

(2007) 08 AHC CK 0187
In the Allahabad High Court

Zaheer Ahmad Shamsi alias Munney Bhai	APPELLANT
Vs	
Imtiaz Husain and Another	RESPONDENT

Date of Decision : 01-08-2007

Acts Referred:

Citation : (2008) 1 AWC 728

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. This writ petition has been filed for quashing the order dated 4.9.2006, passed by the Additional District Judge, Court No. 2, Rampur in Rent Appeal No. 5 of 2006 whereby she set aside the judgment and order dated 13.5.2005 in P.A. Case No. 10 of 2003 passed by the Prescribed Authority/ Civil Judge (Senior Division), Rampur rejecting the release application of the respondents landlord.

3. Briefly stated the facts of the case are that the respondents landlord filed P. A. Case No. 10 of 2003 against the petitioner tenant for release of the shop in dispute situate in Mohalla Domahla Road, Kooncha Nalbbendan, City District Rampur on the ground that two sons of respondents were out of employment ; that the landlords wanted to settle them in the business of general merchant and cold drink in the shop in dispute for which they bona fide required the shop in dispute for their need." It was further pleaded in the application that the petitioner is a rich person and is tenant of their brother Aijaz Hussain Shamsi in another shop at the rate of Rs. 600 per month in Mohalla Domahla Road and that he has let out his own shop in Mohalla Domhla Road to one Ahmad Nabi Carpenter, hence the petitioner has alternative shop for his business which he had acquired in vacant state.

4. The petitioner contested the release application by filing a written statement that the need of the landlords is not bona fide and genuine ; that both sons of

the respondents are minors and are pursuing their higher studies and are not interested in doing business ; that respondent No. 1 has got his own flourishing business of Ready Made Garments in Bazar Maston Ganj whereas respondent No. 2 has also got a big business of cloths ; that both the sons can easily be adjusted if they want to engage in business ; and that if the release application is allowed, the petitioner will suffer greater hardship.

5. The Prescribed Authority after considering the entire evidence on record by judgment and order dated 13.5.2005 rejected the release application of the respondents landlord holding that the need of the landlords is not bona fide and that the respondents are running a flourishing business ; that they have got another house behind the shop in dispute which is on the road and the landlords can settle their sons with him in business. The Prescribed Authority further held that the petitioner has got no other shops as the shop of Aijaz Hussain is in the tenancy of petitioner's son ; that the landlords have recently constructed 3 shops in which they can settle their sons but instead they have let out the same to others on rent and that the release application is tainted with mala fide as the respondents wanted to enhance the rent.

6. Aggrieved by the aforesaid order dated 13.5.2005 the respondents filed Rent Appeal No. 5 of 2006 before the appellate court which was allowed vide order dated 4.9.2006 holding the bona fide need and comparative hardship in favour of the landlords, hence this writ petition by the petitioner.

7. The counsel for the petitioner submits that the findings recorded by the Prescribed Authority in respect of comparative hardship have not been set aside by the appellate court ; that it has wrongly presumed that the sons of the petitioner are doing their own separate business in their building whereas they are doing separate business in the tenanted building not available to the petitioner who is their father ; that the shop/store room in the Masjid which has been given in the tenancy of the petitioner has been given back of the waqf after payment of full rent as such the appellate court has wrongly held that the aforesaid store room/shop is in possession of the petitioner.

8. It is further submitted that the landlords have concealed the fact that they have another plot in their possession near the disputed shop ; that the landlords have constructed three shops before filing the release application which have been let out on rent by them as such the need of the landlords is not bona fide and genuine and if they needed the same, they would not have let out the three shops on rent. It is lastly submitted that if the landlords wanted to settle their sons in the business of general merchant they have their own two shops in which they are doing the business of cloth merchant and their sons are assisting them in the business of cloth merchant, hence they do not require any shop for their two sons for business of general merchant.

9. Sri M. A. Qadeer, counsel for the petitioner placing reliance upon the operative portion of the judgment and order of the appellate court dated 4.9.2006 and the

map appended with the report of the Advocate Commissioner submits that the two sons of the respondents can do their business in the shop after petitioner having a door in the gali. He further submits that the appellate court has wrongly passed the order directing the petitioner to construct his shop on the plot which he has purchased and thereafter vacate the disputed shop and for payment of Rs. 300 as damages for use and occupation.

