

20. The initial FIR that was lodged on 15.10.2024 by the police official concerned related to a general information regarding the incident which happened during the immersion procession of Devi Durga idols where one person was shot as a result whereof crowd got angry and destroyed the shops of the other community through stone-pelting and setting them on fire whereas the FIR that was lodged on 18.10.2024 at 05:11 pm by the public representative, the sitting MLA of Mahasi Constituency with regard to the incident where the named accused alongwith others were holding Dharna Pradarshan with the body of the deceased-victim and not letting the District Administration and the Police Authorities from carrying out their public duties regarding the autopsy of the deceased-victim by taking his body to the mortuary for post mortem examination. There was firing of gun shot in the air also.

21. *Prima facie*, we do not find that the second FIR which was lodged on 18.10.2024 and which has been challenged in these petitions to be a part of the same transaction. It is related to a subsequent development and the Section of the B.N.S. invoked in the same are not identical and do not relate to the same incident or the same accused.

22. We, therefore, do not find any good ground to show interference, as prayed for, in these petitions, hence, they are **dismissed**.

-----  
**(2024) 11 ILRA 397**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 07.11.2024**

**BEFORE**

**THE HON'BLE ASHUTOSH SRIVASTAVA, J.**

Matters Under Article 227 No. 1205 of 2024  
 (Civil)

**Usman**

**...Petitioner**

**Versus**

**Smt. Rajeshwari & Anr.**

**...Respondents**

**Counsel for the Petitioner:**

Sri Lalit Kumar

**Counsel for the Respondents:**

Sri Sanjay Kumar Dubey, Smt. Shreya Gupta

**Civil Law - U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972) - Section 21(1)(a) – Bona fide need – Comparative hardship – Petition under Article 227 challenging concurrent findings of Prescribed Authority and Appellate Authority allowing landlord's application for release of shop for setting up chamber – Landlord was an advocate by profession – Tenant claimed shop was unsuitable and concealed facts regarding landlord's existing chamber – Both authorities below held landlord's need as genuine and bona fide – Tenant failed to deny specific averments in release application; adverse inference drawn – Order VIII Rule 5(1) CPC- Comparative hardship also decided against tenant as no alternative accommodation was explored.**

**Constitution of India, 1950 - Article 227 – Scope and limitation – Interference permissible only in cases of jurisdictional error, grave dereliction of duty, or manifest injustice – Reappreciation of evidence or correction of mere factual errors not permissible – Reaffirmed by catena of Supreme Court decisions- petition dismissed. (Paras 11, 14, 17, 18, 19, 20, 21 to 31 and 32)**  
**HELD:**

In the opinion of the Court since the tenant/petitioner has not specifically denied the averments in para 5 of the release application an adverse inference is liable to be drawn against him and the fact St.d in para 5 of the release application would be treated to have

been admitted. Order VIII Rule 5 (1) CPC provides that every allegation of fact in the plaint if not denied specifically in the written statement shall be taken to be admitted by the defendant. I am fortified by the view taken by the Apex Court in the case of Suresh Chandra Jain Vs Jai Krishna Goswamy & ors. reported in 1993 (2) ARC 484. (para 11)

The scope of judicial review in such matters where the orders of courts below are assailed before this Court in a writ petition under Article 226/227 of the Constitution is very limited. This power involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes. (Para 14)

The above discussion leaves no scope for interference with the orders impugned in this writ petition. I have no doubt in holding that this petition lacks substance and is devoid of merits. (Para 32)

