

A

SUDHA AGRAWAL

v

XTH ADDL. DISTRICT JUDGE AND ORS.

AUGUST 4, 1999

B

[V.N. KHARE AND SYED SHAH MOHAMMED QUADRI, JJ.]

C

*U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972—Sections 12,16,21(1) (a), 21(1) fourth proviso, explanation (1) to fourth proviso of S.21(1)—Eviction petition filed by landlord on the ground of bonafide need—Landlord contending that his need has to be presumed bonafide in view of explanation (i) to fourth proviso of S.21(1)—Applicability of the said explanation presumed in favour of the landlord—Effect of—Held, the only effect of application of explanation(i) is that the tenant is not entitled to contest the application filed by the landlord and the Prescribed Authority is not required to compare the hardship of the landlord with that of the tenant but there is no presumption in favour of the landlord that his need is bonafide by virtue of application of the said explanation and the landlord has to allege and prove that his requirement is bonafide in order to evict the tenant from the premises.*

E

*Presumption of bonafide need under explanation (i) to fourth proviso of S.21(1) shall be contrary to the requirement of S.16—Interpretation of—Held, that a provision of a statute is required to be interpreted in such a manner which may avoid possible conflict in various provisions of a statute—Interpretation of Statutes.*

F

G

**Appellant-landlord filed an application before the Prescribed Authority for eviction of the respondent-tenant on the ground of *bonafide* need. The ground floor of the premises was being used by the tenant for non-residential purposes, whereas the first floor was being used for residential purpose. The said application was rejected by the Prescribed Authority on the ground that the benefit of explanation (i) to fourth proviso of sub-section (1) of Section 21 of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 was not available to the landlord since the premises was let out to the tenant partially for non-residential purpose and partially for residential purposes; and that the need set up by the landlord was not *bonafide*. Landlord's**

H

appeal against the said order was dismissed by the appellate authority. Writ A  
Petition filed by the landlord was also dismissed by the High Court. Hence,  
these appeals.

The appellant contended that in view of explanation (i) to fourth proviso B  
of sub-section (1) of Section 21 of the Act, the tenant besides being debarred  
from contesting the application filed by the landlord, the need set up by the  
landlord in the application has also to be presumed *bonafide*.

The respondent contended that explanation (i) to fourth proviso of sub- C  
section (1) of Section 21 of the Act is not attracted ; and alternatively, even  
if it is held applicable, the landlord independently has to prove that his need  
is *bonafide* and the alleged need set out in the application cannot be presumed  
to be *bonafide*.

This Court presumed that benefit of explanation (i) to fourth proviso D  
of sub-section (1) of Section 21 of the Act is available to the appellant  
landlord without deciding the said question.

Dismissing the appeals, the Court

HELD : 1. A perusal of Section 21(1)(a), fourth proviso of Section 21(1) E  
and explanation (i) to the said proviso shows that in cases where explanation  
(i) is applicable no presumption can be raised with regard to the need of the  
landlord as *bonafide*. The only effect of application of explanation (i) is that  
the tenant is not entitled to contest the application filed by the landlord and  
the Prescribed Authority is not required to compare the hardship of the  
landlord with that of the tenant which he is otherwise required to do under F  
fourth proviso of Section 21(1) of the Act. The landlord can get an order of  
release in his favour only when he proves his need as *bonafide* before the  
Prescribed Authority. It is no doubt true that the application of landlord is  
uncontested as the tenant is out of field, still the landlord has to establish  
his *bonafide* need. In fact the landlord is required to stand on his own legs G  
and he cannot derive any advantage of absence of defence of the tenant. The  
proceedings before the Prescribed Authority is like an-uncontested suit  
where there is no defence of the defendant. In such a suit plaintiff in order  
to get decree must prove his case to the satisfaction of the Court. Applying  
the above principle, there is no doubt that by application of explanation (i) the  
landlord is not discharged from the burden of proving his need as *bonafide*.  
There is no provision in the Act creating any presumption in favour of the H