10. On the other hand, the contention of the counsel for the respondents is that the petitioner tenant has his own five shops, which is evident from record. Relying upon Annexure-CA-1, i.e., reply of notice dated 22.9.2001 paper No. 31C, filed before the court below he submits that the shops of the respondents brothers viz., Aijaz Hussain is in the tenancy of petitioner and he permitted his sons to do business and that the shop of Aijaz Hussain is under his tenancy ; that he is having a shop in Masjid in Mohalla Gher Ghulam Nasir Khan ; that he purchased a shop of Municipal Board, Rampur in Mohalla Pan Dariba ; that the tenant is also having share in the shop situated at bazar Safdarganj and that in the notice dated 22.9.2001 he concealed the fact that he also has a plot in his name at Shahabad Road, Ajitpur, Rampur about a km. from the station.

11. He has further urged that the petitioner has filed incorrect affidavit before the Court which has been replied by the respondents by filing affidavits 42C and 45C that the petitioner has as many as four shops under his possession ; that in the shop in dispute he is doing business, in the shop of Aijaz Hussain his sons are doing business, in the shop of Pan Dariba purchased from Municipal Board, Rampur his sons are using it as godown for business of salt and in the shop situated at Mohalla Safdarganj his nephew Tanvir Ahmad is doing business ; that the petitioner purchased two plots, one in the name of his son and wife and another in his own name in Civil Lines, area at a distance of 1 km. from Railway Station, Rampur and over the plots purchased in the name of his wife and son shops and godowns were constructed and are under the possession of the petitioner's son and wife and they are doing business of cement in those godowns also.

12. It is next submitted that the petitioner is telling a lie since from beginning. Earlier he denied his properties at Ajitpur and tried to mislead the Court by filing fake affidavits. The facts according to the counsel for the petitioner is clearly established from the affidavit filed by respondent No. 1 (paper No. 64C), as such the Prescribed Authority has not applied his judicious mind and has illegally rejected the release application.

13. He also submits that the Prescribed Authority has failed to consider this aspect of the matter that the petitioner's sons are doing business from the age of 20 years and has not considered the entire evidence on record and has given perverse findings on face of record illegally dismissing the release application filed by the respondents ; that the appellate court after considering the entire evidence on record rightly allowed the appeal as well as the release application. It is stated that the findings recorded by the appellate court are just and proper

and based on evidence ; and that has considered each and every aspect of the matter of evidence before recording the findings.

14. The counsel for the petitioner further submits that as regards the shop in the Masjid under the tenancy of the petitioner is concerned, the petitioner has filed a false certificate that he has surrendered the tenancy right only to give colour to the present case.

15. It is stated that the shop situated in Mohalla Gher Ghulam Nasir Khan was under the tenancy of the petitioner which he purchased from the erstwhile landlord in his name, his wife's name and in the name of his nephew in equal share but he permitted his nephew to do business in that shop. In fact the petitioner was tenant in the shop and he is co-sharer of 2/3 part in that shop and that the petitioner has himself admitted that shop at Pan Dariba was purchased in his name from Municipal Board, Rampur and he permitted his sons Faiz Ahmad and Faraz Ahmad to do business of salt from that shop.

16. It is lastly submitted that it is not possible for the respondents to do business by partition of a small portion of the shop triangular in shape in which slab exists at a height of about 7ft. and the release of entire shop is just and proper ; that the judgment and order of the appellate court is based on correct appreciation of facts and evidence ; that the petitioner is a multi millionaire, having a number of shops in his possession and in the possession of his sons. The family of the petitioner is joint family and he can easily get a shop in Civil Lines, Rampur ; and that the petitioner has falsely stated that the shop situated at Ajitpur is situated at a distance of 7 kms. whereas these shops and plots in his possession there are about at a distance of 1 km. from the Railway Station, Rampur and Civil Lines, Rampur, hence the petitioner is not entitled to get any relief from this Court.

17. It appears that the Prescribed Authority rejected the release application of the respondents landlord only on the ground that the sons of the respondents were minor aged about 20 years, hence in the opinion of the Authority they could not do business whereas the Prescribed Authority has failed to take into consideration that sons of the petitioner tenant were also aged about 20 years and were minors yet they were doing separate business. The aspect regarding number of the shops in possession of the petitioner as well as in possession of the landlords have been considered by the appellate court in its judgment dated 4.9.2006. The relevant findings of the appellate court in this regard as are as under:

