Om Prakash vs Bhagwan Das on 10 March, 1986

Equivalent citations: 1986 AIR 1643, 1986 SCR (1) 598, AIR 1986 SUPREME COURT 1643, 1986 ALL. L. J. 740, 1986 SCFBRC 271, 1986 MPRCJ 155, 1986 ALL CJ 319, 1986 UJ(SC) 2 28, 1986 2 UJ (SC) 287, (1986) 12 ALL LR 245, (1986) 2 ALL RENTCAS 6, (1986) ALL WC 425, (1986) 1 RENCJ 653, (1986) 2 RENCR 392, (1986) 2 RENTLR 181, 1986 (2) SCC 428

Author: A.P. Sen

Bench: A.P. Sen, B.C. Ray, K.N. Singh

PETITIONER:
OM PRAKASH

Vs.

RESPONDENT:
BHAGWAN DAS

DATE OF JUDGMENT10/03/1986

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
RAY, B.C. (J)
SINGH, K.N. (J)

CITATION:
1986 AIR 1643 1986 SCR (1) 598
1986 SCC (2) 428 1986 SCALE (1)1278

ACT:
U.P. Urban Buildings (Regulation of Rent and Eviction) Act 1972 & U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Rules, 1972, s. 21(1) (a) 4th Proviso/Rule 16(1)(f) - Landlord seeking ejectment of tenant on bona fide need -Landlord offering reasonable, suitable accommodation to tenant- Landlord's claim to eviction to be considered liberally.

HELD:

The Prescribed Authority, Varanasi and the Second Additional District Judge, in revision, after considering the comparative hardship likely to be caused to the tenant and the landlord, allowed the application of the appellant -

landlord under s. 21(1)(a)of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 on the ground that the need of the appellant-landlord was bona fide and he was entitled to the release of the demised premises. The Authorities also held that since the appellant was living in the rented premises, there was no reason why he should be deprived of the beneficial enjoyment of his own property. However, in the appeal, the High Court set aside the orders passed by the aforesaid two Authorities.

Allowing the appeal,

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HELD : 1. There was no infirmity in the order of the Prescribed Authority or that of the learned II Additional District Judge. The High Court was clearly in error in interfering with the order passed by the Prescribed Authority, Varanasi and that of the II Additional District Judge, Varanasi. The judgment and order of the High Court are, therefore, set aside. The order of the Prescribed Authority, Varanasi and that of the II Additional Judge, Varanasi directing the release of the accommodation under s.21 (1)(a) of the Act are restored. [601 D; 601 H]

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2. One of the factors prescribed by r. 16 (1)(f) is that if the landlord applies for ejectment 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. [601 B]

In the instant case, the refusal of the application of the landlord under s.21 (1)(a) of the Act would undoubtedly cause greater hardship to him as that would deprive 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 s.21(1)(a) of the Act.[601 D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 959 of 1986.

From the Judgment and Order dated 1.5.1985 of the Allahabad High Court in C.M.W.P. No. 11377 of 1980.

R.B. Mehrotra for the Appellant.

Sunil Ambwani and Mukul Mudgal for the Respondent. The Judgment of the Court was delivered by SEN, J. After hearing learned counsel for the parties, we are satisfied that the High Court, in the facts and circumstances of the case, was clearrly 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 s. 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 s. 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.

In Bhaichand Ratanshi v. Laxmishanker Tribhovan, [1981] 3 S.C.C. 502 this Court interpreting the analogous provisions in s. 13 (1) (g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 observed :

> "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 E.R. 261; Fowle v.Bell, [1946] 2 All E.R. 668; Smith v. Penny, [1946] 2 All E.R. 672; Chandler v. Strevett, [1947] 1 All E.R. 164; and Kelley v. Goodwin, [1947] 1 All E.R.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. 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."

A plain reading of s. 21 (1)(a) of the Act read with the 4th proviso thereto and r. 16 (1)(f) shows that the scheme under the Act is the same. One of the factors prescribed by r. 16 (1)(f) is that if the landlord applies for ejectment 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.

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 s. 21 (1) (a) of the Act would undoubtedly cause greater hardship to him as that would deprive 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 s. 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 s. 21 (1) (a) of the Act.

We wish to record that Shri R.B.Mehrotra 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.

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 s. 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.

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 to the Prescribed Authority, Varanasi, for permission to exchange their respective premises on the terms set out above. No costs.

M.L.A. Appeal allowed.