

Om Parkash

Vs

Bhagwan Das

Civil Appeal No. 959 of 1986

(K. N. Singh, B. C. Ray, A. P. Sen JJ)

10.03.1986

ORDER

A.P. SEN, J. –

1. After hearing counsel for the parties, we are satisfied that the High Court, in the facts and circumstances of the case, was clearly in error in interfering with the order passed by the Prescribed Authority, Varanasi and that of the II Additional District Judge, Varanasi by which they allowed the application made by the appellant under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. Although the authorities on a consideration of the evidence came to the conclusion that the need of the landlord was bona fide and he was entitled to the release of the demised premises under Section 21(1)(a) of the Act. Admittedly, the appellant and the respondent are displaced persons and the authorities held that since the appellant was living in rented premises there was no reason why he should be deprived of the beneficial enjoyment of his own property.

2. In *Bhaichand Ratanshi v. Laxmishanker Tribhoyan* ((1981) 3 SCC 502) this Court interpreting the analogous provisions in Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 observed : (SCC p. 506, para 5)

The legislature by enacting Section 13(2) of the Act seeks to strike a just balance between the landlord and the tenant so that the order of eviction under Section 13(1)(g) of the Act does not cause any hardship to either side. The considerations that weigh in striking a just balance between the landlord and the tenant were indicated in a series of decisions of the Court of Appeal, interpreting an analogous provision of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (c. 32), Section 3(1), Schedule I, para (h) : *Sims v. Wilson* ((1946) 2 All ER 261); *Fowle v. Bell* ((1946) 2 All ER 668); *Smith v. Penny* ((1946) 2 All ER 672); *Chandler v. Strevett* ((1947) 1 All ER 164) and *Kelley v. Goodwin* ((1947) 1 All ER 810). One of the most important factors in considering the question of greater hardship is whether other reasonable accommodation is available to the landlord or the tenant. The court would have to put in the scale other circumstances which would tilt the balance of hardship on either side, including financial means available to them for securing alternative accommodation either by purchase or by hiring one, the nature and extent of the business or other requirement of residential accommodation, as the case may be. It must, however, be observed that the existence of alternative accommodation on both sides is an important but not a decisive factor (Halsbury's Laws of England, 3rd Edn., Vol. 23, p. 824). On the issue of greater hardship the English courts have uniformly laid down that the burden of proof is on the tenant. We are inclined to the view that on the terms of Section 13(2) of the Act, the decision cannot turn on mere burden of proof, but both the parties must lead evidence. The question whether or not there

would be greater hardship caused to the tenant by passing the decree must necessarily depend on facts and circumstances of each case.

3. A plain reading of Section 21(1)(a) of the Act read with the 4th proviso thereto and Rule 16(1)(f) shows that the scheme under the Act is the same. One of the factors prescribed by Rule 16(1)(f) is that if the landlord applies for ejection of the tenant on the ground that the accommodation is bona fide required by him for his use and the members of his family and if the landlord offers reasonably suitable accommodation to the tenant for the needs of his family, the landlord's claim for eviction shall be considered liberally. In the present case, the Prescribed Authority and the II Additional District Judge both, after considering the comparative hardship likely to be caused to the tenant and the landlord, recorded a finding that on the refusal of the application, the landlord would be put to greater hardship.

4. There was no infirmity in the order of the Prescribed Authority or that of the learned II Additional District Judge. The refusal of the application of the landlord under Section 21(1)(a) of the Act would undoubtedly cause greater hardship to him as that would deprive him of his beneficial enjoyment of his own property. In such a case, it could not be said that the landlord had not fulfilled the requirement of the 4th proviso to Section 21(1)(a) of the Act. The High Court obviously committed an error in interfering with the findings of the Prescribed Authority and the learned II Additional District Judge on the ground that the landlord had failed to fulfil the requirements of the 4th proviso to Section 21(1)(a) of the Act.

5. We wish to record that Shri R.B. Mahotra learned counsel for the appellant made an offer that the rented premises in occupation of the appellant may be given to the respondent who is his tenant in exchange. We think that this was a very reasonable offer and should be accepted. Shri Sunil Ambwani, learned counsel appearing for the respondent stated that the respondent was not agreeable to his proposal. We, therefore, heard the parties on merits.

6. In the view that we take, the appeal must succeed and is allowed. We set aside the judgment and order of the High Court and restore that of the Prescribed Authority, Varanasi and that of the II Additional District Judge, Varanasi directing the release of the accommodation under Section 21(1)(a) of the Act. We direct that the Prescribed Authority, Varanasi shall on an application being made by the parties, allot the rented premises occupied by the appellant in favour of the respondent with the consent of the landlord. If no such consent is forthcoming, the Prescribed Authority shall allot a reasonably suitable alternative accommodation to the respondent for his occupation on such terms as he may deem fit.

7. We further direct that the order of eviction shall not be executed for six months in the event the respondent furnishes usual undertaking within four weeks from today. Both the parties shall, in the meantime, move the Prescribed Authority, Varanasi, for permission to exchange their premises on the terms set out above.

8. No costs.

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