(2016) 08 AHC CK 0213

In the Allahabad High Court

Case No : Writ A No. 32138 of 2007

Rajendra Prasad APPELLANT

Vs

Narendra Mittal RESPONDENT

Date of Decision : 10-08-2016

Acts Referred:

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

Citation : (2016) 8 ADJ 546 : (2016) 6 AllLJ 194 : (2016) 6 AllWC 5950 : (2016) 119 ALR 267 : (2016) 3 ARC 606

Hon'ble Judges : Mrs. Sunita Agarwal, J.

Bench : Single Bench

Advocate : Ajit Kumar, Radha Kamal Saraswat and Shashi Nandan, Advocates, for the Petitioner; A.K. Gupta and A.K.Gupta, S.C, for the Respondents

Final Decision : Dismissed

Judgement

Mrs. Sunita Agarwal, J.—Before going to the matter of merits of the case in view of the arguments raised by the learned counsel for the parties, this Court is constrained to put on record that Sri Ajit Kumar Singh, learned counsel for the petitioner was heard at length. He had supplied seven compilations from compilation No. 1 to Compilation No. 7 containing synopsis of the case laws in addition to a written submissions in support of the oral submissions made by him in the Court. This has resulted in making the record too bulky. Each compilation contains number of judgements on each point. For example, in compilation no.2, on the question of consideration of subsequent events, he had referred to ten judgements of this Court and the Supreme Court. In fact one judgement of this Court in the case of Saroj Kumari (deceased) and others v. Suresh Chand and others in Writ Petition no.8017 of 2003 passed by Hon''ble Mr. Justice Sudhir Agarwal on 20.12.2012 has been referred at two places with two different equivalent citations and by mentioning different paragraph of the same judgement giving an impression that these are two different judgements on the same point. The Court is constrained to record that this approach of the counsel is nothing but an effort either to mislead the Court or to make the record so bulky as to make it difficult for the Court to decide the matter. Similarly on the point of "duties of Appellate Court to discuss the reasons assigned by the Trial Court while upsetting its finding and to consider the evidence of the parties", nineteen judgements of this Court and the Supreme Court have been given in compilation no.4. In compilation no.1, there are fourteen judgements on four different points and in compilation no.7 there are twenty seven judgements on different points. There are two other compilations i.e. compilation nos.3 and 6 which also contain four judgements, thus approximately hundred judgements have been cited by learned counsel for the petitioner in seven compilations supplied by him before oral argument in the matter had started.

2. After the arguments were over on 05.01.2016, he again passed on a written submission in support of his oral submission citing a number of judgements in various paragraph of the written submissions.

3. This Court may note that the bulky records took lot of precious time of the Court to go through the case laws cited by the counsel and this has caused delay in delivery of the judgement.

4. This Court may further record that after going through the entire pleadings in the writ petition and also the supporting material supplied by the learned counsel for the petitioner in the nature of compilation nos.1 to 7 and written submission dated 05.01.2016 in support of oral submission, the Court would deal with each point argued by the learned counsel for the petitioner but will only refer to those judgements which it think are relevant to deal with the controversy, so as not to make the judgement too long and cumbersome.

5. This writ petition is directed against the judgement and order dated 26.05.2007 passed by Special Judge (E.C. Act), Bareilly in Rent Control Appeal 6 of 2004 (Nand Kishore v. Rajesh Prasad). The brief facts of the case relevant to decide the controversy are:-

6. The release application under section 21(1)(a) of U.P. Act No. 13 of 1972 was filed by three brothers namely Nand Kishore, Sundar Lal, Jagdish Saran all sons of Tara Chand residents of Maarwariganj, Bareilly, for release of a godown situated in Marwariganj, Bareilly on the ground of their personal need. The need set up was for three sons of applicant no.1, 2 and 3 namely Sri Vishnu Kumar, Narendra Kumar, Dheeraj Kumar. It was categorically stated in the release application that sons of the applicants had completed their education but they could not settle in their career and they want to establish a new venture for the sale of Empty Tin Cans. As a larger area was required for storage of tin cans, the godown in question was needed. It was stated that for running the business proposed by three younger members of the joint family, only an office space is available with the landlords.

