district. The landlord has clarified in his affidavit paper no.159B; that due to the regression in the business of brick kiln as labour are not available this business has been closed down and the brick kiln as well as the land on which it was situated had to be sold out by the applicants to cut down recurring loss. A copy of the sale deed was also filed by the applicantslandlord which is also part of record of the Court below and has been filed along with the writ petition. As regards, other family members for whom the need has been set up by the landlord for establishing them in independent business, it is stated that it has already been proved before both the Courts below who by their concurrent findings of facts have held that the need of the landlord is bona fide and pressing. It is prayed that in these circumstances, Court may not interfere in the impugned judgment in its exercise of extra ordinary power under Article 226 of the Constitution of India as no irregularity or perversity could be shown by the petitioner in the reasonings of the Court below.

25. Counsel for the respondents cites 2003 SC FBRC page no.137 "Akhlesh Kumar and others Vs. Mustaqeem and others" wherein the Supreme Court has held that need for independent business for unemployed sons is genuine and such need cannot be doubted because the son is involved with others in the family business. In the present matter the need of all the members of the family of the landlords is to be considered as they are admittedly sitting idle because they do not have any commercial space of their own in the city from where they can start their business. Reliance has also been placed upon the judgment of the Supreme Court in "Rishi Kumar Govil Vs. Maqsoodan and others", reported in 2007 Volume 53, All India Cases, page 30, wherein it has been held that the landlord is the best judge of his requirement and the bona fide need being a question of fact, cannot be interfered in the writ jurisdiction.

26. The next submission of the counsel for the respondents is on comparative hardship. It is submitted by him that admittedly the landlord has no other accommodation except the building in dispute which is a very in dilapidated and ruinous condition; that it is apparent from record that the building is falling down as most part of the building which was being used for residential purpose by six tenants and then on the first and second floor respectively has already collapsed compelling those tenants as well as the landlord to vacate his residential portion in which they were living and that the landlords now are living in tenanted accommodations at present in Kydganj and Allahpur localities of Allahabad as

such the need set up by the landlord under Section 21(1)(a) and (b) for the shops under the tenancy of the petitioners is bona fide and they cannot reconstruct the building without demolishing the building whereas as a matter of fact the tenants have several accommodations with them as detailed, hereinafter, would not suffer any hardship.

27. It is stated that the petitioners have 3 alternative accommodation which is detailed by the applicantslandlord in their pleadings before the Court below supported by substantial evidence. In this regard, pleading in paras 48 and 49 of the counter affidavit has been referred to wherein it has been averred that the son of the deceased tenant Amit Kesarwani alias Bablu is running his business of hardware from premises no.288/3/197/3, Tilak Road, Mutthiganj, Allahabad in the name and style of Amit Hrdware. It is a registered shop having TIN number from Commercial Tax Department and that the tenant has 3 other accommodations available with him including a commercial establishment and even otherwise they have not made any efforts to search of an alternate shop for business hence it cannot be said that they will suffer any comparative greater hardship than the landlord. Reliance has also been placed in support of this contention upon the judgment of the Supreme Court in "Deep Chandra Juneja Vs. Smt. Lajwanti Kathuria, reported in 2008, Vol.72 ALR page 754, wherein it has been held that if the tenant has not made any effort for searching an alternate accommodation during pendency of the release application then comparative hardship is to be decided against the tenants. The judgment in Raghuvir Singh Saini Vs. Brij Mohan Gupta", reported in 20;07, Vol.2, ARC has also been cited which is to the same effect. It is stated that the ground taken by the tenant by the time that the landlord has not disclosed as to which specific portion of the building has come under whom and the need of any such person can be considered as landlord in respect of the portion which has come into his share after family settlement as such release application cannot be allowed, is fallacious. He submits in this regard that the tenant has absolutely no concern with the family settlement between the applicants and the bona fide need is not at all effected as considerations of portion falling into the share of the applicants are not relevant for the reasons that the applicantlandlord have jointly filed, the release application under Section 21(1)(a) and (b) of Act No.XIII of 1972 and their need being joint and bana fide for demolition and reconstruction of the building for its release in their favour. It is also pointed out that in the ground of appeal, the tenant has not pressed this point, therefore, averment on this point in the writ petition for the first time is not at all permissible.

