
(2007) 01 AHC CK 0068
In the Allahabad High Court

Bharat Petroleum Corpn. Ltd.

APPELLANT

Vs

Smt. Ramavati Devi and Others

RESPONDENT

Date of Decision : 04-01-2007

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (2007) 2 ADJ 73 : (2007) 1 AWC 679

Hon'ble Judges : Umeshwar Pandey, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Umeshwar Pandey, J.—This revision challenges the order dated 17.11.1997 passed by the court below rejecting petitioner's application moved u/s 29A of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter called as the "Act").

2. A piece of land, which is in dispute, was leased out by the opposite party-landlord to the revisionist-M/s. Bharat Petroleum Corporation Ltd. on 1.11.1956 for twenty years, which lasted till 30.10.1976. It was renewed for a further period of twenty years with expiry date as 30.10.1996. The present Suit No. 162 of 1996 was instituted in the Court of Civil Judge (Sr. Div.), Mirzapur on 28.10.1996 for petitioner-revisionist's eviction and the lease was not further renewed after its expiry. The suit was contested by the revisionist stating that since it had raised constructions of permanent nature over the land, its eviction after notice u/s 106 of Transfer of Property Act simplicitor is not possible and the suit was not maintainable. While the suit was pending disposal, the present application u/s 29A of the Act has been moved stating that such a suit for eviction from the land over which constructions of permanent nature have been raised with consent of the lessor, a regular suit is not possible and the benefit of this provision of the Act should be accorded to it. This application was objected to in the trial court by the opposite party plaintiff and after hearing both the parties the Court was of the view that the benefit, as is made permissible u/s

29A of the Act, was not possibly available to the petitioner-defendant under law and as such, its prayer was refused by the impugned order.

3. Learned Counsel for the revisionist while placing his submissions has contended that the protection, as is made available in this amended provision of the Act, u/s 29A, is very much available to the defendant-revisionist because the parties had already arrived at a mutually agreed rent of the leased property under Sub-section (4) of Section 29A of the Act at the time of renewal of the lease under the new agreement which was executed between them after this amended provision had come into effect from 5.7.1976. Since this renewal is of a subsequent date (18.9.1976), the rent, as was agreed between the parties at that particular point of time would be treated for all practical purposes as mutually agreed rent between the parties as contemplated under Sub-section (4) of Section 29A of the Act. In this context learned Counsel has cited a Full Bench case law of this Court in *Trilok Chand v. Rent Control and Eviction Officer, S.D.M. Naku, District Saharanpur* and Anr. 1997 (1) ARC 290 : 1987 (1) AWC 524 (FB) and also a case law of Apex Court *Vinaya Kumar Shukal Vs. Lakhpat Ram and another*,

4. While approving the law laid down in the Full Bench decision of *Trilok Chand* (supra), the Hon'ble Supreme Court in Para 7 of its judgment has propounded as below:

We are in agreement with the view at page-SC 2174 propounded by the Full Bench in *Trilok Chand Vs. The Rent Control and Eviction Officer/S.D.M. Naku and Another*, In our opinion, the words "such rent as may be mutually agreed upon between the parties" in Sub-section (4) of Section 29A envisage, an agreement with regard to rent entered by the landlord and tenant after the coming into force of Section 29A. An agreement prior to the commencement of Section 29A would not preclude determination of rent under Sub-section (5) of Section 29A. In this context it may be mentioned that the words "may be" used in Sub-section (4) of Section 29A are much often used with reference to the future than the past or the present (*Pollock C. B. in Brown v. Bachelor* 25 LJ Ex 299, *Stroud's Judicial dictionary*, 5th Edn. p. 1575). In Sub-section (4) of Section 29A the words "may be" are preceded by the word "as" and are followed by the words "mutually agreed upon" which indicate that the words are used with reference to the future. The provisions of Sub-section (7) which give overriding effect to the provisions of Section 29A over an existing contract also lend support to this construction. We are, therefore, unable to uphold the view of the learned Judges of the Division Bench of the High Court in this case that there could be no enhancement of the rent under Sub-section (5) of Section 29A in view of the agreement between the appellant and the tenant that the tenant shall pay rent at the rate of Rs. 170 per annum.

5. No doubt in the present case renewal of the lease had taken place on 18.9.1976, which is a subsequent date (5.7.1976) to the date on which the amended provision of Section 29A of the Act came into its application. It is, thus,

clear that when Section 29A of the Act envisages agreement with regard to a mutually agreed rent between the landlord and tenant after coming into force of Section 29A the present agreement for all practical purposes has to be treated as an agreement having taken place between the parties under Sub-section (4) of Section 29A of the Act. This is the import of both the cases of Vinaya Kumar Shukal (*supra*) as well as Trilok Chand (*supra*). But in reply to this matter of fact and the argument placed by the learned Counsel for the revisionist, a submission has come from the side of the opposite party-landlord that though there was an agreement with regard to the rent between the parties which was preceded by the date of enforcement of amended provision of Section 29A of the Act yet the said agreement for no practical purposes is now to be treated for according the benefit to the tenant-revisionist u/s 29A of the Act. That agreement, which was enforced between the parties only for a limited period came to expire on 31.10.1996 after completion of twenty years period for which the lease was renewed under that agreement. Therefore, if a suit was filed and is pending when there is no mutually agreed rent between the parties in respect of disputed premises, the benefit of the aforesaid provision of Section 29A could not be accorded to the tenant. In this context the learned Counsel for the opposite party-landlord placed reliance upon the case of *Sardar Gurcharan Singh v. Ist Addl. District Judge. Kanpur 1994 (1) ARC 546 : 1994 (1) AWC 504*.

