

A

HARBANS LAL  
v.  
JAGMOHAN SARAN

OCTOBER 10, 1985

B

[R.S. PATHAK AND RANGANATH MISRA, JJ.]

Constitution of India, Article 226 - Writ of certiorari - When can be issued - Power of High Court to reappraise the evidence - When arises.

C

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, s. 12 (1) (b) - Agent carrying on business in the building on behalf of the original tenant - Tenant - Whether deemed to have ceased to occupy the building.

D

The respondent-landlord filed a petition under s. 12 read with s. 16 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 against the appellant-tenant in respect of a shop situated in the district of Bulandshahr. He claimed a declaration that the shop had fallen vacant and that it should be released to him on the ground that the appellant-tenant had sub-let the shop to one Yadram and had allowed it to be occupied by Yadram and his son Madan Lal, neither of whom was a member of the appellant's family. The prescribed Authority dismissed the respondent's petition, holding (i) that the respondent had failed to prove that the appellant had sub-let the shop and that it could be deemed to be vacant; and (ii) that the appellant had established that he was conducting his business of selling vegetables in the shop and that Madan Lal sat in on his behalf. An appeal by the respondent was also dismissed by the Second Additional District Judge, Bulandshahr. However, the High Court in a Writ Petition filed by the respondent, remanded the case to the prescribed Authority for passing orders on the respondent's application for release of the property from allotment on the ground that the appellant had been unable to establish any legal relationship of agency between himself and Madan Lal or Yadram and therefore it must be taken that it was Madan Lal who was occupying the shop within the meaning of s. 12 (1)(b) of the U.P. Act.

E

F

G

Allowing the appeal to this Court,

H

**HELD:** 1. It is well known that a writ in the nature of certiorari may be issued only if the order of the inferior tribunal or subordinate court suffers from an error of jurisdiction or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach findings of fact contrary to those rendered by an inferior court or subordinate court. When a High Court proceeds to do so, it acts plainly in excess of its powers. [637 A-C]

In the instant case, the finding is that Madan Lal sat in the shop conducting the vegetable selling business on behalf of the appellant. The findings of fact by both authorities rested on evidence, and there was no warrant for disturbing that finding of fact in a writ petition. [636 G-H]

2. Under s. 12(1)(b) of the U.P. Act a tenant of a building is deemed to have ceased to occupy the building if he has allowed it to be occupied by any person who is not a member of his family. The occupation of a person envisaged here cannot possibly include the occupation by any person as the agent of the tenant. When a person sits in the premises and carries on a business on behalf of and for the original occupant, it cannot be said that the original occupant has thereby allowed the accommodation to be occupied within the meaning of s. 12 (1)(b). [638 B-F]

**Smt. Keshar Bai v. District Judge, Mathura and Ors., [1980]**  
6 A.L.R. 165 referred to.

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 2866 of 1979.

From the Judgment and Order dated 1.8.1979 of the Allahabad High Court in Civil Writ Petition No. 1942 of 1977.

Shankar Ghosh and B.P. Maheshwari for the Appellant.

G.L. Sanghi, Mr. Manoj Swarup and Ms. Lalita Kohli for the Respondent.

The Judgment of the Court was delivered by

**PATHAK, J. :** This appeal by special leave is directed against the judgment of the Allahabad High Court allowing the respondents writ petition on the finding that the accommodation let out to the appellant must be deemed to be vacant.

A        The respondent is the landlord and the appellant is the  
tenant of a shop in Mohalla Nan Panjan, Khurja in the district of  
Bulandshahr. The respondent filed a petition under s. 12 read  
with s. 16 of the U.P. Urban Buildings (Regulation of Letting  
Rent and Eviction) Act, 1972 alleging that the accommodation had  
B        been sub-let by the appellant to one Yadram, that the appellant  
had ceased to occupy the shop and had allowed it to be occupied  
by Yadram and his son Madan Lal, neither of whom was a member of  
the appellant's family. He claimed a declaration that the shop  
had fallen vacant and that it should be released to him.

C        The Prescribed Authority made an order dated October 30,  
1976 rejecting the respondent's petition, on the finding that he  
had failed to prove that the appellant had sub-let the shop and  
that it could be deemed to be vacant. He found that the appellant  
had established that he was conducting his business of selling  
vegetables in the shop and that Madan Lal sat in on his behalf.  
An appeal by the respondent was dismissed by the learned Second  
Additional District Judge, Bulandshahr by his order dated  
D        September 21, 1977. He affirmed the findings of the Prescribed  
Authority.