bl lEcU/k esa eS dguk pkgwaxh fd foi{kh us ;g Lohdkj fd;k gS fd muds lkFk muds nksuks iq= jg jgs gS] tks fd vfookfgr gS mudh vksj ls bl izdkj dh dksbZ nLrkosth lk{; izLrqr ugh dh x;h fd mlds iq=ks dk O;olk; muls fcYdqy vyx gS A ;g vo"; gS fd foi{kh dh vksj ls O;kikj dj vf/kdkjh }kjk nwljk fuxZr ,d izek.k & i= 35,@16 nkf[ky fd;k x;k gS] ftlds vuqlkj Qst vgen o Qjkt vgen o"kZ 2001 ls U;w fgUnqLrku V?sMIZ ds uke ls nks egyk jksM+ jkeiqj ij viuk O;olk; dj jgs gS bu iq=ksa dh vk;q "kiFk&i=ks esa o"kZ 2004 esa 24 o"kZ vafdr gS] ftlls ;g fu"d"kZ

fudyrk gS fd foi{kh ds iq= Hkh yxHkx 20 o"kZ dh vk;q ls viuk dkjksckj dj jgs gS A

14- vkosndx.k dh vksj ls nkf[ky "kiFki=ks esa dgk x;k fd fookfnr nqdku ds vykok if"pe dh vksj ,tkk gqISu dh fdjk;s dh nqdku esa foi{kh ds nksuks iq= U;q fgUnqLrku V?sMIZ ds uke ls lhesaV dk O;olk; dj jgss gS vkSj bl O;olk; ls IEcfU/kr vkfQl jksM+ ds ml ikj eksgeEen uoh dkjisUVj dh fdjk;s dh nqdku esa gS A bl ds vykok ,d vU; nqdku iku&njhck] jkeiqj esa gS] ftlesa ^lw;kZ^ ued dk LVkd j[kk tkrk gS vkSj ;g nqdku foi{kh ds vuqlkj lhesaV ds dkjksckj ds fy, mi;qDr ugh gS] D;ksfd ,d nqdku esa lhesaV o ued dk dkjksckj ugh fd;k tk ldrk gS A tks mfpr Hkh izrhr gksrk gS A bl ds vykok vU; nqdku] ftlesa ruohj vgen ?foi{kh dk Hkrhtk? o"kZ 1993 ls diM+s dk dkjksckj dj jgk gS vkSj ftles foi{kh o mudh ifRu 2@3 LokfeRo ds vf/kdkjh gS A bl ds vykok foi{kh ds ikl efltn dh ,d vU; nqdku Hkh miyC/k gS] ftls nkSjku eqdnek foi{kh tghj vgen us efltn ds V?LVh dks okil dj fn;k gS] ftlds IEcfU/k es izi= 49lh e; layXud izLqr fd;k x;k gS A 49 lh@16 ds vuqlkj fnukad 30-11-2004 rd bl nqdku dk leLr fdjk;k foi{kh }kjk nsdj bl dksBjh dk dCtk efltn ds eqroYyh dks okil dj fn;k x;k A bl izdkj nkSjku eqdnek efltn dh nqdku okfil fd;s tkus ds dkj.k foi{kh ds ikl ;g miyC/k ugh gS A

15- vkosndx.k dh vksj ls okn nkf[ky djus ls iwoZ fn;k x;k uksfVI dk tckc dkxt la0 31lh@22 gS] ftlesa Hkh foi{kh dk ;g dguk gS fd ,tkk gqISu dh nqdku esa foi{kh ds nksuks iq= Qst o Qjkt o"kZ 2001 ls viuk dkjksckj dj jgs gS vkSj bl nqdku ds lekus eksgeEen uoh dkjisUVj dh nqdku esa mudk nrj gS A efltn dh dksBjh esa mudk dkB&dckM+ jgrk gS vkSj iku njhck okyh nqdku esa muds iq=ksa dk ued dk LVkQ j[kk gS vkSj lQnjxat okyh nqdku esa mudk Hkrhtk ruohj vgen viuk diM+s dk dkjksckj dj jgk gS A

16- vkosndx.k }kjk fyLV 55 lh ls nsk fodz; i= fnukafdr 4-8-1999 dh Nk;k izfr;kWa nkf[ky dh x;h] ftlds vuqlkj MkDVj eksgeEen ubZe vgen ls tghj vgen us xzke vthriqj esa ,d vkjkth vius uke ds vkSj ,d vkjkth vius nksusk iq=ks ds uke ls [kjhnh A foi{kh us vius "kiFk&i= 61 lh esa ;g ckr Lohdkj dh ysdu mUgksus dgk fd flQZ 63-81 oxZ ehVj Hkwfe muds uke gS vkSj 167-22 oxZ ehVj Hkwfe mlds nksuks iq=ks o ifRu ds uke gS A foi{kh ds iq=ks o ifRu dh vkjkth gS mldk dksbZ IEcfU/k ugh gS bl vkjkth ij xksnke mUgksus cuk;s gS] tks [kkyh iM+s gS mldh vkjkth vc Hkh [kkyh iM+h gS tks fd "kgj ls yxHkx lkr fdykseVj nwj gS A bl izdkj ;g Li"V gksrk gS fd foi{kh tghj vgen ds ikl xzke vthriqj esa viuh Hkwfe miyC/k gS A