**A** landlord as regards his need as *bonafide*. Thus, there is no presumption in favour of the landlord that his need is *bonafide* by virtue of application of explanation (i) to fourth proviso of sub-section (1) of Section 21 of the Act and the landlord has to allege and prove his requirement as *bonafide* in order to evict the tenant from the premises. [66-E-H; 67-A]

**B** 2. Sections 12 and 16 of the Act support the above view. In cases where the premises has fallen vacant or deemed to have fallen vacant under Section 12, the landlord necessarily has to apply under Section 16 before the appropriate authority for release of the premises in his favour and he can get an order of release of the premises only when he satisfies the Prescribed Authority in respect of his *bonafide* requirement for the premises. If explanation (i) to fourth proviso of Section 21(1)(a) is to be read as creating presumption in favour of the landlord in respect of the requirement of landlord as *bonafide*, in that event the said explanation would come into conflict with Section 16 of the Act. It is well known rule of interpretation that a provision of a statute is required to be interpreted in such a manner which may avoid possible conflict in various provisions of a statute.

[67-D-E-F-G]

**E** 3. Concurrent finding of fact has been recorded by the courts below that the need of the landlord was not *bonafide*. Such a finding cannot be interfered with in appeal. [68-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5737-5738 of 1997.

**F** From the Judgment and Order dated 22.7.96 of the Allahabad High Court in W.P. No. 21380 of 1996.

S. Kulshreshtha for the Appellant.

R.B. Mehrotra and Rajesh for the Respondents.

The Judgment of the Court was delivered by

**G** **V.N. KHARE, J.** The appellant herein is the landlord of the premises in dispute. The premises consists of ground floor and first floor. The respondent-tenant is in occupation of the said premises. The ground floor of the premises is being used by the tenant for non-residential purposes, whereas the first floor is being used for residential purpose. The appellant-landlord **H** filed an application before the Prescribed Authority, Varanasi, for eviction of

the respondent-tenant on the ground that he required the premises for his *bonafide* need. In the said application, the landlord also took a plea that the son of respondent-tenant who was ordinarily residing with him has constructed a residential premises in the city of Varanasi, and as such under explanation (i) to fourth proviso of sub-section (1) of Section 21 of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 (hereinafter referred to as the 'Act'), the tenant besides being debarred from contesting the application, his need has to be presumed *bonafide*. A written statement was filed by the respondent tenant wherein the allegations made in the application were denied. The Prescribed Authority took the view that since the premises was let out to the tenant partially for non-residential purposes and partially for residential purposes, the benefit of explanation (i) to fourth proviso of sub-section (1) of Section 21 of the Act is not available to the landlord. The prescribed authority also found that the need set up by the landlord is not *bonafide*. Consequently, the application for eviction of the tenant from the premises was rejected by the Prescribed Authority.

Aggrieved, the landlord-appellant preferred an appeal which was dismissed by the appellate authority affirming the finding of the Prescribed Authority. The writ petition filed by the landlord has also been dismissed by the High Court.

It is urged by the counsel appearing on behalf of the appellant that in view of explanation (i) to fourth proviso of sub-section (1) of Section 21 of the Act, not only that the tenant was debarred from contesting the application filed by the landlord, but also the need set up by the landlord in the said application has to be presumed *bonafide*. Learned counsel appearing for the tenant, however, argued that in the present case, explanation (i) to fourth proviso of sub-section (1) of Section 21 of the Act is not attracted and in any case, even if it is held that the explanation (i) is applicable in the present case, the landlord independently has to prove that his need is *bonafide* and the alleged need set out in the application cannot be presumed to be *bonafide*.

