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C.A.No. 5879 OF 1999

.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp

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Item No.102

Court No.6

Section XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO. 5879 OF 1999.@@

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Mahendra K. Agarwal

...Appellant(s)

Vs.

Vinay Kumar Gupta & Ors.

...Respondent(s)

[With office report]

Date:28/02/2002 This matter(s) was called on for hearing today.

CORAM:

HON'BLE MR.JUSTICE SYED SHAH MOHAMMED QUADRI

HON'BLE MR.JUSTICE DORAISWAMY RAJU

For the appellant(s) : M/s GL Sanghi, Rakesh Dwivedi, Sr.Advs.
M/s Deepak Dhingra, Nidhi Chopra,
Pradeep K. Bakshi, Adv.

For the respondent(s) : Mr. Anuvrat Sharma, Adv. for
Mr. VB Joshi, Adv.

UPON hearing counsel the Court made the following
O R D E R

.SP2

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Heard Mr. GL Sanghi, the learned senior counsel for the
appellant for about 15 minutes.

The appeal fails and stands dismissed in terms of the
signed order.

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[Naresh Kumar]
Court Master

[Kanwal Singh]
Court Master

[Signed order is placed on the file.]

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.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp

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CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5879 OF 1999@@
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Mahendra K. Agarwal ...Appellant

Vs.

Vinay Kumar Gupta & Ors. ...Respondents

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The tenant of the Shop bearing Municipal No.3320, Chauraha Station Road, Kashipur, the then Dist.Nainital (U.P.) (hereinafter referred to as the 'shop'), is in appeal from the judgment of a learned Single Judge of the High Court of Judicature at Allahabad, dismissing his Civil Miscellaneous Writ Petition No.8958/92, on April 1, 1999.

One late Narender Kumar, father of respondent nos.1 to 3 filed an application before the Prescribed Authority under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act") seeking an order of eviction of the appellant on the ground that the shop is a joint Hindu family property and is needed for carrying on business by himself, his sons and his brother and his sons. The application was contested by the appellant on both the grounds, namely, denying that it is a joint Hindu family property and that the need of the respondents is a bonafide. On February 12, 1990, the Prescribed Authority

2

found that the shop was not a joint Hindu family property but was a personal property of the said Narender Kumar and that the need of the respondents was not bonafide. However, on appeal by the said Narender Kumar the learned Appellate Authority held that the need of the said Narender Kumar and his sons and his brothers and nephews was bonafide and in that view of the matter allowed the appeal on March 5, 1992. The appellant challenged the validity of the said order of the Appellate Authority in the High Court of Judicature at Allahabad in Writ Petition No.8958/92. By the impugned judgment the High Court declined to interfere and dismissed the writ petition. That is how the appellant is before us in appeal by special leave.

Shri GL Sanghi, learned senior counsel appearing for the appellant, contends that the application of the said Narender Kumar indicates that the property was claimed to be joint Hindu family property and the need pleaded is of all the members of the family therefore the Appellate Authority as well as the High Court are not right in holding that the need is bona fide.

It would be appropriate to refer to clause (a) of Section 21(1) of the Act under which the eviction case is filed. It reads as follows:-

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"21. Proceedings for release of@@
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building under occupation of tenant:-- (1) The@@
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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
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).....

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....."

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A plain reading of the provisions, extracted above,
shows that when a building is bonafide required either in
the existing form or after demolition and the new
construction by the landlord for occupation of himself or
any member of his family for the purpose for whose benefit
it is held by him he can seek an order of eviction against

4

the tenant. Further, the said clause entitles a landlord
who is a trustee of a public charitable trust to seek
eviction for the objects of the trust. It is to be noted
here that the provision makes no distinction between a
residential and a non-residential premises. However, what
is important to note is that there must be a bonafide@@

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requirement for occupation of the landlord or any member of@@
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his family. The application of the said Narender Kumar to@@
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which our attention is invited by Shri Sanghi, inter alia,
reads as follows:-

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"That the children of the family of the

Petitioner and his brothers have grown up and they are free and unemployed. The Petitioner himself has been free and unemployed since long.....Therefore the disputed shop is required for the business for the said persons."

.SP2

From the averments, extracted above, it is not possible to accept that the need pleaded does not refer to the requirement of the said Narender Kumar and his children. The Appellate Authority, in our view, has rightly concluded that the need of the said Narender Kumar and his children has been established. We do not find any illegality in the order of the High Court in declining to interfere with the said order of the appellate authority. Consequently, this appeal fails and stands dismissed.

5

At the end of the hearing Mr. Sanghi, submits that the shop is a business premises so the appellant may be granted an year to vacate it. Having regard to the facts and circumstances of the case, we consider that the interest of justice would be met if a period of six months is granted to the appellant to vacate the shop. Accordingly, we grant time till August 31, 2002 to the appellant to vacate and hand over peaceful possession of the premises to the respondents, subject to his filing a usual undertaking within four weeks from today.

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.....J.
[SYED SHAH MOHAMMED QUADRI]

New Delhi,
February 28, 2002.@@
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.....J.
[DORAISWAMY RAJU]