PETITIONER:
SHAYAM BABU

Vs.

RESPONDENT:
DISTRICT JUDGE, MORADABAD & OTHERS

DATE OF JUDGMENT14/12/1983

BENCH:
MISRA, R.B. (J)
BENCH:
MISRA, R.B. (J)
DESAI, D.A.
MISRA RANGNATH

CITATION:
1984 AIR 1399 1984 SCR (2) 30
1984 SCC (1) 411 1983 SCALE (2)1051

ACT:
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972-s. 21 fourth proviso-Interpretation of-Whether protects sub-tenant.

HEADNOTE:
The respondent-landlords had let out a shop to a tenant who had, with the consent of the landlords, sub-let the same to the appellant. The landlords moved an application under s. 21 of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 against the tenant and the sub-tenant for release of the premises on the ground of bonafide requirement. The prescribed authority allowed the application against the appellant and dismissed against the tenant. In appeal the District judge confirmed the order of the prescribed authority. In a writ petition the appellant challenged the order of the District Judge. The High Court dismissed the writ petition observing that the fourth proviso to s.21 contemplated the consideration of the likely hardship of the tenant or the landlord only and not of the sub-tenant. Hence this appeal.

Allowing the appeal,

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HELD: All that the relevant proviso to s.21 requires is that the comparative hardship of the tenant as also that of the landlord shall be taken into account before passing any order of release or refusal to release. If the sub-tenancy had been created without the consent of the landlord the position might have been different. The sub-tenant for the purposes of the fourth proviso to s.21 would virtually be a tenant inasmuch as rent is payable by him to the tenant-in-chief, who to all intents and purposes will be a landlord qua the sub-tenant: To interpret the section in the way as the High Court has interpreted would be defeating the very salutary purpose of the Act. [33 H; 34 A-B]

Bhullan Singh v. Babu Ram (1965) A.L.J. 544 referred to.

In the instant case, the appellant was entitled to the protection of the fourth proviso to s. 21 and the comparative hardship of the appellant as well as that of the landlords should have been taken into account before

disposing of an application under s.21 of the Act. The Courts below have failed to exercise jurisdiction vested in them in not considering the likely hardship of the appellant. [34 C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 230 of 1978.

From the Judgment and Order dated 19th January, 1978 of the
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High Court of Judicature at Allahabad in Civil Misc. Writ No. 355 of 1977.

Yogeshwar Prasad and Mrs. Rani Chabbra, for the Appellant

J.P. Goyal, Rajesh and S.K. Jain for the Respondents.

The Judgment of the Court was delivered by

MISRA, J. The present appeal by special leave is directed against the judgment dated 19th of January, 1978 of the Allahabad High Court. The short question for consideration in this appeal is whether a sub-tenant is entitled to the protection of the fourth proviso to s.21 of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

The material facts to bring out the point for consideration lie in a narrow compass. One Murari Lal was the owner of the disputed shop. During his lifetime a partition took place between him and the other members of his family in 1937. The shop in dispute fell to the share of Murari Lal and Narendra Mohan, his eldest son. After the death of Murari Lal in 1960 his interest devolved upon his sons Rajendra Kumar and Brijendra Kumar along with their brother Narendra Mohan.

It appears that the shop in suit had been let out to one Krishan Kumar. He in his turn inducted Shyam Babu, the present appellant, as his sub-tenant in 1962. Rajendra Kumar and Brijendra Kumar filed a suit No. 181 of 1968 in the Court of Munsif for the eviction of the original tenant as well as the sub-tenant, on the ground of illegal subletting as also for the recovery of arrears of rent. That suit was contested by the tenant as well as the sub-tenant on the ground that the sub-tenancy had been created with the consent of the then landlord and therefore subletting was legal.

The learned Munsif dismissed the suit by his order dated 24th April, 1973 holding that the sub-tenancy created by Krishan Kumar in favour of the appellant Shyam Babu was with the consent of the landlord and as such neither Krishan Kumar nor Shyam Babu was liable to eviction on that ground.

It appears that during the pendency of the suit the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972
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(hereinafter referred to as the new Act) came into force on 15th July, 1972. Rajendra Kumar and Brijendra Kumar, the landlords, moved an application under s.21 of the new Act for the release of the premises in occupation of the appellant and Krishan Kumar on the ground that the same is bonafide required for their personal use. The application was resisted by the tenant as well as the sub-tenant. They denied that the need of the landlords was genuine. They also set up their own needs and contended that they would suffer greater hardship if the application for release was allowed.