After we heard the learned counsel for the parties, we assume for the sake of the argument that explanation (i) to fourth proviso of sub-section (1) of Section 21 of the Act is available to the appellant landlord without deciding the question whether explanation (i) is applicable to the present case or not. For appreciating the arguments of learned counsel for the parties, it is necessary to set out the relevant provisions, which are extracted herein below:-

A "Section 21(1)(a) - that the building is *bonafide* required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust;

B *Fourth proviso to sub-section (1) of Section 21* - Provided also that the prescribed authority shall, except in cases provided for in the Explanation, take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed.

C *Explanation (i) to fourth proviso of sub-section (1) of Section 21* - In case of a residential building :- where the tenant or any member of his family (who has been normally residing with or is wholly dependent on him) has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this sub-section shall be entertained."

D A perusal of Section 21(1)(a) shows that a landlord can succeed in his application for eviction of a tenant if he establishes before the Prescribed Authority that his need for the premises is *bonafide*. Fourth proviso of Section 21(1) provides that the Prescribed Authority, while considering the *bonafide* requirement of the landlord has also to take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application excepting in cases provided for in explanation (i). Explanation (i) provides that where the tenant or any member of his family who is normally residing with him or wholly dependent on him has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, no objection by the tenant against an application under this sub-section shall be entertained.

E The aforesaid provisions extracted above show that in cases where explanation (i) is applicable no presumption can be raised with regard to the need of the landlord as *bonafide*. The only effect of application of explanation (i) is that the tenant is not entitled to contest the application filed by the landlord and the Prescribed Authority is not required to compare the hardship of the landlord with that of the tenant which he otherwise required to do under

fourth proviso of Section 21(1) of the Act. We have noticed earlier that the landlord can get an order of release in his favour only when he proves his need as *bonafide* before the Prescribed Authority. It is no doubt true that the application of landlord is uncontested as the tenant is out of field, still the landlord has to establish his *bonafide* need. In fact the landlord is required to stand on his own legs and he cannot derive any advantage of absence of defence of the tenant. The proceedings before the Prescribed Authority is like a contested suit, where there is no defence of the defendant. In such a suit plaintiff in order to get decree must prove his case to the satisfaction of the Court. Applying the said principle to the present case, we have no doubt in our mind that, by application of explanation (i) the landlord is not discharged from the burden of proving his need as *bonafide*. Further we also do not find any provision in the Act creating any presumption in favour of the landlord as regard his need as *bonafide*.

This view of ours finds support from the provision contained in Sections 12 and 16 of the Act. Section 12 provides the contingency when a building shall be deemed to have fallen vacant. Sub-section (3) of Section 12 provides that in case of a residential building if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, town, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy. Section 16 provides that a landlord can apply to the District Magistrate for release of the premises which has fallen or deemed to have fallen vacant if the premises is *bonafide* required. Thus, in cases where the premises has fallen vacant or deemed to have fallen vacant, the landlord necessarily has to apply before the appropriate authority for release of the premises in his favour and he can get an order of release of the premises only when he satisfies the Prescribed Authority in respect of his *bonafide* requirement for the premises. If explanation (i) to fourth proviso of Section 21(1)(a) is to be read as creating presumption in favour of the landlord in respect of the requirement of landlord as *bonafide*, in that event the said explanation would come into conflict with Section 16 of the Act. It is well known rule of interpretation that a provision of a statute is required to be interpreted in such a manner which may avoid possible conflict in various provisions of a statute.

In view of the legal position discussed above, we find that there is no presumption in favour of the landlord that his need is *bonafide* by virtue of application of explanation (i) to fourth proviso of sub-section (1) of Section

- A 21 of the Act and the landlord has to allege and prove his requirement as *bonafide* in order to evict the tenant from the premises. In the present case, concurrent finding of fact has been recorded by the courts below that the need of the landlord was not *bonafide*. Such a finding cannot be interfered with in this appeal. We, therefore, find no merit in these appeals. The appeals are accordingly dismissed. There shall be no order as to costs.

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A.K.T.

Appeals dismissed.