
(2003) 11 UK CK 0022

In the Uttarakhand High Court

Case No : Writ Petition No. 3200 (M/S) 2001

Rameshwar Sahi Mathur

APPELLANT

Vs

District Judge Dehradun

RESPONDENT

Date of Decision : 18-11-2003

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2, 21(1)(a)

Citation : (2004) 1 UC 306

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Sri. Anant Tiwari, for the Appellant; Sri. B.P. Nautiyal and Sri. S.K. Jain, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Rajesh Tandon, J.—Heard Shri. R. Dhobal counsel for the Petitioner Sri. B.R. Nautiyal and Sri. S.K. Jain Advocates counsel for the Respondents.

2. By the present Writ Petition the Petitioner has challenged the orders passed by the Prescribed Authority and the appellate authority rejecting the release of the accommodation filed by the Petitioner u/s 2 of the Act No. 13 of 1972.

Factual Background

3. Brief facts giving rise to the present writ petition are that the Petitioner landlord has filed an application u/s 21(1)(a) of U.P. Act. No. 13 of 1972 for the release of the building known as building Municipal No. 57 Park Road, Dehradun which is also known as 17, Saraswati Soni Marg, Dehradun for the bonafide requirement of the Petitioner landlord.

4. Respondent No. 3 is the tenant of behalf of the Petitioner in a portion of the building.

5. A bare perusal of the application u/s 21(1)(a) of the Act, shows that the

landlord required the premises bonafide by stating to the following effect:

That the Petitioner had also decided to start an Industry at Dehradun and he has been allotted a plot in the Industrial Estate at Dehradun. The Petitioner shall do the manufacturing of wax coated paper and has been registered under small scale industry with the Director of Industries, Kanpur.

That the family of the Petitioner consists of the following members:

- (1) Smt. Kamla Devi- mother of the applicant.
- (2) Smt. Manju Mathur- Wife of the applicant.
- (3) Km. Samgeeta Mathur- aged 8 yrs, daughter of the applicant.
- (4) Km. Vineeta Mathur- aged 5 yrs, daughter of the applicant.
- (5) Sh. Vineesh Mathur aged 3 yrs son of applicant.
- (6) Sh. Girish Sahai Mathur adult brother of applicant.

That Sh. Girish Sahai Mathur is going to be married in February 1973.

That the portion of the property in occupation of the Petitioner mentioned in para 3 above has no kitchen and the latrine is also situated, outside the building and is meant for servants.

6. Respondent No. 3 has contested the application of the Petitioner on the ground that the need of the Petitioner for the disputed building is neither bonafide nor genuine. The Respondent No. 3 has stated in his written statement as under:

Paragraph No. 20 "Para No. 20 of the application is denied and is false. The writing of the name of the accommodation has been done only to prejudice the mind of the court. They are not available. If the applicant has such good intention he would have left his job and would have asked his brother to occupy the same. The Prescribed Authority in the judgment of 1974 has already stated that his brother is living in the property in suit and he cannot be deemed to be a member of the family yet the applicant does not want him to vacate the premises and allows him to live in the said property. In fact the said property in occupation of the brother of the applicant should be deemed to be vacant and the portion released should be allowed to so no person in genuine need of it.

Paragraph No. 22 - Para No. 22 of the application is denied. It is absolutely wrong that the alleged kitchen is situated between the portions occupied by the applicant. The applicant is not at all residing there. The kitchen is at one side of the portion released.

7. On behalf of the Petitioner evidence was filed showing that the Petitioner has offered various accommodations in favour of the tenant. Relevant Paragraphs to that effect is quoted below:

Paragraph 20- That following accommodations are lying vacant and if you like you may avail any of them:

(6)

- 1- 72-A, Saiyed Mohalla.
- 2- 54-A, Maliyan Mohalla.
- 3- 33/37, Anand Chowk.
- 4- 65-C, Rajpur Road.
- 5- 13, Babu Ganj.
- 6- 37, Karanpur.
- 7- 53, Arhat Bazar.
- 8- 29, Ballupur.
- 9- 38 Old Cannaught Place.
- 10- 49 Nari Shilp Mandir Marg.
- 11- 67-D2 Moti Bazar.
- 12- 28 Moti Bazar.
- 13- 52/2 Moti Bazar.
- 14- 49 Moti Bazar.
- 15- I.E.C. Road.
- 16- 108/116 Moti Bazar
- 17- 107/111, Khooni Gali.
- 18- 214 Chukhuwala.
- 19- 62 Lytton Road.
- 20- 66, Rajpur Road.
- 21- 146, Lakhi Bagh.
- 22- 15, Rajpur Road (Upper Storey).
- 23- 63 Rajpur Road.
- 24- 63/5 Rajpur Road.
- 25- 14/19 Saiyed Mohalla.
- 26- 110 Khurbura Mohalla.
- 27- 4 Park Road.