17- tgka rd vkosndx.k ds edku esa vius iq=ks ds jkstxkj djkus dk IEcfU/k gS] ,tkk gqISu }kjk vkosndx.k ds fo:) lafLFkr ewy okn la0 77 lu~ 1003 ls IEcfU/kr izfr;kWa i=koyh ij nkf[ky dh x;h gS] ftlds ifj"khyu ls ;g Kkr gksrk gS fd bl okn ls iwoZ fnukad 30-04-2003 dks vkosndx.k ds HkkbZ ,tkk gqISu }kjk nkf[ky fd;k x;k Fkk] ftlesa fnukad 31-5-2003 dks le>kSrK ds vk/kkj ij ;g okn fuLrkfjr fd;k x;k A bl edku esa dksbZ Hkh nqdkusa cuh gq;h ugh gS vkosndx.k dh vksj ls ,d vlslesaV o"kZ 1986 dh izfr nkf[ky dh x;h ftlds vuqlkj muds ikl ,d edku o nks nqdkus miyC/k gS] ftls ;g fl) gks tkrk gS fd vkosndx.k ds edku esa O;olk; gsrq dksbZ nqdku miyC/k ugh gS vkSj u gh foi{kh us bl edku dk fujh{k.k fdlh ,M+oksdsV dfe"uj ds ek;/e ls dj;k;k A

18- foi{kh ds fo}ku vf/koDrk }kjk dgk x;k fd fookfnr nqdku ds iwjc dh vksj vkosndx.k us ,d NksVh nqdku vHkh gky gh esa cuk;h gS] ftles og vius iq=ks dk dkjksckj dj k ldrs gS A bl lECU/k es fjiksZV dfe"uj 58lh i=koyh ij nkf[ky gS] ftldk ifj"khyu djus ls Kkr gksrk gS fd fookfnr nqdku fd iwjc fookfnr nqdku dks lh/kk cukus ds mn~ns"; ls ,d NksVh lh dksBjhuqek nqdku cuh gqbZ gS] ftldk rkyk [kqyokdj ,MoksdsV dfe"uj us ik;k fd fookfnr nqdku ds iwjc es foi{kh iz;ksx esa ykus ds fy, fookfnr nqdku ds mRrjh&iwjch dksus ij ,d NksVh lh nqdku cuk;h x;h] ftldk njoktk iwjc dh vksj xyh esa [kqyrk gS A fookfnr nqdku dh Nr dh ?WapkbZ Q"kZ ls 12 fQV gS tcfd NksVh nqdku dh Nr dh ?WapkbZ Q"kZ ls lkr QhV nks bap gS A NksVh nqdku dh Nr dsa ?ij dk iz;ksx VkM ds :i esa foi{kh }kjk fd;k tk jgk gS A bl dksBjh esa&& pkj fQV vkB bap ?WapkbZ ij ,d Lysc Mkyk x;k] tks fd u;h fuekZ.k irk pyrh gS A bl ds vykok ,MoksdsV def"uj us eksgeen uch okyh nqdku dk Hkh fujh{k.k fd;k] ftlesa ,d dkmUVj o ikaWp dqfLZ;ka iM+h gq;h ikbZ vkSj bl nqdku esa IM+d dh vksj ,d "kh"ks dk xsV yxk gqvk ik;k] ftldk iz;ksx vkfQl ds :i esa fd;k tkrk gS A bl izdkj eS ikrh gwWa fd fookfnr nqdku ds iwjc okyh nqdku fuf"pr :i ls nksusk Hkkb;ksa ds izLrkfor jkstxkj ds fy, i;kZIr ugh gSA ;g dksBjhuqek nqdku ihNs ls nks fQV nsk bap vkSj vkxs ls yxHkx ikap fQV gksxh] ftles yxHkx 2-9 bap pkSM+k njoktk iwoZ esa yxk gqvk gS A

