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MOHD. SHAFI

v.

SEVENTH ADDITIONAL DISTRICT & SESSIONS JUDGE, ALLAHABAD & ORS.

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December 16, 1976

[P. N. BHAGWATI, V. R. KRISHNA IYER AND S. MURTAZA FAZAL ALI, JJ.]

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972—Sec. 21(1) *explanation* (*iv*)—*Interpretation of a benevolent legislation—When two views possible—Whether to be construed strictly against the landlord—Meaning of "building" in explanation (iv)—Whether Unit of accommodation—Constitution—Articles* 226-227—*Whether High Court can interfere with mixed questions of law and facts.*

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Respondent No. 3 owned a double storey house. There were two tenements on the ground floor and two on the first floor. Each of the two tenements in the first floor was in possession of a tenant. One of the tenements on the ground floor was in possession of respondent No. 3 while the other tenement on the ground floor was in possession of the appellant as a tenant since the last over 35 years. Respondent No. 3 after terminating the tenancy of the appellant made an application before the prescribed authority under s. 21(1) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Act No. 13 of 1972) claiming release of the rented premises in her favour on the ground that she *bona fide* required them for occupation by herself and the members of her family for residential purposes. The prescribed authority held that the explanation (iv) to s. 21(1) of the Act was attracted in the present case since the ground floor constituted a building and a part of it was under the tenancy of the appellant and the remaining part was in occupation of respondent No. 3. Under s. 21(1) the prescribed authority has power to evict a tenant if it is satisfied that the building is *bona fide* required by the landlord for occupation by himself or any member of his family. The proviso, however, requires that except in the case mentioned in the explanation the prescribed authority shall take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application. Explanation (iv) provides that the fact that the building under tenancy is a part of a building the remaining part whereof is in the occupation of the landlord for residential purposes, shall be conclusive to prove that the building is *bona fide* required by the landlard. The prescribed authority also went into the question of comparative hardship and held that greater hardship would be caused to respondent No. 3 by refusal of her application than what would be caused to the appellant by granting it.

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In an appeal filed by the appellant, the District Court agreed with the prescribed authority that explanation (iv) to section 21(1) was applicable to the facts of the case and that it conclusively proved that the building was *bona fide* required by respondent No. 3. But on the question of greater hardship the District Court disagreed with the conclusion reached by the prescribed authority and held that the appellant was likely to suffer greater hardship by granting the application than what respondent No. 3 would suffer by its refusal. The District Court accordingly allowed the appeal and dismissed the application of respondent No. 3 for release of the rented premises.

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In a writ petition filed by respondent No. 3 the High Court held that the prescribed authority had recorded a definite finding of fact that the accommodation on the ground floor constituted one building and that the appellant was in possession of a part of the building and respondent No. 3 was in occupation of the remaining part of the building for residential purposes. The High Court held that once it was held that explanation (iv) to s. 21(1) was attracted

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there could be no question of examining comparative hardship. The High Court, therefore, allowed the writ petition and set aside the order of the District Court and allowed the application of respondent No. 3 for release of the rented premises.

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Allowing the appeal by Special Leave,

HELD : 1. If explanation (iv) to s. 21(1) is applicable in the present case, the question of comparative hardship of appellant and respondent No. 3 would not arise. [467 G]

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2. The High Court erred in holding that the finding that explanation (iv) was applicable is a finding of fact and it was not competent for the High Court to interfere with it. Whether explanation (iv) is attracted in the present case would depend upon the applicability to the facts of the correct interpretation of the explanation and it would, therefore, clearly be a mixed question of law and fact and if the High Court found that in reaching its conclusion on this question the District Court proceeded on a wrong interpretation of the explanation, the High Court can certainly correct the error and set aside the conclusion reached by the District Court. [469 A-G]

