

NASIRUL HAQUE

v.

JITENDRA NATH DEY

August 24, 1984

[S. MURTAZA FAZAL ALI AND M.P. THAKKAR, JJ.]

*Finding of Facts—High Court calling for a finding of facts from the trial court bypassing the appellate court—Whether conclusive and immune from the scrutiny of High Court in a second appeal.*

*Bihar Buildings (Lease, Rent & Eviction) Control Act, 1977—Proviso to sec. 12 (1) (c)—Partial Eviction—Scope of*

In a second appeal filed by the appellant-tenant against an eviction order, the High Court remanded the matter to the trial court and called for a finding on the question of partial eviction. The trial court while recording its finding was of the view that the question of partial eviction should be considered in the light of the requirement of the landlord-respondent as deposed to by him. The High Court accepted the finding of the trial court without scrutinising it and dismissed the appeal accordingly. Hence this appeal by special leave.

Allowing the appeal.

HEID : (1) The High Court should have scrutinised the finding of the trial court with special reference to the question of partial eviction even on facts as the finding of the trial court standing on its own (not confirmed by appellate court) is not conclusive on facts even in a second appeal. This is so because the High Court had called for a finding of facts from the trial court bypassing the appellate court and thus deprived the right of appeal to the District Judge (last court on facts) which might not have agreed with the trial court. [640 A—B]

(2) The High Court as well as the trial court failed to take into account the Proviso to section 12 (1) (c) of the Bihar Buildings (Lease, Rent & Eviction) Control Act 1977, which provides, *inter alia*, that where the court thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the building and allowing the tenant to continue occupation of the rest and the tenant agrees to such occupation, the Court shall pass a decree accordingly. Therefore, the court has, to determine ;

(i) the extent of the premises which the landlord "*reasonably*" requires. Determine it objectively and not on the basis of his *ipse dixit* or his mere desire to occupy as much as he wants; and (ii) whether such requirement as the court considers reasonable, will be 'substantially' satisfied (not fully satisfied) by ordering partial eviction. [639 G—H]

The Court remanded the case to the High Court to decide the question afresh after considering the evidence on record in the light of the aforesaid observations. [640—F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3482 of 1984.

Appeal by Special Leave from the Judgment and Order dated the 8th May, 1984 of the Patna High Court in Second Appeal No. 182 of 1978.

*Jayanarayan, Miss S. Agarwal D.S. Mehra and R. P. Singh* for the Appellant.

*Lal Narain Sinha and D. P. Mukharji* for the Respondent.

The Judgment of the Court was delivered by

FAZAL ALI, J. After hearing counsel for the parties we are clearly of the view that the judgment of the High Court cannot be sustained for two reasons. Firstly, the High Court had earlier remanded the case to the trial court and called for a finding from the trial court on the question of partial eviction. The trial court while recording its finding was of the view that the question of partial eviction should be considered in the light of the requirement of the landlord as deposed to by him. In doing so, the High Court failed to take into account the proviso to Section 12 (1) (c) of the Bihar Building (Lease, Rent & Eviction) Control Act of 1977, which in terms enjoins that what is necessary to be considered is the 'reasonable' requirement of the landlord and whether it would be 'Substantially' satisfied by evicting the tenant from a part only of the premises. The Court has therefore, in the first instance, to determine the extent of the premises which the landlord "*reasonably*" requires. Determine it objectively and not on the basis of his *ipse dixit* or his mere desire to occupy as much as he wants. But the Court has to furthermore apply a test as to whether such requirement, as the Court considers reasonable, will be 'substantially' satisfied (not fully satisfied) by ordering partial eviction. This vital aspect has been

- A** altogether overlooked by the trial court. Secondly, since the High Court had directly called for a finding from the trial court itself, the High Court should have scrutinized the said finding with special reference to the question of partial eviction even on facts as the finding of the trial court standing on its own (not confirmed by appellate court) is not conclusive on facts even in a second appeal.
- B** This is so because the High Court had called for a finding of fact from the trial court bypassing the appellate court and thus deprived the right of appeal to the District Judge (last court on facts) which, for aught we know, might not have agreed with the trial court and may have considered the question from the point of view indicated by us, viz. , giving full effect to the concept of reasonable extent of the requirement from the perspective of 'substantial' satisfaction of such requirement as considered to be reasonable objectively. Only in case the District Judge would have agreed with the finding of the trial court then it may have become a finding of fact which was binding on the High Court in second appeal. Besides the question as to the connotation of the word 'substantial' was itself a substantial point of law there being no decision of the Patna High Court on this specific point. Other Acts in various States do not embody the concept of "substantial" satisfaction. These decision would therefore be of no avail in the context of the facts of the present case. In these circumstances, it cannot be said that the finding of the trial court, which is not the final court on facts, is conclusive and immune from the scrutiny of the High Court even in a second appeal. We therefore, allow appeal, set aside the decree of the High Court and remand the case to the High Court to decide the question afresh after considering the evidence on record in the light of the aforesaid observations. The appeal is disposed of accordingly.
- F**

In the meantime there will be stay of dispossession. The High Court is requested to expedite the hearing of the case.