

demised shop, that is in the tenancy occupation of Mohd. Ishaq (hereinafter referred to as 'the tenant') is bona fide required by the landlord for the purpose of his residence as well as setting up his shop to earn his livelihood. Once the demised shop became available to the landlord, he would get it redone according to his requirement, where on the ground floor, he would carry on a shop for earning his livelihood, and, on the first floor, set up his living quarters. For the time being, the landlord lives in House No.207, Daru Bhaundela, Jhansi, which is a small house. It has 5-6 rooms, whereas the landlord's family has 20 members. The landlord has in his possession a room of 10x10 feet, wherein he lives with his wife, a daughter 14 years old and a son aged 10 years, all with much difficulty.

3. The landlord's mother is sharp tempered and on account of shortage of space, there are frequent quarrels between his wife and mother. Then there is the landlord's brother, Ramesh Chandra, whose sons have grown up and the elder son has got married in the year 2000. The landlord's mother is under the influence of his elder brother and insisting that the landlord may move away to another house. He has no shop of his own to earn his livelihood. For sometime past, he would work at Ramesh Chandra's shop. Ramesh Chandra has now asked him not to sit on his shop, rendering the landlord jobless. The relationship between the two brothers has become embittered on this account. The demised shop is dimensioned 12x60 feet, which is sufficient space for residential purpose. The tenant fabricates steel almirahs at home and utilizes the demised shop for the purpose of selling them. He is retaining possession of the demised shop in order to extort premium from the landlord to vacate.

4. Pending the proceeding for release, through an amendment application, an amendment was sought to the effect that the landlord's children have grown up. His daughter is reading in B.Com. whereas his elder son reads in Intermediate College. Both the children need a separate room for their studies, a fact that has accentuated the landlord's bona fide need for the demised shop. It is on these grounds that release of the demised shop was prayed.

5. The tenant, Mohd. Ishaq put in a written statement denying the landlord's case generally. It was averred that the release application has been made without basis in order to trouble the tenant on incorrect facts and to exert unlawful pressure upon him. It is the tenant's case that ever since the landlord had purchased the demised shop, he has been litigating with the tenant. It is pleaded that P.A. Case No. 26 of 1993 was instituted on 11.03.1993 on false premises under Section 21(1)(b) of the Act with a case that the demised shop was in a dilapidated condition, which was required by the landlord after reconstruction.

6. The said application was dismissed by the Prescribed Authority vide judgment and order dated 07.09.1996. An appeal from the said order being Rent Control Appeal No.27 of 1996 was dismissed by the District Judge of Jhansi by his judgment and order dated 07.07.2000. Subsequently, the landlord instituted P.A. Case No.95 of 1994 on 19.08.1994 under Section 21(1)(a) of the Act, on the same grounds as those urged in the present application. The Prescribed Authority rejected that application by a judgment and order dated 29.01.1998. Against the said order of the Prescribed Authority, the landlord carried an appeal to the District Judge, which was dismissed on 11.05.2001.

7. It is the tenant's case that on whatever grounds the earlier release application giving rise P.A. Case No.95 of 1994 was instituted and decided against the landlord inter partes, the present application has been brought on the same grounds. Therefore, findings in the earlier judgment bar the present proceedings as *res judicata*. It is denied that the landlord ever purchased the demised shop for his need. To the contrary, the landlord is a member of a Joint Hindu Family and all of them are engaged in the trade of gold and silver, besides being into the business of money lending. The landlord is a powerful man and a property dealer, who buys properties to augment his income. The proceedings for release are brought against the tenant to exert undue pressure upon him. The landlord and his brothers are members of a joint family.

8. It is pleaded that the landlord has purchased a shop in the name of his wife, Meena Agrawal, bearing No. 98, Jawahar Chowk, Jhansi on 22.11.2001. In addition, he has purchased another shop in the name of Manju Agrawal, wife of Sanjay Agrawal bearing Shop No.190, Bada Bazar, Chaudharyana on 2nd of May, 2004 from its previous owner, Smt. Vimla Devi. It is said further on that the landlord has also purchased another shop in the name of Sanjay Agrawal, bearing No. 22, Jawahar Chowk, Jhansi, wherein Ram Bihari and others were tenants. A case was filed against the tenants in occupation of the said shop, seeking their eviction. Once the said tenants vacated under pressure, that shop was sold off.

