

State of U.P. Vs. I Additional District Judge and ors.

State of U.P. Vs. I Additional District Judge and ors.

SooperKanoon Citation : sooperkanoon.com/486724

Court : Allahabad

Decided On : Jan-16-1998

Reported in : AIR1998All262

Judge : Shitla Pd. Srivastava, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(8); [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petn. No. 44439 of 1993

Appellant : State of U.P.

Respondent : i Additional District Judge and ors.

Advocate for Def. : V. Betehore, Adv.

Advocate for Pet/Ap. : R.P. Dubey, Spl. Counsel, State of U.P. High Court

Disposition : Petition dismissed

Judgement :

ORDER

Shitla Pd. Srivastava, J.

1. This petition under Article 226 of the [Constitution of India](#) has been filed by the State of U.P. through member Sales Tax Tribunal, Gorakhpur against the landlord

and others for quashing the order dated 12th March, 1992 filed as Annexure-1 and order dated 17th August, 1993, filed as Annexure-2 to the writ petition.

2. The facts giving rise to the present petition in brief are that the landlord filed an application under Section 21(8) of Act No. 13 of 1972 for enhancement of rent against the petitioner. The basis of enhancement of rent was that the annual value of the building in question was Rs. 4,76,600/- us such the enhanced rent would be Rs. 3972/- per month. It was specifically stated that the annual value of the building included the constructed portion of the land appurtenant to the building.

3. An objection was filed by the petitioner to the aforesaid application to the effect that in 1969 for the first time when the accommodation in question was given on rent its rent was Rs. 250/-per month and the total area in tenancy was 956 sq. feet but from 1st June, 1983 the department was paying rent amounting to Rs. 1126/- per month at the rate of one rupee per sq. feet. It was further stated that in 1983 the landlord constructed one additional room and tin shed, therefore, only 25% of the monthly rent can be enhanced.

4. Both the sides submitted valuer's report. The valuer on behalf of the Sales Tax Department assessed Rs. 1,28000-00 as value of the disputed accommodation and filed alongwith the affidavit of the departmental Lekhpal. The valuer of the landlord Sri Hari Gopal Verma submitted his affidavit along with his report. There appears to be no dispute for market value of the house in question as Rs. 4,76,600.00. The Rent Control and Eviction Officer (A.D.N. City, Supply, Gorkhpur) observed that 'the market value of the construction as given by both the valuers appears to be the same but the landlord's valuer has valued the land also. It was held placing reliance on 1989 All LJ 389 that the building includes the appurtenant land also and as the valuer of the department has not given his affidavit in support of his report, therefore, the value given by the landlord is correct. The R.C. & E.O. accordingly accepted the market value as given by the landlord to be Rs. 4,76,600/- and fixed Rs. 3972/- as monthly rent, but keeping in view the condition of the house and tenancy in favour of the department he reduced the amount to Rs. 3000/- per month. Aggrieved by this order the petitioner filed an appeal and it was urged before the appellate Court that the Rent Control

and Eviction-Officer, hereinafter referred to as R.C. & E.O. has no jurisdiction to determine the application under Section 21(8) of the Act. His contention was that the District Magistrate has the jurisdiction only. The appellate Court also placed reliance on 1989 All LJ 389, Central Bank of India v. Ind ADJ and dismissed the appeal. The petitioner has challenged this order in this writ petition.

5. The parties have exchanged counter and rejoinder affidavit. Though the case was listed for admission but on the agreement of learned counsel for the parties the matter was heard finally even at the admission stage.

6. The learned standing counsel has urged that the provisions of the Rent Control Act was not applicable as the rent of the accommodation in question was more than Rs. 2000/- per month, therefore, the application under Section 20(8) of the Act was not maintainable. Therefore, the finding of the R.C. & E.O. and the appellate authority are vitiated in law. In the same continuation he urged that though on the date of application the rent of the building was less than Rs. 2000/- but when R.C. & E.O. fixed it at the rate of Rs. 3000/- per month, then the provisions of Rent Control Act were not applicable and neither the appellate Court has jurisdiction, nor the R.C. & E.O., had the jurisdiction to dispose of and entertain the application and as the appeal was the continuation of the original proceedings, therefore, the appellate Court should have rejected the application. The second submission is that the land which has been assessed by the valuer of the landlord was not included in the tenancy of the department, therefore, the market value of such land has illegally been taken into consideration for determination of the rent. His third argument is that the appurtenant land cannot be included within the definition of building, therefore, the market value of appurtenant land also should not be taken into consideration of the market value. His fourth contention is that even if there was no affidavit of the departments' valuer but as there was affidavit of Lekhpal in support of the report of valuer of the P.W.D. therefore, the finding recorded by the R.C. & E.O. is against the record.

7. Learned standing counsel laid much emphasis on the extent of the accommodation in tenancy and in support of this he wanted to file a lease deed executed between the parties. It was admitted by him that this lease deed was not

filed either before the R.C. & E.O. or before the appellate Court but for the ends of justice this should be entertained in the writ jurisdiction.