28. In respect of Reentry under Section 24(2) of the U.P. Act No.13 of 1972 it is contended that the findings of the Court below cannot be said to suffer from any infirmity or to be bad in law merely because the Court below has not directed the landlord to provide a shop to the tenants after reconstruction. It is stated that initially the release application was filed under Section 21(1)(b) only wherein the landlord had himself made an offer of reentry by offering each of the petitioner tenants a shop after reconstruction of the building but by efflux of time as well as

subsequent events, situation of landlords drastically changed. Their family members have grown and the family has expended. The sons of the applicants who were earlier minors have now attained majority. Therefore, pleading of release of shops under Section 21(1)(a) on the ground of bona fide need for them was also incorporated by the landlord in the year 2005 by means of amendment application allowed by the court below. The landlords have established their bona fide need for the release of the building as a whole under Section 21(1)(a) hence the question of reentry under Section 21(1)(b) read with Section 24(2) of the Act loses its significance.

29. In support of the above contention reliance has been placed upon the decision rendered in "Zamir Ahmad Siddiqui Vs. Dr. Abdul Aleem" 1987 Vol.2 ARC page 244, wherein it has been held by the High Court that if a composite application for release has been filed under Section 21(1)(a) and 21(1)(b) which is allowed on both the grounds i.e. under Section 21(1)(a) and (b) then the provisions of Section 24(2) will not be applicable. In the present case, the petitioners cannot take a plea of Section 24(2) because he already has 3 commercial accommodations available to him from where he is carrying on his business.

30. It is then stated that the landlord had got the map for reconstruction; sanctioned from the A.D.A. (appended as Annexure no.1 of the counter affidavit). As per the byelaws of the A.D.A. land towards the roads 14.9 feet is to be left for road widening purpose and the applicants have also to leave 15 feet set back on both road sides, as there are two roads on the two sides of the building. Therefore, due to the fact that under existing land extra land is to be left by the landlords for road widening purpose only 5 shops can now be constructed on the ground floor apart from the fact that the four applicants will also have to raise construction for their residential purposes. Thus, there is need of shops for 7 persons of the landlords family and only 5 shops can be constructed after leaving the land for road widening the space/land now available to them as per bye laws is not sufficient even to satisfy the need of the family members of the landlord themselves, therefore, they would not be now able to provide reentry of the tenants even otherwise to the fact that their application under Section 21(1)(a) has been allowed holding the need to be bona fide and Section 21(1)(b) would be eclipsed in view of the judgment in Zamir Ahmad (supra).

31. After hearing learned counsel for the parties and on perusal of release application amendment application and other records appended with the writ petition, it is apparent that the landlords had not specified their share each in the property. It has been stated that by the amendment application, the respondent landlords incorporated paragraph 13 of the writ petition whereby the need of Kunwar Rituraj Singh, Kunwar Kanderp Singh son of Shushant Singh under Section 21(1)(a) is also set up apart from section 21(1)(b) of Act No.XIII of 1972. The relevant paragraph nos.1 to 4 and 13A of the amendment application

by which the aforesaid amendment was sought, reads as under:

Para 1 to 4:

1. During pendency of the case on account of inordinate delay caused by the opposite parties there has been family settlement between the applicants whereby the back half part of Suit No.PA13/96House No.184/137, Tilak Road, Mutthiganj, Allahabad fell to the share and lot of the applicants no.1, 4 and the front part facing Punkroshi Road fell to the share and lot of the applicants 2, 3 and they became owner thereof.
2. During the pendency of the case for the last more than 8 years the sons of applicants have become adult and could not get any job or settlement in some business arose to save their life from being wasted.
3. All the present contesting opposite parties have built and held their own residential and non residential houses the documents of which have already been filed on the record.
4. In the above circumstances it has become necessary and expedient to move the amendment application so that the case be decided correctly, effectively and completely on points involved in the case which will also avoid multiplicity of the case, time and expenses as such it is just and proper to allow the following amendments made in the case in the ends of justice.

Para 13A:

- (i) Kunwar Ritu Raj Singh son of Arvind Singh aged about 23 years is wholly unemployed, the applicants are keen to settle him in independent business in the shop to be constructed in house in Suit No.184/137, Tilak Road, Mutthiganj, Allahabad.
- (ii) Kunwar Kanderp Singh son of Shushant Singh aged about 20 years is adult and grownup and has no taste in study as such it has become necessary to settle him in life in business from the suit premises of shop to be newly constructed.
- (iii) Shri Shusantu Singh aged about 40 years son of late Hariharnath Singh has no job or vocation and wants to engage him in business at Allahabad. He has closed the brick field work due to loss and danger of life in the village.
- (iv) Since opposite parties have their own house for business at Allahabad as such have denied to accept the shop after new construction now the building is bonafidely required by the applicants and members of the applicants family bonafidely, genuinely and honestly for their livelihood as required under Section 21(1)(a) of the Act and the opposite parties will suffer no hardship.
- (v) Exp.I of the Act is fully applicable to the facts of the case.

