

Shafiq Ahmad Vs. Additional District and Sessions Judge and ors.

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Court : Allahabad

Decided On : Dec-13-2002

Reported in : 2003(2)AWC1179

Judge : S.P. Mehrotra, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 2(1) and 2(2); [Constitution of India](#) - Article 226; [Provincial Small Cause Courts Act, 1887](#) - Sections 25; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 7, 96 to 112 and 115 - Order 41, Rules 1 and 22 - Order 45 - Order 50, Rule 1

Appeal No. : C.M.W.P. No. 942 of 1983

Appellant : Shafiq Ahmad

Respondent : Additional District and Sessions Judge and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : S.A. Shah, Adv.

Disposition : Petition allowed

Judgement :

S.P. Mehrotra, J.

1. This writ petition under Article 226 of the [Constitution of India](#) has been filed by the petitioner, inter alia, praying for quashing the order dated 21.9.1982 passed by 1st Additional District and Sessions Judge, Bijnor (respondent No. 1) and also partly quashing the order dated 19.3.1982 passed by Judge, Small Cause Court, Bijnor (respondent No. 2) to the extent that the shop was constructed in 1976 and the provision of Section 2 (f) of the U. P. Act No. XIII of 1972 was attracted to the shop in question.

2. The disputes relates to a shop situated in Agarwal Dharmshala, Station Road, Nagina, district Bijnor. The said shop is hereinafter referred to as 'the disputed accommodation.'

3. The respondent No. 3 filed a suit in the Court of Judge, Small Causes, inter alia, praying for decree of ejectment, arrears of rent and the mesne profits against the petitioner in respect of the disputed accommodation. The said suit was registered as Suit No. 23 of 1981.

4. It was alleged by the respondent No. 3 in the said suit that the respondent No. 3 was a registered institution and the petitioner was a tenant in the disputed accommodation on monthly rent of Rs. 30 ; and that the petitioner paid rent upto 30.6.1980 ; and that the rent with effect from 1.7.1980 was due from the petitioner ; and that the disputed accommodation was constructed in the year 1976, as such, the provisions of the U. P. Act No. XIII of 1972 (in short 'the Act') were not applicable to the disputed accommodation ; and that the respondent No. 3 gave a notice dated 15.10.1982 to the petitioner, and the petitioner gave incorrect reply to the said notice.

5. The petitioner filed his written statement in the said suit. It was, inter alia, alleged by the petitioner in the written statement that the tenancy of the petitioner was tri-monthly, and the respondent No. 3 always realized rent for three months of which the petitioner had got receipts : and that the petitioner regularly paid tri-monthly rent to the respondent No. 3 ; and that when the petitioner tendered rent to the respondent No. 3, then the respondent No. 3 refused to accept the same and sent a notice to the petitioner making incorrect allegations ; and that the petitioner sent reply to the said notice, and also sent rent by money order which

was refused by the respondent No. 3 ; and that the allegation of the respondent No. 3 that the disputed accommodation was constructed in the year 1976, was incorrect and baseless ; and that the disputed accommodation was 50 years old ; and that in the year 1976 the respondent No. 3 got minor repairs done in the disputed accommodation, hence, the provisions of the aforesaid Act were applicable to the same.

6. The learned Judge Small Causes Court, Nagina (respondent No. 2) by his Judgment and decree dated 19.3.1982 (Annexure-4 to the writ petition) dismissed the said suit filed by the respondent No. 3. It was, inter alia, held by the respondent No. 2 that in view of the provisions of Section 2 (f) of the Act as well as in view of the fact that the disputed accommodation was constructed in the year 1976, the provisions of the Act were not applicable to the disputed accommodation. It was, inter alia, further held by the respondent No. 2 that firstly, the respondent No. 3 (plaintiff) had failed to prove that the petitioner (defendant) was defaulter in payment of rent, and secondly, the petitioner deposited the entire arrears of rent and the cost of the suit on the first day of hearing, as such, the suit was liable to be dismissed.

7. The respondent No. 3 thereupon, filed revision being Civil Revision No. 138 of 1982 under Section 25 of the Provincial Small Causes Court Act.

