
(2007) 08 AHC CK 0108

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19160 of 1985

Kedar Nath Agrawal and Anr.

APPELLANT

Vs

District Judge, Ballia & Ors.

RESPONDENT

Date of Decision : 20-08-2007

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a)

Citation : (2007) 08 AHC CK 0108

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. This petition has been filed by the tenants challenging the validity and correctness of the order dated 2221984 passed by the Prescribed Authority/ Munsif, West, Ballia (respondent No. 2) in P.A. Case No. 29 of 1983 and also the order dated 25111985 passed by the District Judge, Ballia (respondent No. 1) in Rent Control Appeal No. 4 of 1984.

3. The facts of the case in a nutshell are that Sri Jagdeo Shah, deceased respondent No. 4, was the owner of the shop in dispute situate in Qasba Rasra in District Ballia. He had carried on cloth business in the shop for some time, but due to his old age he transferred the shop in the name of his wife Smt. Dhanraji Devi, deceased respondent No. 3. Sri Jagdeo Shah was doing cloth business at Kolkata also where he decided to go as his business in the shop in dispute was not giving returns up to his expectations.

4. The landlords let out the shop in dispute to the petitioners for a period of one year. However, due to riots in Kolkata Sri Jagdeo Shah had to wind up his business at Kolkata and returned to Ballia. The respondentlandlady Smt. Dhanraji Devi thereafter obtained licence for hosiery business in the name and style of M/ s. N.N. Hosiery Works and an application was moved by the Smt. Dhanraji Devi and Sri Jagdeo Shah before the Prescribed Authority, Ballia on 181983 under

Section 21 (1) (a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) for release of the shop in dispute on the ground of their bona fide need due to closure of their business at Kolkata. The need of the landlords/contesting respondents is asserted in paragraphs 3, 5 and 6 of the release application dated 18/1/83 as under :

“(3) YAH KI SAYAL NO. 2 KA US SAMAY ROJGAAR CALCUTTA ME BHEE THA ISLIYE MAKOOL INTAZAM DUKAN KAPARE KEE NA HONE KE KARAN FAYADA NA HO SAKA. DUKAN KIRAYA TARAFSANIYAN KO USKI ISTADUWA PAR SAAL BHAR KE LIYE DIYA AUR USEE MEI WOH KIRAYA PAR RAHNE LAGAA BAAD MEI BHEE JABARJASTI KIRAYA PAR RAHTA HAI KYONKI HAM SAYALA KE NABALIGAAN LARKI HAI AUR SAYAL NO. 2 BUZ.URG AADMIT HAI AUR SAYAL NO. 1 AURAT HAI.

(5) YAH KI DUKAN MEI DUKAN APNI JEEVIKA PAR CHALANE KE LIYE TATHA BACHCHI KEE PARWARISH KARNE KE LIYE JO BANAYEE GAYEE THEE HAM SAYALAN KEE SADBHAAWIK AWASHYAK AWASHYAKTA HAI. HAM SAYALAN KE PARIWAR MEI VYAPAR KE LIYE KOI DOOSRA STHAAN NAHI HAI JISME DUKAN KARKE APNI ROJEE ROTI CHALAYA JAA SAKE.

(6) YAH KI SAYALA NO. 1 NE GANJEE BANIYAN KEE ROJGAAR YE LIYE LICENCE BHEE hasil kar liya hai aur sthan dukan ka nahin hone ke karan vyapar nahin chal paa raha hai tatha gujar basar karna asambhawa ho gaya hai.?”

5. According to the landlords the petitionertenants are big businessmen. They were not doing any business in the shop in dispute which was kept locked by them. They do not require the shop in dispute also for the reason that they had another shop at Rasra where also they were running their business.

6. The petitionertenants contested the release application and filed written statement denying the averments of bona fide need of the landlords. It was also stated by the petitioners therein that they were paying rent of the shop in dispute regularly and doing their business in the shop in dispute since many years and asserted that the respondentlandlords had other properties also, as such the need of the respondentlandlords could not be said to be bona fide particularly for the reason that the respondentlandlords had cloth business at Kolkata and they were not in need of the shop.