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3. The language used by the Legislature in explanation (iv) is extremely clumsy. The legislation should be couched in simple and plain language. Since the explanation raises a conclusive presumption in favour of the landlord in a legislation which is intended to protect the tenant against unreasonable eviction, it must be construed strictly against the landlord so as to cut as little as possible into the protection afforded to the tenant. If the language of the explanation is susceptible of two interpretations we should prefer that which enlarges the protection of the tenant rather than that which restricts it. The word building is used thrice in explanation (iv) and it is clear from the context in which it occurs that it is not intended to be used in its popular sense so as to mean the entire superstructure raised on the ground. The "building" in the explanation is used to denote a unit of which accommodation under tenancy constitutes a part and the remaining part is in the occupation of the landlord for residential purposes. Where a superstructure consists of two or more tenements and each tenement is an independent unit distinct and separate from the other the explanation would be of no application because each tenement would be a unit and not a part of a unit. It is only where there is a unit of accommodation out of which a part is under the tenancy and the remaining part is in occupation of the landlord that the explanation would be attracted. To determine the applicability of the explanation, the question to be asked would be whether the accommodation under tenancy and the accommodation in occupation of the landlord together constitute one unit of accommodation. This construction would be more consistent with the policy and intendment of the legislation which is to protect the possession of the tenant unless the landlord establishes his *bona fide* requirement of the accommodation under tenancy. [469 A-F, 470 A-G]

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Chunnoo Lal v. *Addl. District Judge, Allahabad* [1975] 1 A.L.R. 362, approved.

The Court remanded the matter back to the District Court to determine the question in the light of the interpretation of the explanation given in the judgment.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 722 of 1976.

(Appeal by Special Leave from the Judgment and Order dated 14-5-1976 of the Allahabad High Court in C. M. W. No. 7441 of 1975).

K. P. Gupta and *B. B. Tawakley*, for the appellant.

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S. P. Gupta, Pramod Swarup and *Manoj Swarup*, for respondent No. 3.

A The Judgment of the Court was delivered by

BHAGWATI, J.—There is a house bearing No. 10-A situate at Khuldabagh in the city of Allahabad belonging to respondent No. 3. This house consists of a ground floor and a first floor. There are two tenements on the ground floor and two tenements on the first floor. Each of the two tenements in the first floor is in the possession of a B tenant. The tenement on the northern side of the ground floor is in the possession of respondent No. 3, while the tenement on the southern side is in the possession of the appellant as a tenant since the last over 35 years. The appellant pays rent of Rs. 4/- per month in respect of the tenement in his occupation. Respondent No. 3, after determining the tenancy of the appellant, made an application before the Rent Control and Eviction Officer, Allahabad under section 3 of C the U.P. Rent Control & Eviction Act, 1947 for permission to file a suit to eject the appellant on the ground that she *bona fide* required the rented premises in the possession of the appellant for her use and occupation. The Rent Control & Eviction Officer, on a consideration of the evidence led before him, came to the conclusion that the need of respondent No. 3 for the rented premises was not *bona fide* and genuine and on this view, he rejected the application of respondent D No. 3 by an order dated 23rd February, 1972. Respondent No. 3 preferred a revision application against the decision of the Rent Control and Eviction Officer to the Commissioner and, on the coming into force of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 (U.P. Act No. 13 of 1972), this revision application came to be transferred to the District Court under section 43 (m) of that Act and it was numbered as Civil Appeal No. 245 of E 1972. The District Judge by an order dated 12th January, 1973 agreed with the view taken by the Rent Control and Eviction Officer and dismissed the appeal.

However, within a short time thereafter, respondent No. 3, undaunted by her failure, filed an application before the Prescribed Authority on 18th January, 1974 under section 21(1) of U.P. Act No. 13 of F 1972 claiming release of the rented premises in her favour on the ground that she *bona fide* required them for occupation by herself and the members of her family for residential purposes. The Prescribed Authority held that Explanation (iv) to section 21(1) of U.P. Act No. 13 of 1972 was attracted in the present case, since the ground floor of house No. 10-A constitute a building, a part of which was under tenancy of the appellant and the remaining part was in the G occupation of respondent No. 3 for residential purposes, and hence it must be held to be conclusively established that the rented premises were *bona fide* required by respondent No. 3. The Prescribed Authority also went into the question of comparative hardship of the appellant and respondent No. 3 and observed that greater hardship would be caused to respondent No. 3 by refusal of her application than what would be caused to the appellant by granting it. On this H view, the Prescribed Authority allowed the application of respondent No. 3 and released the rented premises in her favour.

