

Gopal Shukla Vs. Vth Additional District Judge, Deoria and Others

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Court : Allahabad

Decided On : May-25-2000

Reported in : 2000(3)AWC2285

Judge : Shitla Prasad Srivastava, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 2, 2(1), (2), 12(5), 20(2), (4), 21(1-A), 24(2), 24A, 24B, 24C, 25, 30(1); [Constitution of India](#) - Article 226; [Factories Act, 1948](#); [Societies Registration Act, 1860](#); State Bank of India (Subsidiary Banks) Act, 1959; Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970; Uttar Pradesh Co-operative Societies Act, 1965

Appeal No. : C.M.W.P. No. 6561 of 1983

Appellant : Gopal Shukla

Respondent : Vth Additional District Judge, Deoria and Others

Advocate for Def. : S.C., P.K. Ganguly and ;K.K. Singh, Adv.

Advocate for Pet/Ap. : Shashi Nandan, Adv.

Judgement :

Shitla Prasad Srivastava, J.

1. This writ petition under Article 226 of the [Constitution of India](#) has been filed by the petitioner, who is tenant of the disputed shop, for quashing the orders passed by the Vth Additional District Judge, Deoria and Judge Small Causes Court (Civil Judge). Deoria, respondent Nos. 1 and 2 respectively.

2. The brief facts, as stated in the writ petition, are that the petitioner was the tenant of the premises in question, which are two in number. The rent of the first was Rs. 90 per month and for the second. It was Rs. 20 per month. A suit was filed by the respondent Nos. 3 and 4, who are the husband and wife for the ejectment of the petitioner from the said premises on the ground that the petitioner had not paid the rent since 1979.

3. The petitioner contested the suit and filed his written statement and alleged that there was no rent due against him rather he had deposited the rent which was more than the amount claimed in the Court. The further plea of the petitioner was that the building was constructed in the year 1969, as such, the provisions of U. P. Act No. XIII of 1972 (hereinafter referred to as the Act) are applicable. The petitioner has also claimed that the protection of the provisions of Section 20(4) of the Act as he had deposited the entire rent along with interest and counsel fee in the Court.

4. The trial court framed a number of issues. One of the issues which was relevant was issue No. 1. It was to the effect that as to whether the provisions of Section 20 (4) of the Act are applicable and petitioner is entitled to the benefits of the aforesaid provisions? The other issues were with regard to the default after legal notice and mis-joinder of the necessary parties etc. While disposing of the issue No. 1. the trial court observed that from the paper No. 46C, it is apparent that the defendant had deposited a sum of Rs. 41,401.25P, whereas the amount was due Rs. 3,904.36P. On the point of Section 20 (4) of the Act, the trial court considered the date of construction of the house in question. The trial court observed that the parties have produced their evidence regarding the date of the construction. The plaintiff claimed that it was constructed in the year 1973 whereas the defendant (petitioner) alleged that it was constructed in the year 1969. From the judgment, it is clear that neither sanction map was filed nor any documentary evidence was

produced to this effect. The Court considered the document paper No. 42-Ka of 1.9.1974 ; it was a rent note in which the petitioner admitted that it was constructed in the recent past. The Court also considered oral evidence of Bandu Ram, the landlord and ultimately came to the conclusion that the shops were constructed before letting it out to the petitioner, therefore, in view of the provisions of Section 2 (2) of the Act, the provisions of the Act are not applicable and the petitioner is not entitled for the protection of the provisions of Section 20 (4) of the Act. While deciding the issue of default, the trial court held that the petitioner is defaulter and he has not paid the rent since 1969. On the point of other issues, the finding was given against the petitioner and the suit was decreed for the ejection and arrears of the rent.

5. Aggrieved by the judgment passed by the trial court, a revision under Section 25 of the Judge Small Causes Court was filed by the petitioner. The revisional authority came to the conclusion, as mentioned in para 5 of the judgment that before the revisional court, one of the legal point was alleged that the burden of proof lies with the landlord, therefore, this burden has not been discharged by the landlord. The revisional court agreed that in view of the provisions of Section 2 of the Act, it is to be seen that when the house was used for the first time. But as there is no document then the rent note, which has been executed by the tenant, is to be seen for assessing the date of construction and since it has been done by the trial court, therefore, the finding recorded by the trial court is correct finding. The revisional court also held that as the provisions of the U. P. Act No. XIII of 1972 was not applicable, the tenant was not entitled to the benefits of Section 20 (4) of the Act and the findings recorded by the trial court have been affirmed.