32. It has been argued by the learned counsel for the petitioner that from the map appended as Annexure 8 to the writ petition which was filed by the landlords along with release application (appended as Annexure CA1 to the

counter affidavit) that there are four vacant shops in possession of the owners/landlords. Apart from Shop no.1 which was in tenancy of Jagannath, shop no.2 now is in possession of petitioner Onkar Nath, shop nos.3 to 8 are in possession of other tenants which are subject matter of the dispute in the connected writ petitions; that not only specific portions of the building after family settlement have not been specified but also the alleged family settlement has not been brought on record and the application for appointment of a senior Advocate Commission for inspection of building in dispute was prayed for before the appellate court. The application is as under:

"In the above noted case it is submitted that the respondents/landlords have already got in their occupation duly constructed shops accommodations in an area of about 40" x 65" abutting main road having separate and independent in a vacant state since before the commencement of the proceeding for release besides a Picture Hall at Sarai Akil; that the said shops are required to be inspected to enable the applicant to bring the correct facts before the Court for adjudication of the dispute within the true spirits of Section 21(1)(a) of the U.P. Act No.XIII of 1972. Under the circumstances it is expedient in the ends of justice that the Court may appoint some Senior Advocate Commission at cost of the appellant to inspect the shops accommodations in occupation of the respondents/landlords in building no.184/137, Tilak Road, Mutthiganj, Allahabad as well as the Picture Hall of the respondentlandlords situated at Sarai Akil and report in the light of this application at an early date."

33. The Court below after considering the objection by its order dated 15.10.2009 on the application found as a matter of fact that the release application was filed by the landlords under Section 21(1)(a) and 21(1)(b) of the Act No.13 of 1972 and the material used in the construction of the building in dispute is mud; that the said building is in a dilapidated condition being very old and having lost its life is falling down. It is now in the ruinous condition and due to this reason the Nagar Nigam Allahabad has by its order dated 24.10.2000 directed the landlords to demolish the same. Therefore, the Court by cogent reasons decided the application of the landlords. In this regard the submission of the landlord has force that application Annexure 16 moved by the landlord for appointment of the commissioner for inspection was opposed by the tenants themselves as such question of non consideration of application moved by the tenants for appointment of Advocate Commissioner at the appellate stage at the time of final hearing holding that such application neither has any relevance nor was it justified. The relevant extract for verification of operative portion of the order dated 15.1.2009 in this regard is as under:

@ Hindi @

34. Therefore, no advantage could be had by the tenant by arguing that this application had not been taken into consideration by the appellate court particularly when the facts for verification by Advocate Commissioner were admitted between the parties.

35. It has been vehemently argued by learned counsel for the petitioner that the appellate court has not looked into its own order dated 15.1.2009 while passing the final order. The attention has also been drawn by the learned counsel for the petitioner to paragraph 11 of the affidavit filed by the landlords appended as Annexure 17 regarding financial capacity and for construction of proposed demolition and a new construction. Paragraph 11 of the affidavit reads as under:

Para 11:

36. Para 14 of the counter affidavit is emphatically denied being incorrect and false. Applicants are man of status having agricultural property. Picture Hall Shops, Bazar having rental and agricultural income and has financial capacity for the proposed demolition ad new construction. Applicants are owners of 60 bighas of agricultural land only besides other property. Documentary evidence and details of estimated expenditure for demolition and new construction will be filed in Court at appropriate time. Assuming opposite parties" contention as alleged to be correct thought emphatically denied that the petitioners have no means to raise now construction, petitioners have various close relations who are ready to assist and will financially assist petitioners if required. Howsoever, in any view of the matter petitioners are not going to ask opposite party for any assistance and if required may dispose off part of agricultural land Gold and ornaments. It is totally incorrect and false that the petitioners do not want to demolish and reconstruct the house and simply wants to enhance rent. Applicants undertake that they will demolish whose house and start reconstruction within 15 days from the date of vacation of the house by tenants thereof. Opposite parties allegation to the contrary are all concoctions and no reliance can be placed thereon. Deponent reaffirms the contents of para 12 of his earlier affidavit."

