

A MEHMOOD RAHMAT ULLAH KHAN & ANR.

v.

NIYAZ AHMAD KHAN
(Civil Appeal No. 1264 of 2009)

B FEBRUARY 23, 2011

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

Rent Control and Eviction:

C *U.P. Urban Building Act, 1972 – s. 21 – Eviction petition*
– *On the ground of bonafide need – Prescribed Authority as*
also the appellate court holding that the landlord could not
establish bonafide need – Writ Petition – High Court
upholding the finding as regards the bonafide need of the
D *landlord, however, increased the rent – On appeal held: High*
Court in a writ petition cannot interfere with the finding of fact,
regarding bonafide need – Under s. 21, rent cannot be
enhanced – Direction with regard to increasing the rent, set
aside.

E CIVIL APPELLATE JURSDICTION : Civil Appeal No.
1264 of 2009.

From the Judgment & Order dated 8.10.2007 of the High
Court of Judicature at Allahabad in Civil Misc. Writ Petition No.
F 46934 of 2002.

WITH

C.A. No. 1073 of 2009

G Irshad Ahmad, Bimal Roy Jad for the Appellants.

Bimal Roy Jad, Vikram Rathore, Irshad Ahmad for the
Respondent.

H The following Order of the Court was delivered

MEHMOOD RAHMAT ULLAH KHAN & ANR. v. NIYAZ 203:
AHMAD KHAN

ORDER

A

CIVIL APPEAL NO. 1264 OF 2009

Heard learned Counsel for the parties.

This Appeal has been filed against the impugned Judgment dated 8.10.2007 passed by the High Court of Allahabad.

B

The appellant herein is a landlord of premises in question and the respondent is the tenant. The appellant filed a Petition under Section 21(1)(a) of U.P. Urban Building Act, 1972 alleging that he has bonafide need of the premises and hence the tenant should be evicted. The prescribed authority found that the landlord could not establish his bonafide need and hence it rejected the petition. The tenant filed an appeal and the Appellate Court has upheld the finding that there is no bonafide need of the premises of the landlord.

C

D

Surprisingly, the High Court while upholding the finding that there is no bonafide need of the landlord has allowed the Writ Petition by the impugned Judgment dated 8.10.2007 by increasing the rent.

E

It is well settled that a High Court in Writ Petition cannot interfere with the finding of fact, regarding bonafide need.

We are also of the opinion that under Section 21, there is no question of enhancement of rent. That may be done under some other provision of the Act.

F

Accordingly, we dispose of this appeal with the direction that the impugned Judgment is set aside and Judgment of First Appellate Court rejecting the Petition under Section 21 is upheld. The direction increasing rent is set aside.

G

The appeal is disposed of accordingly.

H

A **CIVIL APPEAL NO. 1073 OF 2009**

This Appeal has been filed against the impugned Judgment dated 8.10.2007 passed by the High Court of Allahabad.

B The facts have been set out in the impugned judgment and hence we are not repeating the same here.

C Under Section 21(1)(a) of U.P. Urban Buildings Act, 1972, the prescribed authority can either allow the Petition for eviction of the tenant or it can refuse to do so. It cannot enhance the rent under those proceedings. Hence, we set aside the impugned Judgment of the High Court.

The appeal is allowed with no order as to costs.

N.J.

Appeal allowed.