7. The godown in question exists in a house user of which was of mixed nature. At the first floor, the applicants were residing and at the ground floor a large

portion was in the tenancy of the petitioner. It was further stated that the petitioner tenant already possessed a big shop at one side of the godown and the godown in question was not required by him.

8. The release application was contested on the ground that it was defective for non impleadment of the necessary party. The petitioner Rajendra Prasad had wrongly been impleaded as tenant whereas the tenancy was in the name of M/s Satish Tea Company. The application dated 10.10.1995 moved by the petitioner raising issue of maintainability of the release application was rejected vide order dated 14.07.1998 passed by the Prescribed Authority.

9. In support of the release application, the affidavits of Nand Kishore, applicant no.1, Vishnu Mittal son of Sundar Lal, Narendra Mittal son of Nand Kishore, and Dheeraj Kumar son of Jagdish Saran were filed. Vishnu Mittal son of Sundar Lal categorically stated in the affidavit filed on 08.12.1999 that he needed the disputed godown to establish him in an independent business as there was no other place available with him. Shri Dheeraj Mittal also averred in his affidavit that he needed the disputed accommodation for doing business of sale of empty tin Can.

10. In the counter affidavit filed by the tenant Rajendra Prasad, a stand was taken that the release application was malafide, it could not be maintained as M/s Satish Tea Company was the tenant. As the tenant refused to accept the illegal demand of the landlords for enhancement of rent and, therefore, they filed the release application based on a concocted story. It was further stated that two Daal Mills were being run by the applicants, one Mill manufacturing Bhoora, Kulia was also being run in Bareilly. This apart two other firms namely M/s Ram Swaroop Tara Chand Marwariganj, Bareilly and M/s Tara Chand Sundar Lal, Marwariganj, Bareilly were owned by different set of partners being the members of a joint family. The building in question is residential in nature and no commercial activity could be permitted. The applicant''s sons were not sitting idle rather they were already engaged in two firms mentioned above. There are other accommodation in possession of the large joint family of the applicants wherein their sons could be accommodated. He also raised a doubt on the willingness shown by the applicants to start a business of sale and purchase of empty tins that too near a residential portion of the family in the building. In the crux, his submission was that the applicants landlord were men of means, they had sufficient sources and place to establish their sons who may also join the joint family business, they had voluminous wealth and none of them were unemployed.

11. In the written statement filed on 13.09.1999 it was stated by the tenant that the landlord had purchased a plot of measuring 800 square yards in Deshmeshnagar, Mohalla Madhobari, Bareilly within the limits of Nagar Nigam, Bareilly. They had recently constructed a shop and godown while the remaining land was lying vacant at the disposal of the landlords. Had the landlords needed the space for business they would not have left the said plot vacant.

12. In replication, it was stated by the applicants-landlords that the property/plot mentioned in paragraph no.9-A of the written statement filed on 13.09.1999 was a property which was purchased by Tara Chand, the applicant''s father in the year 1959. There were five co-owners of this property comprising of four sons and five daughters of Tara Chand. In one portion of this property, Smt. Kamlesh Kumari wife of Sri Sushil Kumar had constructed her residential house and was using another portion being a shop to meet her daily need. It was also stated that the said property was situated at the distance of approximately 1200 meters from the disputed property and moreover, the said area was predominantly residential in nature. It was further stated that the open land could not be used for godown purpose.

13. The petitioner in another affidavit filed on 06.11.2003 reiterated the fact of alternative land of 800 square yard in Deshmeshnagar being in possession of the landlord. The petitioner then moved an application on 14.08.2000 with the prayer to appoint an Amin Commissioner to inspect the properties namely Daal mills, the plot at Deshmeshnagar, the building no. 16, Marwariganj, Bareilly and building No.18, Marwariganj, Bareilly in possession of the landlords and tenants to ascertain the vacant area and the tenanted portion. This application was rejected on 02.09.2000 on the ground that it was moved with a view to delay the disposal of the release matters sufficient evidences were already on record and in view of the affidavits filed by the parties, matter can be decided.