37. In this regard, the affidavit relied upon by counsel for the tenant in the evidence filed by the landlords may also be seen wherein it has come that one of the petitioners, namely, Shushant Singh has sold three plots; the first plot sold is situate at Mauza Barai alias Sarai Akil, Tehsil Chail, Kaushambi (Allahabad) has been sold to Smt. Sunita Devi wife of Sri Hari Har Nath Sahu resident of village BJakohira, Pargana Karari, Tehsil Majhanpur, Kaushambi (Allahabad) on 13.5.2004 for a sum of Rs.1.60 lacs as per sale deed. The second plot was sold by means of sale deed dated 13.5.2004 is in favour of Smt. Prem Lata wife of late Chhotey Lal Jaiswal in respect of a plot of land as detailed and described in the sale deed. Copies of which has been filed as Annexure II to the writ petition and the third plot vide sale deed dated 23.4.2004 in favour of Maqsood Alam Ansari son of late Ruwab resident of Sarai Akil, Pargana and Tehsil Chail, District Kaushambi.

38. The contention of the counsel for the petitioner in this backstop was that since the petitioner has also constructed ten shops in Sarai Akil, District Kaushambi which is just adjacent to District Allahabad, shows that the landlords had no need of the shop in dispute. Therefore, ten shops in the adjacent district of Kaushambi are available to the landlord for the business and that this fact had

not been even considered in the judgment. This argument is misconceived as the release application has been filed by the landlords for the shops situated in Allahabad for purpose of demolition and reconstruction of their residential accommodation for themselves as they are residing in tenanted accommodation in various localities in Allahabad and reconstruction of five shops for setting their sons in business as per map sanctioned by the local authority after leaving land for road widening purpose.

39. The last contention of the learned counsel for the petitioner was that authority has not considered the question of part release of the accommodation in dispute and has thus committed an illegality.

40. Though it appears from the sanctioned map that only five shops to the respondent regarding which the landlords have furnished his need and until and unless bona fide need is proved by the landlords, hardship cannot be considered. He had argued that commercial building cannot be released for the purpose of residential accommodation and as appeal having been filed by only four members of the family of the landlords whose need is found proved is also misconceived. In this regard consideration about 15ft land on each of the two sides for road widening purpose may be had which is compulsorily to be left out by the landlord under the laws, thereby reducing the area in which building can be reconstructed. Landlord has pleaded that they and their family member need at least seven shops to settle themselves and their sons/family member in business but after leaving 15 ft wide land on two sides of the road they will not be able to reconstruct more than five shops as per the bye laws and that they require the building which is not wholly commercial and the plan has rightly been sanctioned by the authority for reconstruction of some shops remaining or residential portions of the landlords family. Moreover property in Sarai Akil in another district i.e. Kaushambi cannot be considered as an alternate accommodation has to be suitable and in the same municipal limits of the city of Allahabad hence the Courts have rightly not considered those shops and cinema hall etc. situated at District Kaushambi. The landlords are themselves at present living in different localities in Allahabad on rent for the reason as they had to vacate their respective accommodation on second floor along with other tenant on the first floor as the building was crumbling down. In the circumstances the need of the landlord appears to have rightly been found bona fide by the court below.

41. The orders impugned in the writ petitions are concluded by finding of facts. There is no concern of the tenants with the family arrangement/partition between the landlord as all the coowners together filed the application for release hence there is no question of demarcation of share of each of the coowners as outcome of the release application was not known and the building as a whole was to be demolished and reconsidered for their own use; since the family arrangement was inter se between the landlords, the amendment application filed for settlement of the sons of the applicants landlords in business finding

their bona fide need cannot be assailed particularly when the tenants have alternate accommodations and shops of their own as detailed below:

42. Alternative Accommodation in possession of other tenants in connected writ petitions:

43. In writ petition no.1956 of 2010, "Mahavir Prasad who is the tenant of a shop of the disputed premises have 7 alternative accommodations details of which has been provided by the landlord in paras 27 and 28 of the counter affidavit which have not been denied by the petitioner. Apart from above the applicants have also filed documents relating to the property owned by Mahavir Prasad before the Court below. In para 13 of his written statement the petitioner tenant Mahavir Prasad has admitted the alternative accommodation available to him, therefore, it is not permissible to tenant having 7 alternative commercial accommodations already in his possession to occupy the disputed shops belonging the applicantlandlord and to harass him though the landlords have genuineness and pressing need to establish themselves in the disputed shop.