6. The petitioner has challenged these two judgments under Article 226 of the [Constitution of India](#) before this Court. Counter and rejoinder-affidavits have been exchanged. Learned counsel for the parties were heard at length.

7. Sri Shashi Nandan, learned counsel for the petitioner, has urged that both the Courts have not appreciated the legal points involved in the present case, therefore, they have arrived at a wrong conclusion. His submission is that one of the issues framed in the present case was regarding the applicability of the

provisions of U. P. Act No. XIII of 1972, whereas the petitioner was entitled to get the benefits of Section 20 (4) of the Act. His further submission is that to decide the applicability of the aforesaid Act. It was necessary for the trial court to record the finding of fact regarding the date of construction of the premises in question. His submission is that it is true that the rent note was executed by the petitioner in which it was mentioned that the premises was constructed in the recent past but there was no date of construction or first assessment mentioned in the aforesaid document and since there was no assessment register filed by the plaintiff nor any map was filed, there was no evidence before the Court to come to the conclusion regarding the actual date of construction or the first assessment of the premises in question. His submission is that if any such dispute arises, the burden of proof lies on the landlord regarding the date of construction. He has placed reliance on a decision in *Rom Saroop Rai v. Smt. Lilawati*. 1960 ARC 466.

8. His submission is that as the finding which has been given by the trial court has been affirmed by the revisional court is based on assumption, therefore, there is no finding of the date of construction as such, the finding recorded by the trial court is vitiated in law.

9. Sri P. K. Ganguly, learned counsel for the respondent-landlord has submitted that the question with regard to the construction as to whether the building is new or old is the question of fact. His further submission is that as the U. P. Act No. XIII of 1972. Is not applicable, therefore, the petitioner is not entitled for any benefit or protection under Section 20 (4) of the Act. His submission is that there is no error apparent on the face of record in these Judgments of the Court below, therefore, the writ petition should be dismissed.

10. Sri Shashi Nandan, learned counsel for the petitioner urged that the burden lies on the plaintiff (landlord) to prove the date of construction of the building and the findings of fact based on irrelevant document is no finding of fact and his submission is that Section 2 of the Act, deals with the exemption from the operation of the Act of the particular building. He has placed reliance on the Explanation (1) of Section 2 of the Act. His submission is that the date of construction should also be determined as provided under Section 2 (1) of the

Explanation and no other proof is admissible in the eye of law.

11. After hearing the learned counsel for the parties at length. I am of the view that before discussing the real controversy Involved in the present case. It is necessary to see the relevant Section under the U. P. Act No. XIII of 1972 and also consider whether the provisions of the aforesaid Act are applicable or not and thirdly, as to whether the Courts below have decided this issue properly? The relevant Section 2 of the U. P. Act, No. XIII of 1972. Is quoted below :

'2. Exemption from operation of Act.--(1) Nothing in this Act shall apply to the following, namely :

(a) any building of which the Government or a local authority or a public sector corporation (or a Cantonment Board) is the landlord ; or

(b) any building belonging to or vested in a recognised educational institution ;

(bb) any building belonging to or vested in a public charitable or public religious Institution ;

(bbb) any building belonging to or vested in a waqf Including a woqf-alal-aulad ;

(c) any building used or intended to be used as a factory within the meaning of the [Factories Act, 1948](#) (Act No. LXIII of 1948) (where the plant of such factory is leased out along with the building) ; or

(d) any building used or Intended to be used for any other industrial purpose (of any' goods) or as a cinema or theatre ; where the plant and apparatus installed for such purpose In the building is leased out along with the building :

Provided that nothing in this clause shall apply in relation to any shop or other building, situated within the precincts of the cinema or theatre, the tenancy in respect of which has been created separately from the tenancy in respect of the Cinema or theatre : or

(e) any building used or intended to be used as a place of public entertainment or amusement (including any sports stadium, but not Including a cinema or theatre),

or any building appurtenant thereto ; or

(f) any building built and held by a society registered under the Societies Registration Act, 1860 (Act No. XXI of 1860) or by a co-operative society, company or firm, and intended solely for its own occupation or for the occupation of any of its officers or servants, whether on rent or free of rent, or as a guest house, by whatever name called, for the occupation of person having dealing with it in the ordinary course of business ;

(g) any building, whose monthly rent exceeds two thousand rupees :

(h) any building of which a Mission of a foreign country or any International agency is the tenant.

