A SHIV SINGH CHAK

v.

BABY JAIN

(Civil Appeal No.1386 of 2008)

FEBRUARY 7, 2008

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(K.G. BALAKRISHNAN, CJI, R.V. RAVEENDRAN AND J.M. PANCHAL, JJ.)

Uttar Pradesh Urban Buildings (Letting, Rent and
C *Eviction) Act, 1972:*

S.21(1)(a) Explanation (i) – Non-residential building – Petition for eviction of tenant – On ground of bona fide requirement – Held: Since Explanation(i) to clause (a) of s.2(1) is inappiicable to a non-residential building, bar contained in
D *clause (i) of the Explanation will not operate where eviction petition is in regard to a non-residential building – But the fact that tenant has acquired a suitable alternative non-residential building may be urged as a good ground to show that no hardship will be caused to tenant if he is evicted from the*
E *premises – On facts, High Court committed an error in observing that Explanation (i) makes it unnecessary to examine bona fides of landlord and the issue of comparative hardship – However, High Court rightly affirmed the concurrent findings of fact recorded by Prescribed Authority and Appellate*
F *Authority that landlord bona fide required the shop and tenant, because of availability of suitable shop, would not be put to any hardship – Tenant granted time to vacate the shop subject to filing usual undertaking.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1386
G of 2008.

From the final Judgment and Order dated 28/10/2006 of the High Court of Judicature at Allahabadin CMWP No. 19764/ 2006.

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J.C. Gupta, Rajesh and Anurag Tomar for the Appellant. A

R. Mishra (for Mr. M.A. Chinnasamy) for the Respondent.

The Order of the Court was delivered by

K.G. BALAKRISHNAN, CJI. Leave granted. Heard learned counsel. B

2. The respondent is the landlord and appellant is the tenant in regard to the petition schedule shop ('shop' for short) situated at Tundla, District Firozabad. The respondent filed an eviction petition before the Prescribed Authority, alleging that C she had let out the shop when she and her family was living at Etah, that her family had subsequently shifted to Tundla and that she required the shop for her husband to carry on his business in motor parts. She further alleged that the appellant owned and possessed several shops near to the schedule shop, but had D not vacated the shop belonging to her, and that he will not be put to any hardship if he is evicted as he could conveniently shift and occupy his own shop.

3. The appellant herein resisted the said petition. After considering the evidence, the Prescribed Authority, by judgment E dated 14.3.2002, allowed the eviction petition under section 21(1)(a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 ('Act' for short). The appeal filed by the appellant was dismissed by the Appellate authority by judgment dated 13.1.2006. The writ petition filed by the F appellant before the High Court of Allahabad, challenging the order of the Appellate Authority was also dismissed by the order under appeal dated 28.10.2006.

4. We find that the concurrent findings of the Prescribed Authority and Appellate Authority in favour of the landlord- G respondent, on the question of bona fide need and comparative hardship, have been rightly affirmed by the High Court and no ground is made out to interfere with the said findings of fact.

5. Learned counsel for the petitioner, however, submitted H

A that the judgment of the High Court suffers from a serious legal infirmity as it wrongly placed reliance upon Explanation (i) in section 21(1) of the Act to hold that it was not necessary for the landlord to prove that her need was *bona fide* or comparative greater hardship. According to him, explanation (i) applies B only to residential buildings and not to non-residential buildings and the High Court could not have relied upon the said provision.

6. For convenience, we may extract the relevant portion of section 21 of the Act as follows :

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"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 D 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 E 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;

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x x x

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 G to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed.

Explanation.- In the case of a residential building :-

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(i) Where the tenant or any member of his family (who has been normally residing with or is wholly dependant on him) has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this sub-section shall be entertained;

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Clause (a) of sub-section (1) of section 21 enables the Prescribed Authority to pass an order of eviction on an application by the landlord if it is satisfied that the building is bona fide required by the landlord for occupation for himself or any member of his family. The fourth and last proviso to sub-section (1) provides that except in the cases provided for 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 (i) to section 21(1) of the Act provides that where a proceeding for eviction is initiated by the landlord in regard to a residential building under section 21(1) of the Act and where the tenant or any member of his family has acquired a vacant residential building in the same city/town/area, the prescribed Authority shall not entertain any objection of the tenant against the application for eviction. In effect this means that where the landlord avers and proves in an eviction proceedings relating to a residential building under section 21(1) of the Act, that the tenant has acquired vacant possession of a residential building in the same city/town/area, it will not be permissible for the tenant to challenge the bonafides of the landlord or put forth any hardship as a defence. But the said explanation (i) to section 21(1) does not apply to non-residential buildings. The Explanation to section 21(1) starts with the words "In the case of a residential building". As the Explanation is inapplicable to a non-residential building, the bar contained in clause (i) of the Explanation will not operate where the eviction petition is in

A regard to a non-residential building. But the fact that the tenant has acquired a suitable alternative non-residential building may, however, be urged as a good ground to hold that no hardship will be caused to the tenant if he is evicted from the premises let out to him.

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6. The High Court has thus committed an error in observing the Explanation (i) makes it unnecessary to examine the bonafides of the landlord and the issue of comparative hardship in this case. We are however, of the view that this error on the part of the High Court does not necessitate interference with
C the ultimate decision of the High Court nor calls for a remand as contended by the learned counsel for the appellant. We have already noticed that the Prescribed Authority and Appellate Authority have recorded clear concurrent findings of fact that the landlord bona fide requires the shop and that the appellant
D will not be put to any hardship in view of availability of suitable shop. These findings have been considered and affirmed by the High Court while dismissing the writ petition.

7. We, therefore, dismiss this appeal as having no merit, subject to the clarification about the applicability of Explanation
E (i) of Section 21(1) of the Act. However, the appellant is granted time till 31st May, 2008 to vacate the shop in question subject to his filing the usual undertaking before this Court within a period of four weeks from today and continuing to pay the agreed rent till 31st May, 2008.

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R.P. Appeal dismissed.