

CASE NO.:
Appeal (civil) 1244 of 2008

PETITIONER:
Ashok Kumar

RESPONDENT:
Sukhwant Singh

DATE OF JUDGMENT: 12/02/2008

BENCH:
Tarun Chatterjee & Harjit Singh Bedi

JUDGMENT:
JUDGMENT

O R D E R
CIVIL APPEAL NO 1244 OF 2008
(Arising out of SLP)No.3152 of 2007)

1. Leave granted.
2. This is an appeal from the final judgment and order dated 21st of November, 2006 passed in Writ Petition No.1044 of 2004 (M/S) and order dated 12th of December, 2006 in Review Application No.314 of 2006 passed by the High Court of Uttaranchal at Nainital whereby the writ petition filed by the respondent was allowed and the review petition filed by the petitioner was dismissed.
3. An application for release was filed by the respondent under Section 21(1)(a) of the U.P.Act No.13 of 1972 in respect of the premises in question before the prescribed authority which was allowed but in appeal the appellate authority allowed the appeal and rejected the release application filed by the respondent. However, in the writ application, the High Court had set aside the order of the appellate authority and allowed the release application, thereby directing the respondent to be evicted from the premises in question.
4. We have heard Mr.Gupta, learned senior counsel appearing on behalf of the tenant-appellant and Mr.Huzefa Ahmadi, learned counsel appearing on behalf of the landlord-respondent. We have also examined the judgment of the High Court as well as the orders of the courts below. We have also examined the materials already on record.
5. Having heard the learned counsel for the parties and after going through the impugned judgment as well as the orders of the authorities below, we do not find any ground to interfere with the order of the High Court which restored the order of release in favour of the respondent on the ground that the respondent bonafide required the premises in question. Accordingly, we do not find any infirmity in the judgment of the High Court, excepting that in view of the nature of the room that is being occupied by the respondent, we have asked for an undertaking from the landlord that the respondent shall not disturb the access to the passage in front of the tenanted room for the purpose of accessing his other tenanted property. Accordingly, an undertaking has been filed by the landlord-respondent that the appellant shall have access to the passage in front of the tenanted room for the purpose of ingress and egress to his other tenanted property. The passage that shall be permitted to use is marked in red and outlined in black in the map appended with the undertaking filed by the respondent. We are also informed that the concerned room is having two doors and

Mr. Ahmadi learned counsel appearing on behalf of the respondent had also given an undertaking before us that both the doors shall be closed by the respondent. Accepting the undertaking given by the respondent and in view of the fact that this appeal has no merit, we dispose of the appeal in the following manner:- The appeal shall stand dismissed and the appellant shall vacate the tenanted room within three months from the date of supply of a copy of this order to the parties. The appellant shall also file another undertaking within a fortnight from this date that he shall vacate the premises in question and deliver vacant and peaceful possession to the respondent within three months from this date, subject to depositing or paying all arrears of rent or occupational charges at the rate of Rs.100/- for the period the appellant has not paid to the respondent. The copy of the undertaking that has been filed by the respondent shall also form a part of this order, that is, the appellant shall have the access to the passage in front of the premises in question for the purpose of ingress and egress to his other tenanted property, the particulars of which has already been described in red and outlined in black in the map appended with the undertaking filed by the respondent. The copy of the undertaking that has been filed by the respondent shall also form a part of this order.

6. The appeal is thus dismissed, subject to the modification as above. There will be no order as to costs.