

Rehman Jeo Wangnoo

Vs

Ram Chand and Others

Civil Appeal No. 2954 of 1977

(V. R. Krishna Iyer, P. S. Krishna Iyer JJ. )

07.12.1977

ORDER

1. Delay condoned and Special Leave granted on a point raised by the appellant under the proviso to the Explanation to Section 11(1)(h) of the Jammu and Kashmir Houses and Shops Rent Control Act, 1966 (for short, the Act).

2. The only ground which we consider tenable and which has been urged by the appellant before us turns on the failure of the courts of fact in recording a finding as contemplated in the proviso to the Explanation to Section 11(1)(h) of the Act. Obviously an error has been committed by the High Court in thinking that there is a concurrent finding of fact under the proviso aforesaid. The trial Court and the first appellate Court have really not considered this question on the merits; indeed evidence itself has not been taken on the score that there has been no specific plea in that behalf. We are satisfied that the proviso aforesaid mandates the court to consider whether partial eviction as contemplated therein should be ordered or the entire holding should be directed to be evicted. This aspect, therefore, requires judicial exploration after giving opportunity to both sides to lead evidence in this behalf.

3. We direct the first appellate Court to go into the question as to whether the reasonable requirement of the landlord may be substantially satisfied by evicting the tenant from a part only of the premises as contemplated in the proviso. If after taking evidence the court is satisfied that the entire house or premises must be vacated to fulfil the reasonable requirement of the landlord, the present order will stand. If, on the other hand, the court finds, as a fact, that partial eviction will meet the ends of justice as visualised in the proviso, an appropriated order will be passed on that footing. The court will take up the case on file pursuant to this order of remand and confine itself to this limited issue, give opportunity to both to lead evidence on this sole question and dispose of the appeal in accordance with law within two months. The court must proceed on the footing that the absence of a specific pleading under the said proviso does not stand in the way of the obligation of the court to act in compliance with the mandate of the statute. There will be no order as to costs in this court.

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