8. On 5.7.1978, the Prescribed Authority has recorded a finding that the accommodation in possession of the Petitioner is insufficient and therefore need is Bonafide. However the prescribed Authority has released only kitchen in favour of the landlord.

9. Aggrieved by the aforesaid order of the Prescribed Authority both the parties went in appeal before the District Judge Dehradun.

10. On 9th June 1979, the learned District Judge had dismissed both the appeals.

11. Petitioner has filed a writ petition being Writ Petition No. 6217 of 1979. Respondent No. 3 has not challenged the order releasing the kitchen part and the same has become final.

12. The aforesaid writ petition came up for hearing before Hon"ble Mr. Justice N.D. Ojha. The writ petition was allowed on 9.4.1980 and the matter was remanded to the District Judge again for deciding the appeal. The findings of the Hon"ble Court so far as the need of the Petitioner is concerned the same is quoted below:

Having heard counsel for the parties at some length, I am of the opinion that there is substance in both these submission made by the counsel for the Petitioner.

A perusal of the impugned order passed by Respondent No. 1 make it clear that he has stated therein in so many words that "the brother of the landlord does not come within the definition of the term "family" as given in the Act. It hardly matters if the brother of the landlord is living with the landlord since 1970 as alleged by the landlord". While considering the case tenant Respondent No. 1 however observed.

The tenant has, no doubt, a family of five members at present, but admittedly, the daughters of the tenant are married. Looking to the community to which the tenant belongs, it is very reasonable must be coming to the tenant off and on along with their children to live with the tenant. Thus, the accommodation with the tenant cannot be said to be more as compared to his family.

I wish to emphasis on the use of the words "the tenant has no doubt a family of five members at present" and the word thus" in the aforesaid questions. According to Respondent No. 1 even though there were seven members in the family of the land lord and only five members in the family of the tenant the need of the tenant was greater because his three married daughters will be visiting him with their children off and on. In this view of the matter there can be no doubt that Respondent No. 1 has applied double standard while considering the need of the landlord and the tenant. For the landlord" it has been urged that in the circumstances of the present case the requirement of the brother of the Petitioner should also have been taken into consideration. Since Respondent No. 1 is being directed to decide the two appeals afresh and it will be open to the landlord to raise this plea again before the Respondent No. 1, I do not wish to

express any opinion on this point. I am sure that Respondent No. 1 will decide all the please raised by the parties in accordance with law.

In support of his second submission referred to above counsel for the Petitioner places reliance on Allah Buksh and Others v. Additional District Judge and Others (1979 U.P. RCC 509). In that case a direction had been issued to the landlord to construct a shop for the use of the tenant while allowing the release application, it was held that such a direction cannot be issued and the order of the District Judge was quashed. In my opinion, in view of the decision in Allah Buksh's case (supra) the direction issued by the Rent Control and Eviction Officer, requiring the Petitioner to construct a kitchen for the use of the tenant, cannot be sustained.

For Respondent No. 3, it has been stated that the Petitioner appears to have acquiesced with the order of the-Rent Control and Eviction Officer and as such he is not entitled to raise this question in the present writ petition. I do not find any substance in this submission either perusal of ground No. 4 of the memorandum of appeal filed by the Petitioner before the District Judge makes it clear that the order of the Rent Control and Eviction Officer in this behalf had been challenged by him. It cannot, therefore, be said that the Petitioner had acquiesced with the order of the Rent Control and Eviction Officer, directing him to construct a kitchen for the use of the Respondent.

Before parting with the case, I may point out that notwithstanding the finding that the direction of the Rent Control and Eviction Officer requiring the Petitioner to construct a kitchen for the use of the tenant, was without jurisdiction, I do not consider it expedient to Respondent No. 1 is required to decide the two appeals afresh keeping in view the observations made above.