8. The learned 1st Additional District and Sessions Judge, Bijnor (respondent No. 1) by his judgment and order dated 21st September, 1982 (Annexure-5 to the writ petition) allowed the said revision, set aside the said judgment and decree passed by the respondent No. 2, and decreed the said suit of the respondent No. 3 for ejectment, arrears of rent and mesne profits in respect of the disputed accommodation.

Thereafter, the petitioner filed the present writ petition.

Counter-affidavit and rejoinder-affidavit have been exchanged between the parties in this case.

9. I have heard learned counsel for the parties and perused the record. Learned counsel for the petitioner has made the following submissions :

(1) The provisions of Section 2(1) (f) of the Act were not applicable to the present case, and the disputed accommodation could not be exempt from the purview of the Act on the basis of the said provision.

(2) The respondent No. 2 as well as the respondent No. 1 acted on pure assumptions and they did not at all consider the evidence on record in concluding that the disputed accommodation was constructed in the year 1976, and the provisions of the Act were not applicable to the disputed accommodation. Neither the respondent No. 2 nor the respondent No. 1 considered the evidence on record, or the provisions of Explanation 1 to Section 2 (2) of the Act in concluding that the disputed accommodation was constructed in the year 1976. The findings of the courts below in this regard was perverse and illegal. Reliance is placed by the learned counsel on the following cases :

(a) Ram Swaroop Rai v. Smt Leelawati, 1980 ARC 466 (SC).

(b) Om Prakash Gupta v. Digvijendra Pal Gupta, 1982 ARC 391 (SC).

(c) Virendra Prasad Nigam u, Kalika Swaroop, 1999 (4) AWC 3597 ; 1999 (2) ARC 55.

(d) Shamshed Khan v. Special/Additional District Judge, Saharanpur, 1999 (2) ARC 745.

(3) The observation of the revisional court (respondent No. 1) in Paragraph No. 7 of the judgment that the petitioner (defendant in the suit) had not challenged the findings regarding the disputed accommodation having been constructed in the year 1976 before the revisional court was not correct. Learned counsel for the petitioner has referred to Paragraph Nos. 14 to 18 of the writ petition wherein it has been asserted that the learned counsel for the petitioner had made submissions before the revisional court challenging the said findings. Learned counsel for the petitioner has further submitted that the observation of the revisional court in Paragraph No. 7 of its judgment that the petitioner (defendant in

the suit) had not filed cross objection, was misconceived. There was no provision in the [Provincial Small Cause Courts Act, 1887](#) under which the petitioner could prefer cross objection or cross appeal in a revision under Section 25 of the Provincial Small Cause Courts Act, Further, in view of Section 7 of the Code of Civil Procedure, 1908, the provisions of Sections 96 to 112 and Section 115 of the Code of Civil Procedure are not applicable to the courts constituted under the provisions of the [Provincial Small Cause Courts Act, 1887](#). Again, in view of the provisions of Order L of the Code of Civil Procedure, the provisions of Orders XII to XLV of the Code of Civil Procedure are not applicable to the courts constituted under the provisions of the [Provincial Small Cause Courts Act, 1887](#). As such, under the said provisions of the Code of Civil Procedure also, no cross objection or cross appeal could be filed by the petitioner before the revisional court under Section 25 of the [Provincial Small Cause Courts Act, 1887](#). Hence, in any view of the matter, no cross objection or cross appeal could be filed by the petitioner before the revisional court under Section 25 of the [Provincial Small Cause Courts Act, 1887](#).

10. Learned counsel for the respondent No. 3 has made the following submissions :

(1) The provisions of Section 2 (1) (f) of the Act were applicable to the disputed accommodation, as such, the disputed accommodation was exempt from the provisions of the Act.