14. The records further indicates that several applications one after the other were moved by the petitioner on different grounds which were finally rejected and the dates 25.03.2004 and 31.03.2004 were fixed for final argument.

15. The Prescribed authority vide judgement and order dated 16.04.2004 rejected the release application with the reasoning that the applicant''s sons namely Dheeraj Kumar, Vishnu Kumar and Narendra Kumar whose need was set up in the release application were found engaged in the joint family business run by the partnership firms namely M/s Tara Chand Sundar Lal. It was also recorded that the applicant''s family was a joint family and all in the family were engaged in vast business ventures owned by the family, therefore, the need set up for independent business of three sons was not genuine. On comparative hardship, the affidavit of applicants paper no.76 was considered and rejected on the ground that no documentary evidence was produced in support thereof. The disputed godown was being used by the tenant for his tea business.

16. In appeal, the Court below after consideration of the pleading of the parties and the material on record found that indisputably the applicant''s family was a joint family and they had joint business. The contention of the tenant that the need of the members of the joint family had to be determined looking to the requirement of the joint family and the joint family business which they were already carrying on was also noted. It was discussed that in the firm namely M/s Ram Swaroop Tara Chand, three appellants namely Nand Kishore, Sundar Lal, Jagdish Saran were partners. In another firm M/s Tara Chand Sunder Lal, Smt.

Tara Mani wife of Sundar Lal, Smt. Siromati wife of Nand Kishore and Vivek Kumar son of Nand Kishore were partners. There was one residential accommodation namely house no. 23 Marwariganj, Bareilly. The disputed godown is situated in house no.16, Marwariganj, Bareilly. The ? portion of the said house No. 16 was in the share of one brother Ram Gopal who had let out it to one Mangli Ram. The portion which was earlier occupied as PCF godown came in possession of the appellants after release and was being used for residential purposes. At the first floor of the said house no.16 Marwariganj, the family of appellant no.2 was residing and the remaining portion was being used for storage of Daal etc. Fourth property at Dasmeshnagar, Bareilly was an open piece of land which was owned by seven co-sharers and in a portion whereof, residential house had been constructed by one of the co-sharer. Fifth property at 17 Madhobari, Bareilly was an open land of 300 Square meter purchased on 28.06.2001 there existed only gates and a dilapidated building. Sixth property was a shop at Shyamganj which was taken on rent by the appellants for keeping the raw material and manufactured goods of the firm M/s Tara Chand Sundar Lal. There was no accommodation suitable for the business proposed by the landlord.

17. The lower appellate Court after having discussed each property in detail came to the conclusion that looking to the large number of members of the family and the fact that three adult members of the family want to establish themselves in an independent business and that they filed their affidavits paper no.77-A, 78-A, 79-A, the release application could not have been rejected by the Prescribed Authority on the ground that the applicants sons were engaged in the joint family business. It was also recorded that none of the applicants/sons were partner in the two firms named above. Merely because they were involved/ engaged in the family business as a stop gap arrangement their need cannot but be bona fide.

18. It was also recorded that the properties which were in possession of the landlord were not suitable for the business of Tin Can proposed by them. Three adult members of the family were competent to start their business.

19. On comparative hardship, it was recorded that the disputed accommodation was a godown. Placing reliance upon the judgment of this Court in Ram Gulam Gupta v. Additional District Judge, Kanpur and others 1990 (1) ARC 565, it was held by the lower Appellate Court that the godown can be shifted easily at any other place as no goodwill was attached to the building/place. It was also recorded that looking to the pleadings of the parties the tenant would not suffer any hardship in case, he was asked to leave the godown.

20. Having discussed the release application on both points of bona fide need and comparative hardship it was held that the need set up by the landlords in the release application was not only genuine but pressing. The release application was wrongly rejected by the Prescribed Authority and was liable to be allowed.

Challenging the release order passed by the lower appellate Court, the submissions of learned counsel for the petitioner are as under:-

1. The release application has become infructuous as bona fide need set up by the landlord had eclipsed on account of subsequent events taken place during the pendency of the application. The original applicants had died and their sons whose need was set up have engaged themselves in joint family business. Their need to start a new venture of sale of empty tin now does not exist.

