

---

**(1998) 09 AHC CK 0037**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 20015 of 1998**

Shankar Lal Khandelwal

APPELLANT

Vs

IVth Addl. District Judge, Mathura and others

RESPONDENT

---

**Date of Decision :** 22-09-1998

**Acts Referred:**

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —  
Section 21, 21(1)  
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972  
— Rule 18

**Citation :** (1998) 4 AWC 838 : (1998) AWC 838

**Hon'ble Judges :** Sudhir Narain, J

**Bench :** Single Bench

**Advocate :** Rajesh Tandon, for the Appellant;

---

## Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 19.11.1997 passed by the prescribed authority respondent No. 2, whereby it allowed the application of respondent No. 3 u/s 21 of U. P. Urban Buildings [Regulation of Letting, Rent and Eviction) Act. 1972 (in short referred to as the Act), releasing the disputed accommodation in favour of respondent No. 3. and the order dated 26.5.1998 passed by IVth Additional District Judge, Mathura, respondent No. 1 affirming the aforesaid order in appeal.

2. The facts of the case in brief are that petitioner is tenant of premises, the old number of which is 168 and new number is 216. The premises in question is situated at Dalpat Khirki, Holi Wall Gali, Mathura. Respondent No. 3 filed application for release of this accommodation on 27.1.1994 on the allegation that the accommodation in dispute was let out to the petitioner on monthly rent of Rs. 250 per month at the time when he was 20 years of age and he was not married. He was married four years ago. He was residing with his parents in the house situated in Dempeer Nagar. Mathura, which belonged to his mother. In that house, there are four rooms. one kitchen, latrine, bathroom. His parents have three sons, namely, Rajendra Kumar Lakchman Prasad, respondent No. 3

and Dharmendra, Rajendra Kumar is married and he has also two children. The accommodation in that house is not sufficient for the members of three families (sic) has also three sisters and though they have been married but they often come to live in that house at Dempeer Nagar, which is not sufficient accommodation. Further some quarrel took place between the members which disturbed the peace of families. It was stated that the tenant-petitioner has his own house in Nagla Bhutlya. His two sons have got house in Krishnapur, Mathura. His two sons are carrying on business at Delhi and constructed house in Dempeer Nagar. The tenant has also a big shop in front of the disputed accommodation. The tenant has recently purchased house in Mohalla Antapra, Mathura.

3. The petitioner contested the application. It was admitted by him that he is tenant of landlord-respondent No. 3. It was, however, denied that the need of landlord was bona fide. It has stated that he was living in house in Dempeer Nagar. His brother Rajendra Prasad is not residing in house situated at Dempeer Nagar. "Dharmendra Kumar, another brother of the landlord is mentally retarded. The landlord is living jointly with parents in joint family.

4. The prescribed authority recorded finding that the accommodation in Dempeer Nagar with landlord was not sufficient. He required the disputed accommodation for residential purpose. It was further found that wife of tenant purchased one house on 5.10.1982, in Mohalla Krishnapuri and another house on 26.9.1990 in Mohalla Antapra. Wife of son of petitioner also purchased house in Dempeer Nagar. On consideration of evidence on record, it was found that the need of landlord was bona fide and he will suffer greater hardship in case his application for release of disputed accommodation is rejected. Further, as the petitioner has purchased house in the name of his wife after enforcement of the Act hence in his objection the Explanation 1 to proviso to Section 21 of the Act is applicable. The application was allowed on 19.11.1997. The petitioner preferred an appeal and the said application has been dismissed by respondent No. 1 on 26.5.1998.

5. I have heard Shri Rajesh Tandon. learned counsel for the petitioner and Shri Subodh Kumar, learned counsel for respondent No. 3.

6. The learned counsel for the petitioner submitted that the need of landlord was not bona fide. He was living in the house situated in Dempeer Nagar where his parents were living and it is a joint Hindu property. There is no reason to vacate the accommodation where he is living and occupy the disputed accommodation. The learned counsel for the petitioner placed reliance upon the decision Anil Kumar v. Ist Additional District Judge, Moradabad and another. 1989 (2) ARC 117, wherein it was held that where there is partition in the family and tenanted portion coming to share of landlord by itself is not sufficient for allowing the release application unless certain other facts, such as premises in occupation of applicant-landlord is insufficient or that applicant-landlord is required to vacate such premises etc., is established. In Nand Kishore Sharraf Vs. The District Judge and Others, , it was held that the prescribed authority is to take objective

decision on the question of bonafide requirement of premises by the landlord. The prescribed authority has considered the case taking into consideration the objection raised on behalf of the petitioner and evidence adduced in the case. It has been found that respondent, landlord, is living with his mother in Dempeer Nagar where his brother and sisters are also living and other relatives also used to come to live in that very house. The landlord alleged that he was living in one room and one store. In the said accommodation, he was living with his parents. Quarrel takes place. He was not able to carry on his business peacefully in disturbed atmosphere. His family consists of two sons and wife. The prescribed authority recorded the finding that the landlord has no house except the disputed accommodation and on consideration of facts and circumstances of the case, the need of " landlord-respondent is bona fide. This finding has been affirmed by the appellate authority. I do not see any manifest illegality in the finding recorded by respondent Nos. 1 and 2.

