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RAKESH KUMAR JOSHI

v.

NARENDRA KUMAR & ORS.  
(Civil Appeal No. 579 of 2008)

B

JANUARY 22, 2008

**(S.B. SINHA AND HARJIT SINGH BEDI, JJ.)**

*Rent Control & Eviction:*

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*U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972; Ss. 12(3), 16 and 21(1)(a):*

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*Eviction Petition – For eviction of a shop on ground of bona fide requirement for establishing business for family members – Dismissed by trial Court – Reversed by appellate authority – Challenge to – Dismissed by High Court – Correctness of – Held: Incorrect – In regard to vacancy, legal fiction established in terms of s.12(3) applicable in relation to residential accommodation only – Although, r.16(2) refers to shop premises but by reason thereof no legal fiction has been created – Under the circumstances, High Court erred in invoking provisions of s.12(3) of the Act and r.16 of the Rules while affirming order of the appellate authority – High Court should have taken into consideration the factual aspect of the matter and also findings of fact arrived at by the appellate authority while dismissing the eviction petition – Matter remitted to High Court for consideration afresh – U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 – r.16 (2).*

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*Words and Phrases:*

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*‘Deemed vacancy of building’ – Meaning of, in the context of s.12 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972.*

**Mother of respondents had filed a petition for eviction**

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of the suit premises, a 'shop' in terms of Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 against the appellant-tenants on the ground of bona fide requirement for establishing a business for her grand son. Later, an application for amendment was filed by the petitioner indicating further requirement of the suit premises for another family member. The petition was dismissed by the trial Court. The order of the trial Court was reversed by the appellate authority. Appellant-tenants challenged the decision of the appellate authority by filing a writ petition, which was dismissed by the High Court. Hence the present appeal.

Appellant-tenant contended that the High Court had failed to take into consideration that the provisions of the Act, upon which reliance has been placed, relate to residential premises and not to shop premises; and that, in any event, having regard to the fact that the appellate court did not meet the reasonings of the Rent Control Authority, the High Court should have interfered in the matter.

Respondent submitted that although s. 12(3) and s. 16 of the Act are not applicable in the instant case but in view of r. 16(2) of the Rules, the decision of the appellate court must be held to have been rendered on correct premise.

Allowing the appeal, the Court

HELD: 1.1 By reason of sub-Section (3) of s. 12 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, a legal fiction has been created. Such a legal fiction in regard to the vacancy is to be applied in relation to residential accommodation only and not in relation to shop premises. Rule 16(2) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 although refers to the shop premises, by reason thereof no legal fiction has been created. The said Rule

A merely provides for certain factors which are required to be taken into consideration while considering an application for release under Clause (a) of sub-Section (1) of Section 21 of the Act. (Para – 9) [1059-D, E]

B 1.2 The High Court referred to Rule 16(2) of the Rules but the effect and purport thereof had not been taken into consideration. The Rules have a limited application. Applicability of the Rules would undoubtedly depend upon the fact situation obtaining in each case. The court is required to apply its mind upon the materials brought on record in determining the issues. (Para – 10) [1059-F, G]

D 2. The High Court clearly erred in invoking the provisions of ss. 12(3) and 16 of the Act. The Writ Petition, therefore, could not have been dismissed on the premise that s. 12(3), s. 16 of the Act and r. 16 of the Rules would be applicable. The High Court should have taken into consideration the factual aspect of the matter also, particularly having regard to the findings of fact arrived at by the appellate authority. Hence, the impugned judgment cannot be sustained and is set aside. The High Court is directed to consider the matter afresh. (Paras – 10 & 11) [1059-F, G, H; 1060-A, B, C]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 579 of 2008.

From the final Judgment and Order dated 30.11.2006 of the High Court of Judicature at Allahabad in C.M.W.P. No. 27141/2003.

G Dinesh Kumar Garg, B.S. Billowria, Abhishek Garg and D.K. Gupta for the Appellant.

J.C. Gupta and Rajesh for the Respondents.

The Judgment of the Court was delivered by

H S.B. SINHA, J. 1. Leave granted.

This appeal is directed against a judgment and order dated 30.11.2006 passed by a learned Single Judge of the High Court of Judicature at Allahabad in Civil Miscellaneous Writ Petition No. 27141 of 2003 whereby and whereunder the writ petition filed by the appellant herein challenging the correctness of the judgment dated 8.5.2003 passed by the Additional District and Sessions Judge/Special Judge, Rent Control Appellate Authority, Ghaziabad in R.C.A. No. 90 of 2000, was dismissed. The Appellate Authority on 8.5.2003 by reason of its aforementioned judgment had set aside an order dated 24.7.2000 passed by the 2<sup>nd</sup> Additional Civil Judge (Senior Division), Ghaziabad.