7. On the basis of the pleadings and considering the evidence adduced by the parties, the Prescribed Authority/MunsifWest. Ballia vide impugned judgment and order dated 22/1/84 allowed the release application filed by the respondentlandlords holding that the need of the respondentlandlords is bona fide and therefore, they were entitled to possession of the shop in dispute. He further held that the respondentlandlords would suffer greater hardship if the shop in dispute is not released in their favour. The Prescribed Authority also held that the petitionertenants had an alternative shop and they were not in fact carrying on any business in the shop in dispute which was kept closed for ulterior motive. Accordingly, an order of eviction was passed by the Prescribed Authority in favour of the respondentlandlords and against the petitioners.

8. Aggrieved by the judgment and order passed by the Prescribed Authority, the petitioners preferred a rent control appeal before the District Judge, Ballia who also vide impugned judgment and order dated 25/11/1985 dismissed the appeal filed by the petitioners affirming the findings recorded by the Prescribed Authority in respect of bona fide need, comparative hardships and eviction of the petitioners.

9. The judgment and order of the District Judge, Ballia dated 25/11/1985 aforesaid was challenged by the petitioners before the High Court by means of the instant writ petition which was earlier dismissed vide judgment and order dated 6/8/1999 subject to the observations and conditions therein.

10. In the meantime certain subsequent events which had emerged during the pendency of the writ petition namely, death of Smt. Dhanraji Devi and Sri Jagdeo Shah were brought to the notice of the Court. His Lordship Hon'ble A.K. Yog, J., while dismissing the writ petition, however, held that they could not be taken into consideration. Resultantly, the orders passed by the Courts below were confirmed. The observations of the Court, are as under :

?...One has to bear in mind, while considering respective decisions on the question, that vital and decisive factor is as to whether the proceedings had come to an end under the Act. The matter having become final in appeal or revision and thus having come to an end, the matter stood finally decided. Filing of Writ Petition by invoking supervisory jurisdiction under the Constitution cannot be said to be continuation of the proceedings under the Act. It is well settled in law that writ is not continuation of the suit, appeal or revision. For this purpose reference may be made to :

1. AIR 1963 SC 946 (State of U.P. v. Vijay Anand Maharaj)
2. AIR 1966 SC 1445 (Paragraphs 15 & 16) (Ramesh & Anr. v. Genda Lal Motilal Patni & Ors.)
3. 1974 RD 107 : AIR 1974 All. 202 (FB) (Udai Bhan Singh v. Board of Revenue)
4. AIR 1972 SC 1598 (The Ahmedabad Manfg. & Calico Printing Coy. Ltd. v. Rantahal Ramanand & Ors.)

Perusal of all the decisions relied upon by the learned Counsel for the petitioner, (particularly AIR 1991 SC 1760 Paragraph 25 which has taken note of other decisions reported in AIR 1981 SC 1711 and AIR SC 207), clearly show that Supreme Court was considering the question whether a case where matter was pending in Appeal, it was permissible under law to take into account subsequent events before Appeal was finally decided. Paragraph 25 of the said decision shows that in that case application for additional evidence was filed in Appeal to bring on record subsequent developments. Case was not finally decided under the contemplated forum/channel. Supreme Court held, in the facts of that case, that subsequent events emerging during Appeal should be taken into account. No decision has been placed wherein Hon'ble Supreme Court held that even if the

proceedings are finally determined under normal channel, still subsequent developments which take place when Writ Petition is pending, should be taken into account.

There are decisions of the apex Court wherein it has been held that once matter is finally decided in appeal then subsequent circumstances, which occur during pendency of writ proceedings, cannot be taken into account. Reference may be made to the following decisions, which held that "Subsequent Events" after appellate stage (when matter is finally concluded) are not relevant :

(1) 1999 (1) ARC 188 (Paragraphs 17 & 19)

(2) 1997 (1) ARC 627 (SC)

(3) 1975 Allahabad Law Journal 669 (Paragraph 4)

I find no contrary decision of this Court or that of the apex Court on the said issue. The contingency of making reference hence does not arise.

The release application does not abate nor Writ Petition, for the said reason, can be simplicitor allowed. Had the landlord got possession on the basis of the impugned orders and had the Writ Petition not been pending for no fault of the landlords or their legal representatives; the landlords would have certainly reaped the fruits. A party cannot be penalized for the delay in Court.