**Petition dismissed.** (E-14)

**List of Cases cited:**

1. Pawan Kumar Jain Vs Sushila Devi Jain & ors. reported in 2021 (1) ARC 742
2. Suresh Chandra Jain Vs Jai Krishna Goswamy & ors. reported in 1993 (2) ARC 484
3. D. N. Banerji Vs P. R. Mukherjee 1953 SC 58
4. Waryam Singh & anr. Vs Amarnath & anr. AIR 1954 SC 215
5. Nibaran Chandra Bag Vs Mahendra Nath Ghughu, AIR 1963 SC 1895
6. Rukmanand Bairoliya Vs the St. of Bihar & ors., AIR 1971 SC 746
7. Gujarat Steel Tubes Ltd. Vs Gujarat Steel Tubes Mazdoor Sabha & ors., AIR 1980 SC 1896
8. Laxmikant R. Bhojwani Vs Pratapsingh Mohansingh Singh Pardeshi, (1995) 6 SCC 576
9. Reliance Industries Ltd. Vs Pravinbhai Jasbhai Patel & ors., (1997) 7 SCC 300
10. M/s. Pepsi Food Ltd. & anr. Vs Sub-Judicial Magistrate & ors., (1998) 5 SCC 749
11. Virendra Kashinath Ravat & ors. Vs Vinayak N. Joshi & ors. (1999) 1 SCC 47
12. Rena Drego Vs Lalchand Soni & ors., (1998) 3 SCC 341
13. Chandra Bhushan Vs Beni Prasad & ors., (1999) 1 SCC 70
14. Savitrabai Bhausaheb Kevate & ors. Vs Raichand Dhanraj Lunja, (1999) 2 SCC 171
15. Savita Chemical (P) Ltd. Vs Dyes & Chemical Workers' Union & anr., (1999) 2 SCC 143
16. U.O.I. & ors. Vs Himmat Singh Chahar, (1999) 4 SCC 521
17. Ajaib Singh Vs Sirhind Co-operative Marketing cum Processing Service Society Ltd., (1999) 6 SCC 82
18. Mohan Amba Prasad Agnihotri Vs Bhaskar Balwant Aheer, AIR 2000 SC 931
19. Indian Overseas Bank Vs Indian Overseas Bank Staff Canteen Workers' Union (2000) 4 SCC 245
20. U.O.I. Vs Rajendra Prabhu, (2001) 4 SCC 472
21. Maharashtra Vs Milind & ors., (2001) 1 SCC 4
22. Extrella Rubber Vs Dass Est. (P) Ltd., (2001) 8 SCC 97
23. Omeph Mathai & ors. Vs M. Abdul Khader, (2002) 1 SCC 319
24. Surya Dev Rai Vs Ram Chander Rai & ors. (2003) 6 SCC 675

25. Jasbir Singh Vs St. of Pun. (2006) 8 SCC 294
26. Shalini Shyam Shetty & anr.Vs Rajendra Shankar Patil (2010) 8 SCC 329
27. Kokkanda B. Poondacha & ors.Vs K.D. Ganapathi & anr.AIR 2011 SC 1353
28. Bandaru Satyanarayana Vs Imandi Anasuya (2011) 12 SCC 650
29. Abdul Razak (D) through Lrs. & ors.Vs Mangesh Rajaram Wagle & ors.(2010) 2 SCC 432
30. T.G.N. Kumar Vs St. of Kerala & ors.(2011) 2 SCC 772
31. Commandant, 22nd Battalion, CRPF & ors.Vs Surinder Kumar (2011) 10 SCC 244
32. U.O.I. Vs R.K. Sharma (2001) 9 SCC 592

(Delivered by Hon'ble Ashutosh  
Srivastava, J.)

1. Heard Sri Lalit Kumar, learned counsel for the tenant/petitioner and Smt. Shreya Gupta learned counsel appearing for the landlord/respondent.

2. This petition under Article 227 of the Constitution of India at the instance of the tenant has been filed questioning the judgment and order dated 09.11.2023 passed by the Additional District Judge, Court No. 1, Hathras in UPUB Appeal No. 01 of 2021 whereby and whereunder the Appeal of the Tenant/ petitioner has been rejected and the judgment and order of the Prescribed Authority dated 06.04.2021 allowing the application of the respondents/ landlords under Section 21 (1) (a) of the UP Act No. 13 of 1972 has been upheld.

3. The facts necessary for adjudication of the lis between the parties briefly stated are that the landlord/ respondents instituted

a P.A. Case being P.A. Case No. 13 of 2014 under Section 21 (1) (a) of the U.P. Act No. 13 of 1972 setting up a bona fide need for the shop situate in Gali Kaunjan Punjabi Market, Hathras under the tenancy of the petitioner. It was stated that the release was sought on the ground that the respondent no. 2 is an Advocate by profession and requires the shop for setting up his chamber. The tenant has no requirement of the shop and is only occupying it to get Pagri. He carries on his business in Mathura. The release application was contested by the petitioner denying the plaint case stating that the shop is very small measuring 8x10 Feet and not at all suitable for establishing an Advocate Chamber. It was also stated that the tenant would suffer greater hardship in comparison to the landlord and prayed that the release application be dismissed.

