

Pran Nath Vs. 18th Additional District Judge and ors.

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Court : Allahabad

Decided On : Apr-01-2009

Reported in : 2009(3)AWC2722

Judge : Prakash Krishna, J.

Appellant : Pran Nath

Respondent : 18th Additional District Judge and ors.

Disposition : Petition dismissed

Judgement :

Prakash Krishna, J.

1. The only point mooted in the present revision is whether the shop in dispute, i.e., the property No. 28/19, Kashmiri Bazar, Kotwali Ward, Agra of which the petitioner is a tenant @ Rs. 200 per month, is a 'new construction' within the meaning of Section 2 (2) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act No. 13 of 1972 (hereinafter referred to as the said Act) and thus exempt from the operation of the said Act.

2. It has been found by two courts below concurrently that the shop in dispute was a 'new construction' and therefore, the provisions of the said Act are not applicable to the said shop.

3. The respondent No. 3, Smt. Shakuntala Devi who has died during the pendency of the present writ petition, instituted S.C.C. Suit No. 88 of 1993, Smt. Shakuntala Devi v. Pran Nath, on the allegations that the disputed shop being a new construction is exempt from the operation of the provisions of said Act and the tenancy has been determined by a simple notice given under Section 106 of Transfer of Property Act. The suit was contested on the pleas inter alia that the said shop was allotted to him in pursuance of the allotment order which was passed with the consent of the landlady on 20th January, 1984. The shop in question is old construction and the provisions of the said Act are applicable. The notice dated 13th February, 1993 so received by him is illegal.

4. The parties led evidence in support of their respective cases. Only two. issues were framed by the trial court. Issue No. 1 is with regard to the applicability of the U.P. Act No. 13 of 1972 and issue No. 2 is as to whether the notice has been waived by the plaintiff. The trial Judge has recorded findings on both the issues in favour of the plaintiff-respondents. It consequently, decreed the suit by the judgment and decree dated 26.2.2000. The said decree has been confirmed in S.C.C. Revision No. 63 of 2000 by the Additional District Judge, Court No. 11, Agra.

5. Shri B.D. Mandhyan, learned senior counsel for the petitioner, submits that the findings recorded by the two courts below with regard to the applicability of the provisions of the said Act regarding the shop in question is illegal and against the material on the record. He submits that the question of date of construction of a building, is a jurisdictional question as the applicability of the Act is dependent on it.

6. Considered the above submissions of the learned Counsel for the petitioner and perused the record. The two courts below have recorded a finding that the property in question was purchased by the plaintiff-respondents. Thereafter, she demolished the existing constructions and raised 'new construction' as per plan sanctioned by the local authority. The said sanctioned plan is paper No. 16C/1. It was sanctioned on 13th October, 1983. The said sanctioned plan depicts the then standing construction (old standing) construction and the proposed constructions

as well. There were two rooms, one staircase on the ground floor and one room on the first floor. In the proposed constructions two shops, one small passage (Gali), store and staircase have been shown on the ground floor and one balcony, gallery, three stores and staircase have been shown on the first floor. The property was purchased in the year 1982 by the landlady respondent. Shri Mahesh Chand, husband of the landlady was examined, who proved the erstwhile constructions and has stated that after purchase of the property by his wife, the constructions were demolished and his wife applied for grant of sanction of the map to raise proposed constructions in place of the existing construction, which was sanctioned. It has been found that the statement of the said witnesses finds corroboration from the assessment list of the year 1975-1981, sanctioned map, maps and the assessment list of 1981-1987 and other related documents. The courts below on the basis of the documentary evidence have reached to the conclusion that the shop in question was constructed in the year 1983-1984. The said finding has been sought to be challenged by the learned Counsel for the petitioner mainly on two grounds. Firstly, that the petitioner came in occupation of the disputed accommodation in pursuance of the allotment order dated 20.1.1984. This being so, the learned Counsel for the petitioner submits that the provisions of the U.P. Act No. 13 of 1972 are applicable to the present case. Had it not been applicable, there was no question of obtaining allotment order. The explanation in reply given by the plaintiff landlady that the said allotment order was obtained for the satisfaction of the tenant has been accepted by the two courts below. Even otherwise also, on the face of voluminous evidence which are in nature of public documents such as sanctioned map, maps, assessment list which came into existence even before the present dispute had cropped up, certainly have credence over the allotment order. Explanation-1 to Section 2(2) of the said Act provides a mechanism for the purpose of determination of date of construction of a building. Broadly it carves out the buildings in two categories. The buildings which are subject to the municipal assessment and the buildings which are not subject to such assessment. In respect of the buildings which are subject to the assessment, the date of construction is the date of the first assessment and in respect of other buildings the date on which it is occupied for the first time, is the date of construction. The learned Counsel for the petitioner could not place any evidence

