

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8278 OF 2002@@
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(Arising out of S.L.P. (Civil) No. 20492/2001)

Tarsem Singh ... Appellant (s)

Versus

Ramesh Chand Aggarwal ... Respondent (s)

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Leave granted.
Heard parties.

This appeal is filed against the order dated 26th July, 2001. Briefly stated the facts are as follows:-

The appellant had filed an eviction petition, inter alia, on the ground that he was retiring with effect from 30th April, 1992 and so required the premises for his own residence. The said petition was filed under the provisions of Section 15(2) of the Himachal Pradesh Urban Rent Control Act, 1987. The said provision reads as follows:-

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"(2) Where a specified landlord, at any time within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the appointed day whichever is later, applies to the Controller, along with a certificate from the authority competent to remove him from service ...2..

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indicating the date of his retirement and his affidavit to the effect that he or his spouse does not own and possess any other suitable accommodation in the local area in which he intends to reside or to start his own business, to recover possession of one residential building for his own occupation, there shall accrue, on and from the date of such application to such specified landlord, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether expressed or implied), custom or usage to the contrary a right to recover immediate possession of such

residential building or any part or parts
of such building if it is let out in part
or parts:"

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Along with the petition, the appellant filed a letter dated 1.2.1991 from the Superintendent Engineer addressed to the Chief engineer setting out that the appellant was retiring from the Government service on attaining the age of superannuation on 30th April, 1992. The appellant also filed affidavits to the effect that he was retiring and he had no other place of residence.

The Rent Controller dismissed the petition on the ground that the appellant was owning other properties. Against the said order of dismissal, the appellant filed a revision under Section 16(9) read with Section 24(5) of the said Act. This revision has been dismissed on the sole ground that the appellant had not filed a certificate from the authority competent to remove him from service.

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It must be mentioned that when the appellant retired on 30th April, 1992, a notification was also issued setting out that the appellant had so retired. That notification was also placed on record in the eviction petition. The High Court seems to have overlooked that notification completely. Even otherwise, we are of the view that the High Court has adopted too technical a view. The afore-mentioned provision is enacted for the benefit of a person who is retiring. This is to ensure that such persons get back their premises. The provision regarding production of certificate is for purposes of ensuring that the person is actually retiring. Neither the Act nor the rules prescribe any particular form for such a certificate. In the absence of any particular form or requirement of such a certificate, the High Court erred in holding that the letter dated 1.2.1991 was not sufficient. The letter clearly indicated that the appellant was retiring. Further, in this case, there is also a notification. The notification is in the name of the Governor. The Governor is the authority competent to remove him from service. This notification confirms the fact of retirement. The appellant has also filed an affidavit, as required under the Section. Therefore, all the

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requirements of Section 15(2) of the Act had been complied with. In our view the High Court was wrong in dismissing the petition on this ground.

It is urged that in the revision, there were two respondents but in the special leave petition the name of the second respondent has been got deleted by an order of this Court dated 16th July, 2002. It is urged that as the name of the second respondent has been got deleted, this appeal would not survive, as it would lead to contradictory orders. We are unable to accept this submission. There will be no contradictory order inasmuch as if the impugned order of the High Court is set aside, the revision petition will get restored to the file of the High Court. In that revision petition the second respondent is a party. Therefore, the second respondent will be represented in that revision petition.

It is lastly urged that the appellant has already filed an eviction petition pursuant to the liberty given to him by the High Court by an order dated 26th July, 2001. It is urged that therefore, no purpose would be served in remitting the matter back to the High Court. We are unable to accept this submission also. That petition is on separate grounds and will be dealt with separately. That petition has nothing to do with the revision pending before the High Court.

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As the impugned order of the High Court is not sustainable the same has to be set aside. Accordingly, the impugned order is set aside. Civil Revision No. 386 of 1998 is restored to the file of High Court. The High Court shall dispose of the same on merits within a period the six months from today.

The appeal is accordingly allowed.
There shall be no order as to costs.

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.....J.
(S.N.Variava)

.....J.
(B.N.Agrawal)

New Delhi,
December 09, 2002.

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ITEM No.62

Court No.10

SECTION XIV
A/N MATTER

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

Petition(s) for Special Leave to Appeal (Civil) No.20492/2001

(From the judgement and order dated 26/07/2001 in CR 386/98
of The HIGH COURT OF H.P AT SHIMLA)

TARSEM SINGH

Petitioner (s)

VERSUS

RAMESH CHAND AGGARWAL
(For Final Disposal)

Respondent (s)

Date : 09/12/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Petitioner (s) Mr. M.N. Shroff, Adv.
Mr. Gajinder, Adv.

Mrs.Kiran Jai, Adv.
Mr. Chirag M.Shroff, Adv.

For Respondent (s) Mr. Subramonium Prasad.,Adv.

UPON hearing counsel the Court made the following
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Heard learned counsel for the parties for about half
an hour.

Leave granted.

The appeal is allowed in terms of the signed order.

There shall be no order as to costs.

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Anita

(Jasbir Singh)
Court Master

(Signed order is placed on the file.)