9. It is the further case of the tenant that apart from the demised shop vis-a-vis Shop No.14, Nanjhahi Bazar, that was purchased by the landlord's elder brother,

Sanjay Agrawal on 11.01.1994, a suit was instituted against the tenant, Irshad Khan being S.C.C. Suit No.123 of 1994 for eviction and decreed on 23.09.1995. Irshad Khan's revision was dismissed by this Court and possession of the shop under reference delivered to Sanjay Agrawal. The shop thus vacated is lying vacant and locked for the past three years. Apart from these properties, the landlord along with his family lives in a palatial three storeyed house, bearing No.207, Daru Bhaundela, Jhansi, which is equipped with all modern amenities. This house has a number of portions and has about 20-25 large size rooms. In addition, there are two verandahs, a store, kitchen and a number of lavatories and bathrooms.

10. The landlord and his brothers own a two storeyed market in the Jhansi main market area called Mitra Market, constructed in the year 1990. The shops in the said market owned by the landlord and his brothers are let out on rent. The landlord carries on business under the name and style of K.B. Jewellers, apart from of money lending. Apart from the said business in the family, there are other business under the name and style of Ram Sewak Ramesh Chandra Kamaraya Jewellers and M.K. Jewellers. The landlord's family own other firms too, all engaged in the trade of gold and silver. One of his family members carries on business under the name and style of Bulian Refinery, where silver and gold is purified and silver coins minted in the factory.

11. The landlord and his brothers own a building by the name of Naveen Unit School in Mohalla Nai Basti, Jhansi. All members of the landlord's family, men and women are educated and competent, who stay together cordially. There is no dearth

of space with them. There is also a plea to the effect on behalf of the tenant that the landlord and his wife have never fought the landlord's mother who is a simple and straightforward woman. The landlord's case that his house at Daru Bhaundela, Jhansi is a small house with 5-6 rooms and his family comprise a total of 20 souls, where the landlord has a solitary room of 10x10 feet for himself rests on incorrect facts. The landlord and his brother, Ramesh Chandra and others have got vacated a big shop of theirs bearing Shop No.164 from one Idrish and combining with it an adjoining shop, they have built a shopping complex, wherein all the brothers own separate shops.

12. The landlord has purchased through a registered sale deed in the Sharda Hills Colony, a newly built house, which has a number of big rooms, a verandah, a kitchen and a bathroom. Earlier as well the landlord and his brothers, Sanjay Agrawal and Ramesh Chandra had purchased in the names of their wives, Meena Agrawal, Manju Agrawal and Mamta Agrawal a valuable plot of land, located on the Jhansi-Gwalior Road on 21.05.2008, all of which they are in possession. The landlord also owns, in addition to the houses and shops earlier mentioned, House Nos.212, 213, Daru Bhaundela, Jhansi, that are big residential premises. The tenant occupies the upper floor of Shop No.13, premises Nos.13 and 14 at the rate of Rs.32.50 per month. In the said shop, the tenant manufactures steel almirahs, boxes, trunks, book shalves, packing cases etc. and also repairs the same. He stores raw materials. The demised shop is the only one that the tenant has, where he and his five sons work together. This place provides them their sole source of livelihood.

13. The tenant's house, bearing No. 233, Mukuriana, Jhansi is a house located in a constructed bylane, where there are no shops or market. That house of the tenants has six rooms, wherein he lives along with 39 members of family. In those premises, he does not fabricate steel almirah nor can he do that. The demised shop is essential to support the tenant and his family's source of livelihood. In the event, it is released, the tenant would face great hardship. The tenant's business has garnered goodwill. The landlord has no need for the demised shop. In the event, the release application were refused, the landlord would not suffer any hardship. The release application deserves to be rejected.

14. The landlord supported his case by his own affidavit, bearing paper No.25A, besides an affidavit of Ramesh Chandra Agrawal, paper No. 26A and another affidavit of Sanjay Agrawal, paper No.27A. The tenant for his evidence put in his own affidavit, paper No.30A, an affidavit of Manmohan Srivastava, paper No.31A and an affidavit of Anis, paper No. 32A. The landlord filed his rejoinder affidavit, bearing paper No.53A. An additional affidavit on behalf of the landlord was filed, being his own, paper No.69A. The tenant filed an affidavit, paper No.75A. Two other affidavits were filed on behalf of the landlord, bearing paper No.81A and 99A. The tenant filed along with a list, bearing paper No.33C, fourteen documents. Through another list, 76C, four documents were filed. A single document was filed through list 94C, followed by two others through list 102C, another seven through list 108C and a single document through list 116C.

