

Amarnath Gupta Vs. Rent Control and Eviction Officer and ors.

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Court : Allahabad

Decided On : Jul-31-2009

Reported in : 2009(4)AWC4079

Judge : Poonam Srivastav, J.

Appellant : Amarnath Gupta

Respondent : Rent Control and Eviction Officer and ors.

Advocate for Pet/Ap. : Shri. Vishnu Gupta

Disposition : Petition allowed

Judgement :

Poonam Srivastav, J.

1. An order was passed on 18.5.2005 whereby the Rent Control and Eviction Officer, Kanpur Nagar, declared vacancy of the disputed premises No. 54/37 Nayaganj, Kanpur Nagar, which is at present in possession of M/s. Keshav Fin. Con. Limited. While declaring the vacancy, it was observed that the landlord had enhanced the rent twenty times, to the tune of Rs. 2,500 of the previous tenant. Smt. Sushma Pachauri was residing and thereafter she vacated the premises in the month of January, 2004. Present tenant M/s. Keshav Fin. Con. Ltd. came in possession and was given at a monthly rent of Rs. 3,000 in January, 2004 itself.

2. The contesting respondent moved an application for allotment of the premises in dispute to establish office of Vyapaar Mandal, Kanpur.
3. The Rent Control Inspector gave a report that the building is let out on rent at the rate of Rs. 3,000 per month, and, therefore, it is outside from the purview of the provision of U.P. Act No. 13 of 1972. Affidavit was given by Smt. Sushma Pachauri as well as present tenant Avinash Khandelwal on 8.12.2004, which are on record as Annexures-5 and 6.
4. The objection of the counsel for the respondent is that the tenant could not have raised rent unilaterally since the building was governed by the provisions of U.P. Act No. 13 of 1972. The enhancement of rent or fixed standard rent is governed by Sections 4 (2), 5, 6, 8 and 9 of U.P. Act No. 13 of 1972. He submits that there is an embargo imposed by the Legislature in the aforesaid Act and thus calls for an interference by this Court in exercise of writ jurisdiction.
5. Shri Vishnu Gupta learned Counsel for the petitioner has brought to my notice a decision of this Court in the case of Milap Chandra Jain and Ors. v. State of U.P. and Ors. : 2001 (2) ARC 488 : 2001 (4) AWC 2951, wherein the provisions of Section 3 (k), and Sections 4 (2), 5, 6, 8 and 9 were challenged and it was declared unconstitutional. This Court ruled and declared the aforesaid provisions of Section 3 (k), and Sections 4 (2), 5, 6, 8 and 9 and corresponding provisions under Section 3 (k), and Sections 4 (2), 5, 6, 8 and 9 as ultra vires of the Constitution of India. The State was directed to consider the matter in the light of observations and to redefine the 'standard rent' or 'fair rent' in accordance with the model rent control legislation published by the Government of India in July, 1992, at least in respect of the buildings which were in possession of the tenants at the commencement of U.P. Act No. XIII of 1972 to remove injustice done to a class of landlords. The proper legislation in this respect is expected to be enacted at the earliest.
6. It appears that the State has not taken care to do the needful. However, since these provisions are held to be ultra vires, it is not disputed that the rent at present of the disputed building is @ Rs. 3,000 per month and, therefore, is outside the purview of the Act.

7. Learned Counsel for the respondent has not been able to bring to my notice any decision subsequent to this decision either of the Apex Court or by a larger Bench of this Court and according to the learned Counsel for the petitioner, the instant decision still continues to be good law. Probably, this decision was not brought to the notice of Rent Control and Eviction Officer which resulted in declaration of the vacancy vide order dated 18.5.2005 which is impugned in the instant writ petition.

8. In view of the observations made above, this writ petition is allowed and the order dated 18.5.2005 declaring the vacancy is set at naught.

9. A certified copy of this judgment shall be given to the learned Standing Counsel to forward it to the learned Advocate General and State U.P. Law Commission for compliance of the judgment of Milap Chandra Jain (supra) within a period of six months since the judgment pertains to the year 2001.

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