2. Other accommodations are available with the landlord details of which have been given in different paragraphs of the writ petition as well as supplementary affidavit filed before this Court. These alternative premises in possession of the landlords are not denied.

3. M/s Satish Tea Company and wife of the petitioner are the tenants. The petitioner has wrongly been impleaded as tenant.

4. The tenanted accommodation namely the godown was initially let out at the rent of Rs. 4000 per annum but now the rent has been enhanced by this Court to Rs. 10,000/- per month i.e. one lac twenty thousand per annum. Thus, on account of said enhancement, the premises has gone out of the purview of the Rent Control Act (U.P. Act No. 13 of 1972).

5. The need set up in the release application was for Narendra Kumar son of application No.1, Vishnu Kumar son of applicant no.2 and Dheeraj Kumar son of applicant no.3, their need has vanished on account of subsequent event of the death of the applicants/landlords.

6. By means of the supplementary affidavit dated 18.01.2015, the petitioner submitted that a partition has been arrived between the joint family members with regard to the joint family business and the properties owned by joint Hindu family. As a result of the said partition, disputed property namely, the godown situated in house no.18, Marwariganj, Bareilly has fallen in the share of three sons of late Sundar lal namely Vivek Kumar, Vishnu Mittal and Mukesh Mittal. Vivek Kumar has started a firm in October, 2014 in the nomenclature of M/s Sunder Lal Vivek Kumar and running the business of the firm. He has also opened an office and godown in the same building namely house no.16, Marwariganj, Bareilly adjacent to the property in question. He also opened a godown in two big rooms and is running his office in one room relating to Daal mill business in the same building. On the said basis, it is stated that the need of landlords set up in the release application has vanished.

7. Sri Vishnu Kumar has never contested the proceeding before this Court, the reply namely the counter affidavit to the writ petition has been filed by Narendra Mittal only on behalf of the respondent no.1 to 4.

8. The landlords were under obligation to disclose the accommodation in their possession but they had intentionally not done so and this fact would lead to an assumption of non-existence of bona fide need of the landlords.

9. The question of hardship was to be considered strictly in terms of the provision of section 21 (1) (a) read with Rule 16 of U.P. Act no.13 of 1972 which has not been considered by the Appellate Authority, this fact itself vitiates the order passed by it.

10. The Rent Control Legislation is for the benefit of the tenant. It is for the landlord to establish his bona fide need which must be real and compelling. If not actual and genuine, the release application needs to be rejected, being a mere desire. Subsequent need cannot be considered.

11. The Appellate Court without reversing the findings of the trial Court has allowed the release application ignoring the evidence of the petitioner.

21. At the cost of repetition it is noted that in support of these submissions, compilation no.1 to compilation no. 7 have been supplied by the learned counsel for the petitioner wherein more than 100 rulings have been referred on the points noted above. Further in the written submission passed on in support of the oral submission made by the learned counsel for the petitioner more than twenty case laws have been mentioned. It is not possible for the court to deal with each judgement on the law point placed by the learned counsel. And further this Court does not find it relevant to discuss each and every case law relied upon by the learned counsel with a view not to burden this judgement. It may also be noteworthy that some of the judgment are not relevant for the facts of the present case.

22. Now dealing with the arguments of learned counsel for the petitioner.

23. First submission of learned counsel for the petitioner is regarding applicability of the Act on account of enhancement of rent by this Court, this submission is misconceived in as much as the rent has been enhanced by this Court under an interim order dated 19.07.2007 as a condition to stay the eviction of the petitioner-tenant. The tenant namely the petitioner at the time of hearing on the stay application had offered Rs. 10,000/- per month as compensation for the use and occupation of the godown from the month of July, 2007. The petitioner has already been evicted by the Appellate Court, however, the condition put in the interim order to save the petitioner from eviction during the pendency of the writ petition would not mean that the rent of the premises has been enhanced under the provisions of the Act which would result in the premises to go out of the purview of the Rent Control Act 1972.