19- foi{kh us vius "kiFk&i= 61x ds iSjk 5 esa ;g vkQj fn;k gS fd ;fn vkfej o vEcj ds jkstxkj gsrq vko;"drk ik;h tkrh gS] rks og fookfnr nqdku esa ls iwjc fn"kk dh dksBjhuqek nqdku dh lkbZM esa bl nqdku dk rhu fQV dk fgLLk NksM+us dks rS;kj gS ftlls fookfnr nqdku dh pkSM+kbZ nl fQV N% bap gks tk;sxh vkSj vihykFkhZx.k ds iq=ks dks nl QhV pkSM+h nqdku viuk jkstxkj izkjEHk djus gsrq izkIr gks tk;sxh A gkykafd vkosndx.k }kjk bl vkQj dks Lohdkj ugh fd;k x;k vkSj vius "kiFk&i= 64lh esa dgk fd foi{kh mldh ifRu o iq=x.k dk leLr dkjksckj o [kkuk lfEefyr pyrk gSA foi{kh ds iq=ks }kjk cuok;s x;s xksnke vc Hkh [kkyh gksuk foi{kh us Lohdkj dj fy;k gS A mudk dFku gS fd xzke vthriq flfoy ykbUI o jsyos LVs"ku ls yxHkx ,d fdykseVj ls de nwjh ij gS] tgka ij foi{kh dh ubZ nqdkusa cM+s&cM+s cktkj] izFkek cSd] dbZ uflZx gksae] xSl dk xksnke] ,0 vkj0 Vh0 vks0 vkfQl o reke nqdkus cuh gq;h gS A blh jksM+ ij isrk] otjh lhesaV] bZV o bekjr cukus dk dkQh leku fcdrk gS A foi{kh bu nqdkuks ls lhesaV o lfj;s vkfn dk cM+s iSekus ij dkjksckj djuk pkgrk Fkk A mudk ;g Hkh dFku gS fd foi{kh LoLFk O;fDr gS vkSj iwjs "kgj o dpgjh esa LdwVj o lkbZfdy ls vkrs&tkrs gS vkSj muds }kjk xzke vthriq esa viuk dkjksckj djuk eqf"dy dk;Z ugh gS A vkosndx.k us ;g Hkh dgk gS fd fookfnr nqdku dh iwjch fnokj esa nks fQV nf{k.k] rhu fQV mRrj o ikWap fQV mRrj&nf{k.k vkB fQV ?Wapk LFkku fookfnr nqdku ds le; ls cuk gqvk gS A ;g dnkfpr lEHko ugh gS fd foi{kh dks nkSjku eqdnek iwjch nhokj rksM+dj mles fuekZ.k djus dh vuqefr nh A mudk ;g dFku gS fd izFke [k.M+ ij ,tkT glSu okyh nqdku ds ?ij mUgksus dksbZ ubZ nqdku nkSjku eqdnek ugh cuokbZ A ;fn bles dksbZ lPpkbZ gksrh rks ,MoksdsV dfe"uj Jh jes"k ikBd] }kjk bu nqdkuks dk Hkh fujh{k.k foi{kh vo"; djkr A

20- vr% bl lk{; ds vHkko es eSa bl fu"d"kZ ij igqWapr gwWa fd vihydrkZx.k dks vius iq=ks ds dkjksckj gsrq izFke [k.M+ ij dksbZ mi;qDr LFkku miyC/k ugh gS A

