CASE NO.:
Appeal (civil) 2892 of 2001

PETITIONER:
ASHOK KUMAR & OTHERS

Vs.

RESPONDENT:
SITA RAM

DATE OF JUDGMENT: 19/04/2001

BENCH:
D.P. Mohapatra & Shivaraj V. Patil

JUDGMENT:

D.P.MOHAPATRA, J.

Leave granted.
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The appellants are the tenants of the shop room No.R 67 (New No. R/50) located in the Mohalla Rasoolpur, Nawab Ganj, District Barabanki, Uttar Pradesh. Sita Ram @ Nand Kishore, the respondent is the landlord of the said property. On the petition filed by the respondent on 28.1.1988 for eviction of the appellants and release of the premises under section 21(1)(a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Act 13 of 1972) (hereinafter referred to as the Act) P.A. No. 2/1988 was registered in the Court of IInd Additional Chief Judicial Magistrate/Prescribed Authority, Barabanki. The case of the respondent shortly stated was that he was in bona fide need of the shop room in question for establishing his son Dilip Kumar in business; being his father and the Karta of the family it was his duty to provide necessary facilities to his son to start independent business. The appellants entered contest, refuted the averments/ allegations made by the respondent in the eviction petition. They denied that the respondent had any bona fide need for the shop room in question. According to them the respondent had a number of other premises, some of which he let out to others shortly before filing the eviction petition in 1987.

The prescribed authority on sifting the evidence on record accepted the case of the respondent that he was in bona fide need of the shop room in question, and allowed the prayer for release of the premises and ordered eviction of the appellants therefrom. He also ordered payment of an amount equivalent to two years rental as compensation for indemnifying the appellants for the inconvenience faced by them in shifting their business.

Both the parties preferred appeals against the order of the prescribed Authority; the appellants challenged the order of eviction passed against them, while the respondent

assailed the order for payment of two years rental to the appellants.

The 5th Additional District Judge Barabanki in the judgment dated 12.5.1992 in Rent Control Appeal Nos.1/91 and 2/91 allowed the appeal No.2/91 filed by the appellant herein and disallowed the appeal No.1/91 filed by the respondent herein.

Being aggrieved by the judgment of the Appellate Authority the respondent landlord filed the petition under Article 226 of the Constitution being W.P. No. 92(R/C) of 1992 in the Allahabad High Court (Lucknow Bench). A single Judge of the Court by the judgment dated 8.12.1999 allowed the Writ Petition, and quashed the judgment/order of the Appellate Authority.

Hence this appeal by the tenants.

The main thrust of the arguments of the learned counsel appearing for the appellants is that it was not open to the High Court to re-open the findings of fact recorded by the Appellate Authority that the landlord has no bona fide need for the disputed shop room, in exercise of jurisdiction under Article 226. The further submission of the learned counsel is that the Appellate Authority has given cogent reasons for differing from the findings recorded by the prescribed Authority on the question of bona fide requirement of the landlord, and therefore, no interference by the High Court with the order of the Authority was warranted.

Per contra the learned counsel appearing for the respondent supported the judgment contending that the High Court, in the facts and circumstances of the case, was right in setting aside the judgment of the Appellate Authority and restoring the order of eviction passed by the prescribed Authority.

The position is too well settled to admit of any controversy that the finding of fact recorded by the final Court of fact should not ordinarily be interfered with by the High Court in exercise of writ jurisdiction, unless the Court is satisfied that the finding is vitiated by manifest error of law or is patently perverse. The High Court should not interfere with a finding of fact simply because it feels persuaded to take a different view on the material on record.

In the present case on perusal of the judgment of the Appellate Authority which runs to about sixty pages the Authority has discussed in great detail the case pleaded by both the parties, materials placed by them in support of their case and has disbelieved the case that the landlord bona fide required the shop in question for his son Dilip Kumar . The Appellate Authority observed that Dilip Kumar was married in 1979; the marriage was dissolved by a decree of divorce passed in July 1987 before filing of the eviction petition; therefore, the cause pleaded in the eviction petition that Dilip Kumar after his marriage felt the need to augment his income and for that purpose wanted to start his independent business, was not acceptable. The Appellate Authority further observed that the respondent landlord had himself let out his building on rent in 1987 which show that Dilip Kumars need was not bona fide one; the necessity, if

any, had ceased by the date of the eviction petition i.e. on 28.1.1988. In conclusion, the Appellate Authority recorded the finding that from the evidence produced it becomes perfectly evident that the applicant had no need for vacation of the shop room for use of Dilip Kumar and that it was correctly stated by the opposite party that this application was filed in order to enhance the rent. The Appellate Authority further observed:

As regards the relative hardships and the damages it need no decision here as the relative hardship is material only in case the necessity of applicant had been bonafide and as regards the damages, a decision on this point would have required only when the application filed by the applicant was being granted. On these points no decision is therefore required. The decision of the lower court in this regard is set aside.

