

Riyaj Fatma (Smt.) Vs. Special Judge/Additional District Judge and ors.

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Court : Allahabad

Decided On : Feb-25-2005

Reported in : 2005(1)ARC850; 2005(3)AWC2208

Judge : Mukteshwar Prasad, J.

Acts : Uttar Pradesh Buildings (Regulation of Letting, Rent and Eviction) Act, 1972
- Sections 2(1) and 2(2)

Appeal No. : Civil Misc. Writ Petition No. 40881 of 1998

Appellant : Riyaj Fatma (Smt.)

Respondent : Special Judge/Additional District Judge and ors.

Advocate for Def. : J.P.S. Chauhan, Adv. and ;V. Singh, S.C.

Advocate for Pet/Ap. : Deo Raj, Adv.

Disposition : Petition allowed

Judgement :

Mukteshwar Prasad, J.

1 . This is landlord's petition for quashing the judgment and decree dated 16.9.1998 (Annexure-13 to the writ petition) and judgment and decree dated 22.7.1997 (Annexure-9 to the writ petition) passed by respondent Nos. 1 and 2

respectively.

2. Counter-affidavit and rejoinder-affidavit have been exchanged between the parties and are on record.

3. I have heard Sri Dev Raj, learned Counsel for the petitioner and Sri J.P.S. Chauhan, learned Counsel for respondent No. 3 and have gone through the record carefully.

4. It appears that the landlady filed a suit against respondent No. 3 for recovery of arrears of rent and damages and for eviction from the shop in dispute mainly on the ground that the provisions of U.P. Act No. 13 of 1972 (in short the Act) do not apply and the tenant had sub-let the disputed shop to Raghubir Singh and Raju. The tenant paid no rent w.e.f. 1.1.1991 and did not pay house tax also. The landlady sent a notice determining the tenancy by registered post, which was served on 16.12.1995. However, neither shop was vacated nor arrears of rent was paid.

5. The tenant contested the suit on the grounds, inter alia, that the provisions of Act did apply and he committed no default in payment of rent. He had paid rent due up to 31.12.1995. He never sub-let the disputed-shop to anybody.

6. The parties led their oral and documentary evidence. After having considered the evidence on record led by the parties, the learned Judge, Small Causes held that shop in dispute came within the purview of the Act. He further found that the tenant was not a defaulter but he was occupying the disputed shop without an allotment order. Therefore placing reliance on a Full Bench decision of this Court in Nutan Kumar and Ors. v. Additional District Judge, Banda and Ors., 2002 (2) A.R.C., 645 decreed the suit partly for recovery of rent from 1.8.1996 at the rate of Rs. 125/- per mensem.

7. The landlady filed a S.C.C. Revision No. 45/97 which was dismissed and the entire suit was dismissed with costs.

8. Learned Counsel for the petitioner has assailed the impugned judgments mainly on the grounds that the provisions of the Act do not apply to the shop in question

and the Courts below committed illegality in recording a finding that the Act applies to the shop in dispute. The Full Bench decision of this Court in *Nutan Kumar and Ors. v. Additional District Judge, Banda and Ors.* was set aside by the Hon'ble Supreme Court of India in Civil Appeal No. 7254 of 1996, decided on 27.9.2002, reported in 2002 (2) A.R.C., 645. Therefore, the decision rendered by the Full Bench is no longer a good law and as such, the case has to be remanded to the Court below for a fresh decision. It was also urged on behalf of the petitioner that learned Judge, Small Causes did not take into consideration the Explanation (I) to sub-section (2) of Section 2 of the Act which provides the guidelines for determining the date of construction of a building and trial Court did not consider the copy of the assessment list prepared by Nagar Palika Parishad, Nehtaur (Bijnor).

9. Reliance has been placed by the petitioner's learned Counsel on a decision of the Supreme Court in *Surya Dev Rai v. Ram Chander Rai and Ors.*, J.T. 2003 (6) SC 465 : 2003 (2) ARC 385.

10. On the other hand, learned Counsel for respondent No. 3 has supported the judgments and has contended that the suit of the petitioner was rightly dismissed by the revisional Court and there is no ground to interfere with the judgments under challenge in this petition.

11.1 have considered the rival contentions of the parties and perused the copies of the plaint, written statement and copies of the oral and documentary evidence filed by the parties in this petition. I find from perusal of the impugned judgment passed by Judge, Small Causes that the Judge framed two points for determination. Out of which, the first point was whether provisions of the Act did apply to the shop in dispute. In order to ascertain this point, the parties led oral and documentary evidence. The landlord filed a copy of the first assessment list prepared by Nagar Palika Parishad, Nehtaur (Bijnor) effective from 1.4.1990 to 31.3.1995. It appears that the Courts* below rejected the document mainly on the ground that the description of the shop given in the assessment list does not tally with the description of the shop as given at the foot of the plaint. The names of the tenants and the rent shown in the list do not tally with the allegations made in the plaint

and the trial Court considered other oral evidence on this point.

12. Section 2 (1) of the Act provides that nothing this Act shall apply to the following classes of building enumerated in Clause (a) to (h).

