

M/S. Girdhar Das and Others

Vs

The District Judge, Varanasi and Others

Civil Appeal No. 445 Of 1976 With Special Leave Petition (Civil) No. 2729 of 1976

(P.N. Bhagwati, A.C. Gupta, P.N. Shinghal JJ)

20.10.1976

JUDGMENT

BHAGWATI, J. –

1. Respondents 3 and 4 made an application to the prescribed authority for release of certain premises which were in the occupation of the appellants as tenants. The ground on which the application for release was made was that respondents 3 and 4 bona fide required the premises for the purpose of their own use and occupation under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The prescribed authority took the view that the bona fide requirement of respondents 3 and 4 was established and that greater hardship would be caused to respondents 3 and 4 if an order of eviction was refused than what would be caused to the appellants if an order of eviction was passed. On this view, the prescribed authority passed an order of eviction against the appellants. The appellants preferred an appeal to the District Judge, Varanasi. The learned District Judge found in favour of respondents 3 and 4 on the question of bona fide requirement of the premises but so far as the question of greater hardship was concerned, the learned District Judge held that greater hardship would be caused to the appellants by passing an order of eviction than that which would be caused to respondents 3 and 4 by refusing to pass it. The learned District Judge accordingly allowed the appeal and rejected the application of respondents 3 and 4 for release of the premises. Respondents 3 and 4 thereupon preferred a writ petition in the High Court of Allahabad. The question of greater hardship was considered by the prescribed authority and the learned District Judge in view of Rule 16 of the Rules framed under the Act and respondents 3 and 4, therefore, challenged the validity of that rule in the writ petition. Since the question of validity of Rule 16 was a question of some importance, the learned single Judge of the High Court, before whom the writ petition came up for hearing, referred this question to a Full Bench. The Full Bench in a decision reported in Chandra Kumar Shah v. District Judge [1976 Allahabad Weekly Cases 50 : AIR 1976 All 328 (FB)] held that Rule 16 was ultra vires the Act and with this opinion of the Full Bench, the case once again came back to a single Judge of the High Court. The learned single Judge in view of this opinion of the Full Bench held that the District Judge was in error in considering the question of comparative hardship and remanded the case to the District Judge for disposing of the appeal before him in the light of the opinion rendered by the Full Bench. The appellants being dissatisfied by this order of remand preferred the present appeal with special leave obtained from this Court.

2. Since the filing of the present appeal, the Uttar Pradesh Legislature has enacted the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976, amending the principal Act. By this amendment a new proviso has been added after the third proviso in Section 21, requiring that the prescribed authority shall take into account the question of comparative

hardship of the landlord and the tenant for the purpose of deciding whether or not an order of eviction should be passed and the comparative hardship of the landlord and tenant shall be taken into consideration in the light of the factors prescribed by the rules. Section 27 of the amending Act has retrospectively validated Rule 16 and, therefore, now in view of the amendment, the comparative hardship of the landlord and the tenant has to be taken into account in the light of the factors set out in Rule 16. The judgment of the Full Bench has thus been set at naught by the amendment and the order passed by the learned single Judge of the High Court on the basis of the judgment of the Full Bench must be set aside. The case will, therefore, have to go back to the High Court for the purpose of disposing of the writ application in the light of the amended Section 21 read with Rule 16. The High Court will examine whether this is a fit case in which the finding of the District Judge in regard to the question of comparative hardship should be set aside. Since the case is an old one, the High Court will dispose of the writ application as expeditiously as possible, and in any event not later than three months from today.

3. We are told that pursuant to the order of remand made by the single Judge of the High Court, the District Judge has disposed of the appeal before him by holding that the bona fide requirement of respondents 3 and 4 was established and they were, therefore, entitled to obtain a release order against the appellants. The appellants being aggrieved by this release order passed by the District Judge have preferred a writ application in the High Court and this writ application is pending. Since we are setting aside the order of the learned single Judge remanding the case to the District Judge, the subsequent proceedings before the District Judge as also the writ application filed by the appellants before the High Court against the subsequent order of the District Judge will also fall and the subsequent order dated March 13, 1976 made by the District Judge will stand vacated and the writ application will also have to be dismissed as infructuous. The learned counsel appearing on behalf of the appellants says that he will accordingly take steps to withdraw that writ application pursuant to these observations made by us. There will be no order as to costs of the appeal.

4. There will be no order on the special leave petition, in view of the judgment delivered by us in Civil Appeal 445 of 1976.

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