The High Court set aside the order of the Appellate Authority. The learned Judge observed:

Every father wants to see in his life that his son is settled in life. This aspect of the matter was not taken into consideration by the appellate authority. The appellate authority further failed to compare the bonafide need of the opposite parties 2 to 5 and the petitioner. The detailed judgment of the Prescribed Authority too has not been scrutinised in accordance with law. The only thing which prevailed in the mind of the appellate authority was that since the wife had deserted Dilip Kumar, the son of the petitioner therefore there is no need to release the shop in question in favour of the petitioner on the ground of need of his son to settle in life. The appellate authority has also recorded a finding that there is no question of comparing the hardships of the landlord with opposite parties 2 to 5 because he had come to the conclusion that there was no bonafide need of the landlord.

Considering the question of the power of the Court to interfere with the order of the Appellate Authority the High Court appears to have taken the view that if the Appellate Authority has erred on a question of law then the High Court has jurisdiction to interfere under Article 226 of the Constitution. Taking exception to the Order of the Appellate Authority the High Court observed :

The Prescribed Authority had compared the bonafide need of the petitioner as well as the opposite parties 2 to 5 whereas the appellate authority refused to consider the need of the petitioner-landlord on the ground that there was no bonafide need.

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However, it can be said that the order of the Prescribed Authority has been set aside by the appellate authority without comparing the need and hardships of the landlord with opposite parties 2 to 5 which was considered by the Prescribed Authority in details. The finding recorded by the appellate authority that the need of the petitioner was not bonafide is erroneous.

Section 21 makes provision regarding proceedings for

release of building under occupation of tenant. Sub-section (1)(a) under which the respondent sought the eviction of the petitioner, along with its proviso reads as follows: 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 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 objection of the trust;

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Provided also that no application under clause (a) shall be entertained

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(ii) in the case of any residential building, for occupation for business purposes

As noted earlier the High Court has faulted the Appellate Authority for not considering the question of comparative hardship. The Appellate Authority did not feel the necessity to go into that question since it had recorded the finding that grant of eviction as pleaded by the landlord was not acceptable. On a fair reading of the proviso to section 21(1)(a) it is clear that the legislative mandate is that the prescribed Authority shall 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. This question can appropriately be considered by the Authority when he comes to the conclusion that the plea of bonafide requirement taken by the landlord is found to be acceptable. It is at that stage that the Authority should take into account the hardship likely to be caused to the tenant in allowing the petition for eviction as against the hardship likely to be caused to the landlord in the event of rejection of the prayer for eviction of the tenant. In case the Authority comes to the conclusion that the case of bona fide requirement pleaded by the landlord is not believable and acceptable the question of allowing the petition for eviction does not arise and so the necessity of making a comparison between the hardship in allowing the petition for eviction and disallowing the same does not arise.

This Court in Hiralal Moolchand Doshi vs. Barot Raman Lal Ranchhoddas (1993) 2 SCC 458 held :

The High Court was also in error in assuming that the landlord is supposed to have pleaded his own comparative hardship in the plaint itself. Section 13(2) comes into play at the stage when the court is satisfied that the ground contained in clause (g) of sub-section (1) of Section 13 of the Act has been made out. It is at that stage that

the court has to examine the question of comparative hardship. It was thus not necessary to plead in the plaint itself. Often the parties at the stage of recording of evidence of bona fide personal requirement also lead evidence as to the comparative hardship of the landlord or the tenant. But such averments are not required to be pleaded in the plaint itself to give cause of action to the landlord to enable him to file a suit for eviction of the tenant on the ground of his bona fide personal requirement.

The question that remains to be considered is whether the High Court in exercise of writ jurisdiction was justified in setting aside the order of the Appellate Authority. The order passed by the Appellate Authority did not suffer from any serious illegality, nor can it be said to have taken a view of the matter which no reasonable person was likely to take. In that view of the matter there was no justification for the High Court to interfere with the order in exercise of its writ jurisdiction. In a matter like the present case where orders passed by the Statutory Authority vested with power to act quasi-judicially is challenged before the High Court, the role of the Court is supervisory and corrective. In exercise of such jurisdiction the High Court is not expected to interfere with the final order passed by the Statutory Authority unless the order suffers from manifest error and if it is allowed to stand it would amount to perpetuation of grave injustice. The Court should bear in mind that it is not acting as yet another Appellate Court in the matter. We are constrained to observe that in the present case the High Court has failed to keep the salutary principles in mind while deciding the case.

On consideration of the entire matter we are satisfied that the High Court erred in interfering with the judgment/order passed by the Appellate Authority. Accordingly, the appeal is allowed, the judgment/order of the High Court dated 8.12.1999 in Writ Petition No. 92 (R/C) of 1992 is set aside and the order of the Appellate Authority i.e. Vth Additional District Judge, Barabanki dated 12.5.1992 in Rent Control Appeal No.1 of 1991 is confirmed. The parties will bear their respective costs.