13. In accordance with the directions of the High Court in Writ Petition No. 12171, the landlord has preferred the amendment application, which was allowed by the Learned Judge. The amendment was to the following effect:

Paragraph 23 "A" - That brother of the landlord Shri Girish Sahey Mathur is also living with him. His family comprises himself, his wife, son aged about 3 years, daughter aged about 2 years. Landlord is bound to keep his brother along with him. Looking to the status and prestige of the family and love and affection between two brothers and ladies of the house as the mother of landlord is living with the landlord, she also desires to keep together in the same house and on looking to the question that brother has no owned or tenanted accommodation, it is obligatory and moral on the part of landlord to keep his brother and his family with him. Brother of the landlord is living since 1970 with the landlord.

Paragraph 23 "B" - That daughter of the Respondent Nisha Gupta was residing and running a coaching school, known as Nisha Coaching Centre in the premises in question. She has been married on 19.4.1980 and has left the premises in question. This aspect has to considered at the time of comparing hardship.

Paragraph 23 "C" - That O.P. has a house No. 64/66, Saharanpur Road, Dehradun to live in opposite party has telephone No. 3895 in that house in the name of the opposite party for illegal gain O.P. is not shifting to this house."

Paragraph 23 "D" - "That applicant has set up industry for crushing and pulverizing of the lime stone to 250 mash powder at E-2 Government Estate Saharanpur Road, Dehradun. The status of the applicant has thereby increased and many persons in connection with business come and visits. The applicant has no proper place to make them sit and talk. Hence rejection of application shall cause greater hardship to applicant.

14. The appellate authority after the remand of the case has recorded the findings of bonafide need in favour of the landlord but has rejected the release on the ground of greater Lordship in favour of the tenant. The findings of the appellate authority with regard to the bonafide need is quoted below:

Coming now to the main question what has to be seen is whether the requirement of the landlord for the portion in the tenancy of Sri. Murarilal Gupta genuine and bonafide. It may be remembered that 11 members including 7 members of the family of the landlord and 4 members of his real brother Sri. G.S. Mathur live in the portion in the occupation of the landlord. They have no other house of their own. The landlord Sri R.S. Mathur was previously in the employment of J.K. Cotton Mills, Kanpur and use to live there with his mother, wife and children at 106/373 Lal Bhawan, Chowki Jareeb, Kanpur. There is, however, overwhelming documentary of Rs. 50,000/- for the purpose of manufacture of a good quality of marble powder in the Industrial Estate on Saharanpur Road, Dehradun, since Feb. 1980 under the name and style of M/s Mathur and Company It is but natural that the landlord has increased his field of activity and is rising in social status and contracts. His brother Sri. G.S. Mathur, strictly speaking is not a member of his family but it has not been controverted that he lives with the landlord along with his wife and two minor children. Family ties, social requirements and obligations make it obligatory for the landlord to keep his brother and his family with him. Requirement of living space for the family of the brother of the landlord cannot, therefore, be excluded from consideration. I have, therefore, no hesitation in holding that the landlord requires the portion in the tenancy of Sri. Murarilal Gupta genuinely and in good faith. He is, therefore, entitled to claim its release u/s 21 of the Act.

15. The learned Judge has recorded the findings on the comparative hardship as under:

It is common knowledge that daughters are greatly attached to their parents specially where the parents are old and sick. The requirement of the tenant cannot, therefore, be concluded by the number of the present family members. Extent of the covered accommodation in the occupation of the landlord and in the tenancy of the tenant leaving aside the released kitchen is almost-equal. I have therefore, no hesitation in holding that if the tenant is evicted from his present tenanment he shall be thrown on the road and shall suffer greater and

irreparable hardship. He can, however, make his own alternative arrangement for kitchen, release of which is absolutely necessary and has to be upheld.

16. Landlord has come up in the writ petition before Allahabad High Court, which was transferred before Uttaranchal High Court.

17. Respondent No. 3 tenant has also preferred a writ petition in respect of the portion of kitchen being writ petition No. 233/ 83. Following order was passed on 15.5.2002 in W.R. No. 233/83.

The writ petition is dismissed

18. Later on a review application filed by the tenant being mis Review application No. 4645/2002. Following order (sic): was passed on 14.7.2003 on the review application filing by the tenant.

Application is dismissed as not pressed

19. When it was brought to my notice that another writ petition has been filed by the tenant, following order was passed on 1.8.2003.

