

Smt. Nazuk Jahan and Others

Vs

Additional District Judge and Others

Special Leave Petition (Civil) No. 6321 of 1980

(V. R. Krishna Iyer, O. Chinnappa Reddy JJ)

20.08.1980

ORDER

ORDER OF THE COURT

1. We are far from satisfied that the judgment covered by the special leave petition, is correct. But, every error, even of law, does not justify exercise of Article 136.
2. The notice contemplated by the proviso to Section 21 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 cannot be a casual or oral request to the tenant but a formal demand, ordinarily in writing, and clearly insisting on vacant possession after the requisite period. We might have more closely examined, what appears to us to be an error of law in this regard, in the judgment of the High Court but we decline to grant leave, both because the party had not raised the point about the factum or legality of the notice in the trial Court where evidence, one way or the other, could have even led, and also because an undertaking to the High Court to give vacant possession within six months, had been given by the petitioners, making the court believe that they would comply with that condition. However, we note further that the premises are small and the tenant a small man, paying a small rent with a large family residing with him. Having regard to this and other special circumstances of the case and the difficulty of getting alternative accommodation, we grant a period of six months from today to the petitioners to give vacant possession provided they give within one month from today an undertaking to the following effect :

- (a) That the petitioners will hand over vacant peaceful possession of the suit premises to the respondent without need for execution proceedings;
- (b) That the petitioners will not induct anybody else into occupation of any part of the premises or otherwise assign or part with possession;
- (c) That the petitioners will continue to pay regularly a sum equal to the rent that has been fixed between parties, month by month, before the 10th of every month, by way of damages for use and occupation.

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