

(1999) 11 AHC CK 0145
In the Allahabad High Court
Case No : C.M.W.P. No. 2239 of 1982

Chandan Singh

APPELLANT

Vs

Ist Additional District Judge, Mathura and others

RESPONDENT

Date of Decision : 05-11-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 10, 16(9), 2, 21, 24(2)

Citation : (2000) 2 AWC 956

Hon'ble Judges : Shitla Pd. Srivastava, J

Bench : Single Bench

Advocate : R.C. Srivastava and Pradeep Chandra, for the Appellant; S. C., for the Respondent

Final Decision : Allowed

Judgement

Shitla Pd. Srivastava, J.—This petition under Article 226 of the Constitution of India, has been filed by the petitioner, who is tenant of the premises in dispute, i.e., premises No. 2166/2. Dampier Nagar, Mathura. which was allotted to him on 27.4.1978. The petitioner has prayed for quashing the order dated 16.8.1980 passed by the respondent No. 1. which is Annexure 5 to the writ petition and order dated 20.11.1981 so far as it relates to the dismissal of the appeal of the petitioner passed by the respondent No. 1.

2. The brief facts, as stated by the petitioner in the petition are that the house in question was assessed at Rs. 30 in the year 1970. It is stated that the presumptive rent at the time of allotment of the aforesaid building was fixed at Rs. 175 by the Rent Control and Eviction Officer while making allotment in favour of the petitioner. The allegations of the petitioner are that since the presumptive rent was exorbitant. therefore, the petitioner filed an application before the Rent Control and Eviction Officer. Mathura u/s 8/9 of U. P. Act No. XIII of 1972, hereinafter referred to as the Act only. The application of the petitioner was

contested by the landlord-respondent No. 3. The petitioner and the respondents in support of their respective claim filed written statements of the witnesses and of their own. The landlord filed an affidavit of one Sri H. Chandra, Sales Tax Officer, who was previous tenant of the accommodation in question. An application was filed by the petitioner with a request to cross-examine Sri Harish Chandra, the earlier tenant. But this application of the petitioner was rejected. The Rent Control and Eviction Officer has fixed Rs. 175 as monthly rent by order dated 16.8.1980. The petitioner, aggrieved by this order filed an appeal. The landlord also filed an appeal and stated that the rent at least Rs. 200 be fixed. The District Judge dismissed both the appeals on 20.1.1981. The petitioner has only challenged this order.

3. Heard learned counsel for the petitioner and learned standing counsel.

4. Sri R. C. Srivastava, learned counsel appearing on behalf of the petitioner has vehemently urged that the two authorities below having not considered while determining the rent of the premises in dispute the principle laid down in sub-section (2) of Section 9 of the Act have committed manifest error of law. He has further submitted that the authorities below have not taken into consideration the provisions of Section 9(2A) of the Act in determining the rent. His further submission is that the Rent Control and Eviction Officer has not considered the evidence of the petitioner which conclusively proved that the standard rent of the premises in dispute could not be more than Rs. 40 or Rs. 45 per month. His further argument is that the Rent Control and Eviction Officer has not considered the provisions of the Act.

5. I have heard learned counsel for the parties and have perused the record. From the judgment of the Rent Control and Eviction Officer, it is apparent that he considered the rent paid by Sri Harish Chandra, Sales Tax Officer, who was earlier tenant and was paying Rs. 175 per month as rent. This payment was made by the Sales Tax Officer on the basis of the agreement between him and landlord, and fixed Rs. 175 as monthly rent. The appellate court affirmed the same finding. The appellate court considered the Explanation given u/s 16 (9) of the Act and held that in view of this provision, the District Magistrate is required to pass order that the tenant should pay the presumptive rent. The Explanation further says that the presumptive rent will not be less than the rent which was payable by the last tenant. In this case, the last tenant was Sri Harish Chandra, Sales Tax Officer, who was paying Rs. 175 per month as rent and this rent was settled by agreement, paper No. 17/2. The agreement remained in force for one year and thereafter rent was increased to Rs. 200 per month. The appellate court found that the disputed accommodation is an old building and the rent fixed by the Rent Control and Eviction Officer is perfectly correct, therefore, he dismissed both the appeals.

6. Before discussing the argument of the learned counsel for the parties, it is necessary to see the provisions which are relevant for the present case. It is apparent that application was filed by the petitioner under Sections 8 and 9 of

the Act. The relevant provisions of Sections 8 and 9 of the Act are quoted below :

"8. Disputes regarding amount of standard rent, etc.-

(1) Where a dispute arises with regard to the amount of the standard rent or to the amount of enhancement in rent permissible u/s 5 or Section 6 or to the date with effect from which such enhancement shall take effect, or to the amount of taxes payable by tenant u/s 7. or to the amount of proportionate rent payable by the tenant after a part of the building or any land appurtenant thereto is released u/s 16 or Section 21, or to the amount of rent payable by the original tenant for the new building allotted to him under sub-section (2) of Section 24. the District Magistrate shall, on an application being made in that behalf, by order (determine such dispute).