The learned Counsel for the petitioner then submitted that the Prescribed Authority has erred in law in taking into account the ex parte report of the Amin, which was obtained behind the back of the Petitioners and also that tenants were not allowed to cross-examine the said Amin. Reference is made to certain provisions of the Act wherein Prescribed Authority has power to allow cross-examination. Memorandum of Appeal under Section 22 of the Act has not been annexed with the Writ Petition. A copy of the same was placed for perusal before the Court by the learned Counsel for the Petitioners. A perusal of the same shows that in Ground No. 10 (Memorandum of Appeal) tenant-appellants did express grievance on this aspect. Perusal of the appellate judgment, however, does not show any discussion on this aspect. It is clear that said ground was not raised and pressed before Appellate Authority. Again, in Paragraph 16 of the Writ Petition, Petitioners have alleged that this aspect was urged and pressed before Appellate Authority (District Judge).....?

11. Aggrieved by the judgment and order of the High Court dated 681999 the petitioner-tenants filed Special Leave Petition which was converted into Civil Appeal No. 41 of 2000, Kedar Nath Agrawal (dead) & Anr. v. Dhanraji Devi (dead) by L.Rs. & Anr., before the Hon'ble Supreme Court. However, it was dismissed in default. The heirs of the respondent-landlords in the meantime dispossessed the petitioners from the shop in dispute. The Civil Appeal filed before the Hon'ble Supreme Court by the petitioners was thereafter restored and allowed vide aforesaid judgment and order dated 13102004 remitting the matter for consideration afresh after taking into consideration the subsequent events in

accordance with law. The relevant extract is as under :

?In view of the settled legal position as also the decisions in Pasupuleti Venkateswarlu and Hasmat Rai in our opinion, the High Court was in error in not considering the subsequent event of death of both the applicants. In our view, it was power as well as the duty of the High Court to consider the fact of death of the applicants during the pendency of the writ petition. Since it was the case of the tenant that all the three daughters got married and were staying with their inlaws, obviously, the said fact was relevant and material. The ratio laid down by this Court in Rameshwar, would not apply to the facts of this case as it related to agrarian reforms. Likewise Gaya Prasad does not carry the matter further. There during the pendency of proceedings the son for whom requirement was sought had joined Government Service. In the instant case, the requirement was for the applicants who died during the pendency of writ petition Gaya Prasad is thus clearly distinguishable.

There is yet another reason on which the order passed by the High Court is liable to be set aside. As stated earlier, notice was issued by this Court on October 29, 1999 in view of provisions of subsection (7) of Section 21 of the Act. Sub section (1) of the said section enables the landlord to get possession of the tenanted property on certain grounds. One of such grounds is bona fide requirement by the landlord for residential purposes or for purposes of any profession, trade or calling. Subsection (1) has to be read with subsection (7) of Section 21. The relevant part of Section 21 reads as under;

?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 he 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 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 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 trust;

(7) Where during the pendency of an application under clause (a) of subsection (1), the landlord dies, his legal representatives shall be entitled to prosecute such application further on the basis of their own need in substitution of the need of the deceased.?

Conjoint reading of clause (a) of subsection (1) and subsection (7) of Section 21 makes it clear that where the possession is sought by the landlord on the ground of bona fide requirement and during the pendency of the application, the landlord dies, his legal representatives can prosecute such application on the basis of their own need in substitution of the need of the deceased.

In the light of decisions referred to by us, particularly in Hasmat Rai and the

provisions of subsection (7) of Section 21 of the Act, the High Court has to consider the matter and record a finding.

For the reasons aforesaid, the appeal deserves to be allowed by setting aside the order passed by the High Court. The matter is remitted to the High Court with a direction that the High Court shall consider the subsequent event of death of both the applicants and also the provisions of subsection (7) of Section 21 of the Act in the light of observations made hereinabove and pass an appropriate order in accordance with law after hearing the parties.

Regarding possession, as already noted earlier, according to respondents, after the dismissal of the appeal in default and before restoration, they have already taken over possession of the shop. According to the appellants, however, possession has remained with them. We express no opinion. When we are remitting the matter to the High Court with a direction that the High Court will decide the matter afresh according to law, appropriate order will be passed in consonance with the final decision by the High Court. Till then status quo as of today shall continue. There shall be no order as to costs.?

12. Thus, this case has come up before this Court after remand in pursuance of the Hon'ble Supreme Court's decision dated 1310 2004 directing the High Court to decide the case afresh after taking into consideration the subsequent events also of death of both the contesting respondents and also the provisions of subsection (7) of Section 21 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act") before passing appropriate order in accordance with law after hearing the learned Counsel for both the parties. However, the Hon'ble Supreme Court has not expressed any opinion regarding rival claim of the parties with regard to possession and directed the parties to maintain status quo till the decision of the High Court.

