

(2004) 04 AHC CK 0079
In the Allahabad High Court
Case No : C.M.W.P. No. 7703 of 1987

Champa Lal Jain and Another

APPELLANT

Vs

Addl. District Judge and Others

RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:

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

Citation : (2004) 3 AWC 2468

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Radhey Shyam, S.C. Dwivedi, Ajit Kumar, Mohit Kumar and Manu Saxena, for the Appellant; Shashi Nandan and Manish Dev, S.C., for the Respondent

Judgement

Tarun Agarwala, J.—The petitioner is the landlord and owner of the shop in question. The petitioner filed a suit alleging that the shop in question was reconstructed on 31.5.1973 and was let out to the defendant on 1.10.1973. It was alleged that the first assessment of a property in question was made on 1.10.1979. The petitioner gave a notice dated 31.12.1982 terminating the tenancy of the defendant on the ground that the arrears of rent had not been paid. It was also stated in the suit that since the building was not 10 years old, the provisions of U.P. Act No. 13 of 1972 was not applicable (hereinafter referred to as the Act). The defendant contested the suit and denied that the shop was reconstructed on 31.5.1973 and contended that it was an old construction which was let out to a previous tenant and after he had vacated the shop in question, the same was let out to the defendant. The defendant contended that U. P. Act No. 13 of 1972 was applicable to the shop in question and that he could not be evicted from the shop in question on the ground of the termination of the tenancy and that he could only be evicted on the grounds mentioned in Section 20 of the Act. The defendant further contended that the notice issued u/s 106 of the Transfer of Property Act was invalid and that in any case he had deposited

the entire arrears of rent, damages and interest on the first date of hearing and therefore, the benefit of Section 20 (iv) should be made available to him.

2. The trial court by judgment and order dated 10.2.1986 dismissed the suit of the petitioner. The trial court held that the defendant was not in arrears of rent. The trial court further found that the shop was constructed in the year 1973 and during the pendency of the proceedings, the period of 10 years were completed and therefore, the Act became applicable. The trial court relying upon the decision of Vineet Kumar Vs. Mangal Sain Wadhwa, dismissed the suit.

3. Aggrieved by the decision of the trial court, the petitioner filed a revision u/s 25 of the Provincial Small Cause Courts Act, which was also dismissed by judgment dated 22.1.1987. The revisional court found that the shop was reconstructed in 1973 and the assessment was also made in the year 1973. The revisional court also held that since the Act became applicable during the pendency of the proceedings, the defendants could not be evicted except on the grounds mentioned in Section 20 of the Act. The petitioner has now filed the present writ petition.

4. Heard Sri Ajit Kumar, the learned counsel for the petitioner assisted by Sri Mohit Kumar and Sri Manu Saxena, and Sri Manish Dev holding the brief of Sri Shashi Nandan, the learned counsel for the respondent No. 3.

5. The question that arises for consideration is whether during the pendency of the proceedings the building completed 10 years of its existence, does the Act become applicable and the tenant is entitled to seek the protection under the Act or not?

6. Section 2 (2) of the Act reads as under:

"Except as provided in Sub-section (5) of Section 12, Sub-section (1A) of Section 21, Sub-section (2) of Section 24, Sections 24A, 24B, 24C or Sub-section (3) of Section 29, nothing in this Act shall apply to a building during a period of ten years from the date on which its construction is completed.

(a) the construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction, and in the case of building subject to assessment, the date on which the first assessment thereof comes into effect, and where the said dates are different, the earliest of the said dates, and in the absence of any such report, record or assessment, the date on which it is actually occupied (not including occupation merely for the purposes of supervising the construction or guarding the building under construction) for the first time."

7. It is clear that U. P. Act No. 13 of 1972 will not apply to a building during the period of 10 years from the date on which its construction is completed. The Explanation to this section makes it apparently clear that the period of ten years will start from the date of the first assessment and in the absence of such

assessment, from the date of which it was actually occupied.

8. In the present case, the findings of the Court below are that the shop was newly constructed on 31.5.1973 and that an assessment was also made in the year 1973. The shop was let out to the respondents w.e.f. 1.10.1973. Therefore, the period of 10 years will start from the date when the assessment was made in the year 1973. The contention of the petitioner that the first assessment was made on 1.10.1979, cannot be accepted inasmuch as the Court below has given a finding that the first assessment was made in the year 1973 and this being a finding of fact cannot be interfered in a writ jurisdiction.

