

Girja Shankar Tiwari and Others

Vs

Hirday Ranjan Chakraborty and Another

Civil Appeal No. 3732 of 1988

(S. Ranganathan, Sabyasachi Mukharji JJ)

05.10.1988

JUDGMENT

SABYASACHI MUKHARJI, J.-

1. Leave granted. The appeal is disposed of by the following judgment.
2. This appeal arises out of the judgment and order of the High Court of Allahabad, Lucknow Bench, dated February 15, 1988. It relates to the premises being shop No. 483/10 in house No. 483/7, ward No. 11, Station Road, Rae Bareilly, in U. P., hereinafter described as premises in dispute. The house was situated on the first floor of the aforesaid shop. The landlords of the aforesaid shop and house at present are S/Shri Anand Kumar Agnihotri and Raj Kumar Agnihotri, being the sons of late Shri Krishna Chandra Agnihotri, residents of Station Road Rae Bareilly.
3. After the death of the owner, Shri Krishna Chandra Agnihotri, the entire property was divided amongst his sons and the present shop and house have fallen in the share of the aforesaid two sons. The appellant is the brother-in-law of the said landlords of the premises in dispute. It appears that on April 26, 1980, the appellant moved an application before the Rent Control and Eviction Officer, Rae Bareilly, that the premises in dispute had fallen vacant and the same should be declared to be vacant and also applied for allotment of the said premises in his favour.
4. The Rent Controller held that the shop was vacant. As mentioned hereinbefore, the proceedings started on an application which was moved by the appellant under Section 12 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, hereinafter called the Act, for allotment of the premises on the ground floor on the ground that the premises had fallen vacant. The Inspector (Rent) made a local inspection and found that the respondent was residing on the first floor whereas on the ground floor certain medicines were found and the water and electric connections were in the name of the respondent. Evidence had been adduced before the Rent Controller. On behalf of the respondent it was contended before the Rent Controller that the premises was not vacant and that the respondent who had applied, was none other than the landlord's wife's own brother.
5. The High Court recorded that the building was taken on rent by M/s Dhacca Swastic Aushadhalaya', in the year 1946 or 1947. The Aushadhalaya was no longer in existence and the service of the proceedings was effected at its Varanasi address. It further appears from the records that the respondent had been doing the profession of Vaidya. On a conspectus of the evidence the High Court was of the view that the Aushadhalaya had been a tenant through the respondent at the inception. The business, however, was closed in the year 1976 and the respondent was carrying on

his own business. The Rent Controller found that the tenant was not in occupation and the tenant, the Aushadhalaya, nor its proprietor. The present respondent was not the tenant but the premises was occupied by Hirday Ranjan Chakraborty, the respondent herein. The Rent Controller found that the premises was not occupied by the tenant but by other person other than the tenant. The High Court found to the contrary. The rent was being paid, but as it appears, in the name of the tenant, and not in the name of the respondent in his own name. The rent was paid by the respondent in the name of the Dhacca Swastic Aushadhalaya, but the premises was being occupied by the person other than the tenant.

6. Section 12 of the Act provides for deemed vacancy, which is as follows:

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.

(2) In the case of a non-residential building, where a tenant carrying on business in the building admits a person who is not a member of his family as a partner or a new partner, as the case may be the tenant shall be deemed to have ceased to occupy the building.

(3) In the case of a residential building, if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy :

Provided that if the tenant or any member of his family had built any such residential building before the date of commencement of this Act, then such tenant shall be deemed to have ceased to occupy the building under his tenancy upon the expiration of a period of one year from the said date.

Explanation.-For the purposes of this sub-section-

(a) a person shall be deemed to have otherwise acquired a building, if he is occupying a public building for residential purposes as a tenant, allottee or licensee;

(b) the expression "any member of family", in relation to a tenant, shall not include a person who has neither been normally residing with nor is wholly dependent on such tenant.

(3-A) If the tenant of a residential building holding a transferable post under any government or local authority or a public sector corporation or under any other employer has been transferred to some other city, municipality, notified area or town

area, then such tenant shall be deemed to have ceased to occupy such building with effect from the thirtieth day of allotment to him of any residential accommodation (whether any accommodation be allotted under this Act or any official accommodation is provided by the employer) in the city, municipality, notified area or town area to which he has been so transferred, whichever is later.