13. The contention of the learned Counsel for the petitioners is that from the perusal of paragraphs 5 and 6 of the release application it would be clearly established that the shop in dispute is sought to be released on the grounds confined to the need of the deceased landlady Smt. Dhanraji Devi and Sri Jagdeo Shah, the original landlord who transferred the shop in dispute in favour of his wife Smt. Dhanraji Devi through a saledeed dated 2191994. He submits that the original respondent landlords have since died and have been substituted by their heirs and legal representatives.

14. The learned Counsel for the petitioners submits that it is not in dispute that the application was allowed by the Prescribed Authority and the appeal filed by the petitioners was also dismissed by the District Judge, Ballia. During the pendency of the writ petition filed by the petitioners both the landlords Smt. Dhanraji Devi and Sri Jagdeo Shah died and their heirs and legal representatives did not choose to plea their own need in a separate suit, hence in the aforesaid scenario it is contended that both the landlords having died the release application has become otiose and is liable to be rejected and the writ petition to

be allowed.

15. The learned Counsel for the petitioners has then relied upon the judgment of the Hon''ble Supreme Court and has urged that in the release application it was alleged that Smt. Dhanraji, respondent No. 3 was owner of the shop in dispute which was built long back by her husband Jagdeo Shah and was transferred to her; that the shop in dispute was let out to the petitioners as at the time of letting out of the shop in dispute to the petitioners the husband of respondent No. 3 who had business at Kolkata had no need of the shop. It is further alleged that an application was also filed for inspection of the shop and for preparation of the siteplan by the Amin behind the back of the petitioners and the Prescribed Authority on that application had ordered the Amin to make inspection which was made on 24/9/1983 again behind the back of the petitioners, but the Amin was neither examined nor produced for cross-examination.

16. It is submitted that according to the judgment of the Hon''ble Supreme Court the matter has, therefore, necessary to be confined within the four corners of the judgment of the Hon''ble Supreme Court as it has been rendered interparties and, therefore, operates as res judicata and the parties cannot wriggle out of it. Reliance has been placed by the learned Counsel upon paras 17 to 19 of the decision rendered in (2005) 6 S.C.C. 304, wherein the difference between a precedent and res judicata has been succinctly brought out. According to it a precedent does not bind the parties whereas a res judicata does.

17. It is also submitted that since the release application deserves rejection the tenants ought to be put back into possession of the tenanted premises by applying the principles of restitution as embedded under Section 144 C.P.C.

18. It is further contended by the learned Counsel for the petitioners that the High Court cannot act in derogation of the findings or independence of it, as such in view of the judgment of the Hon''ble Supreme Court the petition deserves to be allowed.

19. The learned Counsel for the contesting respondent submits that in the release application itself the shop in dispute was sought to be released for the bona fide need of the family which includes not only her father and mother but also the contesting respondent who had filed the release application. Relying upon the decision of this Court rendered in Smt. Satya Mishra & Ors. v. IInd Additional District Judge & Ors., 1978, U.P. Supplementary Rent Control Cases 738, he contends that even the need of the person assisting the landlord is also covered under the need set up by the landlord for himself. On the basis of the aforesaid decision the argument of the learned Counsel for the petitioners that since during the pendency of the writ petition the landlords died, hence the bona fide need of the landlord has come to an end is sought to be repelled by the respondents. It is stated that the petitioners themselves wanted the Court to take into consideration the subsequent events and went up to the Hon''ble Supreme Court which ordered for reconsideration of the case, hence the

arguments of the learned Counsel for the petitioners has no force. It is urged that the submissions made by the learned Counsel for the petitioners that the need of the heirs of the deceased cannot be considered since during the pendency of the writ petition the landlords died; hence the bona fide need of the landlords has come to an end has no force also in view of the decision of the Hon''ble Supreme Court rendered in Kamleshwar Prasad v. Pradumanju Agarwal (dead) by LR.s., 1997(2) JCLR 94 (SC); JT 1997 (4) SC 425, wherein it has been held that the death of landlord during pendency of writ proceedings does not result in lapsing of bona fide need of widow and children.