(2) There was evidence on record to show that the disputed accommodation was constructed in the year 1976. Learned counsel has referred to oral statements recorded in the said suit, copies whereof have been filed as Annexure-C.A. 1 to C.A. 3 to the counter-affidavit. He has also referred to plans for construction sanctioned in the year 1976 and 1980, photostat copies whereof have been filed Annexures-C.A. 4 and C.A. 5 to the counter-affidavit. Learned counsel has contended that in view of the evidence on record, findings have been recorded by the courts below regarding the disputed accommodation having been constructed in the year 1976, and the same being finding of fact, no interference is called for in the writ Jurisdiction under Article 226 of the [Constitution of India](#). As the disputed

accommodation was constructed in the 1976, the contention proceeds, the provisions of the Act were not applicable to the disputed accommodation. Reliance is placed by the learned counsel for the respondent No. 3 on a decision in Subhas Chand Bharati v. Additional District Judge, Court No. 3 Saharanpur and Ors., 2002 (3) AWC 2166 : 2002 (2) ARC 23.

(3) Findings regarding the date of construction of the disputed accommodation had not been challenged before the revisional court by the petitioner, and the revisional court was right in making observations which were made in Paragraph No, 7 of its Judgment.

11. Coming to the first contention raised on behalf of the petitioner, the provisions of Section 2 (1) (f) were not attracted to the present case and the disputed accommodation could not be exempted from the purview of the Act on the basis of the said provision. It will be pertinent to reproduce Section 2 (1) (f) of the Act :

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

(a) to (e)

(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 persons having dealing with it in the ordinary course of business

12. Analysis of this provision shows that the following conditions are required :

(1) The building in question has been built and held by a society registered under the Societies Registration Act, 1860, or by a co-operative society, company or firm.

(2) The building in question is intended solely

- (i) for the own occupation of such society or cooperative society or company or firm, or
- (ii) for the occupation of any of the officers or servants of such society or cooperative society or company or firm, whether on rent or free of rent, or
- (iii) as a guest house, by whatever name called, for the occupation of persons dealing with such society or co-operative society or company or firm in the ordinary course of business.

13. Let us now examine as to whether the aforesaid ingredients of Section 2(1) (f) of the Act are satisfied in the present case or not? In Paragraph No. 1 of the plaint (Annexure-1 to the writ petition), it has been alleged by the respondent No. 3 (plaintiff in the suit) that the respondent No. 3 was a registered society. Further, in the statements of the witnesses P.W. 1. P.W. 2 and P.W. 3 (Annexures-C.A. 1, C.A. 2 and C.A. 3 to the counter-affidavit), it is stated that the respondent No. 3 was a registered society. A perusal of the judgment dated 19.3.1982 (Annexure-4 to the writ petition) passed by respondent No. 2 shows that the respondent No. 3 (plaintiff in the suit) had filed a copy of the certificate of registration in respect of the respondent No. 3 which was marked as Exhibit 4 on the record.

In view of the said evidence, the conclusion of the respondent No. 2 that the respondent No. 3 was a registered society under the Societies Registration Act appears to be correct. Therefore, the first ingredient as mentioned above in Section 2 (1) (f) of the Act is satisfied in the present case.

14. However, as regards the second ingredient for the applicability of Section 2 (1) (f), the same was not satisfied in the present case. The said ingredient deals with any of the purposes for which, the building in question is intended to be used. The building in question must be intended to be used solely for any of the said purposes. Accordingly, the building in question must be intended to be used solely for the own occupation of the society or co-operative society or company or firm, or for the occupation of any of the officers or servants of the said society or co-operative society or company or firm, whether on rent or free of rent, of as a guest house, by whatever name called, for the occupation of persons having dealing with

such society or co-operative society or company or firm in the ordinary course of business.

15. In the present case, the disputed accommodation was not being utilized for any of the said purposes contemplated in the second ingredient, as mentioned above, for the applicability of Section 2 (1) (f) of the Act. The disputed accommodation was neither being utilized for the own occupation of the society or cooperative society, or company or firm, nor was the disputed accommodation being utilized for the occupation of any of the officers or servants of such society or co-operative society or company or firm, whether on rent or free of rent, nor was the disputed accommodation being utilized as guest house for the occupation of persons having dealing with such society or co-operative society or company or firm in the ordinary course of business. In fact, the disputed accommodation was let out to the petitioner as tenant. Hence, the second ingredient, as mentioned above, for the applicability of Section 2 (1) (f) of the Act was not satisfied in the present case. As such, the provisions of Section 2 (1) (f) of the Act were not applicable to the disputed accommodation, and the disputed accommodation could not be said to be exempted from the purview of the Act on the basis of the said provision. Thus, the learned Judge, Small Causes Court, Nagina (respondent No. 2) was not correct in holding that the disputed accommodation was exempt from the purview of the Act in view of the provisions of Section 2 (1) (f) of the Act, and the finding to the said effect recorded in the Judgment dated 19.3.1982 was illegal. The revisional court (respondent No. 1) also acted illegally in not considering this aspect.

