

Nanda Ballabh Gururani

Vs

Smt. Maqbool Begum

Civil Appeal No. 1605 of 1979

29.04.1980

JUDGMENT

DESAI, J. –

1. A tenant under a decree of eviction is the appellant in this appeal by special leave. Respondent Smt. Maqbool Begum initiated two separate actions being N.C.C.s. Nos. 15 and 16 of 1977 in the Court of the Prescribed Authority, Nainital, for eviction of two tenants, one being the present appellant and another, one Kishan Chand Pandey, under Section 21(1)(a) of the U. P. Urban Building (Regulations of Letting, Rent and Eviction) Act, 1972, on the ground that the accommodation at her disposal was insufficient for her family and she needed additional accommodation. Both the cases were consolidated and the prescribed authority held that the landlady bona fide required the premises for her own use and her need was genuine and greater hardship would be caused to her if her application for release of accommodation was rejected. Consistent with these findings the application for release of accommodation was granted in favour of the landlady. After an unsuccessful appeal by the tenant, he moved the High Court under Article 227 of the Constitution. Before the High Court it was contended that the landlady had purchased the house of which possession was sought, on November 11, 1974, and she commenced the action for release of accommodation within three years of the date of purchase and as such the application was not maintainable in view of the first proviso to sub-section (1) of Section 21. Negating this contention the High Court held that there was no bar to the entertaining of application for release of accommodation within three years from the date of purchase of the house but the court would be precluded from awarding possession at any time within three years and that by the time eviction was ordered in the instant case the period of three years had elapsed and the application at inception was maintainable. Accordingly, the writ petition filed by the tenant was dismissed.

2. When the tenant moved the petition for special leave to appeal to this Court under Article 136 of the Constitution it was contended that the landlady made the application for release of accommodation on September 10, 1977, and as the High Court has found that the house from which eviction of the tenant was sought was purchased by the landlady on November 11, 1974, it would be incontrovertible that the application for release of accommodation was made within three years. It was further contended that the proviso to sub-section (1) of Section 21 enacts a prohibition in that no application can be entertained on the ground mentioned in clause (a) of Section 21(1) of the Act unless a period of three years has elapsed since the date of such purchase. It was also contended that the meaning given by the High Court to the expression 'entertained' would defeat the beneficial effect of the proviso. The substantial question of law canvassed before the court at the time of granting leave was whether the proviso enacts a prohibition restraining the court from entertaining an application for release on the ground of personal requirement for a period requirement for a period of three years from the date of purchase of the accommodation of which release is sought or it merely inhibits the court from making an order of eviction within three years? As the

court was of the opinion that the substantial question of law needs authoritative pronouncement from this Court because it was likely to affect a large number of persons, special leave was granted on May 15, 1979.

3. After the grant of leave the respondent-landlady appeared and moved CMP 12737 of 1979 for revocation of leave on the ground that the accommodation from which tenant was sought to be evicted was purchased by the landlady on July 28, 1974, and not on November 11, 1974, as contended on behalf of the tenant, and the date of purchase being July 28, 1974, was admitted by the tenant in his written statement and yet suppressing this material fact leave was obtained from this Court. To substantiate the submission the original sale deed was produced before the court as also a true translation of it was annexed to the affidavit of one Hifajat Ali along with the application for revocation of leave.

4. The contention canvassed on behalf of the respondent puts the substantial question of law which appealed to the court while granting leave into background because if as contended by the landlady the accommodation was purchased on July 27, 1974, the application for release filed on September 10, 1977, would be after the expiry of three years from the date of the purchase and the proviso would not be attracted.

5. Instead of spending time on the question whether leave granted should be revoked or not, the parties at the suggestion of the court agreed that the appeal be heard on merits because the fate of the appeal would depend upon the narrow question as to the date on which the accommodation in dispute was purchased by the landlady.

6. The court was shown the original registered sale deed. It was also shown to Mr. S. S. Khanduja, learned counsel for the appellant. It clearly shows that the sale deed was executed on July 27, 1974, and it was offered for registration and admitted for registration on July 28, 1974. This becomes evident from the endorsement of the Sub-Registrar on the sale deed itself. The confusion that the deed was registered on November 11, 1974, stems from the fact that the book in which all documents registered by the Sub-Registrar are transcribed as permanent record showed that the present sale deed was transcribed into the book on November 11, 1974. However, in view of the provision contained in Section 47 of the Indian Registration Act, it clearly transpires that once the deed is registered, it would operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. There is no suggestion that the sale deed was deliberately ante-dated. Therefore, on registration the sale deed operated from July 27, 1974, the date of its execution. The relevant provision prohibits court from entertaining a petition for release of accommodation within three years from the date of purchase and not from the date of registration of sale deed. Once it is established that the house from which appellant was sought to be evicted was purchased by the landlady on July 27, 1974, and the application for release of accommodation was made by the landlady on September 10, 1977, it was certainly made after a lapse of three years from the date of the purchase and the proviso would not be attracted. This was the only point on which leave was granted by this Court and as there is no merit in it, the appeal fails and it is dismissed but in the circumstances of the case with no order as to costs.

7. Mr. Khanduja requested the court that the tenant is staying in the premises for a long time and that he would find it very difficult to arrange for an alternative accommodation and, therefore, he must be given reasonable time for adjusting his affairs. After hearing both sides, we are of the opinion that the tenant should be given time up to April 30, 1981, for vacating the premises

occupied by him at present. Accordingly, the decree for eviction hereby confirmed shall not be executed till April 30, 1981, on the condition that the appellant-tenant would file an undertaking on affidavit to this Court within two months from today that he will hand over peaceful and vacant possession by April 30, 1981, and that he will not induct any one into the premises and that he will pay compensation for use and occupation equivalent to rent regularly every month within 10 days of the expiry thereof.

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