20. He further contends that the finding recorded by both the Courts below on the question of bona fide need is the finding of fact based on appraisal of evidence on record. Both the Courts below after considering each and every argument of the learned Counsel for the petitionertenant.s raised before them and after due appraisal of the evidence adduced by the petitioners before them recorded their finding.

21. It is further contended by the learned Counsel for the respondentlandlord that the release application was filed as far back as in the year 1983 and since then more than 25 years have passed but the petitionertenant.s have not made any efforts to find out any alternative shop in cast they bona fide needed any shop for doing their business, hence in view of the Hon''ble Supreme Court decision rendered in Mst. Bega Begum & Ors. v. Abdul Ahad Khan (dead) by L.R.s. & Ors., AIR. 1979 S.C. 272, the argument of the learned Counsel for the petitioner has no force.

22. Before advertng to the arguments advanced by the respective parties it would be proper to see what the Hon''ble Supreme Court has in fact directed the High Court to decide. From the relevant extract relied upon by the learned Counsel for the petitioners which has been quoted above in the judgment it appears that the view of the Hon''ble Supreme Court is based on the judgments rendered in Pasupuleti Venkateswarlu and Hasmatai Rai (supra) on three points, firstly, that it was power as well as the duty of the High Court to consider the fact of subsequent event of death of the applicants Smt. Dhanraji Devi and Sri Jagdeo Shah during the pendency of the writ petition and its effect on the need of the landlord.

23. It is the case of the petitionertenant.s that all the three daughters of the respondentlandlord.s have been married and they are staying with their inlaws, as such the need of the landlords stands extinguished. This contention is against the ratio laid down by the Hon''ble Supreme Court in Kamleshwar Prasad (supra) for the reason that neither the need of the widow who was landlady in her own right and was unmarried faced with the burden of the family after the death of her husband nor of the daughters who were living with her would extinguish, lapse or eclipse completely by subsequent events.

24. Likewise the case of Gaya Prasad (supra) does not help the petitioners in the

matter further as it appears that subsequent developments occurred pendente lite can be taken only when the need of the landlord is completely eclipsed by subsequent events.

25. In that case during the pendency of proceedings the son of the petitionertenant for whom requirement was sought had joined Government Service. The requirement was for the applicants who died during the pendency of writ petition. Gaya Prasad (supra) is thus clearly distinguishable.

26. In the facts and circumstances of the case the need of the family of the landlord survived as the husband who was landlord was survived by his widow and daughters. The widow also being landlord in her own right had jointly sued for the eviction of the tenants.

27. The second point on which the matter is remanded by the Hon''ble Supreme Court for consideration by the High Court is to consider the dispute in the light of the decisions referred to by the Hon''ble Supreme Court in its judgment particularly in Hashmat Rai and in view of subsection (7) of Section 21 of the Act and to record a finding and pass appropriate orders in accordance with law after hearing the learned Counsel for the parties.

28. As regards Hasmat Rai''s case it was under M.P. Accommodation Control Act (41 of 1961). In that case a suit for eviction of tenant from premises in a building for the purposes of reconstruction for starting his business was filed. The landlord came in possession of larger premises during eviction proceedings. In that case it was held that in the absence of pleading as to extent of landlord''s requirement in the circumstances of that case, the High Court should have held premises in landlord''s possession as sufficient for his need.

29. Further in that case the tenant in his written statement has alleged that the landlord obtained decree for eviction for acquisition of larger premises which was sufficient to meet the landlord''s need.

30. In the instant case, the landlord''s business at Kolkata had been wound up in the riots. He was old and he needed the shop in dispute for sustenance of himself, his wife and his family members. It was a question of livelihood. The need of the family of the landlord, therefore, cannot be ignored as they had only one shop which was kept locked by the tenant for the reason he had other shops. The position in this case is just reverse of the case of Hasmat Rai (supra). Similar question arose in Suraj Narain Mehrotra v. The District Judge, Bareilly & Ors., 1977 ACN 33, wherein the landlord died during the pendency of the writ petition. In that case the Court relying upon Phool Rani v. Nau Dat Rai''s, A.I.R. 1973 S.C. 2110 held that the case would survive and therefore the legal representatives would be entitled to continue further proceedings.

31. In the circumstances, it is irresistible conclusion that the need of the landlord for the shop would be ?reasonable requirement? for sustenance as has been held in Mst. Bega Begum.