(3-B) If the tenant of a residential building is engaged in any profession trade, calling or employment in any city, municipality, notified area or town area in which the said building is situate, and such engagement ceases for any reasons whatsoever, and he is landlord of any other building in any other city, municipality, notified area or town area then such tenant shall be deemed to have ceased to occupy the first mentioned building with effect from the date on which he obtains vacant possession of the last mentioned building whether as a result of proceedings under Section 21 or otherwise.

(4) Any building or part which a landlord or tenant has ceased to occupy within the meaning of sub-section (1), or sub-section (2), or sub-section (3), sub-section (3-A) or sub-section (3-B), shall for the purposes of this Chapter, be deemed to be vacant.

(5) A tenant or, as the case may be a member of his family referred to in sub-section (3) shall, have a right as landlord of any residential building referred to in the said sub-section which may have been let out by him before the commencement of the Uttar Pradesh Urban Buildings (Regulation of Letting Rent and Eviction) (Amendment) Act, 1976 to apply under clause (a) of sub-section (1) of Section 21 for the eviction of his tenant from such building notwithstanding that such building is one to which the remaining provisions of this Act do not apply.

7. In fact, the said section provides that where a landlord does not occupy the building or substantially removes his effects therefrom, or allows to occupy any person who is not a member of his family, then the vacancy should be deemed.

8. In this admittedly the property is not being occupied by the members of the tenant's family. It is vacant but it is occupied by Hirday Ranjan Chakraborty, who was not the tenant at any relevant time. In our opinion, the deemed vacancy of the premises though not actually vacant, has happened. The Rent Controller was right in coming to that conclusion. The error into which the High Court fell was in considering Hirday Ranjan Chakraborty to be a part of the Aushadhalaya and the rent that was being paid and credited along in the name of the Aushadhalaya to be treated as the rent on behalf of Hirday Ranjan Chakraborty.

9. The tenant of the premises in question has long left. An employee without the consent though, perhaps with knowledge of the landlord was occupying the premises, but in such circumstances it cannot be held as the High Court has done that there was no deemed vacancy. The High Court was in error in holding that the Aushadhalaya was a tenant through the petitioners. The tenant was the Aushadhalaya and the propriety thereof. It is an admitted factual position and the High Court has recognised that the Aushadhalaya was closed in the year 1976. The High Court commented that the landlord recognised Shri Hirday Ranjan Chakraborty as a tenant and was charging rent from him. That is wrong and incorrect. There was no such evidence. No rent was charged from Hirday Ranjan Chakraborty. He never paid any rent. The rent was paid in the name of the Aushadhalaya by Hirday Ranjan Chakraborty.

10. The High Court has rightly commented that the landlord knew that there was a change in the occupation but the landlord did not consent as there was no evidence and Hirday Ranjan Chakraborty has not said that there was any change of tenancy.. The tenancy was not in the name of Hirday Ranjan Chakraborty. The premises, indubitably, was in the name of the Aushadhalaya. It was not in occupation or possession of the Aushadhalaya, its proprietors or partners, and at the relevant time Hirday Ranjan Chakraborty did not claim or purport to occupy the same on behalf of the Aushadhalaya. He claimed and asserted his own right of occupation. He was not the tenant. The premises, indubitably, was occupied by a person other than the tenant without his consent but perhaps with the knowledge of the landlord.

11. In those circumstances, in our opinion, the High Court was not right. The Rent Controller in his order had held that Hirday Ranjan Chakraborty could not be given the benefit of Regulations (sic) 6 and 14 of the Act because at no stage the landlord had accepted him as the tenant. In view of this categorical finding, it could not be said that Hirday Ranjan Chakraborty was occupying the premises in question with the consent of the landlord.

12. In the premises the judgment and order of the High Court are set aside. The order of the Rent Controller is restored.

C. M. P. No. 17425 of 1988

13. In view of the above order, no order is necessary in this application, and the same is accordingly dismissed.

</html