15. The Prescribed Authority, who heard the landlord's application for release,

held against him both on the issues of *bona fide* need and comparative hardship. The landlord's application was rejected by the Prescribed Authority vide his judgment and order dated 07.05.2009. The landlord questioned the Prescribed Authority's judgment through an appeal under Section 22 of the Act, carried to the District Judge of Jhansi. The appeal was numbered on the file of the learned District Judge sitting as the Appellate Authority under the Act, as Rent Control Appeal No.6 of 2009. The landlord's appeal came up for determination before the Additional District Judge/Special Judge, SC/ST Act, Jhansi on 22.09.2011. The learned Additional District Judge reversed the judgment of the Prescribed Authority, allowed the landlord's appeal, granting the application for release and ordering the tenant's eviction.

16. Aggrieved, the tenant has preferred this writ petition under Article 226 of the Constitution.

17. Heard Mr. Arvind Srivastava, learned Counsel for the tenant and Mr. Arvind Srivastava, learned Counsel appearing for the landlord.

18. During the pendency of the writ petition, the tenant passed away and his heirs LRs, who are five in number have been brought on record as petitioner Nos.1/1 to 1/5. Therefore, all further mention of the tenant bears reference to each of the five heirs of the original tenant, who have inherited the joint tenancy.

19. The foremost submission on behalf of the tenant is that the present release application is not maintainable because it has been moved within two months and ten days of rejection of the earlier release application made on the

same grounds by the landlord. The submission of the learned Counsel for the tenant is that the present application is barred by Rule 18(2) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (for short, 'the Rules'). It is also submitted that, even otherwise, the circumstances have not changed since the rejection of the last application under Section 21(1)(a) of the Act, so as to entitle the landlord to maintain the present application.

20. The short summary of events on this point canvassed on behalf of the tenant is that the first release application was made by the landlord on 15.03.1993, bearing Case No. 26 of 1993. It was moved under Section 21(1)(b) of the Act. This application was rejected vide order dated 09.07.1996. The appeal filed from the said order was dismissed on 07.07.2000, and a writ petition preferred challenging the appellate order was dismissed by this Court on 14.03.2012. The second application seeking release on the ground of bona fide under Section 21(1)(a) of the Act was made on 19.08.1994, which was numbered on the file of the Prescribed Authority as Case No.95 of 1994. This application came to be dismissed by the Prescribed Authority vide order dated 29.01.1998. An appeal from this order was carried to the Appellate Authority, being Rent Control Appeal No.9 of 1998, which was dismissed vide judgment and order dated 11.05.2001. A writ petition was preferred challenging the appellate order, being Writ Petition No.30896 of 2001, which was dismissed vide order dated 27.04.2010.

21. The learned Counsel for the tenant reckons the period of presentation of the present application under Section 21(1)(a) of the Act from the date of the appellate

order, that is to say, 11.05.2001 passed in the proceedings arising from the release application, moved in the second instance. It is on that basis that the learned Counsel for the tenant submits that the present application was made within two months and ten days of rejection of the second application for release. He, therefore, urges that the application is clearly barred by the provisions of sub-Rule (2) of Rule 18 of the Rules, apart from submitting that there is no material change in the circumstances inter se the landlord and the tenant about their bona fide need and comparative hardship.

22. The learned Counsel for the landlord on the other hand says that the present application is not at all barred because the period of one year envisaged under Rule 18(2) of the Rules has to be reckoned from the date of rejection of the application by the Prescribed Authority, and not dismissal of the appeal carried from the original order. He submits that even otherwise Rule 18 is directory; not mandatory. There is, thus, no bar, according to the learned Counsel for the landlord, preventing the Authorities in exercising their jurisdiction under the Act and entertaining a subsequent release application. It is also argued that the circumstances have materially changed, on account of which the judgment rendered in the earlier application would not bind parties about the issues of bona fide need and comparative hardship.

23. The Appellate Authority has repelled the tenant's contention on this score disagreeing with the Prescribed Authority and held that a second application would be maintainable, unhindered by Rule 18 of the Rules within one year of the rejection of the earlier

release application, and not dismissal of the appeal from the order passed in the earlier application. The Appellate Authority has also held in tune with the submissions advanced on behalf of the landlord that the provisions of Rule 18 are directory and not mandatory.

