

(2007) 08 AHC CK 0005
In the Allahabad High Court

Awadhesh Badhauiliya alias Tarun	APPELLANT
Vs	
Additional District Judge/Special Judge (E.C. Act) and Others	RESPONDENT

Date of Decision : 14-08-2007

Acts Referred:

Citation : (2008) 2 AWC 1718

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties.

2. Respondents landlord filed S.C.C. Suit No. 5/1987 for arrears of rent, which is said to be due and for ejectment against the tenant.

3. The prescribed authority by order dated 18.8.1998 dismissed the said suit holding that U.P. Rent Control (Regulation, Letting and Eviction) Act, 1972 is not applicable on the basis of finding that the building was constructed in 1976.

4. Aggrieved by the order dated 18.8.1998, the landlord filed Revision No. 11 of 1998, which was allowed on the ground that the prescribed authority has committed error in law in holding that Provisions of Act No. 13 of 1972 are not applicable.

5. The revisional court relied upon the case of Virendra Prasad Nigam Vs. Kalika Swaroop, in which it was held that the date of construction of building, which should have been from the date of earning of the building or its completion of building.

6. On remand, the Rent Control and Eviction Officer again decided the case in light of the judgment of Hon"ble Supreme Court vide judgment dated 13.1.2000 holding that Rent Control Act is not applicable to the premises in dispute. Revision No. 2/2000 filed by the tenant before the revisional authority challenging the findings of the Rent Control and Eviction Officer was also rejected vide order dated 31.7.2000 affirming the judgement of the prescribed authority

dated 13.1.2000.

7. The petitioner has challenged the validity and correctness of the order dated 13.1.2000 passed by the Civil Judge (Senior Division) and order dated 31.7.2000, passed by the Special Judge (E.C. Act), Jalaun at Orai in the writ petition.

8. Learned Counsel for the petitioner submitted that both the courts below have committed an illegality in holding that the Rent Control Act is not applicable. He has placed his argument and agreement of the landlord with other tenant in the building from which according to him it appears that the part of building was construction constructed in the year 1976.

9. Learned Counsel for the petitioner has not argued any other point.

10. It is settled law that the building may not be completed at one go, as a building may be constructed in part. There is no evidence produced by the petitioner that the shop was constructed in the year 1976 as alleged by him. The courts below have after appreciation of records have given a categorical finding of fact that the shop in dispute was constructed in the year 1982. The contention of the learned Counsel for the petitioner that shop in dispute was constructed in 1976 has been discussed in detail by the courts below in paragraphs 9 and 10 of the judgment is as under:

9. Learned Counsel for the respondent has contended that the revisionist got an ex parte rent note written by the defendant when shop was let out to him on 1.11.1982. In this rent note it has been mentioned that the shop was let out on 1.11.1982 at the rate of Rs. 200. It has also been mentioned that provisions of the Act are not applicable to the shop in question. Learned Counsel for the respondent further contended that the plaintiff also let out another shop to one Kamlesh and obtained rent note from him in which it has mentioned that the shop was constructed in the year 1976. The respondent has filed photocopy of the rent note attested by the Notary as paper No. 128C. Respondent also filed certified copy of statement of the plaintiff/ revisionist Satish Chand Dwivedi in J.S.C.C. Suit No. 6/1987, Satish Chand Dwivedi v. Kamlesh Kumar Mishra, but perusal of statement shows that no question was put to him about this alleged rent note executed by Kamlesh Kumar Mishra. Moreover, it appears that the rent note of Kamlesh Kumar was not filed by Kamlesh Kumar in that suit otherwise the respondent should have summoned that record to prove the document in this case. To the contrary, suggestion was given to Satish Chandra Dwivedi in that case in his cross-examination, that the disputed shop was constructed in the year 1964-65. If case of Kamlesh Kumar was that shop was constructed in the year 1976 as mentioned in his alleged rent note, there was no question to suggest construction of shop in the year 1964-65. Moreover respondent has not filed certified copy of alleged rent note and this attested copy of notary does not help the respondent. The revisionist has stated in specific words that Kamlesh Kumar did not execute any rent note in his favour. The respondent took a case in

his written statement that shop in question was constructed prior to 1976, therefore, he has not been consistent in his case to when his shop was constructed. He has stated in his statement on oath that he was outside Orail in connection with his education from 1977 to 1981 and prior to that he was student of Gandhi College and D. V. College, Orail. Therefore, he was not in position to say as to when shop in question was constructed he was examined one witness Devi Din D.W. 1 as mason who constructed alleged shop but statement of this witness does not inspire confidence and cannot be accepted.

10. Learned Counsel for the respondent further contended that the plaintiff did not produce map sanctioned by the Nagar Palika for construction of the shop although he admitted in his statement that map was available with him and presumption may be drawn against him for non-production of map, but non-production of map is not material because period of completion of building cannot be decided on the basis of map passed by Nagar Palika. In this connection, revisionist has cited case of Virendra Prasad Nigam v. Kalika Swaroop 1999 (36) ALR 67, where it has been held that in relying simply upon the building plan, cash memos, bills and report of Amin and holding the building on old one, is manifestly erroneous and illegal, therefore, non production of map by the revisionist was material.

11. Both the courts below have given concurrent findings of fact against the petitioner that he has not been able to establish that the shop in which he was a tenant was constructed in the year 1976. The agreement relied upon by him in his arguments said to have been entered into other tenants are of no help to him as these shops may have been constructed in 1976. In view of the law laid that building may be constructed in part or in phases, the burden of proof has not been discharged by the petitioner in this regard. The court below have recorded findings on basis of evidence that the shop under the tenancy of the petitioner was constituted in 1982.

12. I have also perused the judgment of revisional court.

13. Both the courts below have categorically recorded the finding that the Rent Control Act is not applicable. On perusal of the record, I am of the considered opinion that the courts below has rightly come to the conclusion that the Rent Control Act is not applicable.

Accordingly, the writ petition is dismissed.

No order as to costs.