7. The second submission of the learned counsel for the petitioner is that the landlord respondent had earlier filed an application in the year 1982 against one Prem Chandra Gupta and the petitioner on the ground that he required the accommodation in question as he had no good relation with his parents. The parties entered into compromise on 23.11.1982 admitting the petitioner as tenant and the petitioner was permitted to continue in the accommodation as tenant at monthly rent of Rs. 250 per month. It is urged that the second application has been filed on the same ground. The first application was filed u/s 21 of the Act on 23.11.1982 at the time, the landlord was 20 years old. The second application was filed on 27.1.1994 wherein it was alleged that he was married sometimes in the year 1990 and thereafter his two sons were born. The circumstances totally changed in the year 1994 and was not barred by Rule 18 of U. P. Urban Buildings (Regulation of Letting. Rent and Eviction) Rules. 1972 in short referred to as the Rules.

8. The third submission of the learned counsel for the petitioner is that the need of the tenant has not been taken into account. Respondent Nos. 1 and 2 recorded finding that wife of the petitioner purchased one house in Mohalla Krishnapur on 5.10.1982 and another house in Mohalla Antapra on 26.9.1990. The contention of the petitioner was that these houses were being used for making sweets. The prescribed authority and the appellate authority found that these houses were purchased for residential purpose. House of Krishnapur is very big house consisting of six rooms, big verandah, gallery two kitchen and two stores. It was further found that wife of son of the petitioner purchased house in Dempeer Nagar during this period. The house Nos. 63/37/L and 63/37/0 were used for the purposes of manufacturing sweets and the accommodation at Krishna Nagar, the tenant-petitioner has on his disposal. As these accommodations have been purchased after commencement of the Act, the Explanation I of Section 21 of the Act is applicable.

9. The fourth submission of the learned counsel for the petitioner is that a

portion of Dempeer Kothi was given to United Insurance Company Limited on rent. In para 8 of the counter-affidavit, it has been explained that only one portion of the building has been let out for the last 14 years by the mother of contesting respondent to United India Insurance Company Limited and no other portion of the building has been let out to any other person and a very small portion of the house is under the occupation of the mother of respondent No. 3.

10. The fifth submission of the learned counsel for the petitioner is that one Ram Gopal had filed affidavit dated 19.1.1996 whereby he stated that the respondent No. 3 had entered into agreement to sell house after the property in dispute is released in his favour. A copy of said affidavit has been annexed as Annexure-4 to the rejoinder-affidavit.

11. Firstly, there is no registered agreement and unless there is any registered agreement, it is not enforceable under law. secondly, he has not disclosed the date of agreement. In third para of the affidavit he stated that Lakchman Prasad and his father had agreed to sell his property after the property is released and he paid Rs. 20,000 for it. He has not filed any receipt to show that a sum of Rs. 20,000 was paid. This affidavit could not have been relied upon to show that the need of landlord is not bona fide.

12. The next submission of the learned counsel for the petitioner is that the accommodation was let out to the petitioner without any allotment order in his favour therefore, his possession can be taken as unauthorised. The petitioner cannot be treated as tenant of the accommodation in question. The application u/s 21 of the Act is maintainable only as against tenant and as the petitioner is not tenant under law. the application u/s 21 of the Act is not maintainable against him. The landlord had filed application for release u/s 21 of the Act in the year 1982 against Prem Chandra Gupta and Shankar Lal alleging that Prem Chandra Gupta was tenant and Shanker Lal was sub-tenant. The parties filed compromise in said application and it was agreed that the petitioner be taken as tenant on monthly rent of Rs. 250 per month and the disputed accommodation shall be utilised for residential purposes. Prem Chandra shall have no right over the accommodation in question. The petitioner on the basis of the compromise was taken as tenant and thereafter he continued to pay rent as agreed by him. The landlord filed application u/s 21 (1) (a) of the Act on 27.1.1994 alleging that he was landlord of the accommodation in question. In para 3 of the application, it was stated that the petitioner is tenant of the said accommodation on monthly rent of Rs. 250 per month. The petitioner himself admitted that respondent No. 3 is landlord and he is tenant of the disputed accommodation on monthly rent of Rs. 250 per month. It was never the case of the petitioner that he is unauthorised occupant of the accommodation in question as there was no allotment order in his favour. In *Brij Nandan Sahai Hajela v. Third Additional District Judge and others* 1996 All LJ 1221, it has been held that if the said application, u/s 21 (1) (a) of the Act is filed on the allegation that there was no agreement of tenant between him, the tenant against whom the application u/s

21 (1) (a) is filed, the said application is maintainable under the provisions of the aforesaid Act. *Nutan Kumar v. IInd Additional District Judge, Banda* 1994 All LJ 999, has been considered in the aforesaid decision. In view of this decision, the view taken by respondents that application filed by respondent No- 3 was maintainable does not suffer from any illegality. Even otherwise, if the petitioner states that he is unauthorised occupant of the disputed accommodation, then he is liable for eviction, if he has taken specific plea.

13. in view of the above discussion, I find no merit in this writ petition and it is accordingly dismissed.

14. In the end, the learned counsel for the petitioner prayed that some time may be granted to vacate the accommodation in dispute, considering the facts and circumstances of the case, the petitioner is granted three months time to vacate the disputed accommodation provided he gives a written undertaking on affidavit before the prescribed authority, respondent No. 2, within ten days from today that he would vacate the accommodation in question and handover its peaceful possession to land lord-respondent No, 3 within the time granted by this Court.