E        The respondent filed a writ petition in the Allahabad High  
Court, and on August 1, 1979 a learned Single Judge of the High  
Court held that the appellant had been unable to establish any  
legal relationship of agency between himself and Madan Lal or  
Yadram and therefore it must be taken that it was Madan Lal who  
occupying the shop within the meaning of s. 12 (1)(b) of the  
aforesaid U.P. Act. The High Court also declined to accept the  
appellant's case that the appellant was carrying on the business  
of selling vegetables when he was already carrying on a brick  
kiln business and had a cold storage. Holding that the property  
F        must be deemed to be vacant it remanded the case to be Prescribed  
Authority for passing orders on the respondent's application for  
release of the property from allotment.

G        We are satisfied that the High Court travelled outside its  
jurisdiction in embarking upon a reappraisal of the evidence. The  
Prescribed Authority as well as the learned Second Additional  
District Judge concurrently found that Madan Lal was sitting in  
the shop on behalf of the appellant and deputising for him in  
carrying on the vegetable selling business. The findings by both  
authorities rested on evidence, and there was no warrant  
for disturbing that finding of fact in a writ petition. The  
H        limitations on the jurisdiction of the High Court under Article

226 of the Constitution are well settled. The writ petition before the High Court prayed for a writ in the nature of certiorari, and it is well known that a writ in the nature of certiorari may be issued only if the order of the inferior tribunal or subordinate court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach findings of fact contrary to those rendered by an inferior court or subordinate court. When a High Court proceeds to do so, it acts plainly in excess of its powers. We are informed that a report of the Commissioner in another suit was not considered by the Prescribed Authority and by the learned Second Additional District Judge, and therefore, it is urged, the High Court was justified in taking that report into consideration and entering into an examination of the material on the record. We have examined the report of the Commissioner and we find that an objection had been filed to that report and the trial Court had failed to dispose it of. In other words, the report of the Commissioner is not a final document and cannot be taken into consideration as it stands. It must, therefore, be ignored. That being so, the finding of fact rendered by the Prescribed Authority and affirmed by the learned Second Additional District Judge remains undisturbed. The finding is that Madan Lal sat in the shop conducting the vegetable selling business on behalf of the appellant.

The next point to consider is whether the shop can be deemed to be vacant within the meaning of s. 12 (1)(b) of the U.P. Act. Section 12 provides :-

"12. Deemed vacancy of building in certain cases - (1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if -

(a) he has substantially removed his effects therefrom, or

(b) he has allowed it to be occupied by any person who is not a member of his family, or

(c) in the case of a residential building, he as well as members of his family have taken up residence, not being temporary residence, elsewhere.

x x x x x"

A The "deemed vacancy" of a building is relevant for the regulation  
of letting such a building. A building which falls vacant is  
available for allotment under s.16 of the Act to a tenant. Under  
s. 12 (1)(b), with which we are concerned here, a tenant of a  
B building is deemed to have ceased to occupy the building if he  
has allowed it to be occupied by any person who is not a member  
of his family. The occupation of a person envisaged here cannot  
possibly include the occupation by any person as the agent of the  
tenant. If the contrary construction is accepted, and it is held  
that a person who is a mere agent or servant of the original  
occupant falls within the contemplation of s. 12(1)(b), it would  
be impossible for the original occupant to engage any person to  
C assist him in the discharge of his responsibilities in the place  
where he does so. It cannot be conceived that the U.P. Legis-  
lature intended a person, occupying a building as a tenant, to  
live or operate in such a building with members of his family and  
no one else. In the present case, Madan Lal sat in the shop  
conducting the vegetable business on behalf of the appellant.  
When he did so, it must be considered as an occupation by the  
D appellant. Our attention has been drawn to **Sat. Keshar Bai v.**  
**District Judge, Mathura and Ors.**, [1980] 6 A.L.R. 165, where a  
Full Bench of the Allahabad High Court held that a "deemed  
vacancy" would arise within the meaning of s. 12 (1)(b) where a  
person other than a family member was found in the occupation of  
a building. It does not appear that the learned Judges specifi-  
E cally considered the full significance and scope of the  
expression "occupied" in s. 12(1)(b). We are of opinion that when  
a person sits in the premises and carries on a business on behalf  
of and for the original occupant, it cannot be said that the  
original occupant has thereby allowed the accommodation to be  
occupied within the meaning of s. 12(1)(b).

F In our judgment, the High Court is wrong in holding that the  
case attracts the provisions of s. 12(1)(b) of the U.P. Act.

Upon the aforesaid considerations, we set aside the judgment  
and order of the High Court and restore that of the Prescribed  
Authority and the learned Second Additional District Judge. The  
G appeal is allowed with costs.

H M.L.A.

Appeal allowed.