A NIYAS AHMAD KHAN

v.

MAHMOOD RAHMAT ULLAH KHAN & ANR.

(Civil Appeal No. 3372 of 2008)

MAY 5, 2008

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[R.V. RAVEENDRAN AND LOKESHWAR SINGH PANTA, JJ.]

Rent Control and Eviction – Petition seeking eviction – On the ground of bonafide *requirement – Rejection of – Writ* C *petition against rejection – High Court by interim order increasing the rent drastically – On appeal, held: The direction of the High Court is oppressive and unreasonable – In a writ petition by landlord, against rejection of eviction, there is no scope for issue of any interim direction to the tenant to pay* D *higher rent – The writ petition being against order of refusal to grant eviction on* bonafide *ground and there being no prayer regarding rent, High Court was not right in increasing the rent – The statute governing the premises, since specifically provided for fixation and increase of rent, High* E *Court could not have increased the rent ignoring those provisions – Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 – s. 21 (1) (a) – Interlocutory Order – Constitution of India, 1950 – Article 227.*

Constitution of India, 1950:

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Articles 226 and 227 – Power of Judicial review and superintendence – Scope of – Held: High Court cannot exercise its power of judicial review and superintendence, ignoring or violating the specific provisions of a statute.

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Article 136 – Special Leave Petition – Dismissal of, in limine – Held: Dismissal of Special Leave Petition in limine does not preclude Supreme Court from examining the same issue in other cases – Practice and Procedure.

Respondent-landlord filed a petition u/s 21 (1) (a) c

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Uttar Pradesh Urban Buildings (regulation of Letting, Rent and Eviction) Act, 1972 on the ground of *bonafide* requirement. Prescribed Authority as well as appellate Authority dismissed the eviction petition. Landlord filed writ petition questioning the order of the Authorities. High Court by an interim order increased the rent from Rs. 150/- per month to Rs. 12,050/- per month by assessing each portion of the premises separately. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1 The premises in question is governed by the provisions of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The Act contains provisions relating to fixation of standard rent and for increase in rent. Where the statute specifically provides for fixation of rent and increase in rent, it is impermissible for the High Court to ignore those provisions and direct the tenant to pay an arbitrarily assessed rent. Neither the power of judicial review under Article 226 nor the power of superintendence under Article 227, can be exercised in a manner ignoring or violating the specific provisions of a statute. While purporting to exercise the power under Article 227 to keep inferior courts and tribunals within the limits of their authority, the High Court should not itself cross the limits of its authority. [Para 4] [748-G-H; 749-A]

1.2 In the writ petition, there was no prayer for a direction for payment of any rent or for payment of any increased rent. When the grievance in the writ petition was only in regard to refusal of an order of eviction under section 21(1)(a) of the Act, there is no justification for directing payment of a higher rent either pending consideration of the writ petition or otherwise. [Para 5] [749-C-D]

1.3 Even assuming that the High Court has power to

A increase the rent, High Court could not assess the rent at the amount which is more than 48 times, the rent earlier determined, in the absence of any evidence — either oral or documentary or by way of affidavit, Single Judge did not consider any of the relevant circumstances like the B market value of the building on the date of letting, prevailing rentals in the locality as on the date of letting, the size or situation or amenities, age of construction, latest assessment of the building or other circumstances. Further, when a premises consisting of several rooms, C verandahs, kitchen, terrace, bathrooms, latrines, is let out as a single unit, the question of assessing the rent with reference to each room or portion of such premises separately does not arise. The High Court's observation that by taking a pragmatic approach it is assessing the D rent, is arbitrary and contrary to law. [Para 6] [749-E-H]