4. The Prescribed Authority/ Civil Judge, Hathras after due appreciation of the materials on record allowed the release application vide order dated 06.04.2021 holding the need of the landlord/ respondents as bona fide and genuine and the question of comparative hardship was also decided in favour of the landlord/ respondents and against the petitioner. The Appeal preferred by the petitioner against the order of the Prescribed Authority being P.A. Appeal No. 1 of 2021 was also dismissed vide judgment and order dated 09.11.2023. Both the orders have been assailed in this petition.

5. Learned counsel for the tenant/petitioner has assailed the impugned orders on the ground that the learned Prescribed Authority without considering and appreciating the oral and documentary evidence on record upheld the need of the landlord/ respondents holding it to be bona

fide. Placing reliance upon a decision of this Court in the case of *Pawan Kumar Jain vs. Sushila Devi Jain and 3 others reported in 2021 (1) ARC 742*, learned counsel for the tenant/ petitioner submits that the landlord is required to first prove and establish his bona fide need for the accommodation in dispute under the tenancy of the tenant. Elaborating his arguments further learned counsel for the tenant/ petitioner contends that the need pleaded by the landlord should be natural, real sincere and honest and should not be merely a pretence or pretext to evict a tenant. A mere statement or a pleadings on the part of the landlord that he bona fide required the said building for a purpose specified in the pleadings is not sufficient but the requirement has to be proved by the landlord by bringing sufficient evidence before the Court. The burden is on the landlord to establish his case affirmatively. Learned counsel for the tenant/ petitioner has invited the attention of this Court to the objections filed by the tenant/ petitioner to the release application under Section 21 (I) (a) to demonstrate that the landlord/ respondent no. 2 for quite some time has been practising law and has a chamber existing in which he is carrying of his practice as an Advocate. This fact has deliberately been concealed. The need for the accommodation under the tenancy of the petitioner is thus not bona fide. Besides by way of an evidence affidavit/ paper no. 32 C has established the fact that the landlord/ respondent no. 2 has been practising as an Advocate for the last 2 years from his chamber set up in his house. In his own affidavit the petitioner has stated that the landlord/ respondents have already obtained possession of a shop under the tenancy of one Dore Lal which can be utilized for setting up a chamber.

6. Learned counsel for the tenant/ petitioner has further argued that the learned Prescribed Authority while dealing with the issue of bona fide need ventured into the aspect that the tenant/ petitioner had not searched for any alternative accommodation after filing of the release application and proceeded to hold that the need of the landlord/ respondent was bona fide and genuine. It is submitted that the approach of the learned Prescribed Authority was patently erroneous inasmuch as the consideration for searching out alternate accommodation would be relevant for the purposes of comparative hardship and not for determining the bona fide need.

7. It has also been argued that the Appellate Authority manifestly erred in rejecting the Appeal and upholding the order of the Prescribed Authority. It is submitted that the Appellate Authority is required to record, the findings dealing with all issues as well as fact and with the oral and documentary evidence led by the parties. It is argued that the findings of the Appellate Authority falls short of the requirements under the law and as such is liable to be set aside.

8. The petition has been opposed by Ms. Shreya Gupta, learned counsel, who has put in appearance on behalf of the landlord/respondents. Ms. Shreya Gupta, learned counsel submits that the petition is concluded by findings of fact in as much as both the Prescribed Authority and the Appellate Authority have held the need set up by the landlord/ respondents to be bona fide and genuine. The comparative hardship has also been decided in favour of the landlord/ respondents and against the tenant/ petitioner. No interference is warranted by this Hon'ble Court and the

petition is liable to be dismissed at the threshold.

9. I have heard the learned counsels for the parties and have perused the records.

10. A perusal of the Release application under Section 21 (I) (a) of the UP Act No. 13 of 1972 reveals that the release was sought setting up bona fide needs for the shop under the tenancy of the tenant/ petitioner for starting a lawyer chamber for the landlord respondent no. 2 who admittedly was a practising lawyer. It was also stated in the release application in para 5 thereof that the tenant/ petitioner is not in need of the accommodation and has retained the possession only for the purposes of Pagri and carries on his business in Mathura. A perusal of the written statement of the petitioner filed to the release application the court finds that no reply has been given to the averments made in para 5 of the release application. The factum that the petitioner does not require the accommodation and that he carried on business in Mathura has not been controverted.

