

Court No. - 4

Case :- WRIT - A No. - 16374 of 2014

Petitioner :- Manoj Kumar

Respondent :- Lal Chand

Counsel for Petitioner :- Abhishek Kumar Saroj, Ganesh Shanker Pandey, Nitesh Vishwakarma, Punit Kumar Gupta

Counsel for Respondent :- Bansh Raj, Rajesh Kumar Singh, Saurabh Gour

Hon'ble Ajit Kumar, J.

1. Heard Sri Abhishek Kumar Saroj, learned counsel for the petitioner and Sri Rajesh Kumar Singh, learned counsel for the respondent.
2. By means of this petition filed under Article 226 of the Constitution, petitioner has assailed the order passed by the appellate authority, whereby, it has set aside the judgment and order of release passed by the Prescribed Authority and dismissed the release application of the landlord/ petitioner.
3. The ground for assailing the order is that the bonafide need point was duly set up by the landlord to get him settled by establishing a clinic as doctor in the premises in question and of which there was no denial as such except that the tenant had falsely set up a need. It is contended that sufficient evidence was led and the oral testimonies of witnesses also supported the case of the landlord/ petitioner for release, however, the order of release came to be reversed in appeal only on the ground that statutory period of three years' notice in advance to maintain the release application by a subsequent purchaser of the property was not fulfilled and hence the release application was premature.
4. Learned counsel for the petitioner contended that the property in question was purchased by the landlord on 14.06.2004 and a notice was sent to the tenant/ respondent on 04.01.2010 to which he submitted reply but he did not take any objection to the notice as to the statutory period required to be observed before filing release application, nor any objection was raised as to the identity of the premises in question except making a vague reply that notice was sent on wrong facts. He submitted that on 01.08.2010 the petitioner/ landlord filed release application and vide order dated 25.05.2013 Prescribed Authority directed for release of the premises in question and statutory period of three years having lapsed by the time order was passed by the Prescribed Authority. He submits that legal position is very clear on the point that unless and until the plea

of notice is taken before the Prescribed Authority to make a point for determination, it was not open for the tenant/respondent to have raised subsequently. He is liable to be taken to have knowingly waived requirement of notice. He has placed reliance upon a judgment of Supreme Court in **Martin & Harris Ltd. v. VIth Additional District Judge and others (1998) 1 SCC 732** recently followed by this Court in **Matters Under Article 227 No. 8363 of 2024, Pramod Kumar Goyal & 3 Others v. Smt. Saroj Sharma (decided on 16.01.2025)** in which vide paragraph no. 11 this Court has quoted paragraph no. 13 of the judgment of Martin & Harris Ltd. which runs as under:

"13. It is not possible to agree with the contention of the learned Senior Counsel for the appellant that the provision containing the proviso to Section 21(1) of the Act was for public benefit and could not be waived. It is, of course, true that it is enacted to cover a class of tenants who are sitting tenants and whose premises are subsequently purchased by landlords who seek to evict the sitting tenants on the ground of bona fide requirement as envisaged by Section 21(1)(a) of the Act would be between the landlord on the one hand and the tenant on the other. These proceedings are not of any public nature. Nor any public interest is involved therein. Only personal interest of landlord on the one hand and the tenant on the other hand get clashed and call for adjudication by the prescribed authority. The ground raised by the landlord under Section 21(1)(a) would be personal to him. Six months' breathing time is given to the tenant after service of notice to enable him to put his house in order and to get the matter settled amicably or to get alternative accommodation if the tenant realises that the landlord has a good case. This type of protection to the tenant would naturally be personal to him and could be waived."

5. *Per contra* Sri Rajesh Kumar Singh has tried to defend the order on the ground that sufficient pleadings were there to the effect that four boundaries of the shop in question was not mentioned in the plaint to identify it, inasmuch as, the plea of notice was taken. He has taken the court to the memo of appeal in which the requirement of provisions contained under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction Act, 1972 (in short 'Act No. 13 of 1972') have come to be mentioned mandatory which should have been looked into.

6. Having heard learned counsel for the respective parties and having perused the records, I find that the court of appeal has not dealt with the issue at all of the bonafide need and simply rejected the rent case of the petitioner solely on the ground of maintainability in view of the non compliance of the first proviso to Section 21(1)(a) of Act No. 16 of 1972.

7. I have perused the written objection filed by the tenant/respondent, I find there to be no specific objection taken as to

the maintainability of the release application for non compliance of the mandatory provision of three years notice in advanced before moving release application. I equally find that there is no specific ground taken in the memo of appeal itself except that provisions of Act No. 13 of 1972 are mandatory which could have been looked into.

8. In my considered view, unless and until specific plea is taken, a vague general statement made with regard to the requirement of law under the Act No. 13 of 1972 would not suffice the need and it would amount to waiver at the instance of the tenant/ respondent. In view of the law laid down by Supreme Court in aforesaid authority it was not open for the court to have made out a third case to allow the appeal and reject the case of release filed by the landlord/ petitioner and hence the order passed by the court of appeal is unsustainable.

9. At this stage, learned counsel for the landlord/ respondent states that he may be granted some time to vacate the premises in question. Accordingly, with consent of parties, following directions are issued:

(i) Respondent shall be submitting an affidavit of undertaking within a period of two weeks from today to the effect that he would be vacating the shop in question in any circumstances within 10 months and in any circumstances by 31.12.2025.

(ii) Respondent would be clearing all the arrears of rent, if any, at the rate at which he was paying within a period of one month from today, however, whatever amount already deposited shall be adjusted against the arrears, and he shall continue to pay Rs. 3,000/- per month as damages towards use and occupation of tenanted premises in question on 7th day of every calendar month beginning from March, 2025.

10. In the event both the above directions are complied with, the respondent shall not be evicted from the shop in question until 31.12.2025.

11. However, it is clarified that in the event of default in either paying the arrears of rent as directed herein above, if any, or in the payment of monthly damages which is to be paid on every 7th day of calendar month beginning from March, 2025, the interim protection granted herein above, shall cease to operate and respondent shall be liable to be evicted from the property in question pursuant to the order impugned here in this petition.

12. In the circumstances, the order dated 25.05.2013 passed by the Prescribed Authority is set aside and the order dated

01.01.2014 passed by Prescribed Authority in Rent Control Appeal No 4 of 2013 is hereby affirmed and restored.

13. With the aforesaid observations and directions, this petition stands **disposed of**.

Order Date :- 27.2.2025

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