16. Coming to the second contention raised on behalf of the petitioner, the said contention revolves around the provisions of Section 2 (2) of the Act and Explanation 1 thereto. The said provision as it existed at the relevant time is quoted below :

'2, Exemption from operation of Act.--(1)

(2) Except as provided in Sub-section (5) of the Section 12, Sub-section (1A) 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.

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 a 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 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) '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.'

From the aforesaid provision as it existed at the relevant time, it is evident that the building was exempt from the provisions of the Act (except the provisions of the Act specifically mentioned in Sub-section (2) of Section 2 of the Act), during the period of ten years from the date on which the construction of the said building was completed. Clause (a) of Explanation I makes a deeming provision for determination of the date on which the construction of the building would be deemed to have been completed. Analysis of the said Clause (a) is as follows :

(1) (i) The construction of a building shall be deemed to have been completed on the date on which completion thereof is reported to the local authority having jurisdiction.

(ii) The construction of a building shall be deemed to have been completed on the date on which completion thereof is otherwise recorded by the local authority having jurisdiction.

(2) In the case of a building subject to assessment, the construction of such building shall be deemed to have been completed on the date on which the first assessment thereof comes into effect.

(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 the date on which the construction of the building shall be deemed to have been completed.

(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), the date on which the building is actually occupied for the first time will be the date on which construction of the building shall be deemed to have been completed. Such occupation should not be merely for the purposes of supervising the construction or guarding the building under construction.

17. It is evident that the date on which the construction of a building is completed is to be determined on the basis of aforesaid deeming provision. Such determination is to be done on the basis of report/record, or assessment as mentioned in the said provision, or the earliest of such dates if the dates are different. However, in case, there is no such report or record or assessment, then the date of actual occupation of the building for the first time will be the date on which the construction of the building shall be deemed to have been completed.

18. The provisions of Sub-section (2) of Section 2 of the Act and Explanation 1 thereto have been the subject-matter of various decisions of the Apex Court.

19. In Ram Swaroop Rai (supra) their Lordships of the Supreme Court laid down as follows (Paragraph 6 of the said A.R.C.) :

'..... An analysis of Explanation 1 to Section 2 (2) of the U. P, Act Indicates :

(1) Where a building has not been assessed, it is the date on which the completion was reported to, or otherwise recorded, by the local authority having jurisdiction.

(2) Where a building has been assessed, it is the date on which the first assessment comes into effect :

Provided that if the date on which the completion was reported to, or otherwise recorded by, the local authority is earlier than the date of the first assessment, the date of completion will be such earlier date. (3) Where there is no report, record or assessment, it is the date of actual occupation for the first time (not being an occupation for the purpose of supervising the construction or guarding the building under construction).'

20. In Om Prakash Gupta v. Digvijendra Pal Gupta (Supra), their Lordships of the Supreme Court laid down as follows (Paragraph 6 of the said A.R.C.) :

'As a second limb to the first argument, it is contended that the building will be deemed to have been constructed, on the date of occupation on 16th of June, 1967 and not on the date of the first assessment, and that if this be so, the appellant would be entitled to the benefit of Section 39 of the Act on the date when the revision came to be decided by the High Court on 23rd of March, 1978. In order to appreciate this argument it will be expedient to refer to Explanation I to Sub-section (2) of Section 2, which has already been extracted. Explanation I provides that the building shall be deemed to have been completed on the date on which completion thereof is reported to or otherwise recorded by the local authorities having jurisdiction, and in case of a 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 for the first time. A perusal of Explanation I makes it abundantly clear that the occupation

would be taken to be the date of completion of the construction only when there is no report or record of the completion of the construction or no assessment thereof. If there is an assessment, as in the present case, it is, it will be the date of the first assessment which will be deemed to be the date of completion of the construction, and in that view of the matter the building had not become more than ten years' old on the date when the revision came to be decided by the High Court, and therefore, there was no question of giving the benefit of Section 39 of the Act to the appellant.'

