

Supreme Court of India

Om Prakash And Ors vs Smt. Sunhari Devi And Ors on 2 March, 1993

Equivalent citations: 1993 SCR (2) 144, 1993 SCC (2) 397

Author: B S.P.

Bench: Bharucha S.P. (J)

PETITIONER:

OM PRAKASH AND ORS.

Vs.

RESPONDENT:

SMT. SUNHARI DEVI AND ORS.

DATE OF JUDGMENT 02/03/1993

BENCH:

BHARUCHA S.P. (J)

BENCH:

BHARUCHA S.P. (J)

KULDIP SINGH (J)

CITATION:

1993 SCR (2) 144

1993 SCC (2) 397

JT 1993 (3) 641

1993 SCALE (1) 743

ACT:

U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972: Section 21(1)(a) Eviction petition- Comparative hardship- Bonafide requirement- Reassessment of evidence by High Court under its writ jurisdiction- Permissibility of.

Constitution of India, 1950: Arts. 136 226- Writ jurisdiction of High Court- Assessment of evidence- Permissibility of- Interference in such matters under Special Leave jurisdiction- Whether called for.

HEADNOTE:

The appellant-landlords filed an eviction petition against respondent-tenants on the ground that they required the shop premises for their own use. The prescribed authority dismissed the petition holding that the appellants' requirement was not bonafide and that greater hardship would be caused to the respondents than to the appellants. On appeal the appellate authority held that the requirement of the appellants was genuine and bonafide. The respondent filed a Writ Petition before the High Court and it observed that the appellate authority ought to have ascertained the actual accommodation available in the property after excluding the accommodation necessary for residential

purposes and should have found out whether two rooms on the first floor could be spared for business. 'Me High Court further observed that the appellate authority was not justified in entering into the question of privacy and that the appellants had failed to disclose their residential accommodation. The High Court thus quashed the order of the appellate authority and restored the appeal to the file of the appellate authority to be decided afresh after hearing the parties and in the light of the observations made by it. This has been challenged in the present appeal by special leave.

On behalf of the appellants, it was contended that it was not open to the High Court to have reassessed the evidence, especially under its Writ jurisdiction.

145

On behalf of the Respondent it was contended that the findings of the appellate authority were perverse and therefore a re-assessment of the evidence was called for.

Allowing the appeal, this Court,

HELD : 1.1. Even in a second appeal the High Court must restrict itself to questions of law; all the more so in a writ petition. [147H]

1.2. In the instant case, the High Court re-assessed the evidence and went beyond its legitimate jurisdiction. The intervention of this Court is therefore, called for, especially since the High Court has directed the appellate authority to decide the appeal afresh "in the light of the observations made above". This Court does not approve of some of those observations. It is very difficult to see how a landlord can be asked to build alternate premises. It is also very difficult to see how a landlord who has asked for the eviction of a tenant from commercial premises can be faulted for not having given particulars of his residential accommodation and how this can be treated as a purposeful attempt on his part to keep back relevant material from the court, which should be taken into consideration in deciding his bona fide need. [148A-C]

2. The judgment and order under appeal are set aside. The order of the appellate authority dated 26th November, 1990 is restored.

#### JUDGMENT:

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 100 of 1993. From the Judgment and Order dated 2.9.92 of the Allahabad High Court in Civil Misc. W.P. No. 32805 of 1990. R.K. Jain and S.R. Setia for the Appellants. Rajinder Sachhar and K.C. Dua for the Respondents. The Judgment of the Court was delivered by BHARUCHA, J. The appeal is directed against the judgment and order of the High Court at Allahabad allowing the writ petition filed by the respondents and ordering that the appeal, the order which was impugned in the writ petition, should be decided afresh in the light of the observations made in its judgment.

The appellants are the landlords and the respondents the tenants. The appellants filed an eviction petition against the respondents under section 21(1)(a) of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 on the ground that they bonafide required the tenanted premises, a shop, for their own use. The prescribed authority under the said Act dismissed the eviction petition holding that the appellants' requirement was not bonafide and that greater hardship would be caused to the respondents than to the appellants. The appellants filed an appeal and the appellate authority allowed the same holding that the requirement of the appellants was genuine and bonafide. It also held in favour of the appellants upon the aspect of comparative hardship.

