

Kamata Vs. Vth Additional District Judge, Fatehpur and ors.

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Court : Allahabad

Decided On : Apr-22-2002

Reported in : 2002(2)AWC1704b

Judge : Anjani Kumar, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1995

Appeal No. : C.M.W.P. No. 23042 of 1998

Appellant : Kamata

Respondent : Vth Additional District Judge, Fatehpur and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : A.N. Bhargava and ;M.A. Mishra, Advs.

Disposition : Writ petition allowed

Judgement :

Anjani Kumar, J.

1. By means of the present-writ petition under Article 226 of the Constitution of India, petitioner has challenged the orders dated 26.5.1998 and 4.4.1997, passed

by respondent Nos. 1 and 2, respectively, Annexures-3 and 1 to the writ petition.

2. The facts leading to the filing of present writ petition are that the respondent No. 3 in the present petition is admittedly a public charitable trust, who is said to be the owner of the property and the petitioner claims himself to be the tenant thereof. In the year 1991 a notice was sent to the petitioner for eviction from the property in dispute, whereupon the petitioner filed a suit under Section 20 (2) of U. P. Act No. XIII of 1972. The respondent No. 3 also filed a suit for ejection of the petitioner-tenant in the year 1991 on the ground of arrears of rent. After serving the notice under Section 6 of the Transfer of Property Act, 1882, during the pendency of the suit, U. P. Act No. XIII of 1972 has been amended to the effect that the provisions of the Act No. XII of 1972 as amended by the amendment of 1995, will not apply to the property owned by the public charitable trust. Before the trial court, the question was argued as to whether amended Act of 1995 will apply to the suit of 1991, which was pending when the aforesaid amendment came into force. The trial court has relied upon the decision in Punjab National Bank v. Dr. Narendra Nath Azad, 1996 (1) ARC 348, wherein this Court has held that the amended provision, as amended by the Act of 1995, will apply to the pending cases also. The decision in 1996 (1) ARC 348, stood overruled with a Division Bench decision by this Court in Smt. Champa Devi and Anr. v. Rent Control and Eviction Officer (1st). Allahabad and another, 2001 (1) AWC 673, which is based on the law declared by the Apex Court in the case of Ambalal Sarabhat Enterprises Ltd. v. Amritlal and Co. and Anr., JT 2001 (7) SC 477. According to the aforesaid two decisions, the provisions of U. P. Act No. XIII of 1972, as amended by U. P. Act of 1995, is prospective in nature and no retrospective, therefore, the provisions of the U. P. Act No. XIII of 1972 as amended by U. P. Act of 1995 will not apply to the pending suits on the date when U. P. Act of 1995 came into force. In this view of the matter, the view taken by the courts below that since the amended provisions of U. P. Act No. XIII of 1972 is retrospective, the petitioner is liable to be evicted by simple service of notice under Section 106 of Transfer of Property Act, 1882. Needless to say that in view of what has been stated above, the view taken by the prescribed authority as well as the revisional authority suffers from the manifest error of law and deserves to be set aside. The order dated 26.5.1998 passed by the revisional court, Annexure-III to the writ petition is hereby quashed and the

matter is remanded back to the revisional court to decide the case taking in view that U. P. Act of 1995 to which U. P. Act No. XIII of 1972 is not applicable before the pending proceedings, including the present suit. Since the matter is fairly old the revisional court is directed to decide the matter within a period of three months' from the date of production of certified copy of this order before the revisional court.

3. In view of what has been stated above, this writ petition is allowed. The orders dated 26.5.1998 and 4.4.1997, passed by respondent Nos. 1 and 2, respectively, Annexures-3 and 1 to the writ petition are hereby quashed. However, there will be no order as to costs

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