Relationship between the parties, admittedly, is that of a landlord and tenant. Mother of the respondents herein filed an application for eviction of the suit premises which is a 'shop' in terms of Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The release application was filed on the ground of bona fide requirement for establishing a business for her grand son, Shri Sheel Kumar. An application for amendment was filed at a later stage of the said proceeding in terms whereof, the requirement of the suit premises even for Sewak Ram was pleaded.

The said release application was dismissed by the learned Trial Court, inter alia, opining :

"Sheel Kumar has been carrying on his business under the name and style 'Balaji Welding Store' at Ghantaghar, in front of Punjab National Bank, G.T. Road, Ghaziabad and Sewak Ram is carrying on a business at Gandhi Market, Modi Nagar, taken by him from Nagar Palika in the name of his his wife Smt. Anita Garg."

In regard to the contention raised by the respondent herein that the appellant had been carrying on three flourishing businesses, it was opined;

"It is correct that opposite party is having a shop near

A Joshi Motors and Niti Niketan, however, in the shop in dispute applicant is carrying business of electronic items and is also used as a store. Pertaining to property of Joshi Palace affidavits have been filed that the property belongs to his brother Dinesh Joshi.”

B It was held :

C “From the aforesaid analysis it is proved beyond doubt that daughters of late Smt. Krishna Devi are also co-owner of property in dispute. Besides this, Chetan Lal Garg and Bhagwat Prasad Garg have never given their consent for the release of shop in favour of Sheel Kumar and Sewak Ram Garg. From the facts it is also proved that Sheel Kumar Garg is carrying on the business in Ghazabad under the name of Balaji Welding Store, Ghaziabad and Sewak Ram Garg is also having a shop in the name of his wife Smt. Anita Garg in Gandhi Market Nagar Palika Ghaziabad.”

D 2. An appeal was preferred thereagainst by the respondents. The Appellate Authority, however, reversed the said findings of the Rent Controller, inter alia, holding :

E “....The said rulings are not applicable as the opposite party is having several commercial premises in his possession which have been admitted by him. It has also been admitted that in the shop in dispute he is using the same as a store also. The appellant has established that Narendra Kumar is out of employment and he is not doing any service. The averments made by opposite party that Narendra Kumar is carrying on business alongwith his son at Ghaziabad in the name and style of Balaji Welding Store, has not been proved. The opposite party could have summon the record of sales tax and income tax department to prove that Narendra Kumar is a partner in the said business. However, opposite party has failed to do so. In these circumstances, it cannot be held that Narendra Kumar is also doing the business alongwith his son Sheel Kumar

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at Ghaziabad. According to Hon'ble Supreme Court the landlord can carry the additional business also and for that purpose he may require shop in dispute."

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4. It furthermore relied upon Rule 16(3) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 to hold :

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"In the present case it has been admitted that Rakesh Kumar Joshi-tenant is having 2 other shops and he has also not refuted two-storied building which was brought on record by way of amendment made in the appeal. In these circumstances, the tenant is having sufficient commercial accommodation to run his business. In para 7 of written statement opposite party has himself admitted that he is also using the shop as store.

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In these circumstances, the tenant does not require the shop in dispute, while applicants in their family are having 4 brothers and their children. Though, it is admitted that there is one more shop in their possession in which applicant No. 4 is carrying on his business, there is one more shop in the name of Sewak Ram's wife where the business is being carried. However, the same is not sufficient for 4 brothers."

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5. The High Court, however, by reason of the impugned judgment relying upon the provisions of Section 12(3), Section 16, proviso 1 to 4 and explanation (i) of Section 21 of the held hold that the petitioner/tenant having acquired alternative accommodations had no legal right to continue in the disputed accommodation.

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6. Mr. Dinesh Kumar Garg, the learned counsel appearing on behalf of the appellant submitted that the High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration that the provisions of the Act, upon which reliance has been placed, relate to residential premises and not shop premises. In any event, having

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A regard to the fact that the appellate court did not meet the reasonings of the Rent Control Authority, the High Court should have interfered in the matter.