On 15.7.2003 the writ petition was listed before me in pursuance of the order passed by Hon"ble the Acting Chief Justice Dated 14.7.2003. On the request of Learned Counsel for the Respondent the case was adjourned and 22.7.2003 was fixed. On 22.7.2003 the case was partly heard and was directed to be put up on 23.7.2003.

On that date it was brought to my notice that a writ petition No. 3199 (M/S) of 2000 has been filed by Respondent No. 3 challenging the order dated 17.9.82 arising out of the same judgment. The said writ petition was dismissed by his lordship Hon"ble Mr. Justice P.C. Verma on 15.5.2002. Thereafter an application was filed for recalling the order dated 15.5.2002 and the same was not pressed on 14.7.2003. The present application has been filed by the Petitioner in writ petition No. 3199 of 2001 for modification of order passed by his Lordship dated 14.7.2003 and the same shall be put up before his Lordship Hon"ble Mr. Justice P.C. Verma.

Another application has been filed by Respondent In writ petition No. 3200 of 2001 for (sic)earing of the case. Fresh Vakalatnama has been filed by Sri. S.K. Jain and earlier writ petition was argued by Sri. B.R. Nautiyal.

"In the interest of Justice application is allowed. The writ petition may be listed for further hearing after the disposal of application for recalling of the order dated 14.7.2003 passed by his Lordship Hon"ble Mr. Justice P.C. Verma in writ petition No. 3199 of 2001.

Put up along with Modification Application No. 7490 of 2003 before his Lordship Hon"ble Mr. Justice P.C. Verma.

20. Now again on 12.9.2003 the matter has been directed to be put before me. The order dated 12.9.2003 is quoted below:

List this petition before Hon''ble Tandon J. as the matter was heard by him and judgment was reserved.

21. Both the parties have advanced their arguments. So far as release of the part of the accommodation is concerned the writ petition has already been dismissed, and the order on review application was also passed and it was not pressed by the tenant.

Concept of Bonafide need is linked with the hardship of the landlord.

22. The Appellate authority has concluded that there are 7 members in the family of the Petitioner and the members of the family of his landlord are residing as well as also doing business. Similarly brother is also living and doing business. Both the brothers have a social status.

23. The landlord is having only two living rooms available with them and one dining room. The findings of the prescribed authority to that effect are quoted below:

24. Petitioner has filed his affidavit stating therein that the family of the Petitioner consists of following members:

1. Petitioner himself.
2. Smt. Kamla Devi aged about 78 years, mother of the Petitioner.
3. Smt. Manju Mathur wife of the Petitioner.
4. Km. Sangeeta Mathur, aged 13 years, daughter of Petitioner.
5. Km. Vineta Mathur, aged 13 years, daughter of Petitioner.
6. Sri. Vinish Mathur, aged 8 years, son of the Petitioner.
7. Sri Amit Mathur, aged 5 years, son of the Petitioner.

Thus there are 10 members two are sons and one grandson.

25. The Petitioner has also stated that the tenant has not made any effort to search the accommodation. Relevant Paragraph is quoted below:

That till date the Respondent-tenant has made any effort for another accommodation and this fact alone shows that the Respondent- tenant is not making any effort to vacate the premises in question despite the fact that the premises in the tenancy of the Respondent is bonafide required by the Petitioner and no hardship is to be caused on the Respondent tenant and that if the tenant is not evicted the Petitioner shall suffer greater and irreparable hardship.

26. Taking into account social status of the family the accommodation available with the landlord is hardly sufficient. The appellate authority has recorded the findings of Bonafide need in favour of the landlord.

27. Thus the findings of the courts below so far as the bonafide need of the

landlord is concerned, the landlord is the best Judge for the requirement of his residential accommodation.

28. In the case of Mrs. Meenal Eknath Kshirasagar v. M/s Traders and Agencies 1996 SC 635 the Apex Court after relying upon the judgment in Pranva Devi v. T. v. Krishnan has held that the landlord is the best judge of his residential requirement. The observations are quoted below:

In Pranava Devi v. T.V. Krishnan to which our attention has been drawn by the Learned Counsel for the Appellant, this Court has pointed out the correct test which has to be applied in finding out whether the requirement of the landlord is bonafide or not. It has held that:

The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern the Courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. There is no law which deprives the landlord of the beneficial enjoyment of his property.

It is further held therein that what is to be considered is not merely the availability of alternative accommodation but also whether that landlord has a legal right to such accommodation.

