

Harbans Lal

Vs

Jagmohan Saran

Civil Appeal No. 2866 of 1979

(R. S. Pathak, Ranganath Misra JJ)

10.10.1985

JUDGMENT

PATHAK, J. -

1. This appeal by special leave is directed against the judgment of the Allahabad High Court allowing the respondent's writ petition on the finding that the accommodation let out to the appellant must be deemed to be vacant.
2. The respondent is the landlord and the appellant is the tenant of a shop in Mohalla Nan Panjan, Khurja in the district of Bulandshahr. The respondent filed a petition under section 12 read with Section 16 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 alleging that the accommodation had been sublet by the appellant to one Yadram, that the appellant had ceased to occupy the shop and had allowed it to be occupied by Yadram and his son Madan Lal, neither of whom was member of the appellant's family. He claimed a declaration that the shop had fallen vacant and that it should be released to him.
3. The Prescribed Authority made an order dated October 30, 1976, rejecting the respondent's petition, on the finding that he had failed to prove that the appellant had sublet the shop and that it could be deemed to be vacant. He found that the appellant had established that he was conducting his business of selling vegetables in the shop and that Madan Lal sat in on his behalf. An appeal by the respondent was dismissed by the learned second Additional District Judge, Bulandshahr by his order dated September 21, 1977. He affirmed the finding of the Prescribed Authority.
4. The respondent filed a writ petition in the Allahabad High Court, and on August 1, 1979 a learned Single Judge of the High Court held that the appellant had been unable to establish any legal relationship of agency between himself and Madan Lal or Yadram and therefore it must be taken that it was Madan Lal who was occupying the shop within the meaning of Section 12(1) (b) of the aforesaid U.P. Act. The high Court also declined to accept the appellant's case that the appellant was carrying on the business of selling vegetables when he was already carrying on a brick kiln business and had a cold storage. Holding that the property must be deemed to be vacant it remanded the case to the Prescribed Authority for passing orders on the respondent's application for release of the property from allotment.
5. We are satisfied that the High Court travelled outside its jurisdiction in embarking upon a reappraisal of the evidence. The Prescribed Authority as well as the learned Second Additional District Judge concurrently found that Madan Lal was sitting in the shop on behalf of the appellant and deputising for him in carrying on the vegetable selling business. The finding by both authorities

based on evidence, and there was no warrant for disturbing that finding of fact in a writ petition. The limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled. The writ petition before the High court prayed for a writ in the nature of certiorari, and it is well known that a writ in the nature of certiorari may be issued only if the order of the inferior tribunal or subordinate court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach findings of fact contrary to those rendered by an inferior court or subordinate court. When a High Court proceeds to do so, it acts plainly in excess of its powers. We are informed that a report of the Commissioner in another suit was not considered by the Prescribed Authority and by the learned Second Additional District Judge, and therefore, it is urged, the High Court was justified in taking that report into consideration and entering into an examination of the material on the record. We have examined the report of the Commissioner and we find that an objection had been filed to that report and the trial court had failed to dispose it of. In other words, the report of the Commissioner is not a final document and cannot be taken into consideration as it stands. It must, therefore, be ignored. That being so, the finding of fact rendered by the Prescribed Authority and affirmed by the learned Second Additional District Judge remains undisturbed. The finding is that Madan Lal sat in the shop conducting the vegetable selling business on behalf of the appellant.

6. The next point to consider is whether the shop can be deemed to be vacant within the meaning of Section 12(1)(b) of the U.P. Act. Section 12 provides :

12. Deemed vacancy of building in certain cases. - (1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if -

(a) he has substantially removed his effects therefrom, or

(b) he has allowed it to be occupied by any person who is not a member of his family, or

(c) in the case of a residential building, he as well as members of his family have taken up residence, not being temporary residence, elsewhere.

* * *##

The "deemed vacancy" of a building is relevant for the regulation of letting such a building. A building which falls vacant is available for allotment under Section 16 of the Act to a tenant. Under Section 12(1)(b), with which we are concerned here, a tenant of a building is deemed to have ceased to occupy the building if he has allowed it to be occupied by any person who is not a member of his family. The occupation of a person envisaged here cannot possibly include the occupation by any person as the agent of the tenant. If the contrary construction is accepted, and it is held that a person who is a mere agent or servant of the original occupant falls within the contemplation of Section 12(1)(b), it would be impossible for the original occupant to engage any person to assist him in the discharge of his responsibilities in the place where he does so. It cannot be conceived that the U.P. Legislature intended a person, occupying a building as a tenant, to live or operate in such a building with members of his family and no one else. In the present case, Madan Lal sat in the shop conducting the vegetable business on behalf of the appellant. When he did so, it must be considered as an occupation by the appellant. Our attention has been drawn to *Keshr Bai v. District Judge, Mathura* (1980) 6 ALR 165) where a Full Bench of the Allahabad High Court held that a "deemed

vacancy" would arise within the meaning of Section 12(1)(b) where a person other than a family member was found in the occupation of a building. It does not appear that the learned Judges specifically considered the full significance and scope of the expression 'occupied' in Section 12(1)(b). We are of opinion that when a person sits in the premises and carries on a business on behalf of and for the original occupant, it cannot be said that the original occupant has thereby allowed the accommodation to be occupied within the meaning of Section 12(1)(b).

7. In our judgment, the High Court is wrong in holding that the case attracts the provisions of Section 12(1)(b) of the U.P. Act.

8. Upon the aforesaid considerations, we set aside the judgment and order of the High Court and restore that of the Prescribed Authority and the learned Second Additional District Judge. The appeal is allowed with costs.

</html