

Laxman Prasad Vs. Vth Additional District Judge, Ballia and Others

Laxman Prasad Vs. Vth Additional District Judge, Ballia and Others

SooperKanoon Citation : sooperkanoon.com/474928

Court : Allahabad

Decided On : Feb-18-1999

Reported in : 1999(2)AWC1444

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction), Act, 1972 - Sections 2;.; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction), (Amendment), Act, 1975 - 16(1)

Appeal No. : C.M.W.P. No. 28989 of 1991

Appellant : Laxman Prasad

Respondent : Vth Additional District Judge, Ballia and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : B.D. Mandhyan, Adv.

Judgement :

Sudhir Narain, J.

1. This writ petition is directed against the judgment and order dated 22.9.1986 of the Judge Small Causes Court decreeing the suit for recovery of arrears of rent, ejection and damages against the petitioner and the order of the revisional court

dated 12.9.1991 affirming the said Judgment in revision.

2. Respondent No. 3 filed Suit No. 20 of 1984 against the petitioner for recovery of arrears of rent, ejectment and damages on the allegation that the shop in question was constructed in the year 1976 and, therefore, he was not entitled to the benefit of provisions of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. 1972 (in short the Act). The tenancy of the petitioner was terminated by notice dated 25.10.1984 and he having not vacated the shop in question, the suit was instituted.

3. The petitioner contested the suit. It was denied that the shop in question was constructed in the year 1976. It was old building and only some repairs were made in the disputed shop. It was further alleged that he is one of the co-tenants and his father and brother are also tenants. The Judge Small Causes Court held that the shop in question was constructed in the year 1976 and the provisions of U. P. Act No. 13 of 1972 were not applicable. It was found that the petitioner was the only tenant and his tenancy was duly-terminated. The suit was accordingly decreed. The petitioner preferred revision against this judgment. Respondent No. 1 has dismissed the revision on 12.9.1991.

4. The main thrust of the submission of the learned counsel for the petitioner is that the Court below has erred in law in holding that the provisions of the U. P. Act No. XIII of 1972 were not applicable. The version of the plaintiff-respondent was that originally building was in the tenancy of Satish Chandra Degree College for the purpose of boys hostel. The tenant vacated the premises on 4.2.1976 because the building pillars had fallen down and students could not live in the rooms. They were vacated after the compromise between parties in Appeal No. 23 of 1974 in the Court of Civil Judge, Ballia. The plaintiff-respondent filed an application for release of the building in question before the Rent Control and Eviction Officer under Section 16 (1) (b) of the Act of 1975 on the ground that it was in a dilapidated condition and he would construct the shops for his business purposes. This application was allowed by the Rent Control and Eviction Officer on 14.6.1970.

5. The copy of the order of Rent Control and Eviction Officer indicates that the petitioner had submitted a copy of the map for reconstruction of the said premises before the Nagar Palika, Ballia. He also relied upon the report of the Rent Control Inspector which showed that the accommodation was in a dilapidated condition. It comprises of 18 rooms out of which many rooms had no doors, etc. The outlook of the building was old and dilapidated one. Some of the portion of the verandah on the eastern and western side had been demolished. The accommodation as it stood, most parts of it did not come under the purview of the Rent Control Act.

6. The plaintiff-respondent appeared as witness in the suit and made statement that he constructed the shop in question in the year 1976 and the petitioner entered into an agreement on 20.12.1976. In the agreement it was clearly mentioned that the shop in question has been newly constructed. He further advanced Rs. 12,000 and the same was to be adjusted towards future rent. The petitioner appeared as witness, he denied that he had executed the agreement dated 22.12.1976. The plaintiff also filed the copy of the inspection report of the Rent Control Inspector (paper No. 71). The Judge Small Causes Court, on consideration of the documentary and oral evidence, came to the conclusion that the shop was constructed in the year 1976 and there was no evidence from the Municipal record regarding the date of assessment and any report regarding the date of its completion, the date of the occupation of the shop in question shall be taken as the date of its completion. As the suit was filed within 10 years before the date of completion of the construction of shop in question the provisions of Act No. 13 of 1972 were not applicable.