13. Sub-section (2) of Section 2 provides that subject to exceptions nothing this Act shall apply to a building during a period of ten years from the date on which its construction is completed.

Explanation (I) to sub-section (2) runs as under:

Explanation I.-[For the purposes 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 of 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 completion 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 tenants;(b)

(c)

14. In the instant case, the landlord came to the Court with the allegations [hat shop in question was a new one and was built in the year 1990 and it was assessed by the Local Municipal Board for the first time w.e.f. 1.4.1990. The law provides that nothing in this Act shall apply to a building during a period of ten years from the date on which its construction is completed. When the construction of a building shall be deemed to have been completed s given in Clause (a) to Explanation 1. In *Fakir Chand Jatav v. Surendra Kumar Gupta*, 2003 All. L.J.,

2615 : 2003 (2) ARC 14, it was held that an analysis of Clause (a) shows that the date of completion of construction of a building is to be decided on the basis of the following dates:-

Clause (a) makes a. deeming provision for determination of the date of completion of construction of a building.

1 (i) The date on which the completion of a building is reported to the local authority having jurisdiction will be deemed to be the date of completion of construction of such building.

(ii) The date on which the completion of a building is otherwise recorded by the local authority having jurisdiction will be deemed to be the date of completion of construction of such building.

2. In the case of a building subject to assessment, the date on which the first assessment thereof comes into effect will be deemed to be the date of completion of construction of such building.

3. If in respect of a building, the above dates, namely, the date on which the completion of the building is reported to the local authority having jurisdiction (mentioned in head 1 (i), above), the date on which the completion of the building is otherwise recorded by the local authority having jurisdiction (mentioned in head 1 (ii) above), and the date on which the first assessment of the building comes into effect (mentioned in head 2 above), are different, then the earliest of the said dates will be deemed to be the date of completion of construction of such building.

4. In the absence of any such report (mentioned in head 1 (i) above), or record (mentioned in head 1 (ii) above), or assessment (mentioned in head 2 above) in respect of a building, the date on which such building is actually occupied for the first time will be deemed to be the date of completion of such building.

15. 21. Above analysis of clause (a) of Explanation I to sub-section (2) of Section 2 shows that the date of actual occupation of a building would be relevant only when there is no report, record or assessment mentioned in the said Clause (a). In case, such report, record or assessment, is available, the date of actual occupation of a

building would not be relevant for deciding the date of completion of construction of a building.

16. Therefore, in view of the Explanation I Clause (a) of sub-section 2 of Section 2 of the Act there is a mandate to the Courts/authorities that when a question arises as to whether or not the building in question comes within the ambit of the Act it shall determine in accordance with the guidelines given in Clause (a) and the date of actual occupation of the building is relevant only when there is no report, record or assessment, in the instant case, the landlord alleged that the provisions of the Act did not apply to the shop in question. On the other hand, the tenant claimed that his father was original tenant and he had been occupying the shop as a tenant since 1950. The landlord filed first assessment list to show that shop No. 4 fully described at the foot of the plaint was assessed for the first time w.e.f. 1.4.1990. In my opinion, absence of the name of the tenant respondent and wrong entry with regard to rent in column No. 5 of the list did not weaken the case of the landlord. The landlord led documentary evidence in the Court as provided in the aforesaid Explanation I. It was, therefore, mandatory for the Courts to determine the date of construction of the building in accordance with the assessment list as provided under the law and not to rely on other evidence. Had there been no report, record or assessment, the Courts could rely on the oral evidence of the parties to ascertain the date of actual occupation of the shop. In this view of the matter, I find that both the Courts below committed illegality in relying on the oral evidence of the parties instead of placing reliance on the copy of the assessment list filed by the landlord. In my opinion, the trial Court as well as revisional Court did not decide the controversy between the parties in accordance with law. Hence, the finding of the learned Judge, Small Causes on point No. 1 and upheld by the revisional Court also is liable to be set aside.

17. I further find that both the Courts below have found that in the view of the Full bench decision in Nutan Kumar's case, the contract of the tenancy between the parties was void and against the provisions of U.P. Act No. 13 of 1972 and as such, the suit was not maintainable, it is noteworthy that Full Bench decision in Nutan Kumar's case was set aside by the Supreme Court of India on 27.9.2002. I have, therefore, no option but to remand the matter to the trial Court for a fresh

decision in accordance with law.

18. For the aforesaid reasons, I hold that the judgments passed by both the Courts below suffer from illegality and are not sustainable. The Courts below committed illegality in deciding the controversy between the parties. I, therefore, hold that this petition has merits and it must succeed.

19. In the result, the petition succeeds and is hereby allowed. The judgment and decrees dated 16.9.1998 and 22.7.1997 are hereby set aside and the case is remanded to Judge, Small Causes, Bijnor for deciding S.C.C. Suit No. 14 of 1996, Smt. Riyaj Fatma v. Churadi, a fresh in accordance with law and in the light of the observations made above. The trial Judge is directed to decide this case within, a period of six months from the date of production of a certified copy of this judgment by the parties. No order is made as to costs.

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