The Following decisions of the Bombay and Calcutta High Courts relied upon by the Learned Counsel for the Appellant are also helpful in deciding the question of bonafide requirement of the landlord. In Dinshaw Billimoria v. Rustom ji Master, the Bombay High Court has held that:

Ordinarily speaking. an owner of premises, if he says he wishes to use them for his own purposes, is entitled to do so. What the Rent Act endeavours to provide for is the case of a landlord who evicts the existing tenants in order that he may let them to another tenant at a higher rent, or exact a higher rent from the tenant on a threat of eviction. It seems to me that the question in that case whether the Plaintiff was reason ably dissatisfied with the premises which he rented in Giraum is irrelevant because in any event premises. He was not bound to continue to rented premises with all the uncertainties of that tenure.

The Calcutta High Court in Basant Lal Saha v. P.C. Chakravarty has observed as under:

Where a landlord seeks to eject a ten-, ant on the ground of bonafide requirement within the meaning of Proviso (f) of Section 11 (1) of the Rent Control Act. 1948, he has to satisfy three tests

- (i) That he "requires" the premises;
- (ii) That such requirement is for his "own occupation"; and
- (iii) That his requirement is "bonafide"

The word "require" means more than mere wish or convenience or fancy of the

landlord. The landlord must show some need or necessity.

But it does not mean an absolute need or an absolute requirement in the sense that the landlord will not have any accommodation of any description and that he must actually be in street before he can demand his own house for his own occupation.

The High Court has also observed there that while considering the quest of bonafide requirement the nature and character of landlord's Temporary accommodation at time when he is asking for a decree for possession, the insecurity or otherwise of the tenure that he might be holding at the time, the fact that he himself is under a notice to quit, the scope, size and character of his requirement are all relevant factors that the court has to consider.

In *Ramandera Mohan Guha Sarkar v. Smt Bedana Paul*, the Calcutta High Court has observed that if a person is in occupation of other premises on leave and licence, they are obviously not available to the landlord for occupation and cannot be taken into account against the claim of the landlord to the decision of this Court in *Phiroze Bamanji Desai v. Chandrakant M. Patel*, it further observed that possession of a licence is precarious and cannot be considered suitable alternative accommodation.

29. Thus the findings of the courts below so far as need of the landlord is concerned is confirmed.

Comparative Hardship

30. So far as comparative hardship is concerned it has come on the record that the family of the landlord is having more than 7 members and are residing along with family of his brother in the premises and the accommodation is hardly sufficient to accommodate two families. This fact itself is sufficient in order to record the findings of the comparative hardship in favour of the landlord,

31. Hardship is a relative factor as held in the case of *Prem Prakash Gupta and Others v. Additional District Judge, Allahabad and Others* in 1992 ARC 77. The observations are quoted below:

As observed by this Court in its decision in the case of *Rajeshwari Prasad v. Fateh Bahadur Chaturvedi and Others* reported in 1984 (1) ARC 347, the bonafide need is the foundation of the application for eviction of the tenant without which it cannot be allowed. Hardship is a relative word. In our society with divergence of economic prosperity no single test can be laid down for it. In some cases, drawing room, guest room, consultation room may be necessary. In other a pretext only. What may be valid and relevant consideration in relation to one land landlord and his tenant may not be relevant for the other.

32. The landlord has filed the release application in the year 1978, and since then he could not get the release of the accommodation.

33. It has come on the record that both the accommodations i.e. in possession of

the tenant and in possession of the landlord have a common entry. The statement of the case of the landlord is quoted below:

The landlord pleaded that both the portions of this building constituted one entity and the continued occupation of a portion by the tenant not only invaded his privacy but also embittered relations between the two families to such an extent that they tended to become nuisance inside the building. The landlord disclosed that he had moved an application u/s 21 of the Act earlier too where upon the prescribed authority had released one room in his favour on 2.2.74 which was upheld in appeals as well. The landlord, therefore, made an impassioned appeal through his application u/s 21 of the Act for release of the entire portion in the tenancy of Sri. Murarilal Gupta.

It is strenuously contended on behalf of the landlord that the lower authority erred in releasing a portion of the tenanted premises consisting of kitchen alone in spite of the fact that his requirement was held to be bonafide and genuine. It is argued that the presence of the tenant in a portion of the building which has a single entity was almost a nuisance on account of several factors and on this ground too the entire portion should have been released.