21- vihydrkZx.k dh vksj ls bUnziky oekZ cuke Jh jke xqIrk ,oa vU;] 2005 ? 59? , ,y vkj i`"B 239 % 2005 ?3? , MCyw lh 2578 ,oa Jherh jkt dqekjh cuke f}rh; vij ftyk tt] >kalh ,oa vU;] 2006 ?4? , ,y ts i`"B 201 % 2006?4? , MCyw lh 3383] dks n`"VkUr Lo:i izLrq fd;k x;k gS] ftles ekuuh; mPp U;k;ky; }kjk ;g vo/kfjr fd;k x;k gS fd fdlh Hkh ifjokj ds O;Ld lnL; dks viuk Lora= dkjksckj djus dk vf/ kdkj izkIr gS vkSj firk dk ;g nkf;Ro gS fd og vius cPpks dks mlds dkjksckj dks pykus gsrq lgk;rk ns A bl vk/kkj ij izLrq dsl esa Hkh eS ikrh gWwa fd vihydrkZx.k vius iq=ksa vkfej o vEcj dks mudh bPNkuqlkj tujy epsZUV o dksYM fM?ad dk dkjksckj djuk pkgrs gS] ftlds fy, mUgs fookfnr nqdku dh vko;"drk gS A mijksDr fof/k O;oLFkkvks esa ;g Hkh vo/kfjr fd;k x;k fd ;fn fdjk;snkj nkSjku eqdnek dksbZ oSdfYid LFkku ryk"k djus dk Irr iz;Ru ugh djrs gS rks ;g rF; muds fo:) dsl ds fu/kkZj.k esa fopkj.kh; gS A blh dze esa lq"kyk cuke f}rh; vij ftyk tt] ckank o vU; 2003 ?52? , ,y vkj i`"B 160 esa ekuuh; mPpre U;k;ky; }kjk vo/kkfjr fd;k x;k gS fd fdjk;snkj dks ;fn dksbZ vU; nqdku miyC/k gS rks ml n"kk es fookfnr nqdku esa cgqr le; ls O;olk; djus dk foijhr izHkko ugh iM+sxk A izLrq dsl es Hkh fdjk;snkj fookfnr nqdku esa o"kZ 1968 ls lhasaV dk dkjksckj dj jgk gS] ysfdu vUr esa foi{kh us ;g Lohdkj dj fy;k fd xzke vthriq ds ikl mudh ,d Iykv [kkyh iM+h gS A bl Iykv dk c;ukek o"kZ 1999 dk gS] ysfdu vc rd foi{kh }kjk Iykv ij dksbZ fuekZ.k ugh dj;k x;k gS tcfd nkSjku eqdnek og vklkuh ls bl Iykv ij fuekZ.k dj ldrk Fkk A ekuuh; mPpre U;k;ky; us cnzh ukj;u pqUuh yky cuke xksfoUnjke xksiky] 2003 ,l lh ,Q ch vkj lh i`"B 167 es vo/kfjr fd;k gS fd ftyht izkFkZuk&i= nkf[ky gksus ds ckn ;fn fdjk;snkj bl dk;Zokgh ds nkSjku okLro esa fdlh vU; lEifRr dks [kjhnus ;k fdjk;s ij ysus dk iz;Ru ugh djrs gS] rks ml n"kk esa rgyukRed dfBukBZ dk fcUnq muds fo:) fuLrkfjr fd;k tk;sxk A bl dsl esa Hkh fdjk;snkj us fdlh Hkh "kiFk&i= ds ek;/e ls ;g Li"V ugh fd;k x;k fd okLro es muds }kjk fdlh oSdfYid O;oLFkk dk iz;kl x;k A bl lECU/k esa dks"ky dqekj xqIrk cuke fo"kqu izlkn ,oa vU;] 2006 ?4? , ,y ts i`"B 629 esa ekuuh; mPp U;k;ky; }kjk vo/kkfjr fd;k x;k gS fd okLrfod ,oa ln~Hkkfod vko;"drk fl) gks tkus ij fdjk;snkj dk yEch vof/k ls fookfnr LFky ij dCtk gksuk ftyht izkFkZuk&i= ds vLohdkj djus ds fy, i;kZIr vk/kkj ugh gS A izeksn dqekj oekZ ,oa vU; cuke "k"Ve vij ftyk tt] fctukSj ,oa vU;] 2000 ?1? , MCyw lh i`"B 412] esa ekuuh; mPp U;k;ky; }kjk vo/kkfjr fd;k x;k gS fd yS.MykMZ dk csjstxkj iq=-----jkstxkj esa enn djrk gS rks ;g ugh dgk tk ldrk gS fd mldh vko;"drk okLrfod ,oa ln~Hkkfod ugh gsS A

22- bu mijksDr fof/k O;oLFkkvks dks n`f"Vxr j[krs gq, eSa bl fu"d"kZ ij igqWaprh gwa fd vkosndx.k dks vius iq=ksa vEcj o bfEr;kt o vkfej lJQkt dks tujy epsZUV o dksYM+ fMa?d dk O;olk; izkjEHk djus ds fy, fookfnr nqdku dks okLrfod] rhoz ,oa ln~Hkkfod vko;"drk gS vkSj vkosndx.k ds ikl dksbZ vU; leqfpr nqdku miyC/k ugha gS tcfd foi{kh ds ikl xzke vthriq esa ,d [kkyh Iykv o"kZ 1999 ls gS A bl ds vykok mlds iq=ks us vius Iykv ij xksne cuk j[ks gS] tks fd mlds Loa; ds vuqlkj [kkyh iM+s gS A bl izdkj rgyukRed dfBukBZ Hkh izkFkZuk&i= [kkfjt gksus dh n"kk es vkosndx.k dks vf/kd gksxh A