1.4 There is distinction between cases where a writ petition is filed by the tenant challenging the order of eviction and seeking stay of execution thereof, and cases where a writ petition is filed by the landlord challenging E the rejection of a petition for eviction. Adopting some arbitrary figure as prevailing market rent without any basis and directing the tenant to pay absurdly high rent would be considered oppressive and unreasonable even when such direction is issued as a condition for stay of eviction. F High Court should desist from doing so. In writ petitions by landlord against rejection of eviction petitions, there is no scope for issue of any interim direction to the tenant to pay higher rent. But in writ petitions by tenants against grant of eviction, the High Court may, as a condition of G stay, direct the tenant to pay higher rent during the pendency of the writ petition. This again is subject to two limitations. First, the condition should be reasonable. Second, there should not be any bar in the respective State rent control legislation in regard to such increase in rent. [Paras 8 and 9] [750-D; 751-A-D]

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2. Dismissal of a special leave petition, in limine does not preclude this Court from examining the same issue in other cases. Further, where the rent is increased reasonably, having regard to the fact that the interim direction is purely a temporary arrangement during the pendency of the writ petition, it is possible that this Court might have refused to interfere under Article 136 of the Constitution of India. Every wrong or doubtful exercise of jurisdiction does not call for grant of special leave, particularly if the order has not resulted in any injustice. [Para 7] [750-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3372 of 2008.

From the Interim Order dated 17/10/2006 of the High Court of Judicature at Allahabad in Civil Mise. W.P. No. 46934/2002

J.C. Gupta, Bimal Roy Jad, Sunita Pandit, Rajesh and D. Singh for the Appellant.

Amit Rana, Parveen, Irshad Ahmad, Aseem Mehrotra and Abhijat P. Medh for the Respondents.

The Order of the Court was delivered by

R.V. RAVEENDRAN, J. 1. Leave granted. Heard both sides.

2. The appellant is the tenant and the respondents are the landlords. On allotment of the premises which is the subject matter of the proceedings to the appellant, the rent was fixed as Rs.150/- per month under section 16(9) of the U.P.Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 ('Act' for short) in the year 1985. The respondents initiated proceedings for eviction of the appellant under section 21(1)(a) of the Act in the year 1998, on the ground that they required the premises for their own use. The Prescribed Authority dismissed the petition for eviction and that was confirmed by the Appellate Authority by dismissing the appeal by the respondents. Feeling

A aggrieved, the respondents filed a writ petition before the Allahabad High Court under Article 226/227 of the Constitution of India.

3. While admitting the said writ petition filed by the landlords, a learned Single Judge of the Allahabad High Court B issued an interim direction dated 17.10.2006 to the tenant (appellate herein) to pay rent at the rate of Rs.12,050/- per month with effect from October, 2006 with a further direction that if the rent at that rate is not paid for two consecutive months, the landlord could evict the tenant by coercive process with the aid C of police. The learned Judge has justified his interim direction on the ground that in exercise of writ jurisdiction the High Court can reasonably increase the rent so as to bring it on par with the prevailing market rentals. The increased rent was assessed in the following manner :

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(i) Rent for six rooms (at Rs.1500/- per room)	Rs.9000/-
(ii) Kitchen	Rs. 500/-
(iii) Three verandahs (at Rs.500/- per verandah)	Rs.1500/-
E (iv) Open terrace	Rs. 300/-
(v) Three latrines/bathrooms (at Rs.250 each)	Rs. 750/-
TOTAL	Rs.12,050/-

F The tenant has challenged the said interim order of the High Court in this appeal by special leave.

4. The premises in question is governed by the provisions of the Act. The said Act contains provisions relating to fixation G of standard rent and for increase in rent. Where the statute specifically provides for fixation of rent and increase in rent, it is impermissible for the High Court to ignore those provisions and direct the tenant to pay an arbitrarily assessed rent. Neither the power of judicial review under Article 226 nor the power of H superintendence under Article 227, can be exercised in a

manner ignoring or violating the specific provisions of a statute. While purporting to exercise the power under Article 227 to keep inferior courts and tribunals within the limits of their authority, the High Court should not itself cross the limits of its authority. A

