

Anwar Hasan Khan vs Mohammad Shafi And Ors. on 19 October, 2001

Equivalent citations: AIR2001SC2984, JT2001(9)SC84, 2001(7)SCALE398, (2001)8SCC540, AIR 2001 SUPREME COURT 2984, 2001 AIR SCW 4461, 2001 ALL. L. J. 2814, 2002 SCFBRC 149, 2002 (1) ALL CJ 758, (2001) 9 JT 84 (SC), 2001 (9) JT 84, 2001 (8) SCC 540, 2002 ALL CJ 1 758, (2001) 2 RENCJ 514, (2001) 4 ALL WC 3228, (2001) 45 ALL LR 568, (2001) 4 CURCC 247, (2001) 7 SCALE 398, (2001) 7 SUPREME 794, (2002) 1 CURLJ(CCR) 253, (2001) 2 ALL RENTCAS 554, (2002) 1 UC 223, (2001) 2 RENCJ 514, (2001) 2 RENTLR 643

Bench: R.P. Sethi, S.N. Phukan

JUDGMENT

Sethi, J.

1. The appellant is the tenant of a shop regarding which order of eviction was passed by the Prescribed Authority on 16.12.1997. After dismissal of his appeal, he moved the High Court by way of a writ petition which was dismissed vide the judgment impugned in this appeal. It has been concurrently held by the Prescribed Authority, the Appellate Court and the High Court that the respondent-landlord required the shop for his personal bonafide requirement.

2. Learned counsel appearing for the appellant has contended that as the proceedings initiated by the respondent-landlord were not maintainable under first proviso to sub-section (1) of Section 21 of the Uttar Pradesh urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act"), the Prescribed Authority, First Appellate court and the High Court committed mistake of law by directing the appellant's eviction. It is contended that as no notice in terms of the aforesaid proviso was served upon the appellant-tenant, no cause of action accrued to the respondent-landlord for seeking his eviction under the provisions of the Act.

3. Undisputed facts of the case are that father of the appellant became a tenant of one Mushabbar Ali Khan in respect of the shop in the year 1330 on payment of rent at the rate of Rs. 4/- per month. The erstwhile owner of the shop migrated to Pakistan leaving no heirs. The tenant started paying rent to the Regional Settlement Commissioner since the shop had vested in the custodian. The said shop was purchased by one Mr. M.D. Malik who, by operation of law, became the landlord of the father of the appellant. The respondent purchased the shop on 2.8.1979 from Dr. M.D. Malik. The father of the appellant, the original tenant died somewhere in 1989. As the appellant-tenant had not paid the rent, the respondent-landlord issued a notice to him on 6.2.1995 calling upon for payment of arrears of rent. He filed an application for release of the shop under Section 21(1)(a) of the Act

against the appellant-tenant. The petition was resisted on various grounds including its non-maintainability in the absence of six months notice required as per first proviso of Section 21 of the Act.

4. Rejecting the prayer of the appellant, the Prescribed Authority directed his eviction. His appeal and the writ petition filed against the aforesaid orders also stood rejected.

5. Section 21 of the Act provides:

"21. Proceedings for release of building under occupation of tenant- (1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists namely--

(a) that the building is bonafide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trusts;

(b) xx xx xx Provided that where the building was in occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of this Act, no application shall be entertained on the grounds, mentioned in clause (a), unless a period of three years has elapsed since the date of such purchase and the landlord has given a notice in that behalf to the tenant not less than six months before such application, and such notice may be given even before the expiration of the aforesaid period of three years.

xx xx xx

6. While dismissing the writ petition of the appellant, the High Court observed:

"Under First Proviso to Section 21(1)(a) of the Act, I hold no six months notice is required in a case where 'three years' have elapsed since the purchase of a building. Six months' notice is required only in a case where a landlord has purchased a building with tenant on or after 15th July, 1972 (i.e. the commencement of the Act) and wants his release application to be allowed on immediate expiry of three years under Section 21(1)(a) of the act, Release application under the proviso can be filed any time after "the purchase" but it must precede by six months' notice. It is, however, open to a tenant to waive 'objection' on the ground of notice being inadequate (being short of six months) and such an objection, being waived, this deficiency will not vitiate release proceeding or render the order of the Prescribed Authority a nullity.

The question whether proviso contemplates absolute 'ban' of three years in all contingencies and that 'Release Application' can be allowed even before three years period has elapsed - by giving six months notice just after purchase does not arise directly in the present case but since it has been raised at the bar on behalf of the respondent therefore decided - though only incidently."

