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C.A.No. 6228 OF 1999

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ITEM No.106

Court No. 5

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.6228 of 1999

Udhav Ram

Appellant (s)

VERSUS

Vani Tripathi

Respondent (s)

With I.A.No.3 (for amendment of the petition)
With Office Report

Date : 21/02/2002 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SYED SHAH MOHAMMED QUADRI
HON'BLE MR. JUSTICE DORAISWAMY RAJU

For Appellant (s) Mr. Shrish Kumar Misra, Adv.

For Respondent (s) Mr. E.C. Agrawala, Adv.v.
Mr. Alok Agarwal, Adv.
Mr. Vivek Yadav, Adv.

UPON hearing counsel the Court made the following
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Heard learned counsel for about half an hour.
I.A. No.3 is dismissed.
The appeal is dismissed in terms of the signed order.
No costs.

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(Pawan Kumar) (Kanwal Singh)
Court Master Court Master
(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6228 of 1999@@
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Udhav Ram

..Appellant

Vs.

Vani Tripathi

..Respondent

O R D E R@@
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In this appeal, the appellant-tenant challenges the order of the High Court of Judicature at Allahabad in C.M.W.P. No.1059 of 1999 dated 12.1.1999.

The question that arises for consideration is: whether the High Court is right in holding that requirement of notice under the first proviso to Clause (a) of sub-Section 1 of Section 21 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, was satisfied.

The respondent is the landlady of premises No.20/189 Chatai Mohal, Kanpur (for short 'the premises'). She purchased the said premises on May 28, 1985. Immediately thereafter she issued a notice to the appellant to vacate the premises. However, again on June 1, 1991 she issued the second notice. In May 1992 she filed Eviction Petition No.8

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of 1992 before the prescribed authority under Section 21(1)(a) of the said Act for seeking eviction of the appellant from the premises for her bonafide requirement of personal occupation. The appellant contested the petition denying the bonafide requirement of the respondent and also service of notice under the first proviso to Section 21(1) of the said Act. The prescribed authority dismissed the application of the respondent on the ground that the requirements of the proviso of the said section were not satisfied. However, on appeal by the respondent, the Appellate Authority under the said Act reversed the order of the prescribed authority and ordered eviction of the appellant from the premises. The appellant challenged the validity of the said order dated 30.11.1998 in C.M.W.P.No.1059 of 1999 in the High Court of Judicature at Allahabad. On 12th January, 1999 the High Court dismissed the writ petition declining to interfere with the order of the Appellate Authority. That order is assailed in this appeal by special leave.

To appreciate the question involved in this case it would be necessary to quote Section 21 insofar as it is relevant for our purpose.

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"Section 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

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any specified part thereof 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;

(b)..
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Provided that where the building was in the occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of this Act, no application shall be entertained on the grounds, mentioned in clause (a), unless a period of three years has elapsed since the date of such purchase and the landlord has given a notice in that behalf to the tenant not less than six months before such application, and such notice may be given even before the expiration of the aforesaid period of three years:

Provided further that if any application under clause (a) is made in respect of (any building let out exclusively for non-residential purposes), the prescribed authority while making the order of eviction shall, after considering all relevant facts of the case, award against the landlord to the tenant (an amount not exceeding two years' rent) as compensation and may, subject to rules, impose such other conditions as it thinks fit:

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

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A plain reading of the provision, quoted above, shows that on the application of the landlord the prescribed authority is empowered to pass an order directing eviction of the tenant from the building under tenancy on the grounds specified therein. Clause (a), with which we are concerned, enables the landlord to seek eviction of the tenant from the

premises if it is bonafide required either in its existing form or after demolishing and new construction by him for occupation by himself or any member of his family or any person for whose benefit it is held by him. There is no distinction in regard to the residential purpose or any other purpose whether professional trade or business. If the landlord is a trustee of a charitable trust an order of eviction of the tenant can be sought for the objects of the trust.

The first proviso to sub-sec. (1) says that if the landlord has purchased the premises when the building was in the occupation of a tenant before its purchase, eviction of the tenant cannot be sought on ground (a) unless:

1. a period of three years has elapsed since the date of purchase of the building in question by the landlord;

2. the landlord has given a notice in that behalf to the tenant; and

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3. that six months period has expired from the date of the notice as on the date of the application under the said provision.

It is also clarified that such notice may be given even before the expiration of the aforesaid period of three years.

The second proviso speaks of comparative hardship.

Mr. Shrish Kumar Misra, learned counsel appearing for the appellant, contends that the first notice of 1985 did not specify six months time and the second notice was not a valid notice. We have pointed out above that what is required under the proviso is that six months period should elapse between the issuance of the notice and filing of the application. Admittedly in this case after service of notice six months' period has expired. We are of the view that the requirements and formalities of section 106 of the Transfer of Property Act cannot be imported in regard to the notice contemplated under the proviso. To so hold would amount to reading words in the proviso which is clearly impermissible.

The learned counsel has next contended that the question of hardship to the tenant who is more than 70 years

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old in searching the premises, was not properly considered. The High Court rejected that contention holding that the ground of hardship was considered by the Appellate Authority on assessment of evidence and it declined to go into reappraising of the evidence in exercise of its jurisdiction under Article 226 of the Constitution. That being the correct position in law we do not find any illegality in the impugned order of the High Court.

For the abovementioned reasons, we find no merit in the appeal; it is accordingly dismissed. In the facts and circumstances of the case, we make no order as to costs.

We, however, grant time to the appellant to vacate the premises and to handover possession of it to the respondent

till 31st August, 2002 on his filing usual undertaking within three weeks from today.

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.....J.
(SYED SHAH MOHAMMED QUADRI)

.....J.
(DORAISWAMY RAJU)

New Delhi,
February 21, 2002.