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PREM CHAND

v.

DISTRICT JUDGE, DEHRADUN & ANR.

November 23, 1976

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[Y. V. CHANDRACHUD, P. K. GOSWAMI AND S. M. FAZAL ALI, JJ.]

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972, *s.* 21(1) *Explanation (iv), presumption of* bonafide *requirement when applicable—Whether shop run in residential building converts it into non-residential.*

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The appellant was a tenant occupying two rooms in the residential house of respondent No. 2. He used one room for living purposes and the other as a tailoring shop. The landlady brought a suit for his eviction on the ground of personal requirement, but the same was dismissed by the District Magistrate. An appeal to the District Judge Dehradun was allowed, and Explanation (iv) to s. 21(1) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 was held applicable. The view was upheld by the High Court in petition filed by the appellant who contended that due to his shop the house under tenancy had ceased to be a residential building and that Explanation

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(iv) was not applicable. The High Court rejected the petition.

Dismissing the appeal, the Court

HELD : Explanation (iv) provides a conclusive and irrebuttable presumption of *bona fide* requirement once the conditions mentioned therein are established. The tests for application of Explanation (iv) are as follows :

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(1) The building should be a residential building; and

(2) The landlord must be in occupation of a part of the building for residential purposes, the other part being in the occupation of the tenant.

If the above two tests are fulfilled in a case, there is no need for the landlord to establish any other requirement. [172F-H]

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(2) The fact that a tailoring shop is run in one of the rooms is not sufficient to convert what otherwise to all intents and purposes is a residential building, into a non-residential building. [172E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1043 of 1976.

Appeal by Special Leave from the Judgment and Order dated

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9-3-1976 of the Allahabad High Court in Civil Misc., Petn. No. 6938/74.

K. P. Kapur and *A. L. Trehan,* for the appellant.

S. C. Agrawal and *M. M. D. Srivastava,* for respondent No. 2.

The Judgment of the Court was delivered by

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GOSWAMI, *J.*—This appeal by special leave is by the tenant (to be described hereinafter as the appellant) and is directed aginst the judgment of the High Court of Allahabad in a writ petition at his

instance which was dismissed. The District Judge, Dehradun, who had earlier dismissed his appeal, has been impleaded as respondent No. 1. A

The facts may briefly be stated :

The appellant is admittedly the tenant under the 2nd respondent (to be described herinafter as the respondent) in respect of two rooms of House No. 11, Rajpur Road, Dehradun. This house has four rooms of which only two rooms are in occupation of the appellant. The other two rooms are in occupation of the respondent whose two sons stay there; the elder one living with his wife. The respondent is an old lady with an ailing husband and wants to have vacant possession of the two rooms so that the entire family can reside at the same place. With that end in view, on June 22, 1972, the respondent filed an application under section 3 of the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 (U.P. Act No. III of 1947) for permission to bring a suit against the appellant for his eviction on the ground of bona fide personal requirement. During the pendency of this application before the Rent Control and Eviction Officer, the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972 (U.P. Act No. 13 of 1972) (hereinafter to be referred to as the Act) came into force with effect from July 15, 1972, repealing the earlier Act of 1947 with certain savings as mentioned in section 43 of the Act. As a consequence of enforcement of the Act the proceedings under section 3 that were pending under the earlier Act converted into one under section 21 of the new Act (U.P. Act No. 13 of 1972). The prescribed authority (The Additional District Magistrate) rejected the application. The respondent then preferred an appeal to the District Judge, Dehradun, who allowed the same on the ground of bona fide requirement relying on the sole ground that Explanation (iv) to section 21(1) of the Act was applicable to the facts of the case. The appellant being aggrieved by the order of the District Judge preferred a writ application before the High Court which, as stated earlier, was disallowed. B C D E F

Before we deal with the question of law raised in this appeal we may note the findings of fact reached by the District Judge. The District Judge found as follows :—

> "It will appear that the house in question is a residential building. It has been built for residential purposes and is being primarily used therefor. Simply because the tenant is also carrying on the business of tailoring in one of the rooms will not convert it into non-residential building. The landlady is admittedly occupying the remaining portion thereof." G

Even the prescribed authority at the first instance had observed as follows in his order :—

> "I have inspected the demised premises situated at 11, Rajpur Road, Dehradun in the presence of both the parties. On inspection it was found that disputed house is one building in which one portion is in the possession of the respondent- H

A tenant. The one portion of the building is in the occupation of the applicant for residential purposes. The respondent has two small rooms and a very small courtyard. Out of those two rooms each one is about 8' wide and 8' long, there is a tailoring shop of the respondent. The other room is being used for residential purposes. The applicant has two rooms of the same size and one additional courtyard."

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The question that arises for consideration is whether Explanation (iv) of clause (1) of section 21 of the Act has been correctly held to be applicable by the District Judge and the High Court to the facts as found. Explanation (iv) of section 21(1) reads as follows :—

"In the case of a residential building—

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* * * *

(iv) the fact that the building under tenancy is a part of a building the remaining part whereof is in the occupation of the landlord for residential purposes, shall be conclusive to prove that the building is bona fide required by the landlord."

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It is submitted by the appellant that the building under tenancy is not a residential building and, therefore, the condition precedent to the application of Explanation (iv) is absent in this case. According to counsel since the tenant is admittedly running a tailoring shop in one of the two rooms under his occupation the house ceases to be a resi-

E dential building.

We are unable to accept this submission. The appellant has only two small rooms in which he resides with his wife, two young sons and one daughter and although he may have a tailoring shop in one of his rooms it is not unlikely that that very room is utilised as bed room for one or two members of his family at night. The fact that he

F runs a tailoring shop in one of the rooms is not sufficient to convert what otherwise to all intents and purposes is a residential building into a non-residential building. The tests for application of Explanation (iv) are as follows :—

(1) the building should be a residential building; and

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(2) the landlord must be in occupation of a part of the building for residential purposes, the other part being in the occupation of the tenant.

If the above two tests are fulfilled in a case it will furnish under the law a conclusive proof that the building is, bona fide, required by the landlord. There is no need for the landlord to establish any other

H requirement. Explanation (iv) provides a conclusive and irrebuttable presumption of bona fide requirement once the conditions mentioned therein are established. The two tests are fulfilled in this case on the findings of fact as noted above. We are of opinion that the District

Judge was right in his finding that Explanation (iv) of section 21(1) was applicable which view was also later upheld by the High Court. The High Court was, therefore, right in dismissing the writ application.

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We may observe that we are not required to consider, in this appeal, the effect of the Amendment Act 28 of 1976, which came into force on July 5, 1976, whereby Explanation (iv) was omitted; nor has any argument been advanced in that connection.

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There is no merit in this appeal which is dismissed. We will, however, make no order as to costs. The appellant may continue in possession of the suit premises till 30th April, 1977. He shall hand over vacant and peaceful possession thereof on May 1, 1977, to the respondent.

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M.R. *Appeal dismissed.*