either documentary or oral to show that the building in dispute was assessed earlier or was in occupation of any person before the year 1984. It may be noted that in connection with the allotment proceeding, the husband of the landlady had stated before the authority concerned that the shop in dispute is newly constructed one. It was constructed after getting the old construction demolished. The said report is paper No. 58C on the record and was produced by the petitioner himself. A bare perusal of the report as mentioned in the impugned judgments would show that the factum of new construction of the shop in dispute, was stated by her husband before the Inspector. A copy of the said report has neither been annexed alongwith the writ petition nor any comment was made by the learned Counsel on the inference drawn by the courts below from the said report. This being so, the matter stands concluded that the building In question is a 'new construction' and the provisions of the said Act were not applicable on the date when the suit was instituted. The two courts below have dealt with the matter in great detail and have taken pains to consider each and every aspect of the case. The learned senior counsel for the petitioner could not point out any legal infirmity therein. Alongwith the writ petition neither any documentary evidence nor copy of the statement of the plaintiff has been filed to enable this Court to re-examine the matter and to take a different view after re-appreciating them.

7. In *Ram Saroop Rai v. Smt. Lilawati* 1980 ARC 466, the Apex Court with reference to Section 2(2) of the said Act has held that the oral evidence is inconsequential being second hand testimony. The recital in rent deed that there was a 'new construction' by the tenant, was held to be of little consequence.. An admission is not always conclusive specially in the light of municipal records which were available and burden such as has been laid down by the statute. The crux of the ruling is that emphasis should be laid on the municipal records rather on any other document.

8. In *Om Prakash Gupta v. Dig Vijainder Pal Gupta*, 1982 ALJ 376, the Apex Court interpreted Section 2 (2) of the said Act and has held that if there is an assessment, it will be the date of first assessment which may be deemed to be the date of completion of the construction. Law as propounded in these cases are fully attracted to the facts of the present case in absence of any assessment in respect

of the constructions in question, the courts below have rightly held that the construction in question is a 'new construction' and was assessed for the first time by the local authority in the assessment year 1981-1987.

9. The learned Counsel for the petitioner, however, placed reliance on the following three cases:

1. Rauf v. 3rd Addl. District Judge, Deoria and Ors. : 2001 (2) ARC 51 : 2001 (3) AWC 1852;

2. Smt. Shashi Singh v. Brig. Sukh Swarup Kapoor 1996 (1) ARC 97 : 1996 (1) AWC 2.49 (NOC); and

3. Bhopal Singh v. 7th Addl. District Judge, Saharanpur and Ors.

10. None of these cases advances the case of the petitioner. In the case of Rauf (supra) entirely a different controversy with regard to the deposit of rent with respect of Section 20(2), 20(4) and (5) was involved. It was held that the revisional court hearing a revision under Section 25 of the Provincial Small Causes Court Act, 1887, has jurisdiction to set aside the findings of fact if it is found that it is not according to law or is based on misreading or mis-appraisal of evidence or view taken, is perverse. In the case of Shashi Singh (supra) only this much has been held that the findings on the question of applicability of the said Act to the premises and the service of notice are not purely of fact but of misconstruction of fact and law. In Bhopal Singh (supra) it has been held that the date of construction is a jurisdictional fact and can be examined under Section 25 by the revisional court while exercising its revisional jurisdiction. There is no quarrel to the said proposition.

11. There is no merit in the writ petition. The writ petition is dismissed summarily.

12. At the end, the learned Counsel for the petitioner prayed for six months time to vacate the accommodation in dispute. The petitioner is permitted to remain in the disputed accommodation till 31st July, 2009 provided he files an undertaking on affidavit within a period of one month before the Judge, Small Causes Court that he will vacate the disputed accommodation and will hand over its peaceful vacant

possession to the contesting respondents on or before 31st July, 2009. The petitioner shall also deposit the arrears of rent including future rent for the period up to 31st July, 2009 within a period of one month.

13. In case of default of either of the conditions as stipulated above, the time granted by this Court shall stand vacated automatically and it shall be open to the landlord to apply for execution of the decree. If the petitioner fails to vacate the accommodation in dispute on or before 31st July, 2009, the executing court shall issue a writ for delivery of possession as soon as it is applied for, without issuing any notice to the petitioner and evict the petitioner or any person found therein and the petitioner would be liable to pay damages at the rate of Rs. 5,000 per month till the date of actual delivery of possession since August, 2009.

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