44. Similarly Sri Shyam Lal who claims himself to be the tenant of Chabutra of the disputed building is also having alternative accommodation. Details of the accommodation under his possession has been given by the applicantlandlord in paras 30 and 31 of the counter affidavit filed by them in Writ Petition No.1956 of 2010. The 3rd petitioner i.e. Sita Ram who is also a tenant of a shop of the disputed building is also having an alternative accommodation, the details of which are given in para 32 of the counter affidavit filed in Writ Petition No.1956 of 2010. The Writ Petition No.2535 of 2010, filed by Ram Chandra Jaiswal who is a tenant of shop of the disputed building also has an alternative accommodation from where he is already conducting his business. Detail of his alternate shop has already given by the applicantlandlord in Para 23 of the counter affidavit before the Court below as well as in the counter affidavit filed in Writ Petition No.2535 of 2010. It is contended that in these circumstances the petitioners have not been able to make out any ground for interference in the orders impugned by this Court under Article 226 of Constitution of India and as such the writ petition is liable to be dismissed with heavy cost, otherwise the applicants shall suffer irreparable loss and injury.

45. It has been argued by the counsel for the respondent that the landlords believe in the policy of live and let live. In this regard he relied upon para no.13 of the release application wherein it is averred that they offer a shop to the tenant for the business after reconstruction. The aforesaid paragraph 13 has been replied by the tenants in their written statement that averment made in para 13 of the release application is not accepted, though it has been specifically stated therein by the landlords they would start construction within fifteen days, but as litigation prolonged, need of the landlord become more and more pressing and for this reason the family agreement was arrived at. Kunwar Ritu Raj Singh son of Arvind Singh aged about 23 years and Kanderp Singh son of Shushant Singh aged about 20 years have no interest in studies as such it has become

necessary to settle them in business in the proposed shop to be newly constructed as per sanctioned map of the premises in dispute. The amendment application was, therefore, filed by the landlord setting out additional need. An application was also filed by the landlord before the Prescribed Authority for appointment of Advocate Commissioner to inspect the spot and report about the dilapidated condition of the building. This application was vehemently opposed by the tenant that no inspection is required on the ground that the building was in good condition and they can say this as they are removing their business in the shops in dispute.

46. As regards, Section 24 and Rule 17 of the Rules 1972 framed under the Act are concerned, the attention of the Court has been drawn by the counsel for the respondents to the provisions of this section and the rule which read as under:

47. Section 24: Option of reentry by tenant(1) Where a building is released in favour of the landlord and the tenant is evicted under section 21 or on appeal under Section 22 and the landlord either puts or causes to be put into occupation thereof any person different from the person for whose occupation according to the landlord's representation, the building was required, or permits any such person to occupy it, or otherwise puts it to any use other than the one for which it was released, or as the case may be, omits to occupy it within one month of such extended period as the Prescribed Authority may for sufficient cause allow from the date of his obtaining possession or in the case a building which was proposed to be occupied after some construction or reconstruction, from the date of completion thereof, or in the case of a building which was proposed to be demolished, omits to demolish it within two months or such extended period as the Prescribed Authority may for sufficient cause allow from the date of his obtaining possession, then the Prescribed Authority or, as the case may be, the District Judge, may, on an application in that behalf within three months from the date of such act or omission, order the landlord to place the evicted tenant in occupation of the building on the original terms and conditions, and on such order being made, the landlord and any person who may be in occupation thereof shall give vacant possession of the building to the said tenant, failing which, the Prescribed Authority shall put him into possession and may for that purpose use or cause to be used such force as may be necessary.

(2) Where the landlord after obtaining a release order under clause (b) of Sub Section (1) of Section 21 demolishes a building and constructs a new building or buildings on its site, then the District Magistrate may, on an application being made in that behalf by the original tenant within such time as may be prescribed, allot to him the new building or such one of them as the District Magistrate after considering his requirements thinks fit, and thereupon that tenant shall be liable to pay as rent for such building an amount equivalent to one per cent per month of the cost of construction thereof (including the cost of demolition of the old building but not including the value of the land) and the building shall, subject to the tenant's liability to pay rent as aforesaid, be subject to the provisions of this

Act, and where the tenant makes no such application or refuses or fails to take that building on lease within the time allowed by the District Magistrate, or subsequently ceases to occupy it or otherwise vacates it, that building shall also be exempt from the operating of this Act for the period or the remaining period, as the case may be, specified in subsection (2) of Section 2.