21. In *Vindhyachal Prasad Jaiswal v. VIIth Additional District Judge, Varanasi and Ors.*, 1995 (1) ARC 318 (SC), their Lordships of the Supreme Court after extracting the provisions of Section 2 (2) of the Act, and Explanation I thereto, laid down as follows (Paragraph 3 of the said A.R.C.) :

'..... A reading of these provisions clearly indicates 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., Explanation I specifies as to when the building for the purpose of Section 2 is completed. It postulates, firstly, that where there is a report of completion of the construction of the building the period of ten years should start from the date on which the report was made. Equally, if recorded in the records of the local authority from the date of such recording. In its absence, the second method of computation of the period is the assessment of the building to property tax under the Municipal Law. The date on which the first assessment thereof came into effect would be the crucial date. If there are different assessments on different dates in that behalf then earliest date is the date for the computation of the period of ten years. In the absence of either of these three methods, the last method is the date on which the building was actually occupied. If there are different dates of completion of construction of different portions or parts of a building by operation of the proviso and if separately occupied the computation would be in the aforesaid manner. If the building is wholly or substantially demolished and reconstructed, it would be a new construction. If a substantial addition was made to an existing one, being minor, part of the building shall be deemed to be constructed on the date of the completion of the said addition.'

22. In *Virendra Prasad Nigam v. Kalika Swaroop* (Supra), learned single Judge of our court referred to the aforesaid propositions laid down in *Vindhyachal Prasad Jaiswal's* case (Supra) and held as follows (Paragraph 12 of the said A.R.C.) ;

'In the present case, court below has simply referred to and relied upon the building plan, cash memos, bills, and the report of the Amin and, has held that the building in question was an old construction. The court below has totally ignored the provisions of Section 2 of the Act, referred to above. The findings recorded by the court below on the question of age of the construction is thus, manifestly erroneous and illegal and is liable to be quashed. Since the question relating to the age of construction is to be decided, in accordance with the provisions of Section 2 of the Act, the case is bound to be remitted to the court below for decision afresh.'

23. In *Shamshed Khan v. Special/ Additional District Judge, Saharanpur* (Supra), learned single Judge of our court laid down as follows (Paragraphs 5 and 6) of the said A.R.C.) :

'5. Section 2 (2) of the Act provides exemption from the operation of the Act to a building during 10 years from the date of its construction. Explanation I of Section 2 (2) provides a legal fiction for finding out the date of completion of a building. So far as, it is relevant here, it says that the building shall be deemed to have been completed on the date on which the first assessment thereof comes into effect. The revisional court should have applied its mind on what date of assessment has come into effect.'

'6. The writ petition is allowed. The matter is sent back for re-decision in accordance with observation made above. Parties will appear before the authority concerned on 12th July, 1999.'

24. In *Ram Siuaroop Rai's* case (Supra), it was also laid down as follows (Paragraph 5 of the said A.R.C.) :

'..... Nothing in the rent control legislation shall apply to a building 'during a period of ten years from the date on which its construction is completed.' The first thing that falls to be emphasised is that in regard to all buildings the Act applies save

where this exemption operates. Therefore, the landlord, who seeks exemption must prove that exception. The burden is on him to make out that notwithstanding the rent control legislation, his building is out of its ambit. It is not for the tenant to prove that the building has been constructed beyond a period of ten years, but it is for the landlady to make out that the construction has been completed within ten years of the suit. This is sensible not merely because the statute expressly states so and the setting necessarily implies so, but also because it is the landlady who knows best when the building was completed, and not the tenant. As between the two, the owner of the building must tell the Court when the building was constructed and not the tenant thereof. Speaking generally, it is fair that the onus of establishing the date of construction of the building is squarely laid on the landlord, although in a small category of cases where the landlord is a purchaser from another, he will have to depend on his assignor to prove the fact.' ,

