

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**  
**Writ Petition (M/S) No. 2880 of 2014**

Anand Mangal Thulgharia

... Petitioner

Vs

Smt. Uma Devi & others

... Respondents

Mr. Aditya Singh, learned counsel for the petitioner.

**Hon'ble Manoj K. Tiwari, J. (Oral)**

1. This is landlord's petition against the judgment and order dated 05.04.2014 passed by learned Additional District Judge, Almora in Rent Control Appeal No. 1 of 2012, whereby tenants appeal, filed under Section 22 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (*from hereinafter referred to as "U.P. Act No. 13 of 1972"*), was allowed.

2. Petitioner filed an application for release of a shop situated in Chaughan Pata, Almora on the ground that the said shop is needed by him for expanding his photography business by establishing a photography lab. In para 3 of the release application, it was stated that petitioner had sent a written representation to the tenant (*Prakash Singh Mehta – original tenant*), indicating his need for the shop in question, which was served upon the tenant on 05.12.2010. It was further stated in the release application that the building, including shop in question, was purchased by him from one Sri Hiranath, the previous owner, in the year 1988. The release application, filed by the petitioner along with supplementary affidavit, bears the date of 03.01.2011, which indicates that the said application was filed on 03.01.2011 or some other date soon thereafter.

3. The tenant filed his written statement in which he stated that the need set up by the landlord is artificial; landlord has a big house in which in addition to another shop,

there are six more rooms. It was further stated in the written statement that tenant is poor person, who is running a tea stall from the shop in question and his family also resides in the said shop. It was further stated that originally the rent of the shop in question was ₹35/- per month, which was enhanced by the landlord from time to time and presently, he is paying ₹1,100/- per month as rent. The tenant further stated that no notice to vacate the shop in question was given by the landlord, after purchasing the property in the year 1988.

3. Learned trial court allowed the release application, filed by the landlord, vide judgment and order dated 03.02.2012. However, the question of maintainability of the release application in the absence of notice, as contemplated in first Proviso to Section 21 (1) of U.P. Act No. 13 of 1972, was not at all considered by the learned Prescribed Authority.

4. It is pertinent to mention here that before filing appeal before the appellate court, original tenant i.e. Prakash Singh Mehta passed away, therefore, his legal representatives filed appeal against the order passed by learned Prescribed Authority.

5. The tenants challenged the judgment and order dated 03.02.2012 passed by learned Prescribed Authority by filing an appeal, which has been allowed by learned Additional District Judge, Almora vide judgment and order dated 05.4.2014, which is under challenge in this petition.

6. Heard Mr. Aditya Singh, learned counsel for the petitioner and perused the record.

7. Section 21 (1) of U.P. Act No. 13 of 1972 provides that the landlord can seek eviction of a tenant from a building only on two grounds, namely, (a) that the building is *bonafide* required in its existing form or after demolition and new

construction, by the landlord himself or any member of his family (b) that the building is in a dilapidated condition and is required for the purpose of demolition and new construction.

8. First Proviso to Section 21 (1) (a) of U.P. Act No. 13 of 1972 is enacted to cover a class of tenants who are sitting tenants and whose premises are subsequently purchased by landlords who seek to evict the sitting tenants on the ground of *bonafide* requirement as envisaged by Section 21 (1) (a) of the Act. It provides twin protection to such tenants, namely; (a) no application for their eviction shall be entertained before expiry of three years period from the date of purchase of the premises by the present landlord; (b) before filing an application for eviction, landlord will be required to give six months notice to such tenant.

9. First Proviso to Section 21 (1) (a) is reproduced below for ready reference:

**“21. Proceeding for release of building under occupation of tenant.** - (1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists namely-

(a) .....

(b) .....