24. The second submission is with reference to the events occurred during the pendency of the present petition.

25. The subsequent events which have been brought to the knowledge of the Court is that out of the three applicants/landlords, Sri Nand Kishore, and Sunder lal had expired. They are succeeded by their sons namely Narendra Mittal, Vivek Kumar, Vishnu Mittal, Mukesh Mittal and Smt. Taramani (wife) and daughter Smt. Saroj Agarwal. It is stated that the accommodation in question was required by

Vishnu Mittal son of late Shri Sunder Lal, but no counter affidavit has been filed by him till date. The petitioner has brought the subsequent events before this Court by means of supplementary affidavits. In the second supplementary affidavit dated 18.01.2015, it has been stated in paragraph no.4 that the property in question has been settled with Sri Vivek Kumar, Sri Visnhu Mittal, Vishnu Kumar and Sri Mukesh Mittal and thus the counter affidavit of Sri Narendra Mittal who has no concern with the property in question cannot be treated to dispute the averments in the writ petition. Narendra Mittal who has nothing to do with the property in question cannot continue to oppose the writ petition on behalf of all the landlords/respondents. Under section 58 of the Evidence Act, nothing remains to be adjudicated because the factum of vanishing the need of the landlord is already admitted, in reply to the supplementary affidavits filed by the respondent.

26. The only affidavit filed by Narendra Mittal is neither on behalf of Sundar Lal nor for Jagish Saran nor for Vishnu Mittal and thus is not on behalf of heirs of Sunder Lal. This Court has no option but to dismiss the release application as having become infructuous.

27. The applicants are worthy people having movable and immovable property in abundance, they own highly lucrative business, there is a big building at Marwariganj, Bareilly in which the business under the name and style of M/s Tara Chand Ram Swarup is being run. In another premises at Deshmeshnagar in the city of Bareilly, lot of space is available. One shop at Bazar Shyamganj, Bareilly is also in possession of the landlord. Another mill namely Daal manufacturing mill is being run by Vishnu Kumar son of Sundar lal.

28. Thus a false story has been set up by the applicants/landlords for unemployment of their sons. The properties, details of which have been given herein above are admitted to the landlords. The Prescribed authority after consideration of these materials rightly came to the conclusion that looking to the large joint family business, the need to set up an independent business for sons of the applicants/landlords cannot be accepted. These findings have not been reversed by the Appellate Court. The applicants/landlords did not disclose their business premises in the release application and as such it is a clear case of concealment of material facts. The need, therefore, cannot be termed as bona fide.

29. Considering these submission of learned counsel for the petitioner in the light of the evidence on record, it is relevant to note that the Appellate court has discussed in detail each and every property/business premises owned by the landlords and the business which were being run by them. There is no dispute about the fact that the business which are being run in the family are joint family business. On account of death of their father, the sons whose need has been set up started looking/managing their father''s business and are not unemployed as on date. This fact is of no relevance as at the time of filing of the release application they were not engaged in the business or were employed.

30. The settled law is that the crucial date for looking to the need of the landlord is the date of filing of the petition for release. The normal rule is that the rights and obligation of the parties are to be determined as they were when the lis commenced. The only exception is that the Court is not precluded from moulding relief(s) appropriately in consideration of the subsequent events provided such events had an impact on those rights and obligations. Subsequent event may change but only if they are of such nature and dimension so as to completely vanish the need of the landlord, it can be said that the need of the applicant/ landlords has eclipsed.

31. In Ramesh Kumar v. Kesho Ram 1992 Suppl. (2) SCC 623, the then Chief Justice M.N. Venkatachalia, speaking for the bench held that where the subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspect which bear on the moulding of the relief occur, the Court is not precluded from taking a "cautious cognizance" of the subsequent changes of fact and law to mould the relief.

32. In Kamleshwar Prasad v. Pradumanju Agarwal 1997 (4) SCC 413, the Apex Court has held that even the subsequent events of death of the landlord who wanted to start a business in the tenanted premises is not sufficient to dislodge the bona fide need established by him earlier as the business in question can be carried on by his widow or any other son. It has been held that the subsequent events to over shadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events.