7. General and sweeping observations regarding the non applicability of the proviso with respect to the building purchased prior to the commencement of the Act were uncalled for and not in consonance with the object of the Act. However, the High Court rightly observed that "considering the language used in the 'First Proviso' and keeping in mind the object for providing the said proviso' one fails to find any good reason for attaching the condition of six month notice even after three years period after purchase, as suggested by the petitioner's counsel. There could possibly be no object for providing such an obligation on the landlord".

8. It is settled that for interpreting a particular provision of an Act, the import and effect of the meaning of the words and phrases used in the statute has to be gathered from the text, the nature of the subject matter and the purpose and intention of the statute. It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding the conflict and adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved. The well-known principle of harmonious construction is that effect should be given to all the provisions and a construction that reduces one of the provision to a "dead letter" is not harmonious construction. With respect to law relating to interpretation of statute this Court in *Union of India & Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama* held:

"The paramount object in statutory interpretation is to discover what the legislature intended. This intention is primarily to be ascertained from the text of enactment in question. That does not mean the text is to be construed merely as a piece of prose, without reference to its nature or purpose. A statute is neither a literary text nor a divine revelation. "Words are certainly not crystals, transparent and unchanged" as Mr. Justice Holmes was wisely and properly warned (*Towne v. Eisner* 245 US 418, 425 (1918)) learned (sic) and, J., was equally emphatic when he said" : "Statutes should be construed, not as theorems of Euclid, but with some imagination of the purpose which lie behind them." (*Lenigh Valley Coal co. V. Yensavage* 218 FR 547, 533]."

9. With respect to interpretation of a Welfare Statute, like the Rent Control Act being a piece of legislation, this Court in *Mangat Raj & Anr. v. Kidar Nath & Ors.* held:

"Like all other Rent Control Acts in the other States in the country, the Rent Act is a piece of social legislation which seeks to strike a just balance between the rights of the landlords and the requirements of the tenants. The Act prevents the landlord from taking the extreme step of evicting the tenant merely on the ground of default in

payment of rent if the landlord is guaranteed entire payment of the entire arrears of rent, cost and interest. Thus, the proviso affords a real and sanctified protection to the tenant which should not be nullified by giving a hypertechnical or literal construction to the language of the proviso which instead of advancing the object of the Act may result in its frustration."

10. Keeping in mind the object of the Act to provide safeguards to the tenant, the first proviso to Section 21 of the Act was added to ensure that the unscrupulous litigants do not transfer properties only for the purposes of creating grounds for eviction of the tenant in occupation thereof. The aforesaid proviso, however, was not intended to put any restriction upon the owners of the property not to transfer it under any circumstances. To ensure that the sale transaction was valid and not malafide, a statutory bar was created vide aforesaid proviso for the transferee to seek the eviction of the tenant with respect to such purchased property.

The proviso mandates that no application shall be entertained by the Prescribed Authority on the grounds mentioned in clause (a) of sub-section (1) of Section 21 of the Act unless a period of three years had elapsed since the date of such purchase. It further provides that no application under the said clause shall be entertained unless the landlord had given a notice to the tenant not less than six months before the filing of such application and such notice may be given even before the expiration of a period of three years. The object of the service of the notice is to furnish information to the tenant about the requirement of the landlord in order to enable him to search for an alternative accommodation or to find out as to whether the sale made by his erstwhile owner was a genuine and bonafide or not. The proviso and the notice contemplated under it was never intended to be permanent clog on the rights of the purchaser. The period contemplated for not initiating the eviction against the tenant on the ground as specified in clause (a) of sub-section (1) of Section 21 of the Act was intended to be for a period of three years and in no case for more than three years and six months. Any proceedings initiated for release of building under occupation of tenant on the aforesaid ground after the period contemplated under the aforesaid proviso does not require the service of aforesaid notice of six months.

11. In the instant case the respondent-landlord purchased the shop on 2.8.1979 whereafter the father of the appellant attorned him as his landlord. After the death of his father in the year 1989, the appellant started paying the rent and, therefore, became a tenant of the respondent-landlord entitled to the protections guaranteed to a statutory tenant under the Act. To seek his eviction, the respondent-landlord was obliged to prove that the leased premises were bonafide required by him for his occupation by himself or any member of his family or any person for whose benefit the property was held by him. In the present case, the respondent-landlord successfully proved the existence of the aforesaid ground which was concurrently upheld by the appellate court.

12. Looking from any angle we do not find any substance in the appeal and are not inclined to interfere with the order of eviction passed against the appellant.

13. The appeal is, therefore, dismissed without any order as to costs. At this stage the learned counsel appearing for the appellant submitted that as his client's family is in possession of the shop

for more than 70 years, a reasonable time be given to him for finding an alternative accommodation and vacating the shop. We feel that the interests of justice would be served if the appellant is given time to vacate the premises on or before 31st December, 2002 subject to his furnishing of the usual undertaking within four weeks.