

Gautam Chand Jain and Others

Vs

Sushila Kumari Jain and Others

Civil Appeal No. 1013 of 1980.

(D. A. Desai, Ranganath Misra JJ)

30.04.1985

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal is by special leave. Appellants are monthly tenants of a shop located in bazar Shahid Ganj within the city of Saharanpur in Uttar Pradesh on a monthly rent of Rs. 19.38 per month. Challenge in this appeal is to the order of release passed in the courts below and upheld by the High Court of Allahabad in favour of the landlady, respondent 1.
2. The respondent moved the Prescribed Authority under Section 21 of the U. P. Act XIII of 1972 for an order of release of the premises referred to above on the allegations that her son, a doctor, intended to settle down in the medical profession at Saharanpur and needed the premises for establishing a clinic. It was claimed that the shop-room with the adjacent shop would be re-built into a convenient place for housing the clinic. It was further maintained that the tenants were doing business of repairing electrical goods which they could shift to any other place without inconvenience. The tenants resisted the application contending, inter alia, that the shop-room was only 8 1/2x24 1/2 sq. ft. in size and the location was such that it was totally unsuitable for medical practice. It was pointed out that in Saharanpur most of the doctors had their clinics away from this place. The landlady, it was maintained, had a palatial residential building and several other shops and accommodations belonging to her. She had no bona fide in making of the application and a list of properties belonging to the landlady was detailed in their objection filed before the Prescribed Authority. It was also pointed out that apart from the properties standing in the name of the landlady the other members of the family had extensive properties; for instance, the wife of the eldest son of the respondent 1 was the owner of 8 big shop-rooms within Saharanpur city and one of it was lying vacant. The tenants pleaded that they were in occupation of the premises since 1939 and had built up goodwill and local reputation in and around the area. No other site was available in the locality or even at reasonable distance from that place as an alternative accommodation to them. They pleaded that while the landlady on account of her status and several premises at her command was in a position to think of opening of the clinic at some other place, they were not in a position to shift from the shop premises. The balance of convenience as such in consideration of comparative hardship was on their favour and prayer for release should not be granted.
3. The Prescribed Authority brushed aside all the contentions of the tenants and allowed the release application by order dated October 18, 1978 directing the tenants to be compensated to the tune of two years' rent and allowed them 18 months' time to deliver vacant possession. The appellants carried an appeal to the Additional District Judge. It is relevant to point out here that the landlady had claimed that the shop-room in dispute as also the adjacent shop would be put together for

reconstruction for the purpose of providing accommodation for the clinic. The order of release in respect of the adjacent shop-room was, however, vacated in appeal by the learned Additional District Judge on a finding that accommodation for the clinic was available in the ground floor of the respondents' residential house and there was no bona fide requirement in respect of the premises in possession of the tenants of the adjacent shop premises. So far as the appellants' appeal was concerned the learned Additional District Judge, however, took a different view and sustained the order of the Prescribed Authority and dismissed the appeal. The appellants invoked the writ jurisdiction of the Allahabad High Court but failed.

4. The landlady came before the Prescribed Authority with a positive stand that for locating the clinic both the adjacent shop-rooms (the one in possession of the tenants appellants and the other in possession of Kumar Brothers & Co.) would be built into one spacious room. The finding of the appellate Judge that there was an alternate accommodation available which was more suitable for the clinic completely destroyed the claim of the landlady and made the application sans bona fides. The finding of the appellate Judge in the connected matter had two significant aspects - firstly, there was a more suitable premises available for the clinic and secondly, if half of the accommodation for the proposed clinic was not available the area of the shop-room in possession of the respondents before us was not adequate to make room for the clinic. These aspects have obviously been lost sight of by the appellate Judge when he reached opposite opinions in the two appeals before him thought they were heard together. Appellants maintained that the two appeals had been clubbed together and in our view rightly. The learned appellate Judge fell into error in making two separate judgments and thereby losing track of the relevancy of the conclusion reached in one for the disposal of the other. If he disposed of both the appeals by a common judgment it is clear that he would not have fallen into the error and two inconsistent decisions would not have been reached in the two appeals.

5. In course of the hearing of these appeals learned counsel for the respondents suggested that an alternative accommodation may be found out for the tenants. Keeping in view the fact that the landlady has several premises and appeared to be a person of status and influence, we adjourned the matter with a view to giving an opportunity to her to suggest an alternative accommodation in the neighbourhood of the premises in dispute. On the adjourned date, her learned counsel informed us that such accommodation has not been found. That is a feature which justifies the stand of the tenants that premises are rare in Saharanpur as in any urban area in this country. If comparative hardship is taken into account, in the backdrop indicated above, there is no scope to dispute the conclusion that the tenants would be harder hit and, therefore, their eviction should not be permitted. We allow the appeal and vacate the order of the Prescribed Authority as affirmed in appeal as also by the High Court in the writ jurisdiction. The application of the landlady shall stand dismissed.

6. With a view to restoring good relationship between the two, we are directing the parties to bear their respective costs throughout. Simultaneously, we also direct that the rent shall now be fixed at Rs. 100 per month beginning from April 1, 1985.

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