32. In Smt. Satya Mishra (supra) wherein the question for determination was about the scope and deconnotation of the expression 'for occupation by himself', the Court held that it would also cover the need of company or assistance of any other person to the landlord. The Court in paragraphs 8 and 9 of its decision has held :

8. The question that needs determination is about the scope and deconnotation of the expression 'for occupation by himself.' The contention of the learned Counsel appearing for the petitioners that in interpreting the aforesaid phrase the Court cannot consider the need of a person who is not covered by the definition of the word 'family'. He submitted that an attempt to include an outsider, who is not a family member within the ambit of this phrase, would defeat the very object for which this section is enacted. I have given my anxious consideration to the above argument but am unable to find substance in the same. The words 'for occupation by himself' do not have the meaning as being limited to the use of the landlord himself. There can be a number of cases where a landlord may not actually use every inch of land sought to be taken possession of by him from a tenant but still the need to occupy it would be a need falling within the scope of this phrase. The legislature, while providing for the need of occupation by landlord, could not be imputed the intention of having provided that a landlord will be entitled to the benefit of this provision only when he needs the premises for his own occupation. While dealing with the interpretation of this section one cannot afford to miss sight of the normal condition of our society. If the meaning given to this expression by Counsel for the petitioners is accepted it would result in rejecting all applications made by landlords left without family members in however pitiable and helpless circumstances they may be living in the house.

9. The expression 'for occupation by himself' does not mean that the landlord should live in isolation. If the state of health of a landlord or his age is such that he cannot live alone and would need the company or assistance of any other person, then the need of such other person, whose assistance he needs, would also be covered by this phrase. Similarly, if the landlord is invalid, an accommodation required for a helper may also be considered as a need of the landlord. In cases or illustrations mentioned above it would be seen that such a helper or assistant would be required to live with the landlord only because his presence is necessary for landlord and not for that person himself. A distinction has, therefore, to be maintained between two classes of cases where a landlord does not need an assistance of a man but still he wants to keep some one with him, in such a cases the need for occupation would not be that of the landlord but of that other person. But where, as here, the landlord keeps his daughter and her son-in-law to look after his business and for his help, it will have to be held that the requirement of these persons to have an accommodation to live with the landlord is bona fide need of the landlord himself.

10. I, however, wish to make it clear that in a case where the landlord has

already accommodation to accommodate his relation, who is looking after him or his servant and helper in that event he would not be entitled to get an order of eviction under this section. It is only in a genuine case of bona fide requirement that he can get the same, it must further be made clear that the need to occupy the premises in occupation of a tenant should not be a pretence or that an application must not have field with a collateral purpose to oust the tenant.....?

33. Regarding possession the Hon"ble Supreme Court did not express any opinion but only observed that it was remitting the matter to the High Court with a direction that the High Court will decide the matter afresh according to law and appropriate order will be passed in consonance with the final decision by the High Court. Till then status quo as on day has been directed by the Hon"ble Supreme Court to continue.

34. Learned Counsel for the petitioners has pressed that after three daughters of the landlord had been married by him during the pendency of the writ petition extinguishing the need of the landlords, this fact was relevant and material subsequent event which ought to have been considered by the High Court while deciding the writ petition. It has been urged before me by the learned Counsel for the petitioners that one of the daughters is running the business in the shop in dispute of which she has come into possession after the S.L.P. before the Hon"ble Supreme Court which was converted into Civil Appeal No. 41 of 2000 had been dismissed in default. The petitioners have brought on record the place where and to whom the three daughters have been married.

35. In the instant case what appears from the record is that one of the daughters of the deceased landlords is living in the same city and is running her business in the same shop which has come in her possession after the S.L.P. filed by the petitioners before the Hon"ble Supreme Court was dismissed in default even though the daughter might be staying elsewhere with their inlaws in the same city, but the undisputed fact is that she is in possession of the shop and is running her business in the shop which was earlier in the tenancy of the petitioners.

36. I am, therefore, of the view that on the basis of the averments made in the affidavit filed in support of Application No. 33332 of 1997 under Section 5 of the Limitation Act regarding the places where the daughters of the landlords (since deceased) are living with their inlaws after their marriage and on the basis of counteraffidavit filed by Shankarji Gupta husband of Smt. Shimla Devi the Court cannot pass any order in favour of the tenants particularly when one of the daughters to whom the shop has been willed by her mother, the landlady (since deceased) is living in the same city and is running her business in the shop.

