
(2011) 01 AHC CK 0196

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23740 of 1998

Anand Swaroop and another

APPELLANT

Vs

XIth ADJ, Muzaffarnagar and others

RESPONDENT

Date of Decision : 27-01-2011

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2, 21(8)

Citation : (2011) 01 AHC CK 0196

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record.

2. In Writ Petition No. 33653 of 1996, Smt. Champa Devi and another versus Rent Control and Eviction Officer and another, on 29.8.1997 the following question of law has been referred to larger Bench for consideration.

"The short, though substantial, question that arises for consideration in these two petitions is as to whether clause (g) to Section 2 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as U.P. Act No. 13 of 1972) which has been inserted in the Principal Act by Section 2 of U.P. Act No. 5 of 1995 will affect the proceedings pending on the date of enforcement of U.P. Act No. 5 of 1995 ?.

Clause (g) inserted by Section 2 of U.P. Act No. 5 of 1995 in Section 2 of the U.P. Act No. 13 of 1972 exempts from the purview of the Act " any building whose monthly rent exceeds two thousand rupees. The question is whether pending proceeding under Section 21(8) of the U.P. Act No. 13 of 1972 for enhancement of monthly rent payable in respect of a building let out to the State Government or to a local authority or to a public sector corporation or to a recognized educational institution whose monthly rent exceeds Rs.2,000/ will be governed by the Act as it stood amended by U.P. Act No. 5 of 1995 or will it be governed by the Act as it stood before its amendment. In Punjab National Bank Ghaziabad

versus Dr. Rajendra Nath Azad, 1996 (1) A.R.C. 348, a learned Single Judge has taken the view that "it cannot be said that such amendment will operate prospectively in the sense that the previously instituted suits will be governed by the old provisions. The said decision has been followed in Jenson and Nicholson (India) Ltd. Ghaziabad versus Ist Additional District Judge, Ghaziabad and others, 1996 (2) A.R.C. 38, wherein it has been held that the amended provisions would be applicable to the pending proceedings also. However, contrary view has been taken in Central Bank of India, Kanpur Nagar versus Vith Additional District and Sessions Judge, Kanpur Nagar and others, 1997(1) ARC 312. The latter case was decided by me after noticing the contrary view expressed in Punjab National Bank, Ghaziabad and Jenson and Nicholson (India) Ltd. Ghaziabad (supra). However, upon consideration of the submissions made by the learned counsel for the parties and having regard to the importance of the question involved, I am of the view that it would be but proper if the conflict is resolved by an authoritative decision of a larger Bench.

Let the papers be placed before Hon"ble the Chief Justice for constituting a larger Bench for decision of the question aforesaid or such question as may be formulated by the Bench keeping in view the conflicting decisions referred to above.

Since the question is coming up in large number of cases, registry is directed to place the record before Hon"ble the Chief Justice at the earliest.

As an interim measure it is directed that the respondent shall continue to pay the admitted rent. Arrears, if any, may also be paid within reasonable time."

3. Relying upon the judgment rendered by the Apex Court in M/s Ambalal Sarabhai Enterprises Ltd. versus M/s Amrit Lal & Co. another, reported in J.T. 2001(7) SC477 : 2001 SCFBR 484 and the provisions of U.P. Act No. 13 of 1972, the Division Bench of this Court vide order dated 11.1.2002 answered the aforesaid referred question thus:

"Clause (g) to Section 2 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, inserted in the Act by Section 2 of U.P. Act No. 5 of 1995, will not affect the proceedings pending on the date of enforcement of U.P. Act No. 5 of 1995".

4. Thereafter, the Court directed that the record of Writ Petition No. 33653 of 1996 along with other connected cases be transmitted to the appropriate Bench for decision in the light of the answer recorded above.

5. In view of the aforesaid answer, the writ petition was allowed by this Court by quashing the orders impugned in Smt. Champa Devi's case and the matter was remitted back to the Prescribed Authority for decision in accordance with law.

6. Learned counsel for the petitioner has submitted that the insertion of Section 2(1) (bbb) of U.P. Act No. 13 of 1972 during the pendency of the suit is perspective in nature as it cannot take away umbrella of protection given to a

tenant under this Act which was available to him on the date of creation of tenancy or at least on the date of filing of the suit. He has also placed reliance upon the order and judgment dated 17.7.1998 passed in JSSC Revision No. 15 of 1998.

7. Following the judgment rendered in Smt.Champa Devi and another versus Rent Control and Eviction Officer, Allahabad and another, (2002) (1) ALR 192 wherein it has been held that provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 would not affect the proceedings in pending cases on the date of enforcement of U.P. Act No. 5 of 1995, the impugned order is quashed and the writ petition is allowed. The matter is remitted back to the Prescribed Authority for decision in accordance with law.