11. In the opinion of the Court since the tenant/ petitioner has not specifically denied the averments in para 5 of the release application an adverse inference is liable to be drawn against him and the fact stated in para 5 of the release application would be treated to have been admitted. Order VIII Rule 5 (1) CPC provides that every allegation of fact in the plaint if not denied specifically in the written statement shall be taken to be admitted by the defendant. I am fortified by the view taken by the Apex Court in the case of **Suresh Chandra Jain vs. Jai Krishna Goswamy and others reported in 1993 (2) ARC 484.**

12. The records further reveal that the release application was resisted by stating that the landlord/ respondent no. 2 has concealed the fact that he is already in possession of a chamber which he is utilising in his residential house and as such the need set up is not genuine. However, the learned Prescribed Authority while dealing with the issue of bona fide need has found that the landlord/ respondents established their need for the shop in dispute by oral and documentary evidence of Dinesh Kumar Bansal (Landlord/ Respondent no. 2) as P.W.-1, Ramji Lal Verma as P.W.-2, and Ghanshyam Das as P.W.-3. The tenant petitioner filed his own evidence affidavit and got examined Mahendra Singh as D.W.-3. The Prescribed Authority held that the tenant/ petitioner could not establish the fact that the landlord respondent no. 2 has already established his lawyer chamber. The Prescribed Authority also found that the tenant/ petitioner could not dictate how the landlord respondents may utilize certain property available with them to satisfy their need. It also found that the tenant petitioner had not made efforts to search out alternate accommodation after filing of the release application and accordingly decided the question of comparative hardship against the tenant/ petitioner. The release application was accordingly allowed.

13. In Appeal, the Court finds that the question of bona fide need of the landlord/respondents have been upheld. The question of comparative hardship has also been decided against the tenant/ petitioner on the ground that the tenant petitioner did not search for any alternate accommodation. Several authorities have been taken note of by the Appellate Authority while upholding the findings of the Prescribed Authority. The Court does

not deem it appropriate to burden this judgment by reiterating all the decisions relied upon suffice is to mention that having gone through both the judgments at length, I do not find any manifest error therein warranting interference in exercise of jurisdiction under Article 227 of the Constitution of India.

14. The scope of judicial review in such matters where the orders of courts below are assailed before this Court in a writ petition under Article 226/227 of the Constitution is very limited. This power involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes.

15. In *D. N. Banerji Vs. P. R. Mukherjee 1953 SC 58* the Court said:

"Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under articles 226 and 227 of the Constitution to interfere."

16. A Constitution Bench of Apex Court examined the scope of Article 227 of the Constitution in *Waryam Singh and another Vs. Amarnath and another AIR 1954 SC 215* and made following observations at p. 571 :

"This power of superintendence conferred by article 227 is, as pointed out

by Harries, C.J. in *Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee AIR 1951 Cal. 193*, to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors".

17. In *Mohd. Yunus v. Mohd. Mustaqim and Ors. AIR 1984 SC 38* the Apex Court held that this Court has very limited scope under Article 227 of the Constitution and even the errors of law cannot be corrected in exercise of power of judicial review under Article 227 of the Constitution. The power can be used sparingly when it comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. The High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there must be a case of flagrant abuse of fundamental principles of law or where order of the Tribunal, etc. has resulted in grave injustice.

18. For interference under Article 227, the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and de hors the factual and legal position on record. (*See: Nibaran Chandra Bag Vs. Mahendra Nath Ghughu, AIR 1963 SC 1895; Rukmanand Bairoliya Vs. the State of Bihar & ors., AIR 1971 SC 746; Gujarat Steel Tubes Ltd. Vs. Gujarat Steel Tubes Mazdoor Sabha & ors., AIR 1980 SC 1896; Laxmikant R. Bhojwani Vs. Pratapsingh Mohansingh Singh Pardeshi, (1995) 6 SCC 576; Reliance Industries Ltd. Vs. Pravinbhai Jasbhai Patel & ors., (1997) 7 SCC 300; M/s. Pepsi Food Ltd. & Anr. Vs. Sub-Judicial Magistrate & ors., (1998) 5*

**SCC 749; and Virendra Kashinath Ravat & ors. Vs. Vinayak N. Joshi & ors. (1999) 1 SCC 47).**

19. It is well settled that power under Article 227 is of the judicial superintendence which cannot be used to up-set conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. (See: *Rena Drego Vs. Lalchand Soni & ors., (1998) 3 SCC 341; Chandra Bhushan Vs. Beni Prasad & ors., (1999) 1 SCC 70; Savitrabai Bhausahab Kevate & ors. Vs. Raichand Dhanraj Lunja, (1999) 2 SCC 171; and Savita Chemical (P) Ltd. Vs. Dyes & Chemical Workers' Union & Anr., (1999) 2 SCC 143).*

