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Court : Allahabad

Decided On : Apr-21-2005

Reported in : 2005(4)AWC3628

Judge : Anjani Kumar, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 2 and 20(4); [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 30672 of 2005

Appellant : Har Prasad

Respondent : Kamla Devi

Advocate for Def. : M.K. Gupta, ;V.K. Gupta and ;Anil Singh Jadon, Adv.

Advocate for Pet/Ap. : Pramod Bhardwaj, Adv.

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. This writ petition filed by the petitioner-tenant under Article 226 of the [Constitution of India](#) challenges the order passed by the trial court dated 6.12.2004 and the order passed by the revisional court dated 24.3.2005.

2. The facts leading to filing of the present writ petition are as under :

That the petitioner who is the tenant of the accommodation No. 17/41 situated at Padaw Jaiganj, district Aligarh was served with a notice to quit the shop in question on the ground that the petitioner is in arrears of rent and hence not paid the same inspite of the notice being served to quit, therefore, the tenancy of the petitioner stood terminated and the suit is filed. Before the trial court the landlord plaintiff applicant specifically pleaded that the provisions of U. P. Act No. 13 of 1972 (in short the Act') are not applicable to the accommodation in question. The petitioner contested the suit by filing the written statement and disputed the claim of the landlord that the provisions of 'the Act' are not applicable. The petitioner's case was that the provisions of the Act are applicable to the accommodation in question and therefore, the petitioner is entitled to benefit of Section 20(4) of the Act. The trial court on the basis of the material on record recorded the finding that the provisions of the Act are not applicable to the shop in question, therefore, the petitioner is not entitled to the benefit of Section 20 (4) of the Act. Thus, the trial court decreed the suit. Aggrieved thereby the petitioner preferred a revision before the revisional court and argued the same points as were argued before the trial court. The revisional court after discussing the evidence on record and after considering the arguments advanced by petitioner-tenant affirmed the findings arrived at by the trial court to the effect (i) that the provisions of 'the Act' are not applicable to the shop in question (ii) petitioner-tenant is defaulter of payment of rent, therefore, the view taken by the trial court in decreeing the suit do not warrant any interference. The suit has rightly been decreed by the trial court and does not warrant any interference. The only point argued before this Court by learned Counsel for the petitioner is that the view taken by the trial court and affirmed by the revisional court regarding applicability of the U. P. Act No. 13 of 1972 is erroneous in as much as there is abundance of evidence on record which has been misread by the trial court as well as the revisional court whereby it is apparent that the shop in question was pre-January, 1985 construction, therefore, on the date when the suit was filed, the shop has already completed more than ten years of its construction. The Explanation 1 to Section 2 of the Act. which reads as under:

2. Explanation 1.--(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 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....'

3. Learned counsel for the petitioner relied upon the aforesaid provision of Explanation 1 (a) to Section 2 and submitted that in view of the fact that there is material on record that the shop in question was first assessed to tax by the local body concerned, namely Nagar Maha Palika in January, 1985 pre-supposes that the construction was pre-January, 1985 or in any case as enshrined in the aforesaid Explanation 1 (a) to Section 2 of the Act the date when the building was first reported or recorded by the local body concerned that being January, 1985 on the date when the suit was filed the shop in dispute has already completed more than ten years of construction therefore, on that date the building was covered by the provisions of U. P. Act No. 13 of 1972 and view to the contrary taken by the trial court suffers from manifest error of law. This argument is completely in ignorance of the fact that the trial court as well as the revisional court has discussed the evidence on record that after January, 1985 and before the premises was let out to the petitioner the four shops in the building were demolished and reconstructed and reshaped into three shops. This reconstruction of the shop in dispute, as the shop in dispute is one of the three shops, was done in sometime 1988 after getting the map duly sanctioned by the local body concerned. That the petitioner was inducted as tenant in the year, 1991, the suit was filed in the year, 2000, therefore, the view taken by the trial court and affirmed by the revisional court that the provisions of U. P. Act No. 13 of 1972 are not

applicable to the shop in dispute in my opinion, does not suffer from any error, as suggested by learned Counsel for the petitioner.

4. Learned counsel for the petitioner tries to demonstrate that the findings recorded by the trial court and affirmed by the revisional court are perverse and in his attempt to demonstrate this, learned Counsel for the petitioner invited the attention of the Court to the evidence on record. But in view of the law laid down by the Apex court in a case in *Ranjeet Singh v. Ravi Prakash*, 2004 (2) AWC 1721 (SC) : 2004 (1) ARC 613, this Court do not have any jurisdiction to interfere with the findings and reappraise the evidence on record in exercise of powers under Article 226 of the [Constitution of India](#). As already discussed the petitioner has miserably failed to demonstrate that the findings recorded by the trial court and affirmed by the revisional court suffer from any manifest error of law, the view taken by the trial court and affirmed by the revisional court that the provisions of U. P. Act No. 13 of 1972 are not applicable to the shop in question, does not warrant any interference by this Court under Article 226 of the [Constitution of India](#).

5. Lastly, it is submitted that the petitioner-tenant is carrying on business from the accommodation in question for sometime, therefore, he may be granted some reasonable time to vacate the same.

6. Considering the submission made by learned Counsel for the petitioner and facts and circumstances of the present case. I direct that the petitioner shall not be evicted pursuant to the decree of eviction till 31st October, 2005 provided :

(1) petitioner furnishes an undertaking before the prescribed authority within one month from today that he will hand over peaceful vacant possession to the landlady on or before 31st October, 2005 ; and

(2) petitioner pays to the landlady or deposits the entire arrears of rent/damages, if not already deposited before the prescribed authority, at the rate of rent till date within one month from today and continues to pay or deposits the same by first week of every succeeding month so long he remains in possession or till 31st October, 2005, whichever is earlier. The landlady will be entitled to withdraw the amount so deposited.

7. In the event of default of any of the conditions referred to above, it will be open to the respondent-landlady to get the decree executed.

8. In view of what has been stated above, this writ petition is dismissed.

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