24. Upon hearing learned Counsel for the parties, this Court finds that the bar envisaged under Rule 18(2) of the Rules, even if it were to be strictly enforced, is not to be reckoned from the date of the judgment in appeal, but the date of rejection of the earlier application by the Prescribed Authority. This principle was laid down by this Court in **Heera Lal v. IXth Additional District Judge, Kanpur and others, (2005) 61 ALR 488 (All)**, also indicating the reason why the period of one year has to be reckoned from the date of rejection of the earlier application by the Prescribed Authority; not the Appellate Authority. In Heera Lal (supra), it has been held:

"5. Secondly, period of one year will be counted from the decision of the Prescribed Authority. If appeal filed against the said decision is dismissed, the period of one year provided under the aforesaid Rule will not be counted from the date of dismissal of appeal. The reason behind the above Rule is that within a year position of the need does not substantially change. However, after one year it may change. Before the prescribed authority the position of need as prevailing until final decision of the release may be brought on record as of right. However, during pendency of appeal subsequent developments cannot be brought on record as of right. The Appellate Court simply said that as earlier release application had been rejected against the respondent No. 3 Babu

Singh hence it would be deemed that landlord had no bona fide need. The view of the Appellate Court was utterly erroneous in law."

25. The issue, whether the bar under Rule 18(2) of the Rules is directory or mandatory, fell for consideration in **Ammal Chandra Dutt (supra) Ammal Chandra Dutt v. Second Additional District Judge and others, (1989) 1 SCC 1**. In **Ammal Chandra Dutt (supra)**, it was held by their Lordships of the Supreme Court:

"9. We may now set out the reasons as to why the prescription in Rule 18(1) should be construed as only directory and not mandatory. In the first place, the rule envisages two kinds of situations, one of them where the second application is made within an interval of six months from the date on which final orders were passed in the previous application and the other where the second application is made beyond an interval of six months, which may even go up to several years, as in this case where the interval was over five years, but within six months of the Act coming into force. Surely, the legislature would not have intended that the interval factor in the two sets of situations should be visited with the same consequences by adopting a rigid and inflexible application of the prescriptive guideline given in Rule 18(1). The second factor is that even if the interval factor is the sole criterion for the application of the formula contained in Rule 18(1), the legislature could not have intended that even where drastic changes had taken place subsequent to the disposal of the earlier application, the Prescribed Authority should shut his eyes to the realities of the situation and blindly and mechanically apply the formula in Rule

18(1) and reject the second application. To cite a few examples it may be that after the disposal of the first application, the landlord had been rendered houseless due to the house occupied by him falling down due to decay or heavy rains or being destroyed by fire. Could anyone say that irrespective of the changes that have taken place, the findings rendered in the previous application would have the force of relevancy till the period of six months fixed under the rule has expired? It is, therefore, manifest that the rule of presumption enunciated in Rule 18(1) is only to serve as a guideline to be followed by the Prescribed Authority if he finds the circumstances to remain unchanged and the finding rendered in the earlier application to have relevance even with reference to the facts set out in the second application. The rule is intended to avoid multiplicity of proceedings as the very heading given to the rule would make it clear. It will therefore be inequitable and unrealistic to construe Rule 18(1) as containing an inexorable legal prescription for rejecting a second application filed within the prescribed time limit solely on the basis of the findings rendered in the earlier application."

26. It is these decision, which have been relied upon by the Appellate Authority to repel the tenant's contentions, and in our opinion rightly so. The bar under Rule 18(2) of the Rules would not apply in this case, because the earlier application, that is to say, the second application preceding the instant application for release was rejected by the Prescribed Authority on 29.01.1998, whereas the present application was moved on 23.07.2001. Therefore, the instant application was well beyond the period of one year from the rejection of the second application for release by the Prescribed

Authority. The contention raised on behalf of the landlord that the period of one year under Rule 18(2) has to be reckoned from the date of the appellate order passed in the second application for release, that is to say, on 11.05.2001, cannot be countenanced. Even otherwise, the Rule has been held to be directory and would not work as a bar in the sense understood in law to affect maintainability.

27. What is of substance is whether the circumstances of the parties have changed since the rejection of the earlier release application. In the opinion of this Court, like the Appellate Court, they have. The landlord's daughter has entered the B.Com. Course, whereas the son reached his intermediate grade. The landlord on evidence has also been found to be without a shop of his own, though he has residential accommodation to take care of that part of his need. These circumstances are change enough to entitle the landlord to renew his prayer for release of the demised shop, post rejection of his previous application. The finding of the Appellate Authority cannot be faulted on this score at all.

