Smt. Smriti Marthand

Vs

District Judge of Kumaun, Nainital and Others

Civil Appeal No. 715 of 1976

(P.N. Bhagwati, V.R. Krishan Iyer, Syed M. Fazal Ali JJ)

20.09.1976

JUDGMENT

BHAGWATI, J. –

1. This appeal arises out of an application filed by respondents 2 to 5 for eviction of the appellant under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The prescribed authority, who heard the application, took the view that the bona fide requirement of respondents 2 to 5 was not established and on this view, rejected the application of respondents 2 to 5. The District Judge, in appeal, however, disagreed with the view taken by the prescribed authority and came to the conclusion that the bona fide requirement of respondents 2 to 5 was established on the evidence on record and in any event, by reason of explanation (iv) to Section 21, it must be conclusively presumed that they bona fide required the premises for their own use and occupation. Since, according to the learned District Judge, the case fell within explanation (iv) to Section 21, he held that Rule 16(1) of the Rules framed under the Act which requires the comparative hardship of the landlord and the tenant to be taken into account was not applicable, and passed an order of eviction against the appellant. The appellant thereupon preferred a writ petition in the High Court of Allahabad. The High Court declined to interfere with the finding in regard to the bona fide need of respondents 2 to 5, since that was a finding of fact and the High Court was of the view that it would not be competent for it in the exercise of its jurisdiction under Article 226 of the Constitution to disturb a finding of fact reached by the District Judge. So far as the question of comparative hardship of the landlord and the tenant was concerned, the High Court held that it was not liable to be taken into account since Rule 16(1) was ultra vires of the Act. The High Court in this view rejected the writ petition. Hence the present appeal by special leave obtained from this Court.

2. The only question which arises in this appeal for consideration is whether High Court was right in taking the view that the comparative hardship of the landlord and the tenant was not required to be taken into account since Rule 16(1) was ultra vires the Act. This question need not detain us, since subsequent to the filing of the appeal, Section 21 of the Act has been amended with retrospective effect by introduction of a proviso, which requires that comparative hardship of the landlord and the tenant should be taken into account in the light of the factors prescribed by the rules, in the determination of the question whether or not an order of eviction should be made against the tenant and Rule 16 has been retrospectively validated by Section 27 of the Amending Act. It is, therefore, obvious, that the learned District Judge as well as the prescribed authority were liable to take into account the comparative hardship of the landlord and the tenant and the High Court was in error in taking the view that the judgment of the District Judge could not be quashed simply on the ground that the hardship of the tenant was neither considered nor compared. On this view, we would have

ordinarily remanded the case to the High Court but it would be an idle formality to do so, since the District Judge has also not taken into account the comparative hardship of the landlord and the tenant, and even if the matter is remanded to the High Court, the High Court would have to set aside the judgment of the District Judge and remand the case to the District Judge. This step can be bypassed in the interest of expedition and the (sic) we accordingly allow the appeal, set aside the order of the High Court as also the judgment of the District Judge and remand the case to the District Judge with a direction to dispose it of in the light of the amended Section 21 read with Rule 16. Since the case is an old one, the District Judge will dispose of the appeal before him as expeditiously as possible and in any event not later than December 31, 1976. There will be no order as to costs.

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