The appellant being aggrieved by the order passed by the Prescribed Authority prefered an appeal to the District Court, Allahabad. The

District Court agreed with the view taken by the Prescribed Authority that Explanation (iv) to section 21(1) of U.P. Act No. 13 of 1972 was applicable to the facts of the present case and "that fact conclusively proved that the building was *bona fide* required" by respondent No. 3. But on the question of greater hardship, the District Court disagreed with the conclusion reached by the Prescribed Authority and held that the appellant was likely to suffer greater hardship by granting the application than what respondent No. 3 would suffer by its refusal. The District Court accordingly allowed the appeal and rejected the application of respondent No. 3 for release of rented premises.

This led to the filing of a writ petition by respondent No. 3 in the High Court of Allahabad challenging the legality of the order rejecting her application. Respondent No. 3 contended that since her *bona fide* requirement of the rented premises was established by reason of applicability of Explanation (iv) to section 21(1) of U.P. Act No. 13 of 1972, the question of comparative hardship was immaterial and the District Court was in error in throwing out her application on the ground that greater hardship would be caused to the appellant by granting her application than what would be caused to her by refusing it. The High Court while dealing with this contention observed that the Prescribed Authority had recorded a finding of fact that "the accommodation on the ground floor constituted one building" and "the respondent was in possession of a part of the building and the landlady was in occupation of the remaining part of the building for residential purposes" and this finding of fact reached by the Prescribed Authority was confirmed by the District Court and in view of this finding which the High Court apparently thought it could not disturb, the High Court proceeded on the basis that Explanation (iv) to section 21(1) of U.P. Act No. 13 of 1972 was applicable in the present case. But the High Court went on to point out that once it was held that Explanation (iv) to section 21(1) of the U.P. Act No. 13 of 1972 was attracted, there could be no question of examining comparative hardship, for in such a case greater hardship of the tenant would be an irrelevant consideration. The High Court on this view allowed the writ petition, set aside the order of the District Court and allowed the application of respondent No. 3 for release of the rented premises but gave two months' time to the appellant to vacate the same. The appellant being dissatisfied with this order passed by the High Court preferred the present appeal with special leave obtained from this Court.

Now, it may be pointed out straightaway that if Explanation (iv) to section 21(1) of U.P. Act No. 13 of 1972 is applicable in the present case, the question of comparing the relative hardship of the appellant and respondent No. 3 would not arise and respondent No. 3 would straightaway be entitled to an order of eviction as soon as she shows that the conditions specified in the Explanation are satisfied. Section 21(1), as it stood at the material time with the retrospective amendment introduced by the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) (Amendment) Act, 1976 being U.P. Act

A No. 28 of 1976, was in the following terms—we are setting out here only the relevant portion of that section :—

"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,

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(a) that the building is *bona fide* 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 or 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 trust :

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Provided also that the prescribed authority shall, except in cases provided for in the Explanation, take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed.

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Explanation : In the case of a residential building—

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(iv) the fact that the building under tenancy is a part of building the remaining part whereof is in the occupation of the landlord for residential purposes, shall be conclusive to prove that the building is *bona fide* required by the landlord."

