

Rajendra Baboo Vs. Additional District Judge - lii and ors.

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Court : Allahabad

Decided On : Nov-13-2007

Reported in : 2008(1)AWC413

Judge : S.U. Khan, J.

Appellant : Rajendra Baboo

Respondent : Additional District Judge - lii and ors.

Disposition : Petition allowed

Judgement :

S.U. Khan, J.

1. Heard learned Counsel for the parties.

2. This is landlord's writ petition. Property in dispute is a shop. Respondents No. 3 and 4 Sri Niwas Gupta and Smt. Raj Kumari wife of Sri Niwas Gupta are tenants of the shop in dispute since 1985. Shop in dispute was let out through registered lease deed dated 20.3.1985 for five years at the rent of Rs. 500 per month. The lease deed was registered on 16.5.1985.

3. Landlord petitioner instituted a suit for eviction against the tenants respondents by filing plaint on 17.12.1990, which was registered as S.C.C. Suit No. 58 of 1990 before J.S.C.C., Bareilly. The suit was transferred for disposal before Additional

J.S.C.C, Bareilly. In the written agreement, it was mentioned that the shop in dispute was constructed in the year, 1980.

4. The main dispute was/is regarding date of construction of the shop in dispute. According to the landlord, the shop in dispute was assessed for the purposes of house tax for the first time In the Year 1987-88, hence U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 was not applicable, when suit was filed. On the other hand, defendants pleaded that the first assessment was made in the year 1977, hence the Act was applicable when the suit was filed. Both the parties filed extracts of Assessment Register of 1977 and 1987-88 before the courts below, copies of the said extracts are Annexure-R.A.-1 and R.A.-3 to the rejoinder-affidavit filed in this writ petition. Trial court held that the first assessment of the shop in dispute was made in 1987-88, hence the Act was not applicable. Accordingly, suit for eviction and for recovery of arrears of rent and damages for use and occupation alongwith pendente lite and future rent/damages was decreed on 4.8.1995. Against the said Judgment and decree, tenants-respondents filed S.C.C. Revision No. 36 of 1995. A.D.J.-III, Bareilly allowed the revision through judgment and order dated 11.9.1996, set aside the judgment and decree passed by the trial court and dismissed the suit. This writ petition is directed against the said judgment and order of the revisional court.

5. Revisional court held that shop in dispute was included in the assessment of 1977, hence Act was applicable thereupon on the date of filing of the suit.

6. There is no dispute about the legal position that in case shop in dispute was constructed in the year 1977, then the Act became applicable in 1987 and suit was liable to be dismissed as no ground of default etc. as mentioned under Section 20 (2) of the Act was made out, however if it is held that the shop in dispute was constructed/deemed to be constructed in 1987-88, then the Act was not applicable when suit was filed. In fact, on the buildings constructed/deemed to be constructed in April, 1985 or afterwards the Act becomes applicable after 40 years.

7. The date of construction for the purposes of applicability of the Act is to be decided in accordance with Explanation 1 (a) to Section 2 (2) of the Act, which is quoted below:

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....

8. In the assessment of 1977, the old number of the entire building which was double storied, was mentioned as 158A. In the assessment of 1977, new numbers were given, i.e., 100 for the residential portion and 100/1 for a shop, which was described as having two doors [do dar ki). The house was shown to be in the occupation of previous owner (from whom petitioner purchased). The shop was shown to be in tenancy of Asha Trading Company and the rent payable by Asha Trading Company was shown to be Rs. 110 per month. In the assessment of 1987, the old numbers were shown as 100 and 100/1 and below that a line was drawn to indicate upon and thereafter 158A was mentioned. The new number allotted was 100. In the said assessment (of 1987), on the first floor, residential accommodation was shown and on the ground floor, 8 shops were shown. Shops No. 1 to 3 were shown in the tenancy of one Vishnu Baboo. Shop No. 6 was shown in occupation of Smt. Raj Kumari tenant respondent No. 4 and the rent was shown to be Rs. 500 per month. Naresh was shown to be tenant of shop No. 4 and Rakesh Gupta of shop No. 5. Shops No. 7 and 8 were shown to be vacant. In this manner from the assessment of 1987-88, it is quite clear that several new shops had been constructed after the old assessment of 1977. Name of tenant Smt. Rajkumari along with correct rent was shown in the extracts of said assessment register. In spite of it, revisional court held that in the year 1977 there was some other shop (apart from the two door shop shown in occupation of Asha Trading Company), which was, in fact, let out to tenants respondents in 1985. The said findings are absolutely illegal and based upon no evidence. The comparison of assessments of 1977 and 1987 does not leave any doubt that at least five new shops had been constructed in between, which were assessed for the first time in 1987-88. By virtue of aforesaid Explanation to Section 2 (2) of the Act, the date of first assessment will have to be taken as date of construction, even if the shop was constructed and occupied earlier vide *Om Prakash Gupta v. Dig Vijendrapal Gupta*

AIR 1982 (2) SC 1230 and Sudha Rani Garg v. Jagdish Kumar : AIR 2004 SC5120 .