20. Power under Article 227 of the Constitution is not in the nature of power of appellate authority enabling re-appreciation of evidence. It should not alter the conclusion reached by the Competent Statutory Authority merely on the ground of insufficiency of evidence. (See: *Union of India & ors. Vs. Himmat Singh Chahar, (1999) 4 SCC 521).*

21. In *Ajaib Singh Vs. Sirhind Co-operative Marketing cum Processing Service Society Ltd., (1999) 6 SCC 82*, the Hon'ble Apex Court has held that there is no justification for the High Court to substitute its view for the opinion of the Authorities/ Courts below as the same is not permissible in proceedings under Articles 226/227 of the Constitution.

22. In *Mohan Amba Prasad Agnihotri Vs. Bhaskar Balwant Aheer, AIR 2000 SC 931*, the Hon'ble Supreme

Court held that jurisdiction of High Court under Article 227 of the Constitution is not appealable but supervisory. Therefore, it cannot interfere with the findings of fact recorded by Courts below unless there is no evidence to support findings or the findings are totally perverse.

23. In *Indian Overseas Bank Vs. Indian Overseas Bank Staff Canteen Workers' Union (2000) 4 SCC 245*, the Court observed that it is impermissible for the Writ Court to reappreciate evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. The same cannot be disturbed for the mere reason of having based on materials or evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken the High Court can not interfere.

24. In *Union of India Vs. Rajendra Prabhu, (2001) 4 SCC 472*, the Hon'ble Apex Court held that the High Court, in exercise of its extraordinary powers under Article 227 of the Constitution, cannot re-appreciate the evidence nor it can substitute its subjective opinion in place of the findings of Authorities below.

25. Similar view has been reiterated in *State of Maharashtra Vs. Milind & ors., (2001) 1 SCC 4; Extrella Rubber Vs. Dass Estate (P) Ltd., (2001) 8 SCC 97*; and *Omeph Mathai & ors. Vs. M. Abdul Khader, (2002) 1 SCC 319*.

26. In *Surya Dev Rai Vs. Ram Chander Rai and others* (2003) 6 SCC 675, it was held that in exercise of supervisory power under Article 227, High Court can correct errors of jurisdiction committed by subordinate Courts. It also held that when subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has occasioned, the Court may step in to exercise its supervisory jurisdiction. However, it also said that be it a writ of certiorari or exercise of supervisory jurisdiction, none is available to correct mere errors of fact or law unless error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or disregard of the provisions of law; or, a grave injustice or gross failure of justice has occasioned thereby.

27. In *Jasbir Singh Vs. State of Punjab* (2006) 8 SCC 294, the Court said:

"...while invoking the provisions of Article 227 of the Constitution, it is provided that the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. The power of superintendence exercised over the subordinate courts and tribunals does not imply that the High Court can intervene in the judicial functions of the lower judiciary. The independence of the subordinate courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior courts in the discharge of their judicial functions."

28. In *Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil* (2010) 8 SCC 329, the Court said that power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court. The above authority has been cited and followed in *Kokkanda B. Poondacha and others Vs. K.D. Ganapathi and another* AIR 2011 SC 1353 and *Bandaru Satyanarayana Vs. Imandi Anasuya* (2011) 12 SCC 650.

29. In *Abdul Razak (D) through Lrs. & others Vs. Mangesh Rajaram Wagle and others* (2010) 2 SCC 432, Apex Court reminded that while exercising jurisdiction under Article 226 or 227, High Courts should not act as if they are exercising an appellate jurisdiction.

30. In *T.G.N. Kumar Vs. State of Kerala and others* (2011) 2 SCC 772, the Court said that power of superintendence conferred on the High Court under Article 227 of the Constitution of India is both administrative and judicial, but such power is to be exercised sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority.

31. In *Commandant, 22nd Battalion, CRPF and others Vs. Surinder Kumar* (2011) 10 SCC 244, Apex Court referring to its earlier decision in *Union of India Vs. R.K. Sharma* (2001) 9 SCC 592 observed that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226 or 227.