6. There is no doubt that after two days of institution of the suit the period of lease had expired. The agreement in respect thereto had become inoperative and was having no effect as between the parties for the purposes of Sub-section (4) of Section 29A of the Act. If the revisionist-tenant intended to take benefit of Section 29A of the Act it had to comply to the entire obligations placed upon it under the aforesaid provision of the Act. One of the obligations as envisaged is given under Sub-section (5) of Section 29A of the Act. In case, there is no mutually agreed rent between the landlord and tenant in respect of the premises in question, either of the parties is supposed to approach the District Magistrate and get the rent determined in accordance with Sub-section (5) itself. If this formality has not been gone into. It is quite obvious that the benefit of Section 29A of the Act, as is permissible under law, cannot be granted to such party seeking for the same. Paras 14 and 15 of the judgment of *Sardar Gurcharan Singh (supra)* are actually relevant in this context and are extracted as below:

14. "The tenant cannot claim the benefit of Section 29A of the Act unless he enhances the rent on the basis of the mutual agreement between him and the landlord after enforcement of Amending Act No. 28 of 1976 or applies to the District Magistrate for determination of annual rent payable in respect of such land at the rate of ten per cent per annum of the prevailing market value of the land as provided under Sub-section (5) of Section 29A of the Act. The landlord let out the land and the rent was fixed for such open piece of land. The rent has to be enhanced under the provisions of Sub-section (5) of Section 29A of the Act. Till the rent is enhanced and the tenant agrees to pay such amount in accordance with the said provision, the landlord will be justified in treating the

property let out to him as a land. A Full Bench of this Court in *Trilok Chand v. Rent Control and Eviction Officer S.D.M., Naku, district Saharanpur* 1987 (1) ARC 290 : 1987 (1) AWC 524 (FB). has held that an agreement referred to in Section 29A (4) of the Act refers to agreement entered into between the parties after coming into force of Section 29A of the Act and if there is no such agreement, the District Magistrate shall on the application of the landlord or the tenant, determine the annual rent payable in respect of such land at the rate of ten per cent per annum of the prevailing market value of the land and such rent shall be payable except as provided in Sub-section (6) of Section 29A of the Act from the date of expiration of the term for which the land as let out or from the commencement of the section which ever is later.

15. Sub-sections (4) and (5) of Section 29A of the Act read together contemplate that the rent which was agreed between the landlord and tenant in respect of land shall not be treated as the rent for getting protection of Section 29A of the Act. Till such time, there is no agreement to pay the enhanced rent after 5th July, 1976, or any order of the District Magistrate determining the rent as provided in Sub-section (5), the landlord can treat the premises let out to the tenant as land. In case the suit is pending on the date of U.P. Act No. 28 of 1976 came into force and the tenant wants protection of Section 29A of the Act, he has to make an application u/s 29A (6) of the Act, but where the suit is filed after the enforcement of the Amending Act and, if the tenant wants the protection of this section, he has to apply to the District Magistrate for determining the annual rent u/s 29A (5) of the Act except in case of mutual agreement. The intention of the Legislature seems to clear that the rent which was agreed upon between the landlord and tenant was in respect of the land and the same rent cannot be taken as rent for the purpose of granting protection u/s 29A of the Act to a tenant of land.

7. Learned Counsel for the revisionist has also contended that the suit was filed two days before expiry of the subsequently renewed period of lease and therefore, the obligation as placed upon the revisionist-defendant under Sub-section (5) is not applicable in the present matter. I do not agree with the submission of the learned Counsel. It is only after two 1 days of filing of the suit the period of subsequently renewed lease had expired. Therefore, the mutually agreed rent upon which the revisionist places its reliance for the purposes of] Sub-section (4) of Section 29A had in fact, become extinct much before the present application u/s 29A of the Act was moved before the trial court for according its benefit to the tenant revisionist. Therefore, to say that the suit for eviction of the revisionist-tenant in the present form as has been instituted and is pending disposal is not maintainable in the face of Sub-section (3) of Section 29A of the Act, is definitely not a correct contention. In any case the benefit of Section 29A at that point of time when this application had been moved before the trial court was legally not available and if such application has been rejected by the court below even by a laconic order, this Court would not be inclined to interfere in the same in its revisional jurisdiction. The application moved u/s 29A

of the Act was actually not maintainable and if it has been reelected, the order can be said to be just and proper.

8. This revision does not have any strength and as such it is hereby dismissed.

9. The suit is pending disposal before the court below for the last about ten years and its disposal has to be expedited. It is, therefore, directed that the trial court would take up the matter and after hearing it finally dispose of the suit within next six months latest.