28. It is argued on behalf of the tenant that there is no bona fide need established by the landlord, entitling him release of the demised shop. It is pointed out that in Paragraph Nos.8 and 9 of the objections/written statement filed in response to the release application, it has been pleaded that the landlord, his brothers and mother are living jointly. The landlord has recently purchased a shop, bearing No.98, situate in Mohalla Jawahar Chowk, Jhansi on 22.11.2001. He has also purchased a Shop No.190 on 25.05.2004 in the name of Smt. Manju Agrawal wife of his brother Sanjay Agrawal. The said facts are asserted in Paragraph No.10 of the written statement.

29. It is pointed out on behalf of the tenant that it was brought to the notice of the Authorities below that the landlord has a number of accommodations, to wit, Shop No.14, Premises No.207, where he is living, a shopping complex in the name of Mitra Market, firms, namely, M/s. Ram Sewak Ramesh Chandra, K.B. Jewellers, Kamaria Jewellers and M.K. Jewellers. He also has a residential house purchased through a sale deed dated 01.08.2008 at the Sharda Hills, Nai Basti and other properties. It is urged that it was taking into account the availability of all these accommodations that the Prescribed Authority rightly rejected the landlord's application for release.

30. It is contended on behalf of the tenant by the learned Counsel that in the appeal preferred, the landlord did not challenge these findings recorded by the Prescribed Authority. It is further argued that Shop No.190, purchased in the name of the landlord's brother's wife, Smt. Manju Agrawal was sold off by the landlord on 24.02.2011. This shop was available to the landlord for doing business, but he has chosen not to do so, and instead, sold it off. This, according to the learned Counsel for the tenant, is for the reason that he never needed the aforesaid shop as he is well settled in business. Likewise, he has no bona fide need for the demised shop.

31. In addition, it is submitted that the landlord has purchased a residential house on 01.08.2008 in the Sharda Hills Colony out of his own resources garnered from the business that he does in premises No.164, Sarrafa Bazar, Jhansi. In this connection, he has drawn the Court's attention to the sale deed at Page No.226 of the paper-book. Again, according to the learned Counsel for the tenant, the landlord has purchased

another house in Om Shanti Nagar. To substantiate the said fact, apart from referring to the findings of the Authorities below, the learned Counsel has drawn the Court's attention to a photostat copy of the sale deed annexed as Annexure No.19 to the paper-book. It is urged that on the question of bona fide need, the affidavits of Ishaq, Manmohan Srivastava and Anis Khan, annexed as Annexure Nos.21, 22 and 23 to the writ petition, had not been considered by the Appellate Authority. It is, thus, submitted that the Appellate Authority in recording its finding on the question of bona fide need had ignored from consideration material evidence on record.

32. It is next submitted that the Appellate Authority in answering the issue of bona fide need has also committed an error apparent on the face of record. It is submitted in substantiation that the Prescribed Authority has recorded findings to the effect that the landlord's family was living happily together as a joint family, and also that the landlord has a number of accommodations together with his family available to him, both for residential purpose and the purpose of doing business. He does not need the demised shop. According to the learned Counsel for the tenant, since this finding recorded by the Prescribed Authority for the reasons given by the said Authority has not at all been considered by the Appellate Authority, the impugned judgment is vitiated by error apparent.

33. The learned Counsel for the landlord, on the other hand, has supported the findings recorded by the Appellate Authority and submitted that all the various accommodations, pointed out by the tenants to be available to the landlord, have been considered before holding in favour of

the landlord on the issue of bona fide need. The landlord's bona fide need has been accepted for the purpose of business alone. It is urged that the Appellate Authority has not ignored from consideration any evidence or committed an error apparent, so as to merit interference by this Court with a pure finding of fact in the exercise of jurisdiction under Article 226 of the Constitution.

34. This Court has carefully considered the submissions advanced by the learned Counsel for parties and perused the impugned judgment and the record. The judgment of the Prescribed Authority has also been looked into.

35. This Court finds that the landlord's submissions that the Appellate Authority has ignored from consideration material evidence or committed an error apparent in record findings on the issue of bona fide need are far from sustainable. The Appellate Authority has considered the residential accommodation available to the landlord in House No.207, Daru Bhaundela and the case of parties about the space therein, where the landlord resides with his three other brothers and their families. The Appellate Authority has not accepted the landlord's case that the said house has 5-6 rooms nor that of the tenant that it has 20-25 big rooms, besides bathrooms and other facilities. The Appellate Authority has considered the Amin's report, paper No.85-C and returned a finding that this house has a ground floor, first floor and second floor, comprising of a total of 10 rooms. The Appellate Authority has then considered the number of family members in the landlord's nuclear family and that of his three brothers, all of whom are said to live in House No. 207, Daru Bhaundela as a joint family.