48. Rule 17. Application for release on the ground for demolition and new construction [Sections 21(1)(b) and 34(8)] Before allowing an application for release of a building under Section 21(1)(b) on the ground that it is required for purposes of demolition and new construction, the Prescribed Authority shall satisfy itself

(i) that the building requires demolition;

(ii) that a proper estimate of expenditure over the proposed demolition and new construction has been prepared;

(iii) that a plan has been duly prepared and conforms to the byelaws or regulations of the local authority or other statutory authority under any law in that behalf for the time being in force; and

(iv) that the landlord has the financial capacity for the proposed demolition and new construction.

49. From a perusal of the aforesaid provisions, it is clear that Section 24 provides an option of reentry to the tenant if application is moved under Section 21(1)(b) and 34(8) only but where release is sought under section 21(1)(a) also on ground of personal need the provisions of Section 21(1)(b), and Section 34(8) read with Rule 17 and 24 will pale into insignificance unless the Court/authority decides the question of personal need under Section 21(1)(a) against the landlord. This option is exercisable by the tenants under the Sub rule 2 of Rule 24. Therefore, the tenants had option to move the District Magistrate after demolition and reconstruction of the building that is required by Rule 17 as plan has been sanctioned by the local authority which are enforced at the relevant time. The sanctioned map had been prepared. Since the map was prepared by the landlords and was sanctioned thereafter renewed thrice by local authority due to the reason that the shops in dispute were not available for demolition and reconstruction and litigation prolonged. Right to the tenants under Section 24 of the Act accrues only after reconstruction of the building for which the landlords had given an assurance to start construction within fifteen days of the shops being vacated by the tenants.

50. It is apparent that the landlords has set up the need of entire building by way of amendment for the members of their family. Rule 17 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 which provides that map for reconstruction should be in accordance with the byelaws. Admittedly, the map was sanctioned by the local authority being in accordance with byelaws hence Rule 17 appears to be complied with. From the judgment

cited by the petitioner in 2008(2) ARC 1 SC 1, Shiv Singh Chak Vs. Baby Jain, it is apparent that as the explanation is inapplicable to a nonresidential building. The bar contained in Clause (i) of the Explanation will not operate where the eviction of tenant is in regard to a nonresidential building but the acquisition of an alternative nonresidential building may be urged as a good ground to hold that no hardship will accrue to the tenant if he is evicted. In the instant case, both the courts have recorded a finding of fact that need of landlords is bona fide. It has also come on record that the tenant has alternate accommodations in the same city whereas the shops of the landlord are said to be in another district. It is apparent from record that tenants are in possession of their own shops in Allahabad from where they are conducting their business but are impleading reconstruction of building of landlords on untenable grounds of hardship. In fact, they would suffer comparatively more hardship than the tenant in the facts and circumstances of the case. They do not suffer any hardship pursuant to the order of eviction passed by the Courts below which have recorded categorical findings of fact in favour of the landlord under Section 21(1)(a) of Act No.XIII/1972.

51. The case laws cited by the petitioner clearly distinguishable and do not apply to the facts of the present case particularly when the tenants or their members of family have acquired shops where they are carrying on their business.

52. As regards, the report of commission is concerned the same reasoning as regard to Rule 17 is adopted by the learned counsel for the respondent landlords that since there is no surplus space available with the landlords for reconstruction of shops for the tenants and also for the reason that the tenants have their own shops they are barred from raising the plea of hardship and bona fide need to be proved by the landlords.

53. For all the reasons stated above as well as the law laid down this writ petition as well as the connected writ petitions fail and are dismissed with cost of Rs.15,000/ each upon the petitioner in view of the judgment rendered by Apex Court in Salem Bar Association, Tamil Nadu Vs. Union of India, AIR 2005 SC3353 wherein it has been held that so far as awarding of costs at the time of judgment is concerned, awarding of costs must be treated generally as mandatory inasmuch as the liberal attitude of the Courts in directing the parties to bear their own costs had led the parties to file a number of frivolous cases in the Court or to raise frivolous and unnecessary issues. Costs should invariably follow the event. Where a party succeeds ultimately on one issue or point but loses on number of other issue or points, which were unnecessarily raised. Costs must be appropriately apportioned. Special reasons must be assigned if costs are not being awarded. Costs should be assessed according to rule in force. If any of the parties has unreasonably protracted the proceedings, the judge should consider exercising discretion to impose exemplary costs after taking into account the expense incurred for the purpose of attendance on the adjourned dates.

54. In case the cost is not paid within a month it shall be recovered as arrears of land revenue within a month with 9% interest till the date of payment. The cost

received shall be paid to the landlord forthwith thereafter on an application made by him in this regard.