33. In paragraph no. 15 of Gaya Prasad v. Pradeep Srivastava 2001 (1) ARC 352 (SC), the Court has expressed its concern over long drawn judicial process which create an impact on the rights of the litigating parties. Paragraph no.16 of the said judgement are quoted below;-

16. of course a two-Judge Bench (K. Ramaswamy and D.P. Wadhwa, JJ) pointed out in another case Ansuyaben Kantilal Bhatt v. Rashiklal Manilal Shah 1997 5 SCC 457 that the pendency of a lis for a record period of thirty one years has transformed a middle aged landlord to advanced stage of gerenry and at that stage he could not start a new business venture. After lamenting over the system which caused a whopping delay of thirty-one years the Bench made two directions. The first was that the son of the landlord who by that time had four and a half years more to go for reaching the superannuation age could consider starting the business in the tenanted premises after retirement. The second was that in the meanwhile the rent for the building would stand enhanced from Rs.101/- to Rs. 3500/- per month.

34. In Ramkubai (Smt) Deceased By Lrs. And others v. Hajarimal Dhokalchand Chandak 1999 (6) SCC 540, it was noticed by the Apex Court that the landlord was unemployed on the date of filing of the suit but he could not be expected to idle away the time by remaining unemployed till the case is finally decided. It

took about 25 years to reach the case at the final stage. Therefore, the contractor work which was taken by the landlord, in the meanwhile, will not militate against the need set up by him for carrying on the business of Kirana.

35. In Pratap Rai Tanwani and another v. Uttam Chand and another 2004 (8) SCC 490. The Apex Court while considering the contention of the appellant that the landlord''s son had taken a temporary employment with Visa for a limited period and went abroad observed that while considering the bona fide need of the landlord the crucial date is the date of the petition. It has observed in paragraph no.7 and 10 as quoted below;-

7. 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 lengthy 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 applicant just on the eve 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.

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

36. Considering the law in this regard in the background of the factual matrix of the instant case, it is evident that three sons of the applicants/landlords who were unemployed on the date of release application could not engage themselves in an independent business. Because of death of their father and that there was no other business, they joined the joint family business. Their wish to start an independent business remained a dream. In the release application, specific need of three sons of the applicants/landlords namely Vishnu Kumar @ Vishnu Mittal son of Sundar Lal, Narendra Kumar, son of Nand Kishore and Dheeraj Kumar son of Jagdish Saran was set up. These three sons of the applicants landlords namely Vishnu Mittal, Narendra Kumar and Dheeraj Mittal had filed their own affidavits before the Prescribed Authority in the year 1999 to state that they needed the shop in question to start an independent business. Sri Narendra Kumar, one of the son of the applicant/landlord filed his affidavit in support of the need set up by the landlords. It cannot be said that since others did not file their independent affidavits before this Court in the present petition, their need had eclipsed.

37. Moreover it is settled law that every adult member of the family has a right to start his own independent business. Even for expansion of the family business, the premises can be required. The partition of the joint family property,if any, took place during interregnum, long period of litigation, would again does not frustrate the need of the landlords because there are many members of the family including the respondents herein who can start their business in the disputed accommodation. Even Vishnu Kumar who is stated to have got the disputed property as a result of partition in the joint family is not precluded from starting a new venture. Thus it cannot be accepted that since the applicants/ landlords are no more and their sons are carrying on the joint family business for the reason that the godown in question could not be released, the need setup in the release application to start a new venture stood satisfied or eclipsed. The contention of the learned counsel for the petitioner in this regard are thoroughly misconceived.

38. As far as the contention of the petitioner regarding availability of other accommodations to the landlord and non-disclosure of the said fact in the release application, it is sufficient to note that non disclosure of all the business premises and all the residential accommodation in occupation of the applicants/landlords i.e. members of the joint family could not be a factor relevant to reflect upon their bona fide need for the reason that according to the applicants/landlords these premises are not of such nature which would have satisfied their need and further the tenant has not been able to establish that these premises can be utilised by the landlords for the business proposed in the release application. The Appellate Court below has considered in detail each and every accommodations/ business premises in possession of the landlords and recorded a categorical finding of fact that they are not sufficient to satisfy the need of the landlords set up in the release application.

