

Smt. Vidyawati and ors. Vs. Devendra Kumar and anr.

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Court : Allahabad

Decided On : May-18-2004

Reported in : 2004(3)AWC2758

Judge : Tarun Agarwala, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 20(4) and 32(2)

Appeal No. : Civil Revision No. 59 of 1987

Appellant : Smt. Vidyawati and ors.

Respondent : Devendra Kumar and anr.

Advocate for Def. : K.K. Arora, Adv.

Advocate for Pet/Ap. : Ravi Kant, ;A. Sharma and ;Ali Murtaza, Adv.

Disposition : Revision allowed

Judgement :

Tarun Agarwala, J.

1. The plaintiffs filed a suit for eviction of the defendant on the ground of arrears of rent and for possession of the premises in question. The plaintiff alleged that the defendant was a tenant and was in arrears of rent. The premises in question was

constructed in the year 1975 and. therefore, U. P. Act No. 13 of 1972 was not applicable to the building in question. The plaintiff served a notice under Section 106 of the Transfer of Property Act determining the tenancy. The plaintiff alleged that the said notice was duly served upon the defendant and inspite of the expiry of the period, the arrears of rent was not paid nor did the defendant vacate the premises in question.

2. The defendant contested the suit on the ground that he was not in arrears of rent and that the tenanted portion was not constructed in the year 1975 and was constructed much earlier and that U. P. Act No. 13 of 1972 was applicable to the building in question. The defendant further stated that the rent, etc. was sent to the plaintiff through a money order, which was refused and thereafter, the defendant deposited the entire amount in the Court before the first date of hearing and was, therefore, entitled to the benefit of Section 20 (4) of U. P. Act No. 13 of 1972.

3. The Judge Small Cause Court after determining the points in Issue dismissed the suit of the plaintiff. The Judge Small Cause Court held that the defendant was in arrears of rent and had committed a default in the payment of rent. However, since the defendant had deposited the entire amount before the first date of hearing, the defendant was therefore, entitled to the benefit of Section 20 (4) of the said Act. The Judge Small Cause Court further held that the building in question was constructed in the year 1975 and, therefore, the building was not ten years old, when the suit was instituted by the plaintiff. However, a period of ten years were completed during the pendency of the proceedings and therefore, the Act became applicable on the building. The Court relied upon the judgment in Vineet Kumar v. Mangal Sain, AIR 1985 SC 817, and dismissed the suit of the plaintiff.

4. Aggrieved by the judgment of the Judge Small Cause Court, the plaintiff has filed the present revision under Section 25 of the Provincial Small Cause Courts Act.

5. Heard Sri AM Murtaza, advocate holding the brief of Sri Ravi Kant, learned senior counsel for the applicants. No one has appeared on behalf of the opposite parties Inspite of the fact that the case taken up in the revised list.

6. Section 2(2) of the Act reads as under :

'Except as provided in Sub-section (5) of Section 12, Sub-section (1A) of Section 21, Sub-section (2) of Section 24, Sections 24A, 24B, 24C or Sub-section (3) of Section 29, nothing in this Act shall apply to a building during a period of ten year's from the date on which its construction is completed.

(a) the construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction, and in the case of building subject to assessment, the date on which the first assessment thereof comes into effect, and where the said dates are different the earliest of the said dates, and in the absence of any such report, record or assessment, the date on which it is actually occupied (not including occupation merely for the purposes of supervising the construction or guarding the building under construction) for the first time.'

7. It is clear that U. P. Act No. 13 of 1972 will not apply to a building during the period of 10 years from the date on which its construction is completed. The Explanation to this section makes it apparently clear that the period of ten years will start from the date of the first assessment and in the absence of such assessment, from the date of which it was actually occupied.

8. In the present case, the finding of the court below is that the premises was constructed in the year 1975. The suit was filed in the year 1984 and, therefore, the suit was filed within ten years of the completion of the premises in question and, therefore, U. P. Act No. 13 of 1972 was not applicable to the premises in question on the date when the suit was filed by the landlord.

9. The finding of the court below that during the pendency of the litigation, the period of ten years had elapsed and, therefore, the Act became applicable and the tenant could not be evicted except the grounds mentioned in Section 20 (4) of the Act is devoid of any merit.

10. In Vineet Kumar's case (supra), the Supreme Court held that since the building completed 10 years of its existence during the pendency of the suit, the Act

became applicable and, therefore, the tenant was entitled to seek the protection of the Act. The Supreme Court held that the tenant could not be evicted from the premises in question except on the grounds mentioned in Section 20. Since the tenant had deposited the arrears of rent, damages and interest, the benefit of Section 39 was available to the tenant.

11. In *Nand Kishore Marwah and Ors. v. Samundri Devi*, (1987) 4 SCC 382, the Supreme Court dissented with its earlier Judgment in *Vineet Kumar's case* (supra), and held :

'Keeping in view the language of this section if we examine the provisions contained in Sub-section (2) of Section 2 it will be clear that for a newly constructed building the provisions of this Act will not apply for 10 years and therefore so far as the restriction under Section 20 is concerned' they will not apply and therefore it is clear that within 10 years as provided for in Sub-section (2) of Section 2 restriction on the institution of suit as provided for in Section 20 Sub-section (1) quoted above will not be applicable and it is thus clear that during the pendency of the litigation even if 10 years expired the restriction will not be attracted as the suit has been instituted within 10 years and therefore, restriction as provided for in Section 20 cannot be attracted.'

12. Similar view was again expressed by the Supreme Court in *Atma Ram Mittal v. Ishwar Singh Punia*, AIR 1988 SC 2031, impliedly overruling *Vineet Kumar's case*, and in *Suresh Chand v. Gulam Chisti*, 1990 (1) ARC 233 and in *Ramesh Chandra v. Illrd A.D.J. and Ors.*, (1992) 1 SCC 751, and again by the Supreme Court in *Bhola Nath Varshney v. Mulk Raj Madan*, (1994) 2 SCC 127. The Supreme Court in *Kishan alias Srikishan Kumar v. Manoj Kumar*, AIR 1988 SC 999. overruled *Vineet Kumar's case* and held that a suit instituted during the period of exemption could be continued and a decree passed therein could be executed even though the period of exemption come to an end during the pendency of the suit.

13. In *Nand Kishore Marwah's case* (supra), the Supreme Court held that the rights of the parties will be determined on the basis of right available to them on the date of the suit. The Supreme Court further held that Section 39 of the Act would be applicable to those suits, which were pending on the date of the

commencement of the date i.e., 15th July, 1972.

14. In view of the aforesaid, the civil revision is allowed. The judgment dated 6.11.1986 passed by the Vth Additional District Judge, Ghaziabad in Small Cause Court Case No. 24 of 1984 is set aside and the suit of the plaintiff is decreed with costs.

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