5. In this case, the landlord filed an eviction petition seeking possession on the ground that they bona fide required the suit premises for their own use. The said request was rejected both by the Prescribed Authority and by the Appellate Authority. The landlord therefore approached the High Court challenging the said rejection by filing a writ petition. The prayer in the writ petition was for quashing the orders of the Prescribed Authority and the Appellate Authority and for grant of an order of eviction. There was no prayer for a direction for payment of any rent or for payment of any increased rent. When the grievance in the writ petition was only in regard to refusal of an order of eviction under section 21(1)(a) of the Act, there is no justification for directing payment of a higher rent either pending consideration of the writ petition or otherwise. B C D

6. Even assuming that the High Court has power to increase the rent, we fail to understand how in the absence of any evidence — either oral or documentary or by way of affidavit, the learned Single Judge could assess the rent as Rs.12,050 which is more than 48 times, the rent of Rs.250 earlier determined. The learned Single Judge did not consider any of the relevant circumstances like the market value of the building on the date of letting, prevailing rentals in the locality as on the date of letting, the size or situation or amenities, age of construction, latest assessment of the building or other circumstances. Further, when a premises consisting of several rooms, verandahs, kitchen, terrace, bathrooms, latrines, is let out as a single unit, the question of assessing the rent with reference to each room or portion of such premises separately does not arise. The learned Judge's observation that by taking a pragmatic approach he was assessing the rent at Rs.12,050, to say the least, is arbitrary and contrary to law. E F G H

A 7. The learned counsel for respondent-landlord submitted that in several cases, this court has rejected the challenge to similar orders by refusing to grant special leave. Dismissal of a special leave petition, in limine does not preclude this Court from examining the same issue in other cases. Further, where B the rent is increased reasonably, having regard to the fact that the interim direction is purely a temporary arrangement during the pendency of the writ petition, it is possible that this Court might have refused to interfere under Article 136 of the Constitution of India. Every wrong or doubtful exercise of C jurisdiction does not call for grant of special leave, particularly if the order has not resulted in any injustice. In fact, in several cases, this Court has set aside the similar interim directions for payment of excessive rents.

8. We should however note the distinction between cases D where a writ petition is filed by the tenant challenging the order of eviction and seeking stay of execution thereof, and cases where a writ petition is filed by the landlord challenging the rejection of a petition for eviction. What we have stated above is with reference to writ petitions filed by landlords. In writ E petitions filed by tenants, while granting stay of execution of the order of eviction pending disposal of writ petition, the High Court has the discretion to impose reasonable conditions to safeguard the interests of the landlord. But even in such cases the High Court cannot obviously impose conditions which are ex facie F arbitrary and oppressive thereby making the order of stay illusory. When a tenant files a writ petition challenging the order of eviction, the High Court may reject the writ petition if it finds no merit in the case of the tenant; or in some cases, the High Court may admit the writ petition but refuse to grant stay of G execution, in which event, the tenant may be evicted, but can claim restoration of possession if he ultimately succeeds in the writ petition; or in some cases, the High Court finding the case fit for admission, may grant stay of eviction, with or without conditions, so that status quo is maintained till the matter is decided. Where the High Court chooses to impose any H

conditions in regard to stay, such conditions should not be unreasonable or oppressive or in terrorem. Adopting some arbitrary figure as prevailing market rent without any basis and directing the tenant to pay absurdly high rent would be considered oppressive and unreasonable even when such direction is issued as a condition for stay of eviction. High Court should desist from doing so.

9. To sum up, in writ petitions by landlord against rejection of eviction petitions, there is no scope for issue of any interim direction to the tenant to pay higher rent. But in writ petitions by tenants against grant of eviction, the High Court may, as a condition of stay, direct the tenant to pay higher rent during the pendency of the writ petition. This again is subject to two limitations. First, the condition should be reasonable. Second, there should not be any bar in the respective State rent control legislation in regard to such increase in rent. Be that as it may.

10. The appeal is allowed and the order dated 17.10.2006 passed by the High Court directing the tenant to pay rent at the rate of Rs.12050/- per month from October, 2006 is set aside.

K.K.T. Appeal allowed.