

Rajeshwar Dayal Vs. Vith Additional District Judge and ors.

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Court : Allahabad

Decided On : Nov-30-2004

Reported in : 2005(1)ARC107

Judge : Anjani Kumar, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 2(2); Uttar Pradesh Municipalities Act - Sections 185 and 307; [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petition No. 39577 of 2000

Appellant : Rajeshwar Dayal

Respondent : Vith Additional District Judge and ors.

Advocate for Def. : P.K. Jain, S.C.

Advocate for Pet/Ap. : R. Dwivedi and ;V.S. Dwivedi, Advs.

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. This writ petition, under Article 226 of the [Constitution of India](#), challenges the judgment and decree of the trial Court dated 6.4.1998 decreeing the suit filed by

the respondent-landlord for ejectment and arrears of rent and the order passed by the revisioanl Court dated 28th August, 2000.

2. The landlord filed suit for arrears of rent and ejectment of the petitioner-tenant from the accommodation in question with the allegations that since provisions of U.P. Act No. 13 of 1972 are not applicable to the accommodation in question and as the accommodation is a new construction and has not completed ten years of its construction, therefore, is exempted under Section 2 (2) of Act No. 13 of 1972 from the operation of the Act. The suit is filed after determining the tenancy of the petitioner-tenant. The tenant has taken defence that it is correct to say that provisions of Act No. 13 of 1972 are not applicable to the accommodation in question. The tenant has taken the defence that in fact the construction of building was completed in the year 1984 and he is tenant since then but in any case in the alternative the case taken says about a report (Annexure-2 to the counter affidavit) of Rakesh Kumar, a Draftsman of Local Body, who has given report to the effect that on 29th August, 1989 he submitted a report that the construction of the building has been completed. It is, therefore, pleaded by the tenant that since more than ten years have elapsed since the building has been completed, therefore, examination contemplated under Section 2 (2) will not apply to the building and the suit is not maintainable because none of the grounds mentioned under Section 2 (2) of the Act has been shown before the trial Court. The trial Court has mentioned the date of filing the suit as 3rd September, 1993 and the report of Rakesh Kumar, which is stated above, is annexed as annexure to the counter affidavit filed before the trial Court wherein it is stated that on 26th September, 1984 it was found that the plaintiff, Duli Chand, has constructed that house which is contrary to Section 185/307 of the U.P. Municipalities Act. This report is submitted by Sri Rajendra Prasad, Junior Engineer. Before the trial Court the tenant has relied upon a decision of Apex Court relied upon a decision of Apex Court reported in, 1998 ARC (2) 617, Saleem v. District Judge, Muzaffarnager and Ors. wherein the Apex Court, giving reference to an earlier decision of the Apex Court reported in JT 1995 (33) SCC 186: 1996 SCFBRC 172, Surendra Kumar Jain alias Sunni v. Shanti Swaroop Jain and Ors. and considering explanation 1 to Sub-section (2) of Section 2 of the Act, has held that on the facts of that case it was found that the municipal authorities have given notice of assessment on 15th

November 1977 and the date of assessment was thereafter. It was held that in such a situation the earliest of the dates would be relevant for Explanation 1 to Sub-section (2) of Section 2 of the Act and as that aspect was not considered by the High Court the proceedings were remanded for reconsideration. We may note that after remand the High Court came to the conclusion that the construction could be said to have been completed when the Municipal authority recorded such fact of construction and gave notice for assessment of tax. The said decision was again brought in challenge before this Court and that decision was upheld in the case of Surendra Kumar Jain v. Shanti Swarup Jain and Ors., wherein once again Justice G.N. Ray speaking for the Court held that as the Municipality had issued the letter on 30.1.1978 to the respondents and even the building constructed was inspected by the Section Head Clerk of the Municipality on 30.1.1978 the first of the dates on which the Municipality had given such a notice would be relevant for the purpose of Explanation 1.

The Apex Court on the facts of the case of Saleem has held as under:-

'In fact, the present controversy is squarely covered against the appellant by a decision of three Judge Bench of this Court in case of Om Prakash v. Dig Vijendrapal Gupta. Considering the very same explanation Justice Misra speaking for the Bench in Paragraph G of the report observed that a perusal of Explanation 1 makes it abundantly clear that the date of 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. It is also to be noted that in the said decision the argument was that the building was occupied prior to the first date of assessment. That evidence was not held to be relevant for deciding the question of applicability of Explanation 1 as prior occupation by the tenant was not mentioned by the Legislature as one of the requirements for applicability of . Explanation 1 to Sub-section (2) of Section 2 of the Rent Act.

Consequently, the submission of learned Counsel for the appellant that even dehors the explanation and the conditions mentioned therein prior occupation of the premises by the tenant should be relevant cannot be countenanced. Even that apart reliance placed by the learned Counsel for the appellant on the extract of sanction of water connection by the Municipality especially column 4 thereof wherein the word house is mentioned, is of no avail to her as water connection might have been taken on 1.11.1973 but that by itself would not show that the construction of the suit shop had come into existence on that date on the contrary, the document relied upon by the respondent to which we have already referred clearly indicates that the premises continued to be open plot till 31.3.1982. It is therefore, obvious that the suit premises had come into existence some where in the beginning of the financial year 1982. However, the date of actual occupation of the shop would pale into insignificance in view of express terminology of Explanation 1 to Sub-section (2) of Section 2 of the Rent Act as clearly ruled by the three Judge Bench of this Court in the case of Om Prakash Gupta (supra).'

3. Learned Counsel for the petitioner has further relied upon a decision reported in 1982 (1) ARC 451, Irshad Ali v. The Xth Addl. District Judge, Kanpur and Anr., wherein it has been held that in my view, this contention is not correct. There is nothing in the provision to suggest that the reporting should be only by an official of the local authority. There can be little doubt that the house owner is in the best position to report about the completion of a building. It is not necessary to enter into the controversy as to whether such a reporting may something be taken recourse to by way of fraudulent proceedings also. In the facts of the instant case, at least such has not been the allegation and there has been no doubting of the genuineness of Ext. 7 in the facts of the instant case.

4. On consideration of the aforesaid two decisions learned Counsel for the petitioner submitted that irrespective as to who has reported about completion of building for the purpose of Explanation 1 to Sub-section (2) of Section 2, the trial Court as well as the revisional Court has considered the case that even assuming the stand of the tenant to be correct, though not admitted by the landlord, even in that circumstance on the date of filing the suit i.e. 1st September, 1983 the building cannot be said to have been completed its construction of ten years. In

these circumstances the contention of the tenant has rightly been repelled by the trial Court as well as the revisional Court.

5. No other point was argued.

6. In view of the above discussion this writ petition has no merit. It is accordingly dismissed.

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