39. Now the contention of the learned counsel for the petitioner that the appellate Court has not followed the procedure prescribed under law while deciding the appeal in not reversing the findings of the trial Court and the evidence on record has been ignored, its order, therefore, is illegal. To deal with the submission, it is important to note that the proceedings before the Appellate Authority are in the nature of continuation of the release proceeding. The entire evidence on record was examined by the appellate Court and after discussion on each evidence it came to the conclusion that the findings recorded by the trial Court could not be sustained. On comparative hardship a categorical finding has been recorded to the effect that since the disputed accommodation is a godown, it can be shifted elsewhere by the tenant as no good will is attached to the place as in case of retail business. Moreover, the tenant possess ample accommodation in which he can carve out a separate space for the godown. The Comparative hardship was, therefore, tilted in favour of the landlords.

40. It may also be noted that the learned counsel for the petitioner took much time of the Court to place several supplementary affidavits to state that the

income from salary and interest from the joint family business in which the applicant''s sons are now partner and assets of the landlords are sufficient for their need. Attention of the Court was invited to the income tax returns and other related documents.

41. In this regard it is relevant to note that this Court is not going to review the income of the parties and to examine as to whether their earning is increased during the course of long litigation to hold that their need for starting a new venture is satisfied or not. The only bone of contention of the applicants/ landlords was that their sons wanted to start an independent business a new venture. Even to augment the income from the joint family business, in the opinion of the Court, the disputed accommodation can be released.

42. Moreover, there is nothing on record that Vishnu Kumar s/o Sundar Lal in whose share this disputed premises came on account of the partition of the joint family property/business could start or has started a new venture as proposed by him at the time of release. As per own case of the tenant he is engaged in the same partnership business which was earlier being run by his ancestors jointly. This fact further substantiate that the need set up in the release application is still alive and the release application cannot be rejected as having became infructuous with the passage of time.

43. Vishnu Kumar in the affidavit filed before the Prescribed Authority had categorically submitted that he needed the disputed property to start a new business, therefore, it cannot be said that he never came forward to press his need.

44. Learned counsel for the petitioner has further urged that the release application was itself defective, tenancy was in the name of M/s Satish Tea Company and the petitioner was only a partner. The release application could not have been filed against him as the tenant. It is liable to be rejected for non-joinder of parties.

45. This submission does not appeal to the Court at all for the reason that the petitioner has failed to bring any material on record to prove that the tenancy was in the name of M/s Satish Chand & Company and further that this plea was not accepted by the trial Court.

46. Lastly on the question of hardship, it is stated by the learned counsel for the petitioner that no hardship would be caused to the landlords as the landlord''s business would not be affected by not collecting empty tins or keeping them at a different place owned by him. In other words what he suggested is that the proposed business could be run by keeping the empty tins at a different business premises in which other business are being run. Such a suggestion is totally ridiculous.

47. For all above noted reasons, this Court does not find any infirmity in the findings recorded by the appellate Court below and further is of the opinion that

the landlords have established their bona fide need for the godown in question and in case the release application is rejected, the landlord would be deprived of starting a new venture which would cause more hardship to him in comparison to the tenant.

48. It is noted that the appellate Court has granted thirty days time to the applicant/petitioner to vacate the disputed accommodation and handover its possession. A condition was also put that the landlord would pay an amount of Rs.8000/- towards two years of rent to the tenant as a consequence of release of the commercial accommodation. The tenant was required to handover vacant peaceful possession of the disputed accommodation to the landlords. As learned counsel for the petitioner did not make a submission for extension of time and as such no further time is being granted to the petitioner. Consequently, the petitioner has to handover peaceful vacant possession of the disputed accommodation namely the godown in question to the landlords within a period of thirty days. Till the date of vacation of the disputed accommodation, up to date rent as fixed by this Court in the interim order dated 19.07.2007 shall be paid by the petitioner to the landlords.

49. In case of non compliance of any of the above conditions, the decree shall become executable forthwith.

50. With the above observations and directions, the writ petition is dismissed.