37. In so far as the question of possession is concerned, the apex Court after considering the rival claims of the parties clearly expressed no opinion since the matter has been remitted back for consideration of the High Court. I am of the view that the tenants are men of means having many shops and properties. They

appear to have no use of the shop in dispute as they were keeping it locked merely as a measure of harassment to the landlords. They cannot be permitted to further play with the lives of the heirs/legal representatives of the deceased landlords one of whom is running her business in the shop in dispute. The question of delivery of possession of the shop in dispute to the tenants is only academic now and for the sake of litigation as the tenants being persons of means can afford luxury litigation to satisfy their ego.

38. Admittedly the apex Court after coming to know about the fact of dispossession of the petitioner did not interfere in the matter, rather passed order of status quo. It is also admitted to the tenant that he is no longer in possession since long and possession had been taken from him in accordance with law. Hence there can be no restitution of possession as it has not been taken illegally or without any authority.

39. The Hon''ble Supreme Court on the question of taking possession by the daughter of the deceased landlords after noting the fact that according to the respondents after dismissal of the appeal in default and before restoration of the appeal they had taken back possession of the shop in dispute expressed no opinion, hence it is clear that the Hon''ble Supreme Court did not reverse or vary the possession of the daughter of the deceased landlords taken during the period the appeal stood dismissed. Rather the Hon''ble Supreme Court has directed to maintain status quo, meaning thereby, the daughter of the landlords who came in possession of the shop in dispute will remain in possession of the shop in dispute and the tenants who had gone out of possession will remain out of possession.

40. It has come on record that the petitioner-tenants had suggested to the original landlords to sell the shop in dispute to them as the landlords had their flourishing cloth business at Kolkata but the landlords had refused to sell the shop in dispute for emergency purpose. In paragraph 27 of the counteraffidavit filed on behalf of Smt. Shimla Devi, contesting respondent and daughter of the deceased landlords, it has been averred that the petitioners are threatening her of dire consequences and pressurizing her to sell the accommodation in question to them so that she may sell the house in question to the petitioners. Having their own shop available, the tenants were keeping the shop in dispute locked with mala fide intention and ulterior motive. The law is on the side of a righteous and weak person. The petitioner-tenants are affluent persons and have many shops where they are carrying on their business and in the facts and circumstances of the case will not suffer any comparative hardship.

41. For the reasons stated above, I hold that the daughter of the landlords is in possession of the shop in dispute and can prosecute the release application of the landlords since deceased on the basis of her own need in substitution of the need of the deceased. Conjoint reading of clause (a) of subsection (1) and subsection (7) of Section 21 is clearly in favour of the daughter of the landlords in the instant case.

42. As regards the second question the Hon"ble Supreme Court has itself clarified that the conjoint reading of clause (a) of sub section (1) and subsection (7) of Section 21 makes it clear that where the possession is sought by the landlord on the ground of bona fide requirement and during the pendency of the application, the landlord dies, his legal representatives can prosecute such application on the basis of their own need in substitution of the need of the deceased. Thus, the daughter as heir and legal representative of the deceased landlords can prosecute release application on the basis of her own need in substitution of the need of the deceased landlords. From the application for release filed by the deceased landlords it is apparent that they have established their need for themselves and for their family members in substitution of the need of the deceased. The business of deceased landlord Jagdeo Shah at Kolkata had already been wound up due to riots there and therefore, they had no source of livelihood except the shop in dispute for which they were compelled in the circumstances to move the application for release of the shop in dispute.

43. In my opinion the need of the shop by the landlords includes the need of subsistence of the family members too who were living with them at the relevant time. It cannot be said that subsequently after the death of the landlords the daughter who has become landlord by virtue of Will executed in her favour and is running the shop has no need of it for her livelihood.

