

(1993) 04 AHC CK 0079

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 11941 of 1993

Ahmad Raza

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 17-04-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 10, 21, 22, 24, 29A(5)

Citation : (1993) 3 AWC 1358

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : R.K. Asthana, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—Heard the learned Counsel for the Petitioner and perused the impugned orders.

2. The Petitioner seeks to challenge an order passed in the proceedings u/s 29-A(5) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972), initiated by the Land Lord Respondent for determining the annual rent payable in respect of the land let out to the tenant before the commencement of the aforesaid section which was inserted in the Act by U.P. Act No. 28 of 1976, on which land, according to the landlord the tenant had with his consent erected permanent structure and incurred expenses in execution thereof.

3. The Rent Control and Eviction Officer Moradabad after recording a clear-cut finding to the effect that it was only a plot of land which had been let out to the tenant whereon the tenant had constructed permanent structure at his own cost, determined the annual rent payable in respect of the land at a figure of Rs. 63,06 per annum in accordance with the procedure prescribed u/s 29-A (5) of the Act with a direction that this amount of rent will become payable with effect from

1-9-87.

4. The Petitioner sought to challenge the aforesaid order by means of a revision which was filed before the District Judge Moradabad. The learned District Judge, however, on a preliminary objection against the maintainability of the revision held that under the scheme of the Act such an order was not revisable. The Petitioner thereafter moved an application for permission to convert his revision into an appeal. The District Judge rejected the aforesaid application coming to the conclusion that under the scheme of the U.P. Act No. 13 of 1972 an order passed in the proceedings u/s 29-A (5) of the Act thereof had not been made appealable. The learned District Judge was of the view that neither a revision nor an appeal was provided against the order passed in the proceedings u/s 29-A (5) of the Act and since no substantive right of appeal against an order passed u/s 29-A (5) had been provided for, the question of converting the revision into an appeal did not arise. Consequently holding that neither a revision petition nor an appeal was maintainable against the order passed u/s 29-A (5) of the Act the revision as well as the application for converting the revision application into an appeal were dismissed as not maintainable.

5. The learned Counsel for the Petitioner has tried to assail the impugned order passed by the learned District Judge on the ground that since the orders passed in the proceedings for fixation of the rent u/s 8 or Section 9 or Section 9(A) of the Act which pertain to fixation of standard rent or to enhancement in rent permissible u/s 6 of the Act or revision of rent of commercial building let out the public religious institutions has been made appealable therefore an order of enhancement of rent in the proceeding u/s 29-A(5) of the Act should also be taken to be appealable. The learned Counsel for the Petitioner tried to draw support from the provisions contained in Section 22 of the Act which provides that any person aggrieved by an order u/s 21 or Section 24 of the Act may prefer an appeal against it to the District Judge and in other respects the provisions of Section 10 shall mutatis mutandis apply in relation to such appeal.

6. The submission made by the learned Counsel for the Petitioner is totally misconceived and it is not at all acceptable. An appeal is a creature of statute and a right of appeal must be specifically provided for in a statute. The learned District Judge has considered in detail the various provisions contained in the Act and has rightly come to the conclusion that no provision has been made under the Act making an order passed u/s 29-A(5) of the Act after revisable or appealable. In the absence of any provision under the Act providing for a right of appeal against the order u/s 29-A (5) of the Act or conferring any revisory jurisdiction on any authority entitling it to revise any order passed u/s 29-A(5) of the Act, the conclusion reached by the learned District Judge cannot be said to suffer from any legal infirmity and no interference therein is called for.

7. It has to be noticed that so far as regards the efficiency and policy for committing to provide for revision or an appeal against the order passed u/s 29-A (5) of the U.P. Act No. 13 of 1972, the legislature is the only judge. What

persuaded the legislature for not providing so it a matter of legislative policy the wisdom of which cannot be scanned by this Court.

8 The learned Counsel for the Petitioner thereafter tried to assail the findings recorded by the Rent Control and Eviction Officer, enhancing the rest. The findings recorded by the Rent Control and Eviction Officer in the Impugned order passed by him are findings which are based on appraisal of evidence on the record. The Rent Control and Eviction Officer has taken up to account the admission of the tenant Petitioner himself which had not been explained away in any manner. These findings do not appear to be vitiated la law.

9. There is no such error much less manifest error of law, which may justify any interference in the impugned orders in the exercise of the extra ordinary jurisdiction envisaged under Article 226 of the Constitution of India.

10, The writ petition is accordingly dismissed in Illumine.