34. As Stated in the application as well as in the amendment application that two families are residing in a small accommodation consists of two rooms as will appear from the map itself.

35. In *Joginder Pal v. Naval Kishore Behal* 2002 SC and Full Bench Rent Cases page No. 388, the Apex Court after relying upon the judgment of *Mst. Bega Begum* on page No. 392 and *Shiv Sarup v. Dr. Mahesh Chand Gupta* 1999 SCFBRC 330 occupation of the landlord shall include anything dependents. It has been held as under.

Paragraph 15- Section 13(1)(g) of Bombay Rents, Hostel and Lodging House Rates Control Act, 1947 entitles a landlord to recover possession of any premises on the Court being satisfied that "the premises are reasonably and bonafide required by the landlord for occupation by himself or by any person for whose benefit the premises are held." In *Nanalal Goverdhandas and Co. and Others Vs. Samratbai Lilachand Shah*, the High Court constructed the import of words "by himself" and held that "for occupation by himself" do not restrict the proposed occupation to the occupation of landlord alone but may include the occupation by member of his family. The requirement of the landlord for occupation by the dependent of the landlord may be the requirement by the landlord. In a given case the landlord may be dependent upon a person and it may be the necessity of the landlord that such other person should occupy the premises. If emotionally the landlord feels that a relation of his such as daughter or son-in-law should stay with him, it can be regarded as the requirement by the landlord of the premises "for occupation by himself. This is as regards residential premises. In case of non-residential premises if the landlord's interests are shown to be linked with the occupation of those premises by some one for whom he is

seeking the possession of the suit premises it can be said that the requirement of the landlord for occupation by himself is established. The High Court also held that if there is a moral or legal obligation of the landlord to provide accommodation to a particular person then the requirement by the landlord for occupation of that person may squarely fall u/s 13(1)(g). Having taken into consideration the several precedents from different High Courts the learned Judge held that the determinative test underlying the several propositions propounded by the High Courts is the basis fact that the requirement is by the landlord and that there must be a nexus between the interests of the landlord and the one who would physically occupy the premises so as to tantamount to occupation of the premises "by himself", i.e. the landlord. In *Institute of Radio Technology and Others v. Pandurang Baburao* AIR 1946 Bom 212,. Section 11 of Bombay Rent Restriction Act, 1939 was dealt with by the Division Bench and the words "his own occupation" were held to include occupation by all persons who are dependent on the landlord.

Paragraph 22- In *J.L. Mehta v. Smt Hira Devi*, 1970 DLT 484, it was held that assigning a restricted meaning to the word "himself" would lead to anomalous and unreasonable results. The requirement of the sons of the landlady who were married and earning for themselves was held to be included within the requirement of "himself for the landlady.

Paragraph 32- We have to give colour and content to the expression and provide the skin of living thought to the skeleton of the words which the legislature has not itself chosen to define. The Indian Society, its customs and requirements and the context where the provision is set in the legislation are the guides the words "for his own use" in Section 13(3)(a)(ii) of the Act.

36. The burden to lead evidence is on the tenant that he has made effects in *Bhagwan Das v. Smt. Jiley Kaur and Others* S.C.F.B.R.O. 1991 on page No. 182. The observations are quoted below:

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

37. The Petitioner has never made any efforts to search the accommodation. No evidence was given to prove to that effect.

38. In 1997 (2) ARC 259 *Bharat Kumar Gupta v. VII th ADJ and Sessions Judge, Aligarh*, it has been held as under:

It admits of no doubt that recording to Clause (a), Sub-rule (2) of Rule 16, greater the period since when the tenant has been carrying on his venture in the building less the justification for allowing the application but at the same time, having regard to overall facts and circumstances of the case, I am persuaded to the view that the findings recorded by the Authorities under the Act in relation to bonafide requirements of the landlord cannot be assailed and whittled down merely because the Petitioner had been carrying on his business in the shop in question since the year 1977. It is explicitly postulated in Clause (b) Sub-rule (2) of Rule 16 that where the tenant has available with him suitable accommodation to which he can shift his business without the perils of substantial loss there shall be greater justification for allowing the application. The expression "available with him" in this sub-rule does not necessarily mean actual physical availability. A suitable alternative accommodation which may become available on an effort being made in that direction is also in the compensation of the expression and in the facts and circumstances of the case, it has been held that the Petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretches. *Rajendra Kumar and others Vs. Gopal Krishna and others*, It has been held by Sudhir Narain, J and I concur with the view taken therein in that one of the principles for considering comparative hardships of the parties is to find out as to whether the tenant had made a sincere effort to find out alternative accommodation and had placed materials before the authorities to come to their conclusions that he made such an effort." The fact that earlier applications for release met the fate of rejection some 10 years ago could not be projected backward to operate as an obstacle in the way of the release application being allowed as with the passage of time, the situation has undergone considerable change. Indubitably, Landlord Sanjay Gupta did his M.A. after rejection of the earlier applications and his failure to secure employment for himself, lends cogency to his moving the present application.