44. Both the Courts below after appraisal of evidence on record have recorded concurrent findings of facts that in case the shop in dispute is not released in favour of the respondentlandlord, she will suffer greater hardship, the High Court cannot interfere under Article 226 of the Constitution unless the findings are shown to be perverse and illegal. I am supported by the decision rendered by the Hon"ble Supreme Court in Muni Lal & Ors. v. Prescribed Authority & Ors., A.I.R. 1978 S.C. 29, wherein it has been held :

?There can be no doubt that a finding that the need of respondent No. 3, landlord was greater than that of the appellant/tenant is a finding of fact and when the High Court has refused to interfere with this finding on fact, we cannot find fault with the High Court, even if the findings were wrong on the evidence before the Court. It is not for the High Court in the exercise of itsjurisdiction under Article 226 of the Constitution to reappraise the evidence and come to its own conclusion which may be different from that reached by the District Judge or the Prescribed Authority. We do not, therefore, see any reason to interfere with the decision of the High Court.?

45. The dispute has come to this stage after about 25 years of initiation of proceedings. It will be too harsh at this stage to say that after the death of the landlords the proceedings under Section 21 abates and the daughter who is heir and legal representative of the deceased landlords should start the proceedings afresh for a second inning of litigation to establish her bona fide need and comparative hardship whereas the tenants have many shops and the landlady has only one in which she is carrying of her business. The case of Mst. Bega

Begum (supra) squarely applies to the facts of this case. It appears that for this reason the Hon''ble Supreme Court while remanding the matter back to High Court to consider the effect of subsequent events on the dispute was of the considered opinion that the heirs/legal representatives can prosecute release application filed by the landlords on the basis of their own need in substitution of the need of the deceased, i.e. the heir/legal representatives will step into the shoes of the landlord in the pending proceedings.

46. The matter of livelihood and bona fide need with the question as to whether the daughters have been married or not has a direct nexus to fundamental right guaranteed under Article 21 of the Constitution is vital. For these reasons the daughter who inherited the tenancy by Will and came in possession of the shop in dispute subsequently and is living in the same city and running the business for her livelihood can prosecute the application in continuance by stepping into the shoes of the deceased landlords. She can do so also because now she is the landlady of the shop in dispute on the basis of Will said to have been executed in her favour by her mother irrespective of the fact whether there is any dispute or litigation pending interse with her other sisters. The petitioners cannot take any advantage of that interse litigation among the sisters.

47. As regards merits of the case, I am also of the opinion that the daughter can prosecute the case and need not file a separate suit and release application after the death of her parents as the suit or release application does not become otiose as urged by the learned Counsel for the petitioners. Any dispute between the sisters who are heirs/legal representatives of the deceased landlords is a matter of interse dispute between hem and the petitioners cannot be permitted to take advantage of this fact. In so far as the question of rejection of release application putting back the tenant in possession of the tenanted premises by applying the principle of restitution under Section 144 C.P.C. is concerned, suffice it to say that it would not apply to the instant case. Clearly the Hon''ble Supreme Court has not varied or reversed any appeal, revision or other proceedings.

48. I have considered the points which the Hon''ble Supreme Court required the High Court to decide on remand of the matter. The case of the respondentlandlords is clearly covered by the case of Smt. Satya Misra & Ors. v. IInd Additional District Judge & Ors., 1978 (U.P.) Supplementary R.C.C. 738, wherein it has been held that the need of the landlord has no limited meaning and includes the need of the members of the family of the landlord. The submission of the learned Counsel for the petitioners that the need of heirs/legal representatives of the deceased landlord cannot be considered since during the pendency of the writ petition the landlord died has also no force in view of the decision rendered in view of Kamleshwar Prasad (supra) as death of the landlord during the pendency of the writ proceedings will not extinguish, lapse eclipse or render it infructuous.

49. The dispute interse between the legal heirs of the deceased and the present landlady will not be seen in the present proceedings as there is registered Will in

favour of Shimla Devi alias Baby. It is governed by the judgment of the apex Court in Civil Appeal No. 41 of 2000, Kedar Nath Agrawal (dead) & Anr. v. Dhanraji Devi (dead) by L.Rs. & Anr., in so far as the interse dispute is concerned between the daughters of the deceased landlords. Shimla Devi has already been substituted after the death of Smt. Dhanraji Devi. Kamla Devi, the sister, is only formal party for the purposes of continuance of the present writ petition.

50. It has been settled in the case of Vishnu Bhagwan v. Vith Additional District Judge, Bareilly & Ors., 2007 (68) A.L.R. 114, that a tenant who is outsider is nobody to challenge a compromise in a family. The tenant, therefore, cannot challenge the inheritance of tenement even if there is a dispute inter se amongst other members of the family.

51. For the reasons stated above, the writ petition is dismissed. No order as to costs.