

Kr. Om Autar Vs. District Commandant Home Guard and ors.

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Court : Allahabad

Decided On : Jul-08-2002

Reported in : 2002(4)AWC2839

Judge : S.P. Mehrotra, J.

Acts : Uttar Pradesh Urban Buildings (Regulation) of Letting, Rent and Eviction) Act, 1972 - Sections 21(8); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 152

Appeal No. : C.M.W.P. No. 21197 of 1987

Appellant : Kr. Om Autar

Respondent : District Commandant Home Guard and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Krishna Mohan Agarwal, ;Rajendra Kumar, ;Murlidhar, ;R.P. Singh and ;P.K. Singh, Advs.

Judgement :

S.P. Mehrotra, J.

1. This writ petition has been filed by the petitioner, inter-alia, challenging the order dated 27.2.1985 passed by the respondent No. 3 (Annexure-3 to the writ petition) judgment and order dated 19.5.1987 passed by the respondent No. 4 (Annexure-4

to the writ petition) and the order dated 18.9.1987 passed by the respondent No. 4 (Annexure-7 to the writ petition).

2. It appears from the writ petition that the petitioner is the landlord of Bungalow No. 234A, Katra Chand Khan. Shahjahanpur Road, Bareilly of which the respondent No. 1 is a tenant, the rate of rent originally was Rs, 181.25 p. The petitioner moved an application under Section 21 (8) of the U. P. Act XIII of 1972 for enhancement of rent in respect of the said premises to Rs. 5,333.33 per month.

3. Initially, the said application under Section 21 (8) of the U. P. Act XIII of 1972 was rejected by the Rent Control and Eviction Officer, Bareilly by the order dated 22.10.1982.

4. The petitioner filed an appeal against the said order dated 22.10.1982. The appellate authority by its order dated 25.8.1983 allowed the appeal, set aside the order dated 22.10.1982 and remanded the matter to the Rent Control and Eviction Officer, Bareilly for deciding the same again.

5. After remand, the respondent No. 3 by its order dated 27.2.1985 partly allowed the application under Section 21 (8,) of the U. P. Act XIII of 1972 and enhanced the monthly rent of the said premises in question to Rs. 700.

6. Against the said order dated 27.2.1985, the petitioner filed an appeal being Misc. Appeal No. 60 of 1985. The appellate authority (respondent No. 4) by its judgment and order dated 19.5.1987 partly allowed the appeal and modified the order dated 27.2.1985 passed by the respondent No. 3 and fixed the monthly rent of the premises in question at Rs. 2,516. Thus, the rent of the premises in question was enhanced from 181.25 p. to Rs. 2,516.

7. Thereafter, it appears that an application dated 13.7.1987 was filed on behalf of the petitioner before the appellate authority {respondent No. 4) under Section 152 of Code of Civil Procedure seeking correction of clerical/arithmetical mistake in the said judgment and order dated 19.5.1987. Besides, other mistakes mentioned in the said application dated 13.7.1987, it was inter-alia. stated that the figure Rs. 40,500 mentioned as the cost of construction in the said premises was not correct,

and the correct figure was Rs. 1,39,560. It was inter alia, also stated in the said application dated 13.7.1987 that the figure of Rs. 3,61,450 mentioned as the value of the land in the premises in question was not correct and the correct figure was Rs. 2,61,478.

8. The appellate authority (respondent No. 4) by its order dated 18.9.1987 considered the said application dated 13.7.1987. and rectified only one mistake, namely, that in place of figure Rs. 3,61,450. the correct figure was Rs. 2,61,450.

9. The petitioner has filed the writ petition challenging the said order dated 27.2.1985, the judgment and order dated 19.5.1987 and the order dated 18.9.1987.

10. Counter-affidavit has been filed on behalf of the respondent No. 1. The petitioner has filed his rejoinder-affidavit.