9. In the lease deed, number of the demised shop was mentioned as 158. The said number was mentioned in the figures and thereafter in words. After the description of the said number in words, the words CD. were also mentioned. From the use of the said words (CD.), revisional court inferred that it was some other shop. If in the year 1977, there had been any other shop apart from the shop occupied by Asha Trading Company, then the same would have been mentioned in the Assessment of 1977. In the said assessment, there was no mention of any other shop apart from the shop occupied by Asha Trading Company. Even in the written statement, it was not stated that the shop was in existence in or before 1977.

10. Even if for the sake of argument, it is assumed that the shop in dispute was in existence in 1977 but it escaped the assessment still by virtue of the aforesaid Explanation to Section 2 (2) of the Act, 1987-88 will have to be treated as date of construction when shop in dispute was for the first time assessed for house tax.

11. Revisional court placed reliance upon some objections filed by Smt. Kaushalya Devi, the previous owner before Municipal Board against house tax assessment in the year 1976. Under the aforesaid Explanation to Section 2 (2) of the Act, objections have got no value. In any case, there was nothing in the said objections which could establish that apart from a double door shop in occupation of Asha Trading Company any other shop was there. According to the revisional court in the objection, after 158A there is a dash and then word Avam (and) is written and thereafter there is again dash (-). The revisional court by the mere use of this word 'Avam' inferred that after 'Avam' some shop may have been mentioned. Such an inference is not warranted under law. Revisional court has mentioned that in the assessment of 1977, it was mentioned that there were two shops in respect of which tax was assessed and out of which one shop was shown in occupation of tenant Asha Trading Company, however in respect of the other shop no tenant was mentioned. The extract of the said register is Annexure-1 to the rejoinder-affidavit. In the said extract, there is absolutely no mention of any other shop apart

from the shop in possession of Asha Trading Company. In any case, in the assessment of 1987-88, eight shops have been shown and even if it is assumed that apart from the shop in possession of Asha Trading Company there was another shop in existence in the year 1977, it has not been shown that it was the same shop, which was let out to the tenants respondents. The assessment of 1977 was filed by the tenant himself. If there was any other assessment, then it could also be filed by the tenant.

12. Revisional court from the assessment extract of 1977 inferred that the said assessment contained three numbers, i.e., 158A, 100 and 100/1, hence there were three accommodations, one residential and two shops. This inference drawn by the revisional court is absolutely absurd. In the said extract, it is mentioned that old number is 158A and new numbers are 100 (residential) and 100/1 (shop having two doors).

13. As far as the argument of learned Counsel for the tenants respondents regarding necessity and absence of notice of termination of tenancy is concerned, it is not tenable. Tenancy was for a fixed period of five years entered into through registered lease deed. After expiry of the period of lease tenancy stood automatically terminated and no further notice of termination of the tenancy was required.

14. Supreme Court in Suresh Kumar Jain v. Shanti Swamp Jain : AIR 1997 SC2291 , has held that determination of deemed date of construction under U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 by appreciation and interpreting Municipal Records and assessment proceedings is not determination of fact but mixed question of law and fact and Supreme Court in an appeal under Article 136 of the Constitution of India can interfere with such findings.

15. Accordingly, writ petition is allowed. Judgment and order passed by the revisional court is set aside. Judgment and decree passed by the trial court is restored.

Tenants-respondents are granted six months time to vacate provided that:

1. Within one month from today tenants file an undertaking before the Additional J.S.C.C. to the effect that on or before the expiry of aforesaid period of six months they will willingly vacate and hand over possession of the property in dispute to the landlord-petitioner.

2. For this period of six months, which has been granted to the tenants-respondents to vacate, they are required to pay Rs. 12,000 (at the rate of Rs. 2,000 per month) as rent/damages for use and occupation. This amount shall also be deposited within one month before the Additional J.S.C.C. and shall immediately be paid to the landlord-petitioner.

3. Within one month from today tenants shall deposit entire decretal amount due till date before Additional J.S.C.C. for immediate payment to landlord-petitioner.

16. In case of default in compliance of any of these conditions tenants-respondents shall be evicted through process of Court after one month. It is further directed that in case undertaking is not filed or decretal amount and Rs. 12,000 are not deposited within one month then tenants-respondents shall be liable to pay damages at the rate of Rs. 5,000 per month since after one month till the date of actual vacation.

17. Similarly, if after complying with the above conditions shop in dispute is not vacated on the expiry of six months then since after six months till actual vacation tenants shall be liable to pay rent/damages for use; and occupation @ Rs. 5,000 per month. It is needless to add that this direction is in addition to the right of the landlord to file contempt petition for violation of undertaking and file execution application for execution of the decree.