The prescribed authority allowed the application with respect to the portion in occupation of the appellant Shyam Babu but dismissed the same as against the original tenant Krishan Kumar. Feeling aggrieved the landlords as well as the sub-tenant filed two separate appeals before the District Judge to the extent the order went against them. The landlords were aggrieved by the order insofar as their application was rejected against Krishan Kumar, the original tenant, while the appellant challenged the release of the premises granted to the landlords against him. Both the appeals were disposed of by a common judgment of the District Judge on 24th March, 1977 confirming the order passed by the prescribed authority. The landlords submitted to the order passed by the District Judge. The appellant, however, sought to challenge the order of the District Judge by filing a writ petition in the High Court.

The contention raised by the appellant was that the prescribed authority as well as the Appellate Court committed a manifest error of law in allowing the application for release of the premises in favour of the landlords without considering the comparative hardship likely to be caused to the appellant or to the respondent land lords by the order of release or refusal to release the premises within the meaning of fourth proviso to s.21 of the new Act. In the opinion of the High Court the proviso contemplated the consideration of the likely hardship of the tenant or the landlord and as the appellant was only a sub-tenant the proviso did not obligate the authority to consider his hardship.

It will be appropriate at this stage to read the relevant proviso to s.21 as the decision of the case hinges on the construction of the proviso:

> "Provided also that the prescribed authority shall, except in cases provided for in the Explanation, take into
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> 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."

It may be recalled that in the earlier suit No. 181 of 1968 filed by the landlords it was found as a fact that the appellant Shyam Babu was inducted as a sub-tenant by the tenant-in-chief with the consent of the landlords. It was on this ground that the landlords' suit was dismissed against the tenant-in-chief as well as the sub-tenant. A feeble attempt was made before the High Court on behalf of the landlords to challenge that finding but that was rejected and we think rightly. Even an erroneous finding of fact between the parties will be binding on them. The landlords, therefore, cannot possibly urge that the sub-letting was not with the consent of the landlords.

If once it is accepted that the sub-tenancy created by the tenant-in-chief in favour of the appellant was with the consent of the landlords his possession cannot be said to be illegal. In this view of the matter we see no reason why he should be deprived of the protection of the fourth proviso to s.21 of the new Act. It is true that the new Act was intended to give relief to the tenant. 'Landlord' and 'tenant' are defined terms in the Act. Clause(j) of s.3 defines 'landlord' thus:

> "(j) "landlord", in relation to a building, means a person to whom its rent is or if the building were let would be, payable, and includes, except in clause

(g), the agent or attorney, or such person:"

Section 3 (a) defines tenant as;

"(a) "Tenant" in relation to a building, means a person by whom its rent is payable,....."

The appellant who is a sub-tenant pays rent to the tenant-in-chief and the tenant-in-chief in his turn pays rent to the landlord. Between the appellant and the tenant-in-chief the tenant-in-chief would be the landlord and the appellant, the sub-tenant, would be the tenant. All that the relevant proviso to s.21 requires is that the comparative hardship of the tenant as also that of the landlord shall be taken into account before passing any order of release or refusal to release. If the sub-tenancy had been created without the consent

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of the landlord the position might have been different. The sub-tenant for the purposes of the fourth proviso to s.21 would virtually be a tenant inasmuch as rent is payable by him to the tenant-in-chief, who to all intents and purposes will be a landlord qua the sub-tenant. To interpret the section in the way as the High Court has interpreted would be defeating the very salutary purpose of the new Act.

A similar question came up for consideration before a Division Bench of the Allahabad High Court in Bhullan Singh v. Babu Ram based on cl. (g) of s.2 of the U.P. (Temporary Control of Rent and Eviction Act, 1947. The High Court took the view that the term 'tenant' as defined in cl. (g) of s.2 of the Act includes a sub-tenant.

Having considered the argument of the counsel for the parties we are of the firm view that the appellant was entitled to the protection of the fourth proviso to s.21 and the comparative hardship of the appellant as well as that of the landlords should have been taken into account before disposing of an application under s.21 of the new Act. The Court below in our opinion have failed to exercise jurisdiction vested in them in not considering the likely hardship of the appellant.

For the reasons given above the appeal must succeed. It is accordingly allowed and the impugned judgment of the High Court and those of the District Judge as well as of the prescribed authority on the question of comparative hardship are set aside. The case is remanded to the District Judge who will send it to the prescribed authority under the new Rent Act to dispose of the application under s.21 in the light of the observations made above after considering the likely hardship of the appellant and that of the landlord-respondents. In the circumstances of the case, we direct the parties to bear their costs.

H.S.K. Appeal allowed.

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