39. Similar view has been taken in the case of *Smt. Sarla Ahuja v. United India Insurance Company Ltd.* AIR 1999 SC 103. The relative finding are quoted below:

When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bonafide. When other conditions of the clause are satisfied and when the landlord shows a prove facts case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bonafide. It is often said by Courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bonafide of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

40. The landlord having purchased the accommodation and cannot be deprived from occupying the premises on the ground of only comparative hardship.

41. As held by the Apex Court in *Bhimanagouda Basanagouda Patil v.*

Mohammed Dudusaheb AIR 2003 S.C. 1027:

We have perused the material on record based on which the courts below have given the finding as to comparative hardship in favour of the Respondent. The learned District Judge while coming to the conclusion on this question held because the landlord has purchased the premises in question, he should be deemed to be an affluent person. While tenant who has a large family whose earning capacity is about Rs. 20/- per day ought to be held to suffer greater hardship, if an eviction is ordered. Therefore the solely on the basis of affluence of the parties. If this is a correct approach then an affluent landlord can never get possession of his premises, even if he proves all his bonafide needs. The fact that a person has a capacity to purchase the property cannot be the sole ground to hold against the landlord while deciding the question of comparative hardship. If the purchase is pursuant to a genuine need of the landlord the said purchase has to be given due weightage unless, of course, the purchase is actuated by collateral consideration. In the instant case both the High Court and the District Court having upheld that claim of the landlord as to his bonafide need u/s 21(1) (h) they could not have denied the relief solely on the ground that he is an affluent person.

42. In All England Law Reports 1958 Piper v. Harvey on page 454. Concept of comparative hardship has been interpreted by Lord Denning. The observations are quoted below:

However, when I look at all the evidence in this case and see the strong case of hardship which the landlord put forward, and when I see that the tenant did not give any evidence of any attempts made by him to find other accommodation, to look for another house, either to buy or to rent, it seems to me that there is only one reasonable conclusion to be arrived at, and that is that the tenant did not prove (and the burden is on him to prove) the case of greater hardship. Although it is very rarely that this Court interferes in a hardship case, this does seem to me to be a case in which only one conclusion is possible.

I would therefore allow the appeal and give judgment for the landlord for possession.

The domestic position of the landlord is indeed a hard one. It is not even a case where he is occupying a house on his own; he is living in an unfurnished room upstairs in a house which does not belong to him with his invalid wife, and there is very strong evidence of hardship on his side; whereas I am bound to say that I can see no evidence on the other side which can be put into the scale to balance that. I would therefore allow the appeal.

43. In Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others, . It has been held as under:

Paragraph 13: Moreover, Section 11(1)(h) of the Act uses the words reasonable requirement which undoubtedly postulate that there must be an element of need

as opposed to a mere desire of wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the term "need" or "requirement" should not be artificially extended nor its language so unduly stretched or strained so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act, which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts, prevalent in other States in the country. This Court has considered the import of the word "requirement" and pointed out that it merely connotes that there should be an element of need.

Paragraph-19. In this connection our attention was drawn to the evidence led by the Defendants that the main source of their income is the hotel business carried on by them in the premises and if they are thrown out they are not likely to get any alternative accommodation. The High Court has accepted the case of the Defendants on this point, but does not appear to have considered the natural consequences which flow from a comparative assessment of the advantages and disadvantages of a landlord and the tenant if a decree for eviction follows. It is no doubt true that the tenant will have to be ousted from the house if a decree for eviction is passed, but such an event would happen whenever a decree for eviction is passed and was fully in contemplation of the legislature when Section 11(1)(II) of the Act was introduced in the Act. This by itself would not be valid ground for refusing the Plaintiffs a decree for eviction.

