

A

KAMLESHWAR PRASAD

v.

PRADUMANJU AGARWAL (DEAD) BY LRS.

APRIL 2, 1997

B

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

C

*Tenancy Law: U.P. Act XIII of 1972—Sec. 21 (1) (a)—Bona fide use requirement—Landlord requiring the premises for his own bona fide use—Appellate authority satisfied with the bona fide requirement—Landlord dying during the pendency of the writ petition in the High Court—High Court holding that the decree of the appellate authority has become final and cannot be disturbed—On appeal held bona fide use would not lapse with the death of the landlord as such a need must exist on the date of application for eviction which is the crucial date.*

D

*Constitution of India, 1950 : Articles 226, 227—Decree passed by the competent authority having become final—Interference by the High Court taking into account subsequent event—Not permissible.*

E

Respondent-landlord filed a petition for eviction of the appellant under sec 21(1) (a) of the U.P. Act XIII of 1972 *inter alia* on the ground that he *bona fide* required the premises for carrying on his own business and he had no other means of livelihood. Appellant filed objections before the prescribed authority which, on consideration of the materials on record, came to the conclusion that the landlord did not require the premises for his own *bona fide* use. On appeal the appellate authority reversed the conclusion of the prescribed authority and directed the eviction of the appellant.

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G

Appellant filed a writ petition in the High Court. During the pendency of the petition, the landlord died and was substituted by his legal heirs. Appellant contended that the landlord having died the *bona fide* requirement no longer survived and therefore taking into consideration the subsequent event the court must quash the order of the appellate authority. On behalf of the landlord it was contended that the order of the appellate authority was a decree which had become final and it would not be appropriate to interfere with the decree under Article 226 of the Constitution. It was also contended that the requirement in question must exist

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on the day the application for eviction was filed and it was no longer open to the High Court to interfere with the said finding in exercise of its supervisory jurisdiction under Article 226. The High Court held that the decree for eviction had become final and that finality could not be disturbed under Article 226. Hence this appeal. A

Dismissing the appeal, this Court B

HELD :1. Under the U.P. Act XIII of 1972 the order of the appellate authority is final and the said order is a decree of a competent court which having become final cannot be interfered with the High Court in exercise of its power of superintendence under Articles 226 and 227 of the Constitution by taking into account any subsequent event which might have happened. [511-F] C

2.1. The landlord needed the premises for starting the business which had been found by the appellate authority. The day of application for eviction is the crucial date on which the tenant incurred the liability of being evicted from the premises. [511-G] D

2.2. The *bona fide* need cannot be said to have lapsed with the death of the landlord as the business in question can be carried on by his legal heirs. [511-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2576 of 1997. E

From the Judgment and order dated 17.2.97 of the Allahabad High Court in C.M.W.P. No. 13903 of 1991.

Manoj Swarup and Ms. Lalitha Kohli for the Appellant. F

Ms. Halida Khatoon for the Respondents.

The Judgment of the court was delivered by

PATTANAIK, J. Leave granted. G

This appeal by special leave to appeal is directed against the judgment dated 17.2.1997 of the Allahabad High Court dismissing the writ petition filed by the appellant. The respondent-landlord filed a petition for eviction of the appellant under Section 21(1) (a) of the U.P. Act XIII of H

- A 1972 inter alia on the ground that he *bona fide* requires the premises for carrying on his own business and he has no other means of livelihood. The tenant- appellant filed objections before the prescribed authority stating therein that the application for eviction has been filed on false and baseless allegations and in fact the respondent does not need the premises *bona fide* for starting his own business. The prescribed authority on consideration of the materials on record came to the conclusion that the landlord does not require the premises for his own use *bona fide*. The said prescribed authority also came to the conclusion that the tenant would be comparatively harassed if an order of eviction is passed. With these conclusions, the application for eviction having been rejected, the landlord preferred an appeal. The appellate authority re-appreciated the entire evidence on record and reversed the conclusion of the prescribed authority. The said appellate authority came to the conclusion that in the facts and circumstances of the case the requirement of the landlord to start a cloth business must be a *bona fide* requirement entitling him to get an order of eviction under Section 21 (1) (a) of the Act. The appellate authority, therefore, set aside the order of the prescribed authority and directed eviction of the appellant. Being aggrieved by the order of the appellate authority, the tenant carried the matter to the High Court by filing a writ petition. During the pendency of the writ petition in the High Court the landlord died and was substituted by his legal heirs namely his widow, two sons and the married daughter. On behalf of the tenant, it was urged before the High Court that the landlord having died, the *bona fide* requirement which was found to have existed by the appellate authority no more survives, and therefore, taking into consideration the subsequent event the High Court must quash the order of eviction passed by the appellate authority. On behalf of the landlord it was contended that the order of the appellate authority in the eviction proceedings, is a decree and that decree having become final, in a proceeding under Article 226 of the Constitution, the High Court will not be entitled to take into consideration any subsequent event that had occurred and on that score it would not be appropriate for the High Court to interfere with the decree passed by the appellate authority. It was also contended that the requirement in question must exist on the day the application for eviction was filed and the same requirement having been found to be established by the competent forum who was required to go into the said question, it is no longer open to the

High Court to interfere with the said finding in exercise of its supervisory jurisdiction under Article 226 of the Constitution. The High Court by the impugned judgment came to the conclusion that the decree for eviction has become final and the said finality cannot be disturbed on the application under Article 226 of the Constitution by taking into account the facts that the original landlord died during the pendency of the writ petition.

Mr. Manoj Swarup, learned counsel appearing for the appellant in this Court urged that the person for whose *bona fide* requirement the order of eviction has been passed by the appellate authority having died during the pendency of the writ petition, the said *bona fide* requirement no longer subsists and consequently the High Court should have taken that fact into consideration and should have interfered with the order passed by the appellate authority for the eviction of the tenant. The learned counsel further urged that no doubt the proceedings under Article 226 of the Constitution is not a continuation of the eviction proceedings under the Act, but all the same the High Court while exercising its power of supervision under Article 226 of the Constitution is not denuded of its power to take into consideration the subsequent event that had happened which is necessary to be taken into consideration in the interest of justice. Accordingly, the High Court committed serious error in not taking into account the facts of the death of the landlord for whose *bona fide* requirement the order of eviction had been passed by the appellate authority, and therefore, this Court should interfere with the said order of the High Court. Having given an anxious consideration to the contention raised by the learned counsel for the appellant and under the facts and circumstances of this case we are of the considered opinion that this case does not warrant interference by this Court under Article 136 of the Constitution. Under the Act the order of the appellate authority is final and the said order is a decree of the civil court and decree of a competent Court having become final cannot be interfered with by the High Court in exercise of its power of superintendence under Articles 226 and 227 of the Constitution by taking into account any subsequent event which might have happened. That apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority, in eye of law, it must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the writ petition in the High Court the *bona fide* need cannot be said to have lapsed as the business in question can be carried on by his widow or any elder son. In

A this view of the matter, we find no force in the contention of Mr. Manoj Swarup, learned counsel appearing for the appellant and we do not find any error in the impugned judgment of the High Court warranting interference by this Court under Article 136 of the Constitution. The appeal, accordingly, fails and is dismissed but in the circumstances without any order as to costs.

B

J.N.S.

Appeal dismissed.