36. It has been held that according to the ration cards on record, the landlord's brother, Ramesh Chandra has a family of seven, the landlord a family of four, Mahesh Chandra a family of five, Ajay Kumar a family of four and Sanjay Agrawal again a family of four. The Appellate Authority has taken note of the fact that the landlord's mother has passed away pending proceedings. The landlord and his brothers together comprise 25 members. The other residential accommodations considered are the four houses, bearing Nos.33, 210, 212 and 213, Daru Bhaundela, another house bearing No.22, Nanjhai Bazar and the two houses purchased at Sharda Hills Colony and Om Shanti Nagar. The Appellate Authority has recorded a finding that apart from House No.207, the landlord has houses located at Premises Nos.212, 213, Daru Bhaundela and has also purchased two houses pending appeal, one at Om Shanti Nagar and the other at Sharda Hills Colony, Nai Basti. The former has been noted to have an area of 162 square meters and the latter an area 54.03 square meters. The Appellate Authority has also recorded a finding based on the ration cards of the landlord's family that his brother Mahesh Chandra lives at Premises No.213, Daru Bhaundela, whereas Ajay Kumar resides in Premises No.33 and Sanjay Kumar in 210. It has been held that the landlord's brothers live in House Nos.33, 210, 212, 213, Daru Bhaundela. The Appellate Authority has returned a finding that the landlord has no bona fide need so far as his residential requirement goes. Here, the Appellate Authority for its own and very detailed reasons is in agreement with the Prescribed Authority.

37. So far as accommodation for housing the landlord's business is

concerned, the Appellate Authority has very meticulously scrutinized all properties said to be available to the landlord for the purpose about their title, utility and suitability. There is mention of a certain land purchased in the names of Meena Agrawal, Manju Agrawal and Mamta Agrawal, wives of the landlord and two of his brothers, jointly on 21.05.2008. This land is located on the Gwalior Road. The Appellate Authority has opined that the land is agricultural as evident from the document bearing paper No.95-C. It has no built up area and is suitable for agriculture. The Appellate Authority has held that ownership of this kind of land is irrelevant to judge the landlord's need for the demised shop. The said finding is beyond exception in our opinion. There is then reference to a certain Shop No.14, Nanjhai Bazar, Jhansi abutting the demised shop, which has been purchased by the landlord's brother Sanjay Agrawal on 11.01.1994. A suit against the sitting tenant in the shop, one Irshad, is noted to have been instituted, being S.C.C. Suit No.123 of 1994. This suit was decreed on 23.09.1995 and a revision from the decree dismissed. About the aforesaid shop, it is commented that it belongs to Sanjay Agrawal; not the landlord.

38. There is then a reference to a Shop No.190, Bada Bazar, Chaudhariyana, standing in the name of Manju Agrawal wife of Sanjay Agrawal, that was purchased on 25.05.2005 through a sale deed of that date. This shop too had a tenant by the name Wasiurrahman, against whom P.A. Case No.13 of 2005 was instituted, seeking release. The release application was allowed on 16.04.2010. Similarly, Sanjay Agrawal purchased premises bearing No.72, Jawahar Chowk, Jhansi and against the sitting tenant in the said premises

instituted S.C.C. Suit No.39 of 1992. The said suit was compromised with the tenant in revision.

39. It has been remarked that if any of these shops bearing No.14, Nanjhai Bazar, Jhansi, Shop No.190, Bada Bazar, Chaudhariyana, or Shop No.72, Jawahar Chowk, Jhansi, have been purchased and got vacated by Sanjay Agrawal or his wife, it is of no relevance to the landlord's need for the demised shop. This is so because none of these shops belong to the joint family or the landlord. These belong to the landlord's brother, Sanjay Agrawal or his wife. Doing a meticulous analysis of all properties said to be available, it has been held that the landlord has no premises available to him for the purpose of his business.

