

SUPREME COURT OF INDIA

Charan Dass

Vs.

District Judge, Dehradun

C.A.No.552 of 1976

(P. N. Bhagwati and S. Murtaza Fazl Ali, JJ.)

19.01.1977

JUDGEMENT

BHAGWATI, J.:-

1. This appeal arises out of an application made by the third respondent for release of shop under S. 21 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972. The release of the shop was claimed by respondent No. 3 on the ground that he needed it bona fide for the purpose of enabling his son to carry on business as a carpenter. The appellant who is the tenant resisted the claim of respondent No. 3 both on the ground that the requirement of respondent No. 3 was not bona fide as also on the ground that the hardship which would be caused to him by passing an order of eviction would be much greater than what would be caused to Respondent No. 3 by refusing to pass it. The Prescribed Authority upheld that claim of respondent No. 3 that his requirement of the shop was bona fide but on the question of comparative hardship, it decided against respondent No. 3 and rejected the application. Respondent No. 3 thereupon preferred an appeal before the District Court. Whilst the appeal was pending before the District Court, a decision was given by a full Bench of the Allahabad High Court in Chandra Kumar Shah v. District Judge, 1976 All WC 50 : (AIR 1976 All 328) holding that R. 16 cl. (2) of the Rules framed under the Act which required comparative hardship to be taken into account, was ultra vires the provisions of the Act. The District

Court being bound by this decision, declined to take into account the comparative hardship of the appellant and respondent No. 3 and taking the view that the requirement of shop by respondent No. 3 was bona fide the District Court allowed the appeal and directed release of the shop in favour of respondent No. 3. The appellant thereupon preferred a Writ Petition in the High Court but presumably in view of the Full Bench decision in Chandra Kumar Shah's case (supra) the High Court dismissed the Writ Petition in limine. Hence the present appeal by special leave obtained from this Court.

2. Since the following of the present appeal, the Act has been amended by U.P. Act No. 28 of 1976 and as a result of the amendment, a proviso has been introduced in S. 21 with retrospective effect requiring the Prescribed Authority to take into account the comparative hardship of the landlord and the tenant and the provisions of R. 16 have also been validated with retrospective effect. Having regard to this retrospective amendment, the order of the High Court as also the judgment given by the District Court declining to take into account the comparative hardship of the appellant and respondent No. 3 cannot stand and they must be set aside.

3. We accordingly allow the appeal, set aside the order made by the High Court as well as the judgment given by the District Court and remand the case to the District Court so that the District Court may consider the question of comparative hardship of the appellant and respondent No. 3 in the light of the amended law and decide the application of respondent No. 3. We may make it clear that the decision already given by the District court in regard to the fact that respondent No. 3 bona fide required the shop will not be disturbed but only the question of comparative hardship will be considered by the District Court. Since the matter is an old one, we direct the District Court to dispose of the appeal before it as expeditiously as possible and in any event not later than two months from today. There will be no order as to costs.

Appeal allowed.