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**Smt. Sukh Devi and Others Vs. Iv the Additional District Judge, Etah and Others**

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**SooperKanoon Citation : [sooperkanoon.com/474434](http://sooperkanoon.com/474434)**

**Court : Allahabad**

**Decided On : May-24-2001**

**Reported in : 2001(3)AWC1872**

**Judge : B.K. Rathi, J.**

**Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 2(1); Transfer of Property Act - Sections 106; [Constitution of India](#) - Article 226**

**Appeal No. : C.M.W.P. No. 33665 of 1996**

**Appellant : Smt. Sukh Devi and Others**

**Respondent : iv the Additional District Judge, Etah and Others**

**Advocate for Def. : Amit Daga and ;Rakesh Dwivedi, Adv.**

**Advocate for Pet/Ap. : Vinod Sinha, Adv.**

**Disposition : Writ Petition Dismissed**

**Judgement :**

**B.K. Rathi, J.**

1. The dispute is regarding two shops situated in Mohalla Chola Market. Qasba and tehsil Kasganj, district Etah. The respondent Nos. 2 and 3 filed S.C.C. Suit No. 20 of 1979 for eviction of the petitioners from the disputed shops and for recovery of arrears of rent. It was alleged that U. P. Act No. XIII of 1972 does not apply to the shops in dispute as it was constructed in the year 1970 and first assessment came into force in the year 1971. The suit was filed on 9.2.1979 after the termination of tenancy by notice under Section 106 of Transfer of Property Act. The suit was dismissed by the trial court on 28.2.1987 by judgment. Annexure-3 to the writ petition. Against that order, the respondent Nos. 2 and 3 filed S.C.C. Revision No. 17 of 1987 which have been allowed on 21.8.1996 by judgment Annexure-4 to the writ petition. Therefore, the petitioners have filed this writ petition invoking the extraordinary jurisdiction of this Court under Article 226 of the [Constitution of India](#) with the request that judgment of the revisional court dated 21.8.1996. Annexure-4 to the writ petition be quashed.

2. I have heard Sri Vinod Sinha, learned counsel for the petitioners and Sri Amit Daga, learned counsel for the respondent Nos. 2 and 3.

3. The only point that arise for decision in this petition is whether the U.P. Act No. XIII of 1972 is applicable to the premises in dispute or not. It is contended by the learned counsel for the respondents that there is concurrent finding of fact that the first assessment of the premises in dispute took place in the year 1971. That the suit was dismissed by the trial court on the basis of the findings that the Act became applicable during the pendency of the suit and, therefore, the petitioners are entitled to the benefits of Section 39 of the Act. It is contended that this position is now clear from the various judgments and it is to be seen whether the U.P. Act No. XIII of 1972 was applicable at the date when the suit was filed. The question whether the Act became applicable during the pendency of the suit is immaterial. This position of law has very fairly conceded by the learned counsel for the petitioners.

4. However, the argument is that the premises was construed more than ten years before the filing of the suit and U.P. Act No. XIII of 1972 was applicable at the date when the suit was filed.

5. In this connection, Sri Vinod Sinha, learned counsel for the petitioners has referred to the two registered lease deeds Paper Nos. 58 and 62, which is on the record of this petition. It is contended that disputed shops are situated in Chola Market. That by these deeds the other shops of Chola Market was let out by the mother of the respondent Nos. 2 and 3 in the year 1969. The first lease deed was registered on 9.5.1969 and the second on 2.8.1969. That these lease deeds therefore show that the entire Chola Market was ready in the year 1969 and two shops were let out in that year. That therefore, U.P. Act No. XIII of 1972 was applicable at the date when the suit was filed.

6. As against this, it is contended on behalf of the respondents that in the notice. Annexure-4 to the writ petition it was mentioned that the shops were constructed in the year 1970 and it was assessed for the first time in the year 1971. That there is finding of both the courts below that the first assessment of the shops came into force from 1.4.1971. That, therefore, according to the provisions of Explanation I of the proviso II of Section 2 (1) of the Act. 1.4.1971 shall be deemed to be date of first construction. It is also contended that this fact was also not denied in the original written statement by the petitioners. In para 3 of the written statement it was pleaded that the shops were constructed prior to 15.7.1972 and therefore. U.P. Act No. XIII of 1972 apply to the same. It has been argued that it was not pleaded that the shops were constructed more than ten years before the date of filing of the suit. The copy of the written statement is RA-1. Apart from this the lease deed also do not show that the Act was applicable on 9.2.1979 when the suit was filed as the lease deeds are dated 9.5.1969 and 2.8.1969 respectively.

7. It has also been argued by Sri Amit Daga, learned counsel for the respondents that the suit for ejectment against the tenants, who were let out shops by lease deeds. Paper Nos. 58 and 62 have also been decreed on the basis of the findings that U. P. Act No. XIII of 1972 is not applicable. That, therefore, it cannot be accepted that U.P. Act No. XIII of 1972 is applicable to the premises in dispute.

8. Learned counsel for the respondents have also referred to certain cases. The first is Ravindra Kumar Rai and another v. District Judge. Azamgarh and others, 1995 (2) ARC 462. In this case, it was alleged that the shop was constructed in the

year 1979 and U.P. Act No. XIII of 1972 was not applicable at the date of the filing of the suit. The defence of the defendant that U.P. Act No. XIII of 1972 is applicable was not accepted for the reason that there was no specific denial in the written statement, that premises was constructed in the year 1979. Reference has also been made to the decision of Apex Court in Nand Kishore Marwah and others v. Smt. Samundri Devi, AIR 1987 SC 2284. It was held by the Apex Court in this case that the restriction put under Section 20 is to the institution of the suit itself.

9. There is also concurrent finding of fact by both the courts below that the premises in dispute was constructed in the year 1970. There is no dispute that the shops were first assessed from 1.4.1971. The suit was filed in February, 1979. Therefore, at that date U.P. Act No. XIII of 1972 was applicable to the premises in dispute. In view of the Explanation referred above, the lease deeds of other tenants are also immaterial.

10. There is no ground to interfere in the judgment of the court below. The writ petition is dismissed. The stay order, if any, is hereby vacated.