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

Paragraph-28. For the reason given above, the appeal is allowed. The judgment and decree of the High Court are set aside, and a decree for ejection of the Defendants from the house in dispute is hereby passed against the Defendants. In the peculiar circumstances of this case. There will be no order as to costs.

44. Relying upon the judgment of the Apex Court in *Bega Begum* (1980) 1 SCC 290 as well as the case of *Swaraj Prasad Sharma* IInd Additional District Judge, Mirzapur and other 1983 (1) ARC 427 it has been held in *N.S. Dutta v. VIIth Additional District Judge, Allahabad* 1984 ARC (1) 113 as under:

The view taken in *Bega Begum* (supra) has been followed in *Kewal Singh Vs. Smt. Lajwanti*, . The Court is entitled also to take into account the fact that the tenant has neither alleged, nor proved to have made effort to have an alternative

accommodation. Nur Ilhhi V.IIIrd Additional District Judge, Saharanpur and Others 1983 (1) ARC 412; Sanwal Das Binka, 1982 (1) ARC 24 (supra). Moreover, the non-availability of alternative accommodation to the tenant is in itself not the adequate ground to reject the landlord's application vide Kamil Khan v. IIIrd Additional District Judge, Bareilly and Others 1982(1) ARC 783. In Suraj Prasad Sharma VIInd Additional District Judge, Mirzapur and Others (1983) C.J. 432 : 1983 (1) ARC 427, brother M.N. Shukla, J. observed:

It is common place fact that invariably when an application u/s 21 of the Act is allowed, the tenant has to quite and this involves discomfort but if this alone were sufficient to non-suit the landlord, no application for release could ever be allowed. Judging comparative hardships is a matter of deeper import and it would be a lopsided order, which dismisses a landlord's application for release merely with the Plaintiff's dinous observations that the tenant would be "thrown on the street". The physical dispossession of the tenant is the necessary concomitment of every release application of the landlord which is allowed. However, well founded the application may be an element of inconvenience or discomfort is inherent in the very process of vacating an accommodation. A release application cannot be thrown out merely sith the bald observation that the tenant would suffer greater hardship.

45. Further the tenant cannot dictate the landlord as to how he should use the accommodation as held in the case of Sardar Pritam Singh through LR's v. Sardar Prakash Singh and Others in 1999(2) ARC 338. The observations are quoted below:

Paragraph 18- Learned Counsel for the Petitioner then referred to the decision reported in 1996(1) AWC 409. View taken in the decision reported in 1990 AWC 1508 has been reaffirmed and it is observed that tenant cannot dictate landlord as to how he should live and the need of the landlord must be commensurate with his status keeping in mind his need both qualitatively and quantitatively.

Paragraph 21 - No prudent man under normal circumstances could take a view, as has been done by the Courts below. Courts below ought to have taken into account the fact that family is to grow and within short span of time family members were bound to increase in all probabilities. Again children were to grow requiring additional accommodation.

Paragraph 23- Writ petition is allowed. Petitioners may approach the Prescribed Authority (Respondent No. 2) to deliver the possession as contemplated under the Act.

There will be no order as to costs.

Conclusions

46. In view of the fact that the landlord is residing along with the two families in the premises. Sons are grown up, married daughters are visiting the family, and the accommodation available with the landlord is insufficient to cater the

requirements of the member of two families

47. As rightly observed in the case of Sardar Pritam Singh (supra) that: "No prudent man under normal circumstances could take a view, as has been done by the Courts below. Courts below ought to have taken into account the fact that family is to grow and within short span of time family members were bound to increase in all probabilities. Again children were to grow requiring additional accommodation." The findings of the appellate authority with regard to greater hardship tilts in favour of the landlord Petitioner.

48. Further, the tenant has not made any efforts to search the accommodation when the litigation has started since 1978 and the writ petition is pending since 1982.

49. In view of the facts stated above the writ petition deserves to succeed.

50. The orders passed by the appellate authority and the prescribed authority rejecting the application u/s 21 are quashed.

51. Counsel or the Respondent No. 3 prays for sometime to vacate the premises. In view of the aforesaid facts, the tenant Respondent No. 3 is granted time up to 31st of July 2004 to vacate the premises provided he gives an undertaking before the Prescribed Authority Dehradun within a period of 3 weeks after the receipt of the certified copy of this order.

52. Consequently, the writ petition is allowed. There will be no order as to costs.