G The language of the proviso is clear and explicit and it requires the Prescribed Authority to take into account the relative hardship of the landlord and the tenant only in those cases which are not covered by the Explanation. If a case falls within the Explanation, the proviso would have no application and it would not be necessary to consider the comparative hardship of the landlord and the tenant in deciding whether or not to make an order of eviction. The principal question which, therefore, arises for determination in this appeal is whether

H Explanation (iv) is attracted on the facts of the present case. The High Court seemed to take the view that the finding of the Prescribed Authority that Explanation (iv) was applicable in the present case

was a finding of fact and since this finding of fact was affirmed by the District Court in appeal, it was not competent to the High Court to interfere with it in the exercise of its extraordinary jurisdiction under Art. 226 of the Constitution and that was presumably the reason why the High Court accepted the hypothesis that the case was covered by Explanation (iv). But this view of the High Court is plainly erroneous because the question whether Explanation (iv) is attracted in the present case would depend on the applicability to the facts, of the correct interpretation of the Explanation and it would, therefore, clearly be a mixed question of law and fact, and if the High Court found that in reaching its conclusion on this question the District Court proceeded on a wrong interpretation of the Explanation, the High Court could certainly correct the error and set aside the conclusion reached by the District Court. We must, therefore, first consider what is the proper construction of the language employed in Explanation (iv).

It is apparent even on a cursory reading of Explanation (iv) that the language employed by the Legislature in expressing its intent is extremely clumsy. This is a glaring example of how the Legislature can by inapt and ill-considered drafting create uncertainty and promote litigation. It appears that sometimes the legislature forgets that laws are intended for human beings and they should be so framed that an ordinary man can understand their true import and meaning. The language in which the legislation is couched must be simple and plain so that even 'a man in the Clapam bus', or if we may indigenise this expression 'a man in the DTC bus' should be able to follow its mandate and injunction without the possibility of doubt or error. Here, unfortunately the language of Explanation (iv) is such that we have to grope our way in a chaos of verbal darkness and try to arrive at the correct legislative meaning with great diffidence and hesitation. But there is one principle of interpretation which offers some guidance in the interpretation of the rather obscure language of this Explanation and it is that since the Explanation raises a conclusive presumption in favour of the landlord in a legislation which is intended to protect the tenant against unreasonable eviction, it must be construed strictly against the landlord so as to cut as little as possible into the protection afforded to the tenant. If the language of the Explanation is susceptible of two interpretations, we should prefer that which enlarges the protection of the tenant rather than that which restricts it. Bearing in mind his principle of interpretation, we may now approach the language of Explanation (iv) and try to arrive at its proper construction.

The word 'building' is used thrice in Explanation (iv) and it is clear from the context in which it occurs that it is not intended to be used in its popular sense so as to mean the entire super-structure raised on the ground. The first time that the word 'building' is used is in the expression 'the building under tenancy' and it is obvious that it is 'the building under tenancy' which is intended to be referred when the word 'building' is used towards the end of the Explanation. It is in respect of 'the building under tenancy' that a conclusive presumption is raised that it is *bona fide* required by the landlord. Now, 'the building under tenancy' cannot be the entire super-structure because what is contemplated by the Explanation is that "the building under tenancy" must be "a part of a building" and, therefore, it cannot be the whole super-structure. Here, the word 'building' obviously means

