

**Surendra Kumar Vs. Babu Ram**

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**Court :** Allahabad

**Decided On :** Apr-07-1992

**Reported in :** AIR1993All103

**Judge :** D.S. Sinha, J.

**Acts :** Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 2(2)

**Appeal No. :** Civil Revision No. 167 of 1992

**Appellant :** Surendra Kumar

**Respondent :** Babu Ram

**Advocate for Pet/Ap. :** Sri V.D. Ojha, Adv.

**Judgement :**

ORDER

1. Heard Sri V. D. Ojha, learned counsel for the revisionist, at length and in detail.
2. To assail the decree of ejection passed against the defendant-revisionist, Sri Ojha has made following two submissions:--
  - (a) The decree was passed ex parte and without giving any opportunity to the defendant and as such the decree was illegal and liable to be set aside:

(b)that the court below acted contrary to law in coming to the conclusion that the house in dispute was not amenable to the provisions of U. P. Urban Buildings (Regulations of Letting, Rent and Eviction) Act, 1972, hereinafter called the 'Act'.

3. With regard to ground (a) regarding lack of opportunity, there is no material before this Court to arrive at a conclusion that the decree was passed ex parte and the defendant-revisionist did not have the opportunity of producing his evidence as alleged. It will be relevant to point out that the revisionist has not even cared to make any assertion on oath before this Court complaining about the lack of opportunity of the fact that the decree was passed ex parte. It has been argued that the defendant was deprived of opportunity of hearing under the bona fide belief and the impression conveyed to him by his local counsel that the case would be transferred to some court other than the court which passed the decree. In the absence of any material before this Court in the shape of either statement of the defendant-revisionist on oath, or any affidavit or certificate from the local counsel certifying that the alleged impression was conveyed by him to the defendant-revisionist, it is not possible to uphold this plea. In any event, if the decree was passed ex parte then the revisionist would have applied to the court below for setting aside the same apprising the court below of the cause for his absence on the date of hearing. Indisputably, the defendant did not do so. The first submission is, therefore, rejected.

4. So far as the second ground of attack with regard to the finding of the court below that the provisions of the Act were not applicable, it is pertinent to note that the court below has based its finding on the unchallenged documentary evidence establishing the fact that the building in question was first assessed by the Municipal Board with effect from 1st April, 1987. Under clause (a) of explanation (I) to sub-section (2) of Section 2 of the Act, in case of a building subject to assessment, the date on which the first assessment thereof comes into effect is to be taken as the date of completion of the construction. As noticed earlier, in the instant case first assessment of the disputed house was made with effect from 1st April, 1987. The date of completion of the construction qua the disputed house was, therefore, 1st April, 1987 and that being so the provisions of the Act cannot be said to be attracted vis-a-vis to the disputed house. The court below did not act

contrary to law in any manner in arriving at the conclusion that the house in dispute was not covered by the provisions of the Act.

5. No other submission was made by the learned counsel for the revisionist.

6. For the foregoing reasons, the impugned decree and judgment is upheld and the revision is dismissed summarily.

7. Revision dismissed.

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