7. Sri B. D. Mandhyan, learned counsel for the petitioner, urged that in absence of any record from the Municipal Board regarding the date of assessment or the report or record regarding the construction by the local authority, the date of occupation is immaterial unless it is further shown by the landlord by adducing evidence that there is no assessment of the building or there is no report from the municipal authority regarding the completion of construction. There is no averment by the petitioner in the writ petition or in any evidence adduced by the petitioner that there was any assessment regarding shop in question and that was not produced by the respondent or there was any report of municipal authority

indicating as to when the building was completed.

8. The construction of a building can be proved by oral as well as documentary evidence. Explanation 1 (a) of Section 2 (2) of the Act provides a deeming clause as to when the building shall be deemed to have been completed. It is a statutory fiction in regard to date of completion. The building might have been constructed earlier and occupied by the tenant but in case there is assessment of the building and such assessment record is produced, the date of completion of the building shall be taken the date of first assessment, where the completion of the building is recorded or otherwise recorded by the local authority having jurisdiction, it is the date of reporting or recording by the local authority and in absence of any such report, record or assessment, the date on which it is actually occupied for the first time.

9. The Hon'ble Supreme Court in *Om Prakash Gupta v. D. 1. G. Vijendra Pal Gupta*, 1982(1) ARC 391, held that Explanation 1 makes it abundantly clear that the date of occupation would be taken to be the date of completion of construction only when there is no report or record of the completion of construction or no assessment thereof. If there is an assessment, it will be the date of first assessment, which will be deemed to be the date of completion of construction. This view was reaffirmed by their Lordships of the Supreme Court in *Salim v. District Judge, Muzajfarnagar and others*, 1998 (2) ARC 617.

10. The date of construction of the building can be proved by oral as well by documentary evidence but as regards the date of completion, it has to be determined keeping in view the statutory fiction as provided under Explanation I (a) of Section 2 (2) of the Act.

11. In the present case, the Court has determined the date of construction of the building on the basis of the evidence on the record but as there was no evidence as to the assessment of the shop in question or any report by a municipal authority regarding any date of its completion in the municipal record, the date of occupation shall be taken as the date of completion of the building. It was found that the building was constructed in the year 1976 and it was occupied for the first time on 20.12.1976 and this date will be taken as the date of completion of building.

12. The learned counsel for the petitioner has relied upon the decision *Ram Swaroop Rai v. Smt. Lilawati*, 1980 ARC 466, wherein it was held that the date of the completion of the construction is to be determined on the basis of the Explanation 1 to the proviso to Section 2 (2) of the Act. In this case, the version of the landlord was that there was a new construction after the old construction had been demolished. The municipal authority assessment record was produced in the Court which indicated 'increased assessment'. The Court observed 'It may suggest the existence of an assessment which has been increased or it may perhaps be argued that when the building was reconstructed a new assessment was made which was more than the previous assessment, and therefore, was described as increased assessment. The oral evidence in the case, apart from what we have set out, is inconsequential, being second hand testimony. Even the recital in the rent deed that there was a new construction in 1965-66 is by the appellant and the respondent, neither of whom has any direct knowledge about the construction. Of course, an evidence by the appellant is admission against him but an admission is not always conclusive especially in the light of the municipal records such as are available and the burden such as has been laid by the statute.'

13. The Court directed to consider the matter after taking fresh evidence to find out as to whether the constructions were raised after demolition of the construction or it was only remodelled and thereupon the assessment was increased. Here it is not the case that there was any municipal assessment and that was not produced. In absence of municipal record regarding the assessment or report, the Court was justified in taking into consideration the date of occupation as the date of completion of construction. The findings recorded by both the Courts below do not suffer from any error of law.

14. In view of the above, the writ petition is dismissed.

15. The learned counsel for the petitioner, prayed that the petitioner may be granted some time to vacate the disputed accommodation. Considering the facts and circumstances of the case, the petitioner is granted six months time to vacate the disputed premises provided he gives an undertaking on affidavit before respondent No. 2 that he would vacate the disputed premises within the time

granted by this Court and will handover its peaceful possession to the landlord respondent.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com