B 7. Mr. J.C. Gupta, the learned senior counsel appearing on behalf of the respondent, on the other hand, urged that although Section 12(3) and Section 16 of the Act are not applicable in the instant case but in view of Rule 16(2) of the Rules, the decision of the appellate court must be held to have been rendered on correct premise.

C 8. We may, at the outset, notice the relevant statutory provisions :

“Section 12. Deemed vacancy of building in certain cases.  
– (1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if –

D (a) xxxxxxxxxxxxxxxxxxxxxxxx  
(b) xxxxxxxxxxxxxxxxxxxxxxxx  
(c) xxxxxxxxxxxxxxxxxxxxxxxx

E (2) xxxxxxxxxxxxxxxxxxxxxxxx

F (3) In the case of a residential building, if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy:

G Provided that if the tenant or any member of his family had built any such residential building before the date of commencement of this Act, then such tenant shall be deemed to have ceased to occupy the building under his tenancy upon the expiration of a period of one year from the said date.

H Explanation. – For the purposes of this sub-section –

- (a) a person shall be deemed to have otherwise acquired a building, if he is occupying a public building for residential purposes as a tenant, allottee or licensee; A
- (b) the expression "any member of family", in relation to a tenant, shall not include a person who has neither been normally residing with nor is wholly dependent on such tenant." B

Section 16 of the Act provides for the powers of the District Magistrate to pass order in regard to allotment and release a of vacant building. C

Rule 16 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 reads, thus :

"16. Application for release on the ground of personal requirement. (1)xxxxxxx D

.....X.....X.....

(2) While considering an application for release under clause (a) of sub-section (1) of Section 21 in respect of a building let out for purposes of any business, the prescribed authority shall also have regard to such facts as the following – E

(a) the greater the period since when the tenant opposite party, or the original tenant whose heir the opposite party is, has been carrying on his business in that building, the less the justification for allowing the application; F

(b) where the tenant has available with him suitable accommodation to which he can shift his business without substantial loss there shall be greater justification for allowing the application; G

(c) the greater the existing business of the landlords own, apart from the business proposed to be set up in the leased premises, the less the justification for allowing the H

A application, and even if an application is allowed in such  
a case, the prescribed authority may on the application of  
the tenant impose the condition where the landlord has  
available with him other accommodation (whether subject  
to the Act or not) which is not suitable for his own proposed  
B business but may serve the purpose of the tenant, that the  
landlord shall let out that accommodation to the tenant on  
a fair rent to be fixed by the prescribed authority ;

(d) where a son or unmarried or widowed or divorced or  
judicially separated daughter or daughter of a male lineal  
C descendant of the landlord has, after the building was  
originally let out, completed his or her technical education  
and is not employed in Government service, and wants to  
engage in self-employment, his or her need shall be given  
due consideration."

D 9. By reason of sub-Section (3) of Section 12 of the Act, a  
legal fiction has been created. Such a legal fiction in regard to  
the vacancy is to be applied in relation to residential  
accommodation only and not in relation to shop premises. Rule  
E 16(2) although refers to the shop premises, by reason thereof  
no legal fiction has been created. The said Rule merely provides  
for certain factors which are required to be taken into  
consideration while considering an application for release under  
Clause 'a' of sub-Section (1) of Section 21 of the Act.

F 10. The High Court, therefore, clearly erred in invoking the  
provisions of Section 12(3) and 16 of the Act.

The High Court referred to Rule 16(2) of the Rules but the  
effect and purport thereof had not been taken into consideration.  
The Rules have a limited application. Applicability of the Rules  
G would undoubtedly depend upon the fact situation obtaining in  
each case. The court is required to apply its mind upon the  
materials brought on record in determining the issues.

H The Writ Petition, therefore, in our opinion could not have  
been dismissed on the premise that Section 12(3), Section 15

and Rule 16 of the Act would be applicable. The High Court should have taken into consideration the factual aspect of the matter also, particularly having regard to the findings of fact arrived at by the learned appellate authority. It would bear repetition to state that the High Court could not have dismissed the writ petition by referring to certain provisions of law particularly when the findings of the appellate authority required a closer scrutiny. A B

11. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. This appeal is allowed and the matter is directed to be considered afresh. We would, however, request the High Court to consider the desirability of disposing the appeal as expeditiously as possible and preferably within a period of three months from the date of receipt of the copy of this Order. In the facts and circumstances of the case, there shall be no order as to costs. C D

S.K.S.

Appeal allowed.