

Smt. (Dr.) D. Kaur

Vs

Smt. Kanti Khare and Others

Civil Appeal No. 1877 of 1981

(P.N. Bhagwati, O. Chinnappa Reddy JJ)

10.08.1981

JUDGMENT

1. Special leave granted.

2. Two principal questions were debated before the High Court in this case and they were whether it is necessary to give notice of the hearing to an applicant for allotment of accommodation under Section 16 of the U.P. Act 13 of 1972 before the Rent Control and Eviction Officer decides whether a deemed vacancy has arisen and if it has so arisen to whom the allotment should be made and what is the test for determining whether accommodation is residential or non-residential within the meaning of that Act. The learned Single Judge of the High Court has taken the view that an applicant for allotment of accommodation on the ground of deemed vacancy is entitled to be heard before an order is made by the Rent Control and Eviction Officer but this view taken by the learned Judges seems to be contrary to the decision of another Single Judge of the High Court in Munu Lal v. District Judge decided on April 6, 1979. It is therefore, necessary that so far as this particular question is concerned the conflict between the decision of two judges of the High Court should be resolved by a Division Bench of the High Court. Moreover, we find that the High Court has laid down certain guide-lines for the purpose of deciding the question whether the accommodation in the present case is residential or non-residential and remanded the case to the Rent Control and Eviction officer for the purpose of deciding that question, in accordance with rules and guide-lines. We are of the view that the High Court need not have remanded the case to the Rent Control and Eviction Officer but should have decided the question itself on the basis of evidence which was already led by the parties. We would, therefore, set aside the decision of the High Court and remand the case to the High Court with a direction that the matter may be disposed of anew by a Division Bench of the High Court according to law in the light of the observations contained in this judgment. Since the case is an old one the Division Bench of the High Court will dispose it of at an early date. There will be no order as to costs.

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