9. The suit was filed by the petitioner on 21.2.1983. The assessment was made in the year 1973, presumably after the reconstruction of the shop on 31.5.1973. Therefore, the suit was filed within ten years of the completion of the premises in question and therefore, U. P. Act No. 13 of 1972 was not applicable to the premises in question on the date when the suit was filed by the petitioner.

10. The question, which remains to be answered, is whether the U. P. Act No. 13 of 1972 will become applicable during the pendency of the litigation, when ten years have elapsed. The courts below relied upon the decision of the Supreme Court in Vineet Kumar's case (supra) and dismissed the suit on the ground that during pendency of the proceedings, the period of ten years had expired and therefore, the Act became applicable and that the tenant could not be evicted except on the grounds mentioned in Section 20 of the Act.

11. It is well settled, that the law applicable on the date of the institution of the suit alone governs the suit and the mere fact that the statutory period of ten years expired during pendency of the suit, appeal or revision, the Act does not become applicable. The rights of the parties will have to be determined on the basis of the law applicable on the date of the suit and not subsequently.

12. In Rameshwar and Others Vs. Jot Ram and Another, the Supreme Court held as follows :

"It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceedings. This is an emphatic statement that the right of a party is determined by the facts as they exist on the date the action is instituted."

13. In Vineet Kumar's case (supra), the Supreme Court held that since the building completed 10 years of its existence during the pendency of the suit, the Act became applicable and therefore, the tenant was entitled to seek the protection of the Act. The Supreme Court held that the tenant could not be evicted from the premises in question except on the grounds mentioned in Section 20. Since the tenant had deposited the arrears of rent, damages and interest, the benefit of Section 39 was available to the tenant.

14. In Nand Kishore Marwah and Others Vs. Samundri Devi, the Supreme Court dissented with its earlier judgment in Vineet Kumar's case (supra), and held :

"Keeping in view the language of this section if we examine the provisions contained in Sub-section (2) of Section 2 it will be clear that for a newly constructed building the provisions of this Act will not apply for 10 years and therefore so far as the restriction u/s 20 is concerned they will not apply and therefore, it is clear that within 10 years as provided for in Sub-section (2) of Section 2 restriction on the institution of suit as provided for in Section 20 Sub-section (1) quoted above will not be applicable and it is thus clear that during the pendency of the litigation even if 10 years expired the restriction will not be attracted as the suit has been institution within 10 years and therefore, restriction as provided for in Section 20 cannot be attracted."

15. Similar view as again expressed by the Supreme Court in *Atma Ram Mittal Vs. Ishwar Singh Punia*, impliedly overruling *Vineet Kumar's* case, and in *Suresh Chand v. Gulam Chisti* 1990 (1) ARC 233 and in *Ramesh Chandra v. IIIrd Additional District Judge and Ors.* (1992) 1 SCC 751 and again by the Supreme Court in *Bhola Nath Varshney, (since dead) through his LRs. Vs. Mulk Raj Madan, .* The Supreme Court in *Kishan alias Krishan Kumar v. Manoj Kumar* AIR 1988 SC 999 overruled *Vineet Kumar's* case and held that a suit instituted during the period of exemption could be continued and a decree passed therein could be executed even though the period of exemption comes to an end during the pendency of the suit.

16. Thus, the tenant cannot be given advantage that the Act became applicable during the pendency of the suit. It is clear that the Act is not applicable in the present case.

17. The question now to be determined is whether a valid notice u/s 106 of the Transfer of Property Act was served upon the respondent or not. The Judge Small Cause Court framed Issue No. 2 and decided this issue on the ground that the tenancy cannot be terminated u/s 106 of the Transfer of Property Act and can only be terminated on the grounds mentioned u/s 20 of U. P. Act No. 13 of 1972. The revisional Court has not considered this aspect of the matter. Since I have already held that U. P. Act No. 13 of 1972 is not applicable, the Judge Small Cause Court is therefore, directed to decide as to whether the tenancy was actually terminated by the said notice or not.

18. In the result, the writ petition succeeds and is allowed in part. The judgment and orders dated 10.2.1986 and 22.1.1987 passed by the respondent Nos. 2 and 1 are set aside and the matter is remanded back to the Judge Small Cause Court to decide the matter afresh in the light of the observation made above within a period of three months from the date of the production of the certified copy of this judgment.