23- cgl ds nkSjku foi{kh ds fo}ku vf/koDrk us jsfeXVu jS.M vkQ bf.M;k fy0 cuke vij ftyk tt@Lis"ky tt] bykgkckn ,oa vU; 2003 ?1? , vkj lh i`"B 513 ,oa vCnqy

gkfen cuke Lis"ky tt@vij ftyk tt esjB ,oa vU; 2002 ?2? , vkj lh Ik`"B 238 ,oa Lons"kh nsoh tk;loky ,oa vU; cuke vij ftyk tt] cjsyh ,oa vU;] 2004 ?1? , vkj lh i`"B 31 dk vkJ; yrsr gq, dgk fd fookfnr nqdku ls rhu fQV iwjc dh vksj dk fgLlk vkosndx.k dks NksM+us ds fy, rS;kj gS ysfdu vkosndx.k us bl vkQj dks Lohdkj ugha fd;k A bl lEcU/k esa ,M+oksdsV dfe"uj }kjk rS;kj fd;s x;s uD"kk utjh dkxt la[;k 58 lh@3 dk eS iqu% ifj"khyu djrh gWaw fd mRrj dh vksj ;g nqdku NksVh okyh nqdku feykj 15 fQV 6 bap pkSM+h gS A foi{kh dh bl nqdku ds lkeus jksM+ ds mRrj dh vksj eksgeen uch dkjisUVj dh nqdku esa mlDs iq= viuk vkfQl cuk;s gq, gSA esjh jk; esa blh vkfQl esa foi{kh tghj vgen Hkh vko;"drkuqlkj cSB ldrs gS A ,slh n"kk es fookfnr nqdku esa ls lhesaV ds xksne gsrq lkr QhV pkSM+h nqdku vkxs o lkeus ls foi{kh ds i{k esa NksM+k tkuk i;kZIr izrhr gksrk gS] bl fookfnr nqdku dk iz;ksx foi{kh vkt ls ,d o"kZ ds fy, dj ldrk gS vkSj bl vof/k esa og viuk dkjksckj vthriqj esa ;k vU; miyC/k nqdkuksa esa f"Q~V dj yxs A

24- bl mijksDr foospuk ds vk/kkj ij eS ikrh gWaw fd voj U;k;ky; us lk{; dk lgh ewY;kadu djrs gq, fof/k leer fu.kZ; ikfjr ugh fd;k gSS vr% og fujLr gksus ;ksX; gS vkSj izLqr vihy Lohdkj fd;s tkus ;ksX; gS A

vkns"k

izLqr jsUV vihy lO;; Lohdkj dh tkrh gS ,oa voj U;k;ky; }kjk ikfjr fu.kZ; fnukafdr 13-5-2005 [kkfjt fd;k tkrk gS vkSj nksuks i{kks dks funsZf"kr fd;k tkrk gS fd vkt ls ,d ekg ds vUnj fookfnr nqdku dk lkeus dk lkr fQV pkSM+k if"Pe dh vksj dk fgLlk NksM+dj yEckbZ esa iwjh vLFkbbZ nhokj dk fuekZ.k bl rjg djsxs A ftlds ckn iwjch NksVh nqdku o fookfnr nqdku es vkosndx.k vius iq=ks dks bPNkuqlkj O;olk; izkjEHk dj ldrs gS A foi{kh dks funsZf"kr fd;k tkrk gS fd og vkt ls ,d o"kZ ds vUnj fookfnr nqdku ls viuk lhesaV dk dkjksckj miyC/k fdLh vU; vius IyKV ij vko;"d fuekZ.k djkdj f"Q~V dj yxs vkSj blh vk"K; LFkku ij vFkok xzke vthriqj dks ,d v.Mj&Vsfdax voj U;k;ky; ds le{k ,d ekg esa izLqr djsxs vkSj ;fn bl izdkj v.Mj&Vsfdax mDr vof/k esa ugh nh tkrh gS rks fookfnr nqdku dk fdjk;k :0 30 ds LFkku ij :0 300 izfrekg crkSj {kfriwfrZ okLrfod dCts dks vof/k rd dh foi{kh }kjk Hkqxrku fd;k tk;sxk A

g0 izfrHkk [kUuk ?izfrHkk [kUuk? vij ftyk U;k;K/kh"K U;k;ky; la0 2 jkeiqj A

18. It may also be noted that the judgment of the appellate court is based on own admission of the petitioner wherein he has stated that the godown has been constructed by him and is in a vacant state which is about 1 km. from the Railway Station. One of the shops acquired by the petitioner is being used by his sons for storing salt. The godown can also be used for storing salt and business. Thus, it appears from the record that the Prescribed Authority has given the judgment on irrelevant consideration. The sons of the respondents have also grown up even then they are staying with their father and are doing business of cloth merchant with him as no shop was available to them. This would not go against them for the very reason that the sons of the petitioner tenant who were also of the same age are doing independent business. It is settled law that every adult member of the landlord's family has right to do independent business. The

petitioner is multi millionaire and has got many shops in his possession and in the possession of his wife and sons as well as on rent. He will therefore, face no hardship in shifting his business in one of the shops which is being used by him for storing salt which is 1 km. from the Railway Station in Civil Lines, Rampur.

