

(1993) 03 SC CK 0049
In the Supreme Court Of India
Case No : Civil Appeal No. 100 of 1993

Om Prakash and Others	Vs	APPELLANT
Sunhari Devi (Smt) and Others		RESPONDENT

Date of Decision : 02-03-1993

Acts Referred:

Constitution of India, 1950 — Article 136, 226

Citation : (1993) 3 JT 641 : (1993) 1 SCALE 743 : (1993) 2 SCC 397 : (1993) 2 SCR 144

Hon'ble Judges : S. P. Bharucha, J;Kuldip Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.P. 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.

2. The appellants are the landlords and the respondents the tenants. The appellants filed an eviction petition against the respondents u/s 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.

3. The respondent thereupon preferred the writ petition (being CMWP No. 32805 of 35 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 was "purposive, the appellate authority ought to have taken the effect of this into consideration on the question of the bonafide 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."

4. 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.

5. 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.

6. 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.

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