

Purushottam Das

Vs

The VIII Additional Distt. & Sessions Judge, Allahabad and Others

Civil Appeal No. 525 of 1976

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

20.09.1976

JUDGMENT

BHAGWATI, J. –

1. The appellant and respondents 4 to 10 are the tenants in respect of certain premises situated in Allahabad. Respondent 3 who is the landlord, filed an application for eviction of the appellant and respondents 4 to 10 from the premises in their occupation on grounds specified in clauses (a) and (b) of Section 21, sub-section (1) of the U. P. Urban Buildings (Regulation of letting, Rent and Eviction) Act, 1972. The claim for eviction on the ground of bona fide requirement under clause (a) was also based on explanation (iv) to Section 21 of the Act. The prescribed authority held that both the grounds were made out by respondent 3 and the case also fell within explanation (iv) and it accordingly passed an order of eviction against the appellant and respondents 4 to 10. The appeal preferred by the appellant against the order of eviction was dismissed by the learned District Judge. The appellant thereupon filed a writ petition in the High Court of Allahabad under Article 226 of the Constitution of India. Two questions in the main were raised before the High Court; one was that the explanation (iv) was inapplicable since the terms of that explanation were not satisfied; and the other was that the comparative hardships of the landlord and the tenant was not taken into account by the learned District Judge as well as by the prescribed authority in passing the order of eviction, though they were required to do so by reason of Rule 16 of the Rules framed under the Act. The High Court held that explanation (iv) was attracted in the present case and the bona fide requirement of respondent 3 must accordingly be held to be established. The High Court also held in the alternative that in any event the bona fide requirement of respondent 3 was established on the evidence on record. So far as the question of comparative hardship of the landlord and the tenant was concerned, the High Court took the view, following its Full Bench decision in Chandra Kumar Shah v. District Judge [1976 Allahabad Weekly Cases 50 : AIR 1976 All 328], that Rule 16 clause (1) was ultra vires and it was not necessary to consider the comparative hardship of the landlord and the tenant. The High Court in this view rejected the writ petition. Hence the present appeal by special leave obtained from this Court.

2. The first question that was raised before us by the learned Counsel appearing for the appellant was that explanation (iv) was wrongly held to be applicable by the learned District Judge as well as by the prescribed authority. He submitted that this explanation was not attracted in the present case. He also contended that apart altogether from the question as to whether explanation (iv) was on its terms applicable, this explanation did not fall for consideration, since it was repealed by Section 14(i)(c)(2) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976. This contention would have required some consideration but it was conceded on behalf of respondent 3 that in view of its omission by the Amending Act, explanation (iv) was out of the

way and it was not necessary to consider whether it had any application in the present case. But the question still remains whether the High Court was right in refusing to consider the comparative hardship of the landlord and the tenant under Rule 16(1). That would have raised a question as to the correctness of the Full Bench judgment in C. K. Shah's case but we find that by the Amending Act, Section 21 has been amended with retrospective effect by introduction of a proviso which is in the following terms :

Provided also that the prescribed authority shall, except in cases provided for in the Explanation, take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed.

In view of this proviso, it is now obligatory on the prescribed authority and the appellate authority to take into account the comparative hardship of the landlord and the tenant and for that purpose to have regard to such factors as may be prescribed by the Rules in deciding whether or not to pass an order of eviction. Section 26(5) of the Amending Act also declares that, notwithstanding any judgment, decree or order of any court or authority, the provisions of Rule 16 of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 shall be deemed to have been made under the provisions of the principal Act as amended by this Act, as if this Act were in force at all material times. The learned District Judge as well as the prescribed authority were therefore bound to take into account the comparative hardship of the landlord and the tenant in the light of the various factors set out in Rule 16 while considering whether or not an order of eviction should be passed. The High Court ought in the circumstances, to have examined the contention of the appellant that the comparative hardship of the landlord and the tenant in the light of the factors set out in Rule 16 was not taken into account by the prescribed authority and the learned District Judge. It was contended on behalf of respondent 3 that, in fact, the learned District Judge as well as the prescribed authority had considered the question of comparative hardship of the landlord and the tenant and given a finding adverse to the appellant and this finding being a finding of fact, the High Court had refused to interfere with it. But this contention does not appear to be correct if we look at the judgment of the High Court. It is clear that the High Court refused to disturb the finding the learned District Judge in regard to this question because it felt that in view of the Full Bench decision in C. K. Shah's case it was not necessary to consider the question of comparative hardship. The judgment of the High Court will, therefore, have to be set aside and the case will have to be remanded to the High Court for the purpose of considering the contention of the appellant in regard to comparative hardship in the light of the amended Section 21 read with Rule 16. We accordingly allow the appeal, set aside the order passed by the High Court and remand the case to the High Court with a direction to dispose it of in accordance with the amended law. Since the case is an old one, the High Court will dispose it of as expeditiously as possible. There will be no order as to costs.

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