19. The contention of the counsel for the petitioner that the findings of the Prescribed Authority have not been considered by the appellate court is incorrect. The appellate court has rightly directed the petitioner to remove his assets from the disputed shop and shift the same in the godown constructed by him or in any other shop, which is in his possession. The appellate court has also considered the question of bona fide need and comparative hardship in detail as is apparent from the extract of the Judgment of the appellate court quoted in the body of this judgment. In so far as surrendering of the shop in Masjid to waqf is concerned, it is apparent that this plea is not convincing as he did not even pay Rs. 40 as rent of the shop. In so far as the shops constructed by the landlords are concerned it may be that the shops were not needed by him at that time and another plot might have been in the possession of the landlords but the question whether it is available to them. The petitioner has nowhere stated that any shop was available to the landlords for doing business when he filed release application. Even if the landlords was having 5 shops and had given the same on rent earlier, the tenant cannot question the need of the landlords on ground which arose subsequently.

20. The petitioner has got a number of shops and plot in his possession, hence, the same theory which is applying on the landlord for denying the bona fide need and comparative hardship similarly applies to him also like a two edged sword.

21. Once the tenant or any member of his family acquires the shop in a vacant state which in the instant case the tenant has acquired a shop, he has no right to keep the shop of the landlords in his possession. The landlords have every right to settle their sons in business in the disputed shop.

22. In *Banshidhar v. Illrd Additional District Judge, Aligarh* 2000 (2) ARC 808 *Dwarika Nath Soni v. Bhagwan Das Gupta* 2005 (2) ARC 739 *Dwarika Nath Soni Vs. Bhagwan Dass Gupta*, and *Smt. Raj Kumari Vs. IInd A.D.J. and Others*, this Court has held that every adult member of landlord/landlady has right to settle down in independent business and such need of the landlord cannot be rejected on the ground that the same is not bona fide.

23. The admitted fact is that the tenant has his own shop and he has also alternative shops and plots in his possession on which he can build shops according to his need being a mutli millionaire, hence in view of Explanation (i) to Section 21(1)(a) of U.P. Act No. XIII of 1972, which provides that if any of member of tenant's family has acquired an alternate accommodation, the tenant cannot contest the claim of need of the landlord on the ground that there is no bona fide need of the landlord. Explanation (i) to Section 21(1) of the Act No. XIII of 1972 as under automatically applies to the facts of the instant case:

Explanation.-In the case of a residential building:

(i) where the tenant or any member of his family who has been normally residing with him or is wholly dependent on him has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this sub-section shall be entertained.

24. For the reasons stated above, in my opinion, the approach of the Prescribed Authority is not correct and the Prescribed Authority has committed a gross illegality in rejecting the release application of the landlords.

25. Admittedly, the tenant has his own shop and has also got an alternative. The findings of the Prescribed Authority that the bona fide need and comparative hardship of the tenant are greater than the respondents landlord are against the evidence on record and are not sustainable.

26. In the circumstance, the appellate authority has rightly allowed the appeal of the respondents as well as the release application on the ground that comparative hardship is greater in favour of the landlords.

27. Since the petitioner has retained the shop in dispute of the landlord inspite of having his own shop, alternative shops and plots in his possession on which he can build shops according to his need.

28. All these facts lead to establish that the petitioner tenant has neither come with clean hands before this Court nor with bona fide intention and he is only litigating with mala fide intention and ulterior motives, hence he is liable to be awarded with a deterrent and exemplary costs in view of Hon"ble Supreme Court decision rendered in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), Cost is assessed at Rs. 10,000 on the petitioner tenant.

29. For the reasons stated above, the writ petition is dismissed with costs of Rs. 10,000. The petitioner tenant shall deposit the costs of Rs. 10,000 in the trial court within one month from today. The amount of costs so deposited by the petitioner may be withdrawn by the landlords within two months thereafter without furnishing any security. In case the petitioner does not deposit the aforesaid amount of Rs. 10,000 within two months from today, the amount shall be recovered as arrears of land revenue within one month thereafter.