

CASE NO.:
Appeal (civil) 2919 of 2005

PETITIONER:
Manoj Kumar & Anr.

RESPONDENT:
Munni Devi

DATE OF JUDGMENT: 28/04/2005

BENCH:
CJI R. C. Lahoti, G. P. Mathur & P.P. Naolekar

JUDGMENT:
J U D G M E N T

(Arising out of Special Leave Petition (C) No.17996/2002)

G. P. MATHUR, J.

1. Leave granted.

2. This appeal by special leave has been preferred against the judgment and order dated 26.7.2002 of Allahabad High Court by which the writ petition preferred by the appellants was dismissed.

3. Jawahar Lal, the father of the appellants was a tenant of a shop bearing No. 29/17, Namak Ki Mandi, Agra and it was purchased by the respondent Smt. Munni Devi on 23.01.1976. After the death of Jawahar Lal, the appellants being his sons inherited the tenancy and started paying rent to the respondent. The respondent filed an application in the year 1987 seeking release of the shop on two grounds, namely, that the building was in a dilapidated condition and is required for the purpose of demolition and new construction wherein her husband will carry on the business after new construction had been made. The second ground pleaded was that one of her sons was unemployed and was sitting idle and he would also establish his business in the shop. The appellants contested the release application on various grounds. The Prescribed Authority dismissed the release application by the judgment and order dated 15.04.1989. The respondent then preferred an appeal which was allowed by the VIIth Addl. & District Judge, Agra, by the judgment and order dated 13.9.1996 and the shop was released in favour of the respondent and she was directed to pay rent of one year as compensation to the appellants. The appellants challenged the aforesaid judgment by filing a writ petition in the Allahabad High Court which was dismissed on 26.07.2002.

4. Shri Siddhartha Bhatnagar, learned counsel for the appellants, has submitted that the landlord had applied for release of the shop under the tenancy of the appellants under Section 21(1)(a) of UP Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) and the first proviso to said sub-section requires giving of notice by the landlord to the tenant not less than six months before filing of such application and as in the present case no such notice had been given, the release application was not maintainable and was liable to be dismissed on this ground alone. Learned Counsel has submitted

that the aforesaid provision has come up for consideration before this Court in *Martin & Harris Ltd. vs. Vth Addl. District Judge* 1998 (1) SCC 732 wherein it was held that the requirement of giving prior notice was mandatory. Challenge has also been raised to the findings recorded by the Appellate Authority in favour of the landlord and it has been urged that she had no bona fide requirement of the property and further the appellants would suffer greater hardship in the event of release of the shop in which they were carrying on business for a long time.

5. Learned counsel for the respondent has submitted that six months' notice had in fact been given in the present case before filing the release application. He has also submitted that the provision of giving six months' notice before filing the release application is not mandatory and, therefore, the release application cannot be held to be not maintainable even if no such notice is given by the landlord. In support of this submission, learned counsel has placed reliance on a later decision of this Court in *Anwar Hasan Khan vs. Mohd. Shafi and Ors.* 2001 (8) SCC 540 wherein it was held that the period contemplated for not initiating the eviction proceedings against a tenant on the grounds specified in Clause (a) of sub-section (1) of Section 21 was three years and in no case more than three years and six months and any proceeding initiated for release of the building on the aforesaid ground after the expiry of the period does not require the service of six months prior notice. Learned counsel has further submitted that after a thorough examination of the evidence on record the Appellate Authority had recorded clear findings that the need of the landlord was bona fide and genuine and further that in the event the shop was not released the landlord would suffer greater hardship. It has thus been submitted that the Judgment of the Appellate Authority is perfectly sound and the writ petition filed by the appellants was rightly dismissed by the High Court and as such there is absolutely no occasion for this court to interfere in a Special Leave Petition filed under Article 136 of the Constitution.

6. The judgment of the Appellate Authority shows that the respondent (landlord) moved an application for adducing additional evidence in appeal, which was allowed on 9.4.1993. The respondent filed the copy of the notice dated 17.2.1983 sent by Shri Jethanand, Advocate on her behalf and also the copy of the reply dated 8.3.1983 sent by Shri Ram Chander Bhakru, Advocate. The aforesaid documents were proved by Shri Rakesh Kumar Bansal, clerk of Shri Jethanand, Advocate. The respondent also filed affidavit of Shri Brij Mohan. Thereafter, the tenant summoned Bangali Mal (husband of respondent, Smt. Munni Devi), Brij Mohan and Rakesh Kumar Bansal and they were cross-examined. The Appellate Authority, after considering the aforesaid evidence, has recorded a clear finding that a notice was sent by the landlord before filing the release application and the requirement of first proviso to Section 21(1)(a) of the Act had been complied with. The filing of the additional evidence before the Appellate Authority finds mention in the Writ Petition which was filed by the appellants in the High Court.

7. In view of the findings recorded by the Appellate Authority and also by the High Court that a notice, as contemplated by the first proviso to Section 21(1)(a) of the Act, had been sent by the landlord we do not consider it necessary to decide the legal issue raised by the learned counsel for the appellants and the same may be done in a more appropriate case.

8. The Appellate Authority has recorded a clear finding that the need of the landlord was bona fide and genuine and further that the landlord will suffer greater hardship in the event of rejection of the release application than that which will be suffered by the tenants

in the event of grant of the application as they had several other vacant shops in their occupation. The Appellate Authority has also recorded a finding that the requirement of first proviso to sub-Section (1) of Section 21 of the Act had been complied with as a notice was given before filing of the release application. The High Court, therefore, rightly declined to interfere with the order passed by the Appellate Authority while exercising jurisdiction under Article 226 of the Constitution.

9. There is no merit in the present appeal which is hereby dismissed with costs.

10. The appellants are granted time till 31.07.2005 to vacate the building subject to their filing the usual undertaking within one month.

JUDIS