11. I have heard Sri Murlidhar, learned senior counsel assisted by Sri R.P. Singh and Sri P.K. Singh, Advocates for the petitioner and learned standing counsel for the respondents.

12. Sri Murlidhar, learned senior counsel made only one submission. He submitted that while the appellate authority was correct in passing the order dated 18.9.1987, rectifying the figure Rs. 3,61,450 and substituting the same by the figure Rs. 2,61,450, the appellate authority acted illegally in not correcting an arithmetical mistake regarding the valuation of the construction determined as Rs. 40,500.

13. Sri Murlidhar submitted that the following observation made by the appellate authority in its judgment and order dated 19.5.1987 was erroneous on the face of it : 'the year of construction is 1935 and considering the depreciation, I am satisfied that the rate of construction for main building, out houses and boundary wall can be fixed at a flat rate of. Rs. 20 per sq. feet i.e., Rs. 60 per sq. yard inclusive of electric and water fittings. The cost of construction for determining the market value of the property comes to Rs. 40,500.....'

14. It is submitted by Sri Murlidhar that the appellate authority committed an arithmetical mistake in converting Rs. 20 per sq. feet as Rs. 60 per sq. yard.

According to the learned senior counsel, 9 sq. feet is equal to one sq. yard. Accordingly, Rs. 20 per sq. feet when converted into sq. yard would be Rs. 180 per sq. yard. Therefore, valuation of construction should have been done on the basis of the flat rate being Rs. 180 per sq. yard, and not Rs. 60 per sq. yard.

15. Having heard learned counsel for the parties, I am of the opinion that the contention raised on behalf of the petitioner is correct. While the appellate authority was correct in passing the order dated 18.9.1987 and rectifying the arithmetical mistake in the figure Rs. 3,61,450 and substituting the same by the figure Rs. 2,61,450, the appellate authority acted illegally in ignoring the arithmetical mistake committed in computing the value of construction as Rs. 40,500. The appellate authority in its judgment and order dated 19.5.1987 adopted a flat rate of Rs. 20 per sq. feet for determining the value of construction in the premises in question. Rs. 20 per sq. feet when converted into square yard would come to Rs. 180 per sq. yard. The area of total constructed portion was determined by the appellate authority as 675 sq. yard.

16. Therefore, the value of construction would be equal to (675×180) i.e., Rs. 1,21,500. Thus, there was arithmetical mistake apparent on the record in the said judgment and order dated 19.5.1987 in determining the value of construction as Rs. 40,500. Consequently, the total value of the property would not be Rs. 3,01,950 as determined in the judgment and order dated 19.5.1987, but would be Rs. 3,82,950.

17. In the circumstances, the appellate authority while considering the application for correction dated 13.7.1987 ought to have considered the said arithmetical mistake in the figure Rs. 40,500. The appellate authority acted illegally in not considering the said arithmetical mistake in the figure Rs. 40,500 while passing the order dated 18.9.1987.

18. In the circumstances, the writ petition is partly allowed. The order dated 18.9.1987 is quashed only to the extent, it has not considered the arithmetical mistake in the value of construction at figure Rs. 40,500 and has held that the total value of the property has rightly been calculated at Rs. 3,01,950. The matter is sent back to the appellate authority to decide afresh the application for correction

dated 13.7.1987 regarding arithmetical mistake in the judgment and order dated 19.5.1987 regarding determination of the value of construction as Rs. 40,500 and determination of the total value of the property as Rs. 3,01,950 and rectify the said figures in the judgment and order dated 19.5.1987 in the light of calculations made above. The appellate authority will accordingly make consequential rectification in the monthly rent determined in the judgment and order dated 19.5.1987. It is made clear that the parties will not be permitted to raise any other point before the appellate authority.

19. Since the matter is an old one, the appellate authority shall endeavour to decide the same expeditiously, preferably within a period of three months from the date of production of a certified copy of this order.

20. On the facts and circumstances of the case, there will be no order as to costs.

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