40. The Appellate Authority has recorded findings in meticulous detail, after analyzing evidence on record about the availability of business accommodation to the landlord. In Paragraph Nos.8 and 10 of the judgment, the Appellate Authority has recorded the following findings:

"8- विपक्षी ने सायल के स्वामित्व के मकान सं0-22 नझाई बाजार झॉसी भी बताया जो तिर्मांजिला है और जिसके प्रथमतल पर 15 दूकानें है कहा, प्रलेख 80 सी के आधार पर 22 नझाई बाजार के स्वामी महेशचन्द्र अग्रवाल एवं अजय अग्रवाल सायल के भाई है, स्वीकार किया जावेगा। न तो यह संयुक्त परिवार की सम्पत्ति है और न ही यह सायल की है तथा 210 डरू भोंडैला एवं 213 डरू भोंडैला सायल के पिता रामसेवक के स्वामित्व के मकानात है यह प्रलेख 78 व 79 सी पंचसाला की नकल से स्पष्ट होता है। इन दोनों ही मकानों में किरायेदार क्रमशः रमेशचन्द्र तिवारी एवं रामदास गुप्ता है जो सायल के कब्जे में नहीं है तथा भवन सं0-33 डरू भोंडैला कैलाशबाबू, महेश, काशीप्रसाद एवं अजय के स्वामित्व के हैं प्रलेख 77 सी से स्पष्ट होता है इनमें से कोई जगह सायल के कारोबार के लिए उपलब्ध नहीं है।"

"10..... उपरोक्त विवेचना से मैं इस निष्कर्ष पर पहुँचता हूँ कि सायल/ किरायेदार के पास एक पैत्रिक मकान सं0-207 डरू भोंडैला में है उसका स्वयं का मकान ओमशांतिनगर एवं शारदाहिल्स कालौनी नईबस्ती झॉसी में है जिसे दौरान मुकदमा सायल ने खरीदा है। सायल की संयुक्त हिन्दू परिवार की सम्पत्ति की दूकान नं0- 190 बडाबाजार, 72 जवाहर चौक झॉसी, एवं दूकान नं0-14 नझाई बाजार न होकर तनहा संजय अग्रवाल की है सायल एवं उसके भाइयों का मित्र मार्केट या नवीन यूनिट स्कूल नईबस्ती में स्वामित्व की कोई जगह नहीं है तथा 164 सराफा बाजार झॉसी तथा 238, 239, 240 सराफा बाजार सायल के बड़े भाई रमेश अग्रवाल की है जिससे कोई सरोकार व वास्ता सायल का नहीं है इन दूकानों में सायल का कोई हक व हिस्सा नहीं है सायल के पिता के नाम मकान नं० 210, 213 डरू भोंडैला है जिसमें कारोबार के लिए कोई जगह नहीं है तथा इनमें किरायेदारान रमेशचन्द्र तिवारी एवं रामदास गुप्ता रहते हैं जो खाली स्थिति में नहीं है। निर्मुक्ति प्रार्थनापत्र के कथन कि विवादित दूकान रिलीज होने पर वह इसका निर्माण कराकर रिहायश एवं कारोबार के लिए बनवा लेगा। इसमें से रिहायश की आवश्यकता सायल की पूर्ण हो चुकी है। कारोबार के लिए कोई जगह न होने से विवादित दूकान सायल के कारोबार के लिए निर्मुक्त की जाने योग्य है।"

41. There is no such perversity about the findings of the Appellate Authority on the question of bona fide need of the landlord to establish his business as may impel this Court to interfere with those findings. The various shops that have been referred to by the tenant as ones available to the landlord, either do not belong to the landlord or are not available. These are not in the ownership of the joint Hindu family or the landlord's ownership.

42. So far as the shopping complex in the Mitra Market or the Naveen Unit School, Nai Basti is concerned, the finding of the Appellate Authority is that there is no such accommodation available either with the landlord or his brothers. It is a non-existent accommodation.

43. Now, turning to the finding about comparative hardship, one factor that the

Appellate Authority has taken into account is the fact that there is no evidence to show that the tenant has made efforts during the period of 40 years that he has been in occupation of the demised shop to search for alternative accommodation. Indeed, there is no evidence about it. The proposition is well settled that in a case where the tenant does not search for alternative accommodation, particularly, after the landlord initiates proceedings for release against him, the answer to the issue of comparative hardship invariably ought to be against the tenant. In this regard, reference may be made to the decisions in **Sarju Prasad v. VIIIth Additional District Judge, Faizabad and others, 2007 (2) AWC 1068 (L.B.) and Arvind Kumar Mishra v. Jitendra Kumar Gupta and others, 2016 (1) A.R.C. 634.**