Provided that where the building was in the occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of this Act, no application shall be entertained on the grounds, mentioned in clause (a), unless a period of three years has elapsed since the date of such purchase and the landlord has given a notice in that behalf to the tenant not less than six months before such application, and such notice may be given even before the expiration of the aforesaid period of three years:”

10. Hon'ble Supreme Court in the case of Martin & Harris Ltd. Vs. VIth Additional District Judge & others, reported in (1998) 1 SCC 732, has held that requirement of six months notice before entertaining an application under Section 21 (1) (a) of U.P. Act No. 13 of 1972 is mandatory and confers protection to the tenant concerned, however, it can be waived by the tenant.

11. Subsequently, in the case of Nirbhai Kumar Vs. Maya Devi & others, reported in (2009) 5 SCC 399, Hon'ble Supreme Court reiterated that issuance of notice in terms of First Proviso of Section 21 (1) (a) of U.P. Act No. 13 of 1972 is mandatory. Relevant extract of the said judgment is extracted below:

“A three years period becomes relevant when there is a change of ownership. This three years period is a sort of moratorium intended for the tenant's protection. It is to be noted that the crucial expression in the proviso is “and such notice may be given even before the expiration of the aforesaid period of three years”. In other words, notice can be given either before or after the three years period. After expiry of the three years period the protection given to the tenant from being evicted has no further relevance. Thereafter it is only the question of notice.”

12. Similar view was expressed by their Lordship's of Hon'ble Supreme Court in the case of Gopal Krishan Verma Vs. Tahir, reported in 2015 (2) U.D. 393. Relevant extract of the said judgment read as under:

“5. Insofar as the purchase of the property is concerned, the same was made on 13.07.2009. It is apparent that the period of three years had elapsed before the appellant filed the ejectment petition on 21.12.2012. Thus viewed, the first condition depicted in the proviso to Section 21(1) can be accepted to have been complied with.

**6.** The more relevant aspect of the matter is, whether the appellant landlord had given a notice to the tenant, for a period of not less than six months, before such application for eviction was filed by him. It is undoubtedly true, that the appellant could have relied upon the legal notice dated 20.11.2009 if there was no period depicted therein (for seeking ejectment of the respondent thereon). However, since the extract of the legal notice dated 20.11.2009 reproduced above reveals, that the legal notice was for a period of 30 days, inasmuch as, the tenant had been required “... to quit, vacate and deliver vacant possession of the said premises to my client immediately after the expiry of 30 days of the service of the notice upon you...”, we are satisfied with the second requirement in the proviso under Section 21(1), namely, that “the landlord has given a notice in that behalf to the tenant not less than six months...”, cannot be deemed to have been complied with. Since the notice was limited to a period of thirty days, its validity had expired on 19.12.2009. The notice contemplated under the proviso to Section 21(1) extracted above, is a six months notice. In the above view of the matter, we are satisfied that the High Court committed no error in rejecting the claim of the appellant.”

13. The tenant had raised objection regarding maintainability of release application under Section 21 (1) (a) of U.P. Act No. 13 of 1972 in the absence of six months notice, as is reflected from the judgment given by the learned Prescribed Authority. However, this vital aspect was not considered at all by the Prescribed Authority. In his release application, the landlord had nowhere pleaded that six months notice, as provided in the Statute, was given to the tenant before filing of the release application. On the other hand, landlord had stated that representation given by the landlord to the tenant was served upon him on 05.12.2010; while the release application was filed by him in the first week of January, 2011. This aspect has been completely overlooked by the learned Prescribed Authority.

14. Since six months notice under First Proviso to Section 21 (1) (a) of U.P. Act No. 13 of 1972 has been held to be mandatory, in cases like present one, where the landlord

purchases a building having a sitting tenant, therefore the judgment given by the Prescribed Authority suffers from manifest error of law.

15. In such view of the matter, learned Appellate Court was justified in reversing the judgment rendered by the learned Prescribed Authority. This Court does not find any reason to interfere with the judgment given by the learned Appellate Court.

16. Consequently, writ petition fails and is hereby dismissed.

17. There will be no order as to costs.

**(Manoj K. Tiwari, J.)**

28.02.2019

Aswal