

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Writ Petition (M/S) No. 629 of 2003**

Smt. Pushpa Devi

....Petitioner

**Versus**

Sri Bishamber Singh & others

.... Respondents

*Mr. B.D. Jha and Mr. P.C. Petshali, Advocates for the petitioner.  
Mr. Siddhartha Singh, Advocate, for the respondent no.1/9.*

Judgment Reserved - 19.10.2016

Date of Judgment - 28.10.2016

**Hon'ble Rajiv Sharma,J.**

The present petition is instituted against the judgment rendered by learned Additional District Judge/ IInd FTC, Dehradun on 05.07.2003 in Rent Control Appeal No.10 of 1998.

“Key facts” necessary for adjudication of this petition are that Mr. Bishamber Singh (now deceased) filed a petition under Section 21(1) A of the U.P. Act No. XIII of 1972, against the petitioner Smt. Pushpa Devi and respondent no.2 Mahesh Chandra, for release of the premises, on the ground of bona fide need. The petition was contested by the tenant.

Learned Prescribed Authority passed an order on 22.12.1997, ordering the tenant to vacate the premises within a period of one month from the date of order i.e. 22.12.1997.

The tenant filed an appeal against the order dated 22.12.1997 before the Additional District Judge/IInd FTC, Dehradun. He also dismissed the appeal on 05.07.2003. Hence, this writ petition.

The landlord has instituted the petition seeking release of the property due to personal *bona fide* need.

Learned Prescribed Authority also visited the spot to ascertain the dimensions of the property and the requirement of the parties.

Mr. B.D. Jha, learned counsel for the petitioner/tenant as vehemently argued that the requirement of the landlord was not bona fide. He has also contended that since the landlord has acquired more properties during the pendency of the Rent Control Appeal No.10-98, thus the bonafide requirement has now ceased to exist.

The landlord has also brought on record, during the course of the appeal, the details of property which he acquired during pendency of the proceedings. He has not sold any property, acquired by him after the institution of the case. The landlord also requires the property for his grandchildren.

Sri Ram Singh (eldest son of landlord) has started living separately from Sri Bishamber Singh. Initially, there were nine members in the family which now have increased to fifteen.

The bonafide requirement of the landlord is to be seen at the time when he filed the petition, although, subsequent developments can be taken into consideration to assess the comparative hardships faced by the landlord and tenant.

The landlord, in the present case, though has acquired properties after institution of the case but the same is inadequate for his requirement. The tenant cannot ask the landlord to shift to the newly acquired property. The landlord is entitled to live according to his own requirements.

It was also argued that Sri Ram Singh (son of landlord) has also acquired new property. The properties,

acquired by Sri Ram Singh, are not available to the landlord.

The courts below have given concurrent findings that the accommodation with the landlord was inadequate. He acquired more properties for himself, daughter-in-law and his grandchildren. The landlord has given the details of such property, so acquired, along with map. One property is situated in Kedarpuram and another is in Forest Research Institute (FRI). However, the fact of the matter is that the tenant cannot ask the landlord to shift to a particular place either at Kedarpuram or at F.R.I. Colony.

It also cannot be said, in view of the circumstances mentioned hereinabove, that the requirement of bona fide need has ceased to exist after the landlord acquired two more properties through his family members.

The family of Smt. Pushpa Devi was living with the family of Sri Mahesh Chandra. Sri Mahesh Chandra, in fact, is having the alternative accommodation. One shop is also available with Smt. Pushpa Devi to earn her livelihood.

Accordingly, there is no merit in this writ petition and the same is hereby dismissed.

Date: 28.10.2016  
NISHANT

**(Rajiv Sharma, J.)**