8. Learned counsel for the respondent vehemently opposed the petition and the arguments advanced by the learned standing counsel. His contention was that a map is attached with the lease deed showing the extent of accommodation in tenancy of the petitioner, which is part and parcel of the lease deed and from this map also it is apparent that the land valued by the landlord's valuer was also included in the tenancy. Learned counsel for the respondent also placed before the Court the map annexed with the lease deed but his contention was that since the lease deed was not filed before the R.C. & E.O. or before the appellate Court, therefore, the petitioner cannot be permitted to file the document here. His further contention was that under the Act the definition of the building is given in Section 2-H which means a residential and non-residential roofed structure and includes any land including any garden, garages and outhouses appurtenant to such building. His further contention is that the valuer's report is only an opinion therefore, unless the affidavit in support of the report is filed the report cannot be accepted. His further contention is that the exemption given in the Act is to those buildings of which monthly rent is above Rs. 2000/- and this monthly rent is to be seen on the date of filing of the application for enhancement and if the enhancement was made upto Rs. 2000/- or above by the R.C. & E.O. then the provisions of the Act will remain applicable and the appellant Court cannot reject the application and exempt the building from the clutches of the provisions of the Rent Control Act during the pendency of the appeal.

9. Learned counsel for the petitioner in support of his contention on the point of non-filing of the affidavit of his valuer has placed reliance on 1982 ARC page 544 Ram Chandra Singh v. District Judge, Lucknow (sic). He has placed reliance on page 6 of the aforesaid judgment, which is quoted below :

'In my opinion the two authorities below have committed manifest error in recording their findings on the question of dilapidated nature of the building. It is true that no affidavit had been filed by the Asstt. Engineer who prepared plan of the proposed building and the estimate of the cost of demolition and reconstruction

but that was not sufficient to reject the report of the Assistant Engineer.'

10. Learned counsel for the respondent has placed reliance on a Division Bench judgment reported in (1983) 1 All Rent Cas 752 : (1983 All LJ 1273) for the purpose that the valuer's report should have been accompanied by his affidavit. The relevant portion of the decision is quoted herein below.

'Report of valuer filed in rent control case without an affidavit of valuer verifying its contents on the basis of his personal knowledge will not be admissible in evidence, even if its contents are verified by means of an affidavit of the landlord.'

11. After hearing the learned counsel for the parties and going through the record it is clear that it is admitted to the petitioner that the market value fixed by both the valuers so far as the constructed portion is concerned is near about the same, therefore, the factual dispute appears to be only in respect of the open space of land and the land appurtenant to the building and extent of the land in the tenancy of the petitioner. The petitioner has not filed the application which was filed on the application to show that how much accommodation was mentioned in the application for enhancement along with the counter affidavit. The report of Shri Hari Gopal Verma a valuer of the landlord, an affidavit of Hari Gopal Verma has been filed and there is a map annexed to this report. In this report the valuer has mentioned the accommodation in question and its boundary while giving description of the property and has stated in his affidavit that he is a registered approved valuer and has inspected the building and verified with the plan supplied by the owner.

12. In paragraph 3 of the counter affidavit it is stated that the valuer filed his report and his affidavit which have been filed with the counter affidavit as annexure-CA. 1 and C.A. 2. The petitioner has stated in his petition in ground No. 1 that Shri Hari Gopal Verma has not filed his own affidavit to prove his report. In reply to paragraph 3 of the counter affidavit the petitioner has not denied that there was no affidavit of Sri Hari Gopal Verma as such the statement made by the petitioner in paragraph 8 of the writ petition is against the record.

13. The petitioner has also not denied the map, filed along with the valuers report in his rejoinder, affidavit, nor has stated anywhere that the map annexed by the valuer along with the report is not a map of actual accommodation in the tenancy of the petitioner, rather in his affidavit sworn on 16th September, 1994, Sri S.N. Singh, the member of Sales Tax Tribunal No. 1, Gorakhpur has admitted that Sri Hari Gopal Verma has filed his affidavit before the R.C. & G.O. and he has filed photostat copy of the same along with this affidavit. In paragraph 3 of this annexure it is mentioned by Sri Hari Gopal Verma that the map is attached with his report. A supplementary affidavit has also been filed by one Sri Santoshi Prasad Peshkar of the member Sales Tax Tribunal, sworn on 15th February, 1994, annexing therewith a photostat copy of the affidavit of Sri Hari Gopal Verma, the valuer, in compliance of the order of the Court dated 6th December, 1993. It is the same affidavit which has been filed by Sri S.N. Singh along with his affidavit. Thus it is clear from the record that the valuer of the landlord has given full description of the accommodation in question which has not been controverted by the petitioner in his rejoinder affidavit, supplementary affidavit or affidavit filed by Sri S.N. Singh, thus the submission of the learned counsel for the petitioner that the open piece of land was not in the tenancy of petitioner cannot be accepted. The petitioner had an opportunity to rebut the valuer's report of the landlord by filing alleged lease to prove the extent of accommodation which has not been availed of by him. As such the petitioner had no right to file the alleged lease deed before this Court.

14. The submission of the learned counsel for the petitioner that the valuers' report of the department should have been accepted, even though there was no affidavit filed by him has no legs to stand in view of the fact admitted to the petitioner that both the valuers have given up to some extent the same market value of the construction, but as the petitioner's valuer had not mentioned the open piece of land in the tenancy, the market value assessed by the landlord's valuer was rightly accepted by the R.E. & E.O. The submission of the learned counsel for the petitioner that the appurtenant land does not come within the definition of building is also not correct in view of the definition given in the Act as well as decision of the Court.

15. Considering the facts and circumstances of the case I am of the view that the finding recorded by the R.C. & E.O. and affirmed by the appellate Court on the question of market value is finding of fact which needs no interference under Article 226 of the [Constitution of India](#). The petition is dismissed but there will be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com