

(2006) 12 AHC CK 0097

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 37158 of 1998 with 26711 of 1998

Arun Agarwal, State of U.P.

APPELLANT

Vs

State of U.P. & Ors., IIIrd Additional District Judge, Ghaziabad & Ors.

RESPONDENT

Date of Decision : 12-12-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 2(g), 21(1)(g)

Citation : (2006) 12 AHC CK 0097

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Civil Misc. Writ No. 37158 of 1998 is landlord's petition in which the following prayers have been made:

?(a) issue a writ, order or direction in the nature of certiorari quashing the orders dated 1421996 and 2631998 (Annexures 4 and 5) passed by the respondents 2 and 3 respectively;

(b) issue any other writ, order or direction which this Hon'ble Court may deem fit and proper to protect the interest of the petitioner; and

(c) award costs of the petition.?

Civil Misc. Writ No. 26711 of 1998 has been filed by the tenant against the orders dated 14296 and dated 26398 passed by respondent Nos. 2 and 1 respectively. Since common questions of facts and law are involved in both the connected writ petitions, they are being decided by this common judgment treating Civil Misc. Writ No. 37158 of 1998 as the leading case, with the consent of Counsels for the parties.

2. Office of the Chief Medical Officer, Ghaziabad is the tenant of accommodation

in dispute, being House No. 135, Model tow, G.T. Road, Ghaziabad, which is a posh locality of city of Ghaziabad. Sri Arun Agarwal, the landlord moved an application under Section 21(8) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act No. XIII of 1972") before the Rent Control and Eviction Officer, Ghaziabad for enhancement of rent from Rs. 9,140/ to Rs. 18,483/, which was registered as case No. 89 of 1992.

3. After considering the respective case of the parties, the Rent Control and Eviction Officer, Ghaziabad enhanced the monthly rent from Rs. 9140/ to Rs. 13,000/ vide order dated 1421996 appended as Annexure 4 to the writ petition.

4. Aggrieved by the aforesaid order dated 1421996, cross appeals were filed by the landlord and the tenant which were registered as Rent Control Appeal Nos. 104 and 106 of 1996. They were heard together and dismissed by the IIIrd Addl. District Judge, Ghaziabad vide order dated 2631998.

5. Aggrieved by the aforesaid order dated 2631998, the instant writ petitions have been filed.

6. In the connected Civil Misc. Writ No. 26711 of 1998, the following interim mandamus was issued by this Court on 2081998:

?Hon"ble J.C. Gupta, J

Issue notice to respondent No. 3 who may file counteraffidavit within a period of three weeks from the date of service of notice. Rejoinder affidavit may be filed within three weeks thereafter. List this petition for admission/final disposal in the week commencing November 16, 1998. Meanwhile, till the next date of listing operation of the impugned orders dated 1421996 and 2631998 passed by respondent Nos. 2 and 1 respectively shall remain stayed provided the petitioner deposits with respondent No. 2 the enhanced amount of rent due up to date at half of the rate within one month from today which shall be allowed to be withdrawn by the respondent No. 3 on his applying for the same subject to his furnishing security other than cash and Bank Guarantee to the satisfaction of respondent No. 2. It is made clear that the deposit shall be in addition to the amount of rent already payable by the petitioner to the landlord. Dated. 20898

Sd./ Illegible?

7. The landlord also instituted the connected writ petition No. 37158 of 1998 on the ground that the Prescribed Authority has committed illegality and error apparent on the face of record in not granting enhancement in rent which was determined in terms of Section 21(8) the Act No. XIII of 1972 by the approved valuer.

8. Contention of Sri A.N. Bhargava, Counsel for the landlord is that the landlord is entitled to rent as has been determined in accordance with the provisions of Section 21 (8) of the Act No. XIII of 1972 and that the tenant is not paying even

the rent which has been ordered to be paid by this Court vide interim mandamus dated 2081998, quoted above.

9. Contention of Sri S.K. Singh, Counsel for the tenant is that once the rent exceeds the limit of Rs. 2000/ prescribed under the Act No. XIII of 1972, the Prescribed Authority has no jurisdiction to enhance the rent under Section 21 (8) of the Act No. XIII of 1972.

10. Sri A.N. Bhargava, Counsel for the landlord placed reliance on a Division Bench decision of this Court in Smt. Champa Devi & Anr. v. Rent Control and Eviction Officer (1st), Allahabad & Anr., 2002(1) AWC 673 and contended that Section 21(8) of the Act No. XIII of 1972 has been brought by amendment made in September, 1994 and the application for enhancement was moved as far back as in 1992, as such, in view of law laid down in the decision in Smt. Champa Devi (supra), the Prescribed Authority as well as the appellate Court had the jurisdiction.

11. From the perusal of decision in Smt. Champa Devi (supra), it appears that following question of law was under consideration by it on reference by a learned Single Judge:

?Whether clause (g) to Section 2 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act No. XIII 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??

The Division Bench answered the ques tion as under:

?The learned Counsels appearing for the parties agree and submit that the question referred by the learned single Judge has been conclusively answered by the decision of Hon''ble Supreme Court of India rendered in M/s. Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal and Co. & Anr., JT 2001(7) SC 477 and in the light of this decision, the answer to the question has to be in negative.

Accordingly, the answer to the question referred would be that 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.?

12. After hearing Counsels for the parties and perusal of record, I am of the considered view that the instant writ petitions are squarely covered by the decision in Smt. Champa Devi (supra). The order of the Prescribed Authority on application filed in 1992 for enhancement of rent was neither without jurisdiction nor illegal as that application was entertainable under the provisions of U.P. Act No. XIII of 1972.

13. Even otherwise Hon''ble the Apex Court in Smt. Rajeshwari v. Smt. Prema

Agarwal, 2005(1) ARC 526, followed by this Court in Khursida v. ADJ, Allahabad, 2004(2) JCLR 452 (All) : 2004 (2) ARC 64, has held that writ Court can reasonably enhance the rent in exercise of powers under Article 226 of the Constitution for bringing the rent at par with the market rate where the rent is too low.

14. Since the facts of these cases are covered by the decision rendered by Division Bench in Smt. Champa Devi (supra) and no other point having been argued, the tenant is liable to pay Rs. 13,000/ per month w.e.f. 1421992 as per order dated 142 1996 passed by the Rent Control and Eviction Officer, Ghaziabad.

15. Accordingly, both the writ petitions fail and are dismissed. The tenant Chief Medical Officer Ghaziabad is directed to pay the entire balance amount of rent at the rate of Rs. 13,000/ per month w.e.f. 1421992 till date, within a period of one month from today after adjusting the amount already paid, to the landlord and will continue to pay the same rent, month by month, as and when it falls due. In case the arrears of rent are not paid within the aforesaid stipulated period and failure of the tenant to pay monthly rent, at the enhanced rate, consecutively for two months, the landlord will be at liberty to evict Chief Medical Officer, Ghaziabad from the accommodation, in dispute, by coercive process, in accordance with law with the aid of local Police. No order as to costs.