The respondent thereupon preferred the writ petition (being CMWP No.32805 of 1990) in the Allahabad High Court under Article 226 of the Constitution of India and impugned the judgment and order of the appellate authority. The High Court noted that a perusal of the orders of the prescribed authority and the appellate authority showed that seven properties were available to the landlords and these were relevant for the purposes of determining their bonafide need. In regard to a particular property (in Mohalla Shitala), the High Court found that the appellate authority's conclusion was not justified. From the material upon the record it appeared to the High Court that this property was available to the appellants and the second appellant was actually residing in it. The consequence of this finding was that accommodation on the first floor, which was alleged by the appellants to have been occupied for residential purposes, could be freed for doing business. The High Court had not concluded that the business could not be carried on in this property. The High Court then noted that the appellants had themselves pleaded that certain open land available to them was not sufficient for constructing a shop, being too small. In view of this pleading the High Court inferred, in its view, legitimately, that the appellants had no objection and were capable of raising a new construction over the open land available to them subject to their objection regarding its size. The authorities, in these circumstances, should, it said, have considered the availability of this land to meet the appellants' requirements. This had been done by the prescribed authority but his finding had been reversed by the appellate authority on the basis that it would not be proper to direct the appellants to raise money and to construct a shop over the open land. In the High Court's opinion this approach was not justified. The appellate authority should have confined its consideration of this open land only to its size. In regard to a shop left by one Lal Chaturson, the findings of the appellate authority were found by the High Court to be full of conjectures and surmises. The measurement of the shop had not been disclosed and there was nothing on the record to show that it could not be used for accommodating three persons doing the same business, namely, that of manufacturing ornaments. In regard to yet another property it had been admitted by the appellants that they carried out construction on the first as well as second floor. In the High Court's view, the appellate authority ought, in the circumstances, to have ascertained the actual accommodation available in this property "as the business can be carried out and it was being carried out earlier from the first floor". The appellate authority, after excluding the accommodation necessary for residential purposes, should, it held, have ascertained whether two rooms on the first floor could be spared for the proposed business. So far as privacy was concerned, no such case having been set up by the appellants, the appellate authority was not justified in entering into this question. Further, since the prescribed authority had noticed the fact that the appellants had failed to disclose their residential accommodation in the application, and it %,as "purposive, the appellate authority ought

to have taken the effect of this into consideration on the question of the bona fide need of appellants. For these reasons the High Court quashed the order of the appellate authority and restored the appeal to the file of the appellate authority to be decided afresh after hearing the parties and "in the light of the observations made above".

Learned counsel for the appellants submitted that it was not open to the High Court to have re-assessed the evidence, particularly in a proceeding under Article 226. Counsel for the respondents, on the other hand, submitted that the findings of the appellate authority were perverse and the High Court was, therefore, entitled to look into the evidence and come to the findings it reached. In his submission, this Court ought not to exercise its jurisdiction under Article 136 because all that the High Court had done was to remand the matter to the appellate authority.

Even in a second appeal the High Court must restrict itself to questions of law-, all the more so in a writ petition. We have referred to the findings of the High Court in some detail. They leave us in no doubt that the High Court re-assessed the evidence and went beyond its legitimate jurisdiction. The intervention of this Court is therefore, called for, especially since the High Court has directed the appellate authority to decide the appeal afresh "in the light of the observations made above". We do not approve of some of those observations. It is, to take one example, very difficult to see how a landlord can be asked to build alternate premises. To take another, it is very difficult to see how a landlord who has asked for the eviction of a tenant from commercial premises can be faulted for not having given particulars of his residential accommodation and how this can be treated as a purposeful attempt on his part to keep back relevant material from the court, which should be taken into consideration in deciding his bona fide need.

The appeal is allowed. The judgment and order under appeal are set aside. The order of the appellate authority dated 26th November, 1990 is restored.

The respondent shall pay to the appellants the costs of this appeal and of the writ petition quantified at Rs. 3,000. G.N.

Appeal allowed.