25. In Ram Swaroop Rai's case (supra) their Lordships of the Supreme Court further laid down as follows (Paragraphs 8 and 10 of the said A.R.C.) :

'8. The best testimony is the municipal record about the completion of the building and the verification by the municipal authorities as to whether a new construction has come into being or an old construction has been remodeled and, if so when exactly the completion took effect

The oral evidence in the case, apart from what we have set out, is inconsequential, being second hand testimony.'

10. '..... That statute makes it clear that reliance upon the municipal records rather than on the lips of witnesses, is indicated to determine the date of completion and the nature of the construction. This statutory guideline has been wholly overlooked and the burden lying on the landlord has not been appreciated. The result is that the eviction order has to be demolished.'

Thus, the decision of the Apex Court in Ram Swaroop Rai's case (Supra) lays down that speaking generally, the onus of establishing the date of construction of the building lies on the landlord. Further, the best evidence for proving such date is the municipal records, and not oral evidence.

It follows from the said decision of the Apex Court in Ram Swaroop Rat's case (supra) that if 'report, record or assessment' mentioned in Clause (a) of Explanation I is available, that will constitute the best evidence for establishing the date of construction of the building, and the oral evidence in such cases will not be material. However, in case, no such 'report, record or assessment' is available then the date on which the building is actually occupied becomes relevant, and such date can be proved by other evidence including oral evidence.

26. Keeping in view the aforesaid propositions laid down in various cases, let us examine as to whether the courts below in the present case have decided the question of date of construction of the disputed accommodation in accordance with law or not.

27. A perusal of the Judgment and order dated 19.3.1982 passed by the respondent No. 2 shows that the respondent No. 2 without discussing the evidence on record accepted the version of the respondent No. 3 that the disputed accommodation had been constructed in the year 1976,

28. The respondent No. 1 in its judgment and order dated 21.9.1982 held that the finding of the respondent No. 2 that the disputed accommodation had been constructed in the year 1976 was finding of fact, and the same could not be challenged in revision under Section 25 of the [Provincial Small Cause Courts Act, 1887](#). The respondent No. 1 further held that the petitioner had not filed any cross-objection and had not challenged the said finding before the revisional court. The respondent No. 1 further observed that there were documents to support the case of the respondent No. 3. Hence, the respondent No. 1 concluded that it was clear that the disputed accommodation was constructed In the year 1976.

29. It will, thus, be seen that neither the respondent No. 2 nor the respondent No. 1 discussed the evidence on record. Both, the respondent No. 2 as well as the respondent No. 1, accepted the version of the respondent No. 3 regarding the disputed accommodation having been constructed in the year 1976 without any discussion of the evidence on record. Further, neither the respondent No. 2 nor the respondent No. 1 decided the question of date of construction of the disputed accommodation keeping in view the provisions of Sub-section (2) of Section 2 of

the Act and Explanation 1 thereto.

30. It was incumbent on the part of the courts below to consider and decide the question of date of construction of the disputed accommodation after analyzing the evidence on record and keeping in view the provisions of Sub-section (2) of Section 2 of the Act and Explanation 1 thereto as well as proposition laid down in various judicial decisions. The approach of the learned courts below in deciding the question of date of construction of the disputed accommodations was (sic) illegal.

31. Learned counsel for the respondent No. 3 has contended that there was evidence on record, namely, the oral evidence and the sanctioned plans on the basis of which the learned courts below concluded that the disputed accommodation had been constructed in the year 1976, and the said finding of the learned courts below being finding of fact should not be interfered with in the writ petition.