(2) Except as provided in subsection (5) of Section 12, sub-section (1-A) 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 years from the date on which its construction is completed :

Provided that where any building is constructed substantially out of funds obtained by way of loan or advance from the State Government or the Life Insurance Corporation of India or a bank or a co-operative society or the Uttar Pradesh Avas Evam Vikas Parishad, and the period of repayment of such loan or advance exceeds the aforesaid period of ten years, then the reference in this sub-section to the period of ten years shall be deemed to be a reference to the period of fifteen years or the period ending with the date of actual repayment of such loan or advance (Including interest), whichever is shorter :

Provided further that where construction of a building is completed on or after April 26, 1985, then the reference in this sub-section to the period of ten years shall be deemed to be a reference to a period of forty years from the date on which its construction is completed.

Explanation I.--For the purpose of this section-

(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 :

Provided that there may be different dates of construction In respect of different parts of a building which are either designed as separate units or are occupied separately by the landlord and one or more tenants or by 'different landlords ;

(b) 'construction' includes any new construction in place of an existing building which has been wholly or substantially demolished :

(c) where such substantial addition is made to an existing building that the existing building becomes only a minor part thereof the whole of the building including the existing building shall be deemed to be constructed on the date of completion of the said addition.

Explanation II.--The expression 'bank' means-

(i) a banking company, as defined in the Banking Regulation Act. 1949;

(ii) the State Bank of India constituted under the State Bank of India Act. 1955 :

(iii) a subsidiary bank, as defined in the State Bank of India (Subsidiary Banks? Act, 1959 :

(iv) a corresponding new batik constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;

(v) a financing bank or Central Bank (as defined in the Uttar Pradesh Co-operative Societies Act, 1965), not being a Land Development Bank ; and

(vi) any other financial institution notified by the State Government in the Gazette as a bank for the purpose of this Act ;

Explanation III.--A building shall be deemed to be constructed substantially out of funds obtained from sources mentioned in the proviso, if the funds obtained from one or more of such sources account for more than one-half of the cost of construction.'

12. A perusal of this Section would show that the finding has to be recorded by the Court below regarding the date of construction of the house and if such finding is given, then only the provisions of Section 20 (4) of the Act, can be considered. Section 20 (4) of the Act is quoted below :

'20 (4) In any suit for eviction on the ground mentioned in clause (a) of sub-section (2), if at the first hearing of the suit the tenant unconditionally pays or (tenders to the landlord or deposits in Court) the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under sub-section (1) of Section 30, the Court may. In lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground ;

Provided that nothing in this sub-section, shall apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area.

Explanation.--For the purpose of this sub-section-

(a) the expression 'first hearing' means the first date for any steps or proceeding mentioned in the summons served on the defendant ;

(b) the expression 'cost of the suit' Includes one-half of the amount of counsel's fee taxable for a contested suit.'

13. From a perusal of the aforesaid two Sections, it is crystal clear that for the date of construction, the Court must consider the evidence as provided under Section 2 of the Explanation. From a perusal of the Judgments of the Court below, it is apparent that none of the Courts have considered the document, which have been mentioned in the Act rather they have considered the agreement written by the petitioner which was vague with regard to the date of construction. Since the date of construction has not been properly determined. I am of the view that the point of the applicability of the U. P. Act No. XIII of 1972, cannot be determined, therefore, the Judgments of the Courts below are vitiated in law.

14. I accordingly, allow the writ petition and set aside the Judgment and order passed by the prescribed authority as well as revisional authority. The matter is being remanded to the prescribed authority to give opportunity to the parties to lead evidence on the point of construction of the house, as provided under the law and decide the matter afresh in accordance with law.

15. There is no order as to costs.