

## **Nawab Ali Alias Hawab Ali Newar vs Smt. Hira Devi Bodhia on 21 February, 1983**

**Equivalent citations: 1983(1)SCALE778, (1983)2SCC256, [1983]2SCR256, AIRONLINE 1983 SC 7, 1983 (2) SCC 256 (1983) 9 ALL LR 222, (1983) 9 ALL LR 222, (1983) 9 ALL LR 222 1983 (2) SCC 256, 1983 (2) SCC 256**

**Bench: D.A. Desai, E.S. Venkataramiah**

### **ORDER**

1. Special leave granted.

2. This matter was heard on various dated and various alternative proposals were examined with a view to safeguarding the interests of both sides by making an arrangement satisfactory to both of them. The landlady seeks possession on the ground that the existing structure is required to be demolished and a new construction be put up adding to it the ground that the reconstructed premises would be required for personal use of the landlady, for commercial purposes.

3. There is some dispute between the parties about the extent of area now in possession of the appellant-tenant. The appellant contended that the respondent would not be able to put up the proposed construction until and unless other tenants occupying other portions of the building adjacent to and in the vicinity of the premises occupied by the appellant are evicted. It was further contended that in respect of such tenants no decree for eviction has been obtained and only the present appellant is made to vacate the premises in his possession on the ground of demolition existing structure and reconstruction.

4. When the special leave petition came up for hearing we issued notice and called upon the landlady to show the nature of the proposed construction, the extent and carpet area of the proposed construction. A very detailed map is before us and after protracted discussions ranging over many days, we failed to bring about a meeting of the minds with a view to finalising a settlement. It has, therefore, become necessary to dispose of this matter in the light of submissions made to us. However, we feel that further information is necessary to arrive at a just decision. The only course, therefore, open to us is to set aside the decision of the High Court and remit the matter to the High Court with a request that it may record its decision on the following three points:

- (1) What is the area at present in occupation and possession of the appellant-tenant;
- (2) Whether there are other tenants near, adjacent and around the premises occupied by the appellant;
- (3) If yes, whether the proposed re-construction can be proceeded with, without evicting those other tenants.

5. If the decision on these points cannot be arrived at by the High Court on the evidence on record, it would be open to the High Court to get necessary evidence recorded by the trial Court retaining the

matter to itself.

6. After recording its findings on the aforementioned three points, the High Court must further ascertain and determine how much area in the proposed new construction should be made available to the appellant to be used for residence. It is not necessary for the High Court to give the same area as at present in possession of the appellant. The High Court may keep in mind the size of the family of the appellant, the nature of his work and in these days of scarcity of accommodation, some minimum reasonable space he would require for residence for himself and his family. Once the High Court after recording its findings on the three points hereinabove indicated is of the opinion that the landlady would be able to undertake the proposed new construction, the High Court should mould the decree consistent with its findings. In the event the decree for eviction is affirmed, the High Court shall incorporate a condition in the decree that on completion of the proposed new construction, appellant-tenant shall be re-inducted in the area determined by the High Court. The High Court may direct a time bound programme to make its decree effective. The High Court must specify the date on which the appellant must vacate and handover the peaceful possession. A condition shall be incorporated in the eviction decree that the construction shall start by a specific date and a time bound programme for construction shall be provided indicating the date by which it must be ready for occupation. The High Court shall also specify the date by which the appellant should be put back in possession. When the appellant is re-inducted in possession, he will be liable to pay fair rent, to be determined by the appellant between parties, failing which the Court shall fix the rate. We remit the matter to the High Court to proceed with in the light of the observations made in this judgment. There will be no order as to costs of hearing in this Court.