

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.446 OF 2009
(Arising out of SLP(C) NO. 550 of 2009)

Anurag Kumar

..... Appellant

Versus

Mohan Lal & Anr.

.....Respondents

ORDER

- 1) Leave granted.
- 2) This appeal is directed against the orders passed by the High Court of Judicature at Allahabad in Civil Miscellaneous Writ Petition No. 47199 of 2007 dated 24.11.2008. By the impugned order, the court has allowed the writ petition by quashing the order dated 01.09.2007 passed by the Additional District Judge, Court No.1, Meerut and further has remanded the matter to the Revisional Authority to pass fresh order in the light of observations made after affording sufficient opportunity to the parties.

- 3) The appellant is the owner of a Shop No. 570. Budhana Gate, Meerut, where respondent no.1 is the occupant on monthly rent of RS. 400. On 23.04.1999, an application was made by respondent no.2 before the Rent Control and Eviction Officer stating that vacancy be declared as the respondent no.1 has obtained allotment order by the appellant by concealing the fact that he is already in occupation of three other shops.
- 4) The Competent Authority after obtaining a report from the Rent Control Inspector and after having heard the parties vide its order dated 28.09.2005 has observed that as the respondent no.1 has obtained the possession of the disputed shop by playing fraud, and therefore, the allotment of the disputed shop happens to be nullity and is void, and thus the said shop is liable to be declared vacant.
- 5) Neither the respondent no.1 nor the appellant challenged the order dated 28.09.2005, thus it has become final. Appellant after declaration of vacancy made an application for release of the disputed shop before the Delegated Authority. The Delegated Authority after considering the genuine and bonafide need of the appellant allowed the release application in favor of the petitioner under sec. 16 of the act, vide its order dated 30.11.2005.

- 6) Respondent no.1 being aggrieved by the order filed a revision petition before the Revisional Authority on the ground that no question of release of the disputed shop in favor of appellant arises as the said shop is not vacant and had been duly and properly allotted to the respondent no.1. However, respondent no.1 did not challenge the order of vacancy. Revisional Authority again went into details of the case and vide its order dated 01.09.2007, declared that the property in question was not vacant and was in occupation of the respondent no.1 as a valid allottee and the allotment in favor of respondent no.1 has not been cancelled in accordance with provisions of law, therefore the impugned order is liable to be set aside.
- 7) Being aggrieved by the order dated 01.09.2007, appellant filed a Civil Misc. Writ Petition before the High Court for quashing the said order passed by the Revisional Authority.
- 8) The High Court, allowed the writ petition vide its order dated 24.11.2008, quashing the order passed by the Revisional Authority dated 01.09.2007 and has remanded the matter to the Revisional Authority to pass an appropriate order, on the ground that Revisional Authority has failed to take into consideration the fact, that, if the order of vacancy has become final and it has never been challenged

by aggrieved person then the question of allotment or question of release in favour of the landlord cannot be raised by the person concerned without challenging the order of vacancy unless and until the premises in dispute is declared vacant by an authority competent to do that is set aside. Aggrieved by this order the appellant is before us in this appeal.

- 9) The High Court while exercising its discretionary and extraordinary jurisdiction under Article 226 has remanded the matter back to the Revisional Authority to pass an appropriate order with certain directions after going into the merits of the case.
- 10) The basic principle of Article 136 is that if a litigant feels that injustice has been done by a Court or any other body charged with administration of justice, there is one superior court he may always approach and which, in its discretion, may give him special leave to appeal so that justice may be done: (1996) 1 SCJ 786, 803.
- 11) It is not possible to define with any precision, the limitations on the exercise of the discretionary jurisdiction vested in the Supreme Court by the constitutional provision made in Article 136. The limitations whatever they be, are implicit in the nature and character of the power itself. It being an exceptional and over-riding power, naturally, it has

to be exercised sparingly and with caution and in special and extraordinary situations.

12) It is well settled that though special leave is granted, the discretionary power which is vested in the Court at the stage of the special leave petition continues to remain with the Court even at the stage when the appeal comes up for hearing and when both sides are heard on merits in the appeal: (1999) 2 SCC 321.

13) In view of above, in our opinion although leave has been granted but we do not find a need to exercise the discretionary powers under Art. 136. The matter has already been discussed by various Authorities and the same has been remanded back by the High Court and as such no extraordinary situation arises. It will be proper that the Revisional Authority decides the matter again.

14) Therefore without going into the merits of the case, we dismiss the appeal. However, we reserve liberty to the appellant to raise all such contentions which are available to him including certain contentions raised in this appeal before the Revisional Authority. We direct the Revisional Authority to adjudicate upon the matter independently untrammelled by the observations and orders made by the High Court.

15) The appeal is dismissed accordingly. No order as to costs.

.....J.
[TARUN CHATTERJEE]

.....J.
[H.L. DATTU]

**New Delhi,
January 27, 2009.**