44. There is again another factor that has weighed with the Appellate Authority in deciding the question of comparative hardship against the tenant. It is the fact that the tenant has been in occupation of the demised shop for 40 years on a paltry rent of Rs.32.50. The Appellate Authority has placed reliance in this regard in **Sheo Shanker Das v. Special Judge & Ors, 2006 (3) ALJ (NOC) 467 (All)**. This Court thinks that a tenant holding for a long period of time on an absurdly low rent, ought certainly to be held disentitled, vis-a-vis the landlord, when determining the issue of comparative hardship. After all comparative hardship, though a statutory requirement under Section 21(1)(a) of the Act, is nevertheless a principle built on equity. The equity is if the tenant would suffer greater hardship by the grant of the release application than that which the landlord would suffer by its refusal. A tenant who holds on to a rented premises for a very long period of time, on a

ridiculously low rent, virtually does something ex-proprietary. To him, no benefit of any equity or a statutory rule founded on equity ought to be extended.

45. Apart from the aforesaid issues, it is a consistent principle that in the exercise of our writ jurisdiction, this Court ought not to readily interfere with findings of fact recorded by the Authorities of fact functioning under the statute. Here, the findings about bona fide need involved require determination based on sifting of evidence and conclusions drawn that conform to the law. The Appellate Authority has done both satisfactorily. There is no perversity about the Appellate Authority's judgment. Even if the Appellate Authority has taken a different view of the evidence than the one by the Prescribed Authority, it is entitled to do that as a Court of first appeal. No exception can be taken to it. There is no finding of consequence recorded by the Prescribed Authority, which may not have been reversed by the Appellate Authority. The principle that this Court ought not to interfere with a pure finding of fact recorded by the statutory Authorities under the Act is eloquently expressed in **Ashok Kumar and others v. Sita Ram, (2001) 4 SCC 478**, where it has been held:

"17. The question that remains to be considered is whether the High Court in exercise of writ jurisdiction was justified in setting aside the order of the Appellate Authority. The order passed by the Appellate Authority did not suffer from any serious illegality, nor can it be said to have taken a view of the matter which no reasonable person was likely to take. In that view of the matter there was no justification for the High Court to interfere with the order in exercise of its writ

jurisdiction. In a matter like the present case where order passed by the statutory authority vested with power to act quasi-judicially is challenged before the High Court, the role of the Court is supervisory and corrective. In exercise of such jurisdiction the High Court is not expected to interfere with the final order passed by the Statutory Authority unless the order suffers from manifest error and if it is allowed to stand it would amount to perpetuation of grave injustice. The Court should bear in mind that it is not acting as yet another appellate court in the matter. We are constrained to observe that in the present case the High Court has failed to keep the salutary principles in mind while deciding the case."

46. In this view of the matter, in our considered opinion, no case for interference with the impugned judgment passed by the Appellate Authority is made out.

47. In the result, this writ petition **fails** and is **dismissed**.

48. The interim order, already granted, is hereby vacated.

49. There shall be no order as to costs.

(2023) 5 ILRA 1629
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.03.2023

BEFORE

THE HON'BLE MRS. SANGEETA CHANDRA, J.

Writ A No. 11593 of 2021
with
other cases

Ved Prakash Mittal & Ors. ...Petitioners
Versus

State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:

Sri Satyendra Singh, Sri Anil Kumar Bajpai

Counsel for the Respondents:

C.S.C., Sriprakash Singh

Service Law-The formula and procedure for computation of pension as given in the Government Orders dated 18.07.2017 modifying the earlier decision for Government employees who retired before 01.01.2006 shall be applicable to the petitioners as well as the Concordance Tables issued from time to time for determination of their pension/ family pension including the ones appended to the Government Order dated 04.09.2017. The Government Order dated 01.05.2018 also shall apply to the petitioners-Retrospective operation of revised pension with effect from 01.01.2016 and arrears to be paid, nothing on record to show that question of payment of arrears with effect from 01.01.2016 to 24.02.2021 was deliberated upon seriously-It is evident from the fact that information in prepared formats continued to be collected by the Administrative Department even after issuance of the impugned office memo. It is therefore directed that the Respondent No.1 shall collect all necessary information and also determine the availability of finances and issue appropriate orders within a period of three months from the date a copy of this order is produced before it, taking into account also the observations made by this Court hereinabove-(Para 79)

Petition partly allowed. (E-15)

List of Cases cited:

1. Praveen Kumar Agarwal Vs St.of U.P. & ors.(2011) ILR 1 Allahabad 21
2. (Shakuntala Singh Vs St.of UP & ors.) 2019 (11) ADJ 495
3. Subrata Sen Vs U.O.I.& ors.2021 (8) SCC 71