32. The contention of the learned counsel for the respondent No. 3 cannot be accepted. As noted above, neither the respondent No. 2 nor the respondent No. 1 discussed the evidence on record in concluding that the construction of the disputed accommodation had been made in the year 1976. The learned courts below have not examined the evidence on record keeping in view the provisions of Sub-section (2) of Section 2 of the Act and Explanation I thereto. The learned courts below have not examined as to whether there was no 'report, record or assessment' as contemplated in Clause (a) of Explanation I to Sub-section (2) of Section 2 of the Act. The learned courts below have not examined the question as to whether the oral evidence and the sanctioned plans relied upon by the respondent No. 3 would constitute the relevant evidence for deciding the question of date of construction of the building keeping in view the principles laid down in various judicial decisions referred to above. Thus, the finding of the learned courts below that the disputed accommodation had been constructed in the year 1976 is evidently illegal and perverse and can be interfered with in exercise of writ jurisdiction under Article 226 of the Constitution.

33. The decision in Subhash Chandra Bharti (supra) relied upon by the learned counsel for the respondent No. 3 has, thus, no application to the facts and circumstances of the present case. The said decision laid down that the findings recorded by the trial court that the provisions of the U. P. Act No. XIII of 1972 were not applicable to the tenancy in question, could not be interfered with by the revisional court in a revision under Section 25 of the [Provincial Small Cause Courts Act, 1887](#). It is true that normally the findings recorded by the Judge, Small Causes Court on consideration of the evidence on record would not be interfered with in the revision under Section 25 of the [Provincial Small Cause Courts Act, 1887](#). However, if the said findings of fact are not in accordance with law, the same can be interfered with in the revision under Section 25 of the [Provincial Small Cause Courts Act, 1887](#). In the present case, as noted above, the learned Judge, Small Cause Court (respondent No. 2) without discussing the evidence on record and without considering the provisions of Sub-section (2) of Section 2 of the Act and Explanation I thereto, accepted the-version of the respondent No. 3 that the disputed accommodation had been constructed in the year 1976. Such approach of the learned Judge, Small Cause Court (respondent No. 2) was not in accordance with law, and the said finding recorded by the learned Judge, Small Cause Court was vitiated and could be interfered with by the revisions! court (respondent No. 3) in deciding the revision under Section 25 of the [Provincial Small Cause Courts Act, 1887](#). The revisional court (respondent No. 1) was not correct in holding that the said findings recorded by the learned Judge, Small Cause Court (respondent No. 2) could not be challenged in revision.

34. Coming to the contention of the learned counsel for the respondent No. 3 that the finding regarding the date of construction of the disputed accommodation had not been challenged by the petitioner before the revisional court, it is noteworthy that the suit filed by the respondent No. 3 had been dismissed by the respondent No. 2 by the judgment and order dated 19.3.1982, and it was not open to the petitioner to file any revision merely against the findings recorded by the respondent No. 2 regarding the disputed accommodation having been constructed in the year 1976. It is true that under Order XLI, Rule 22 of the Code of Civil Procedure, even the respondent, in whose favour decree in the suit has been passed by the court below, may file objection in respect of the findings recorded by

the court below against the respondent in its decision. However, the provisions of Order XLI, Rule 22 of the Code of Civil Procedure are not applicable to the courts constituted under the [Provincial Small Cause Courts Act, 1887](#) as is evident from Order L, Rule 1 of the Code of Civil Procedure. The said provision, namely, Order L, Rule 1, inter alia, lays down that the provisions of Order XLI to Order XLV of the Code of Civil Procedure relating to appeals are not applicable to the courts constituted under the provisions of the [Provincial Small Cause Courts Act, 1887](#). Similarly, Section 7 of the Code of Civil Procedure inter alia provides that the provisions of Sections 96 to 112 and 115 of the Code of Civil Procedure are not applicable to the courts constituted under the provisions of the [Provincial Small Cause Courts Act, 1887](#). Hence, it is evident that it was not open to the petitioner to file any cross-objection before the revisional court against the findings recorded by the learned Judge, Small Cause Court respondent No. 2 regarding the disputed accommodation having been constructed in the year 1976. The observation of the learned revisional court (respondent No. 1) in this regard was, thus, evidently not in keeping with the correct legal position.