accommodation which is the subject-matter of tenancy. The question thus is : what is the sense in which the word 'building' is used when it occurs for the second time in the Explanation. The context clearly indicates that the word 'building' is there used to denote a unit, of which the accommodation under tenancy constitutes a part and the remaining part is in the occupation of the landlord for residential purposes. The accommodation under tenancy and the accommodation in the occupation of the landlord together go to make up the 'building'. The use of the word 'part' is a clear pointer that the 'building', of which the accommodation under tenancy and the accommodation in the occupation of the landlord are parts, must be a unit. Where a super-structure consists of two or more tenements and each tenement is an independent unit distinct and separate from the other, the Explanation would be of no application, because each tenement would be a unit and not part of a unit. It is only where there is a unit of accommodation out of which a part is under tenancy and the remaining part is in the occupation of the landlord, that the Explanation, would be attracted. To determine the applicability of the Explanation, the question to be asked would be whether the accommodation under tenancy and the accommodation in the occupation of the landlord together constitute one unit of accommodation ? The object of the Legislature clearly was that where there is a single unit of accommodation, of which a part has been let out to a tenant, the landlord who is in occupation of the remaining part should be entitled to recover possession of the part let out to the tenant. It could never have been intended by the Legislature that where a super-structure consists of two independent and separate units of accommodation one of which is let out to a tenant and the other is in the occupation of the landlord, the landlord should, without any proof of *bona fide* requirement, be entitled to recover possession of the tenement let out to the tenant. It is difficult to see what social object or purpose the legislation could have had in view in conferring such a right on the landlord. Such a provision would be plainly contrary to the aim and objective of the legislation. On the other hand, if we read the Explanation to be applicable only to those cases where a single unit of accommodation is divided by letting out a part to a tenant so that the landlord, who is in occupation of the remaining part, is given the right to evict the tenant and secure for himself possession of the whole unit, it would not unduly restrict or narrow down the protection against eviction afforded to the tenant. This construction would be more consistent with the policy and intendment of the legislation which is to protect the possession of the tenant, unless the landlord establishes his *bona fide* requirement of the accommodation under tenancy. We may point out that Mr. Justice Hari Swarup has also taken the same view in a well-considered judgment in *Chunnoo Lal* v. *Addl. District Judge, Allahabad*(1) and that decision has our approval.

Since the question as to the applicability of Explanation (iv) on the facts of the present case has not been considered by the High Court as well as the lower courts on the basis of the aforesaid construction of the Explanation, we must set aside the judgment of the High Court as also the order of the District Court and remand the case to the District Court with a direction to dispose it of in the light

(1) (1975) 1 A.L.R. 362.

of the interpretation placed by us on the Explanation. It was contended before us on behalf of the appellant that since Explanation (iv) has been omitted by U.P. Act No. 28 of 1976, respondent No. 3 was no longer entitled to take advantage of it and her claim for possession must fail. But the answer given by respondent No. 3 to this contention was that the omission of Explanation (iv) was prospective and not retrospective and since Explanation (iv) was in force at the date when respondent No. 3 filed her application for release, she had a vested right to obtain release of the rented premises in her favour by virtue Explanation (iv) and that vested right was not taken away by the prospective omission of Explanation (iv) and hence she was entitled to rely on it despite its omission by U.P. Act No. 28 of 1976. We have not pronounced on these rival contentions since we think it would be better to leave it to the District Court to decide which contention is correct. If the District Court finds that by reason of the omission of Explanation (iv) by U.P. Act No. 28 of 1976 respondent No. 3 is no longer entitled to rely on it to sustain her claim for release of the rented premises in her favour, it will be unnecessary for the District Court to examine the further question as to whether Explanation (iv) is attracted on the facts of the present case. If, on the other hand, District Court finds that the omission of Explanation (iv) by U.P. Act No. 28 of 1976 being prospective and not retrospective, respondent No. 3 is entitled to avail of that Explanation, the District Court will proceed to decide whether the two tenements or the ground floor constituted one single unit of accommodation so as to attract the applicability of Explanation (iv) and for this purpose, the District Court may, if it so thinks necessary, either take further evidence itself or require further evidence to be taken by the Prescribed Authority. If the District Court finds that the case is covered by Explanation (iv), there would be no question of examining comparative hardship of the appellant and respondent No. 3, and respondent No. 3 would straightaway be entitled to an order of release of the rented premises in her favour. On the other hand, if the District Court comes to the conclusion that by reason of the omission of Explanation (iv) of the U.P. Act No. 28 of 1976 respondent No. 3 is not entitled to rely on it or that Explanation (iv) is not applicable on the facts of the present case, the application of respondent No. 3 would fall, since it has already been found by the District Court—and we do not propose to disturb this finding—that the appellant would suffer greater hardship by granting of the application than what would be suffered by respondent No. 3 if the application were to be refused. We accordingly remand the matter to the District Court with no order as to costs.

P.H.P. *Appeal allowed.*

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