35. Again, the observation of the learned revisional court in Paragraph 7 of its judgment that the findings recorded by the learned Judge, Small Cause Court regarding the disputed accommodation having been constructed in the year 1976 had not been challenged before the learned revisional court was not well founded in view of the aforesaid legal position.

36. Learned counsel for the petitioner referred to Paragraph 14 of the writ petition to stress that the arguments were raised on behalf of the petitioner before the learned revisional court challenging the findings recorded by the learned Judge, Small Cause Court regarding the disputed accommodation having been constructed in the year 1976. The assertions made in Paragraph 14 of the writ petition have been disputed in Paragraph 1-6 of the counter-affidavit filed on behalf of the respondent No. 3 in the writ petition.

37. In my opinion, it is not necessary to go into the disputed question as to whether the arguments challenging the finding recorded by the learned Judge, Small Cause Court regarding the disputed accommodation having been

constructed in the year 1976. were raised on behalf of the petitioner before the learned revisional court or not. As noted above, it was not open to the petitioner to file any revision challenging the said findings, nor was it open to the petitioner to file any cross-objection in revision filed by the respondent No. 3 questioning the said findings. Hence, it is not relevant as to whether arguments were raised on behalf of the petitioner before the revisional court challenging the said findings of the learned Judge, Small Cause Court. The revision filed by the respondent No. 3 having been allowed by the learned revisional court by the said judgment and order dated 21.9.1982, it became open to the petitioner to challenge in the writ petition the said judgment and order of the learned revisional court as well as the findings recorded by the learned Judge, Small Cause Court regarding the disputed accommodation having been constructed in the year 1976.

38. In view of the aforesaid discussion, I am of the opinion that it is necessary to quash the findings recorded by the learned courts below on the question of date of construction of the disputed accommodation and remand the case to the learned Judge, Small Cause Court (respondent No. 2) for deciding afresh the question of date of construction of the disputed accommodation and the consequential question of the applicability or inapplicability of the U. P. Act No. XIII of 1972 to the disputed accommodation in the light of the observations made in this Judgment.

39. It may be pointed that in the present writ petition, the petitioner has challenged the findings recorded by the learned courts below on the question of applicability of the U. P. Act No. XIII of 1972. As noted above, the learned counsel for the petitioner has confined his arguments on that question only.

40. The findings recorded by the learned Judge, Small Cause Court that the petitioner was not a defaulter in payment of rent, is not a matter of dispute in this writ petition. As such, no interference is being made with the said findings recorded by the learned Judge, Small Cause Court in his judgment dated 19.3.1982.

41. Again, the findings recorded by the learned revisional court in its judgment dated 21.9.1982 that the notice given to the petitioner under Section 106 of the Transfer of Property Act determining the tenancy of the petitioner in respect of the

disputed accommodation, was a valid notice, has not been challenged by the petitioner in this writ petition. Hence, no interference is being made with the said findings recorded by the learned revisional court.

42. In view of the aforesaid position, the case is being remanded to the learned Judge, Small Cause Court (respondent No. 2) for deciding the question of date of construction of the disputed accommodation and the consequential question of applicability or Inapplicability of the U. P. Act No. XIII of 1972.

43. In case, the learned Judge, Small Cause Court (respondent No. 2) comes to the conclusion that the U. P. Act No. XIII of 1972 is applicable to the disputed accommodation, the suit filed by the respondent No. 3 would be liable to be dismissed in view of the aforesaid finding that there was no default by the petitioner in payment of rent. On the other hand, in case, the learned Judge, Small Cause Court (respondent No. 2) comes to the conclusion that the U. P. Act No. XIII of 1972 was not applicable to the disputed accommodation, the suit filed by the respondent No. 3 would be liable to be decreed in view of the aforesaid finding that the notice given to the petitioner under Section 106 of the Transfer of Property Act determining the tenancy of the petitioner in respect of the disputed accommodation was a valid notice.

44. In the result, the writ petition is allowed. The Judgments and orders of the learned courts below are quashed subject to the aforesaid observations. The case is remanded to the learned Judge, Small Cause Court (respondent No, 2) for a fresh decision in the light of the observations made in this judgment.

45. However, in the facts and circumstances of the case, there will be no order as to costs.