(2) Where the assessment of a building occupied by a tenant is lower than the agreed rent payable therefore, the District Magistrate, on an application of the tenant or of his own motion. may, after giving to the landlord an opportunity of being heard, direct the local authority concerned to enhance the assessment in accordance with the agreed rent with effect from the date from which the agreed rent, has been payable or the date of commencement of this Act. whichever is later, and thereupon, notwithstanding anything contained in the law relating to that local authority, the assessment shall be corrected accordingly.

(3) Every order under subsection (1) or sub-section (2) shall, subject to the result of any appeal preferred u/s 10, be final."

"9. Determination of standard rent.-

(1) In the case of a building to which the old Act was applicable and which is let out at the time of the commencement of this Act in respect of which there is neither any reasonable annual rent nor any agreed rent or in any other case where there is neither any agreed rent nor any assessment in force, the District Magistrate shall, on an application being made in that behalf, determine the standard rent.

(2) In determining the standard rent the District Magistrate may consider :

(a) the respective market-value of the buildings and of its site immediately before the date of commencement of this Act or the date of letting, whichever is later [hereinafter in this section referred to as the said date) ;

(b) the cost of construction, maintenance and repairs of the building ;

(c) the prevailing rents for similar buildings in the locality immediately before the said date ;

(d) the amenities provided in the building ;

(e) the latest assessment, if any. of the building :

(f) any other relevant fact which appears in the circumstances of the case to be

material.

(2A) Subject to the provisions of sub-section (2), the District Magistrate shall ordinarily consider ten per cent per annum on the market value of the building (including its site) on the said date to be the annual standard rent thereof, and the monthly standard rent shall be equal to one-twelfth of the annual standard rent so calculated.

(3) Every order made under sub-section (1) shall, subject to the result of any appeal preferred u/s 10. be final."

7. Section 16 (9) of the Act is also relevant which is quoted below :

"16 (9) The District Magistrate shall, while making an order under clause (a) of sub-section (1), also require the allottee to pay to the landlord an advance, equivalent to (a) where the building is situated in a hill municipality, one-half of the yearly presumptive rent, and

(b) in any other case, one month's presumptive rent, and on his failure to make or offer the payment within a week thereof, rescind the allotment order.

Explanation.--In this subsection the expression "presumptive rent" means an amount of rent which the District Magistrate prima facie considers reasonable having regard to the provisions of sub-section (2) and (2A) of Section 9. provided that such amount shall not be less than the amount of rent which was payable by the last tenant, if any."

8. Section 3 (k) of the Act is also relevant which is quoted below :

"3 (k). "standard rent" subject to the provisions of Sections 6, 8 and 10. means-- (i) In the case of building governed by the old Act and let out at the time of commencement of this Act :

(a) where there is both an agreed rent payable therefore at such commencement as well as a reasonable annual rent (which in this Act has the same meaning as in Section 2 (f) of the old Act, reproduced in the Schedule) the agreed rent of the reasonable annual rent plus 25 per cent thereon, whichever is greater ;

(b) where there is no agreed rent, but there is a reasonable annual rent, the reasonable rent plus 25 per cent thereon.

(c) where there is neither agreed rent nor reasonable annual rent, the rent as determined u/s 9.

(ii) In any other case, the assessed letting value, for the time being in force, and in the absence of assessment, the rent determined u/s 9."

9. The question which has arisen in the case is as to what should be the basis for fixing rent under Sections 8 and 9 of the Act. As is admitted to the petitioner that at the time of allotment, the District Magistrate has fixed Rs. 175 as presumptive rent which was not agreed by the petitioner and he has filed application under

Sections 8 and 9 of the Act to fix the rent and has prayed for fixing Rs. 40 per month as rent. Therefore, it is necessary to see the relevant sections of the Act. A bare perusal of Section 16 (9) of the Act would show that the District Magistrate shall, while making an order under clause (a) of sub-section (1), also require the allottee to pay to the landlord an advance, equivalent to where the building is situated in a hill municipality, one half of the yearly presumptive rent and in any other case, one month's presumptive rent, and on his failure to make or offer the payment within a week thereof, rescind the allotment order. The Explanation given in this subsection the expression "presumptive rent" means an amount of rent which the District Magistrate prima facie considers reasonable having regard to the provisions of sub-sections (2) and (2A) of Section 9, provided that such amount shall not be less than the amount of rent which was payable by the last tenant, if any. According to Section 9 of the Act when there is neither any reasonable annual rent nor any agreed rent or in any other case where there is neither any agreed rent nor any assessment in force, the District Magistrate shall, on an application being made in that behalf, determine the standard rent. Section 16 (9) and Section 9 If read together will make it clear that the presumptive rent can be fixed which should not be less than the rent which was payable by the last tenant. But while determining the standard rent, the Court has to see various aspects as mentioned in sub-section (2) of Section 9 of the Act, Section 8 of the Act under which application was filed deals with the dispute with regard to the amount of standard rent or to the amount of enhancement in rent. So Section 8 of the Act also mentions the standard rent.

10. Sri R. C. Srivastava, senior counsel appearing on behalf of the petitioner has submitted that when application u/s 9 (2) of the Act was filed It was the duty of the Rent Control and Eviction Officer to have considered the factors and circumstances in accordance with Section 9 (2) of the Act and as it was not done the order passed by the Rent Control and Eviction Officer is illegal. In this respect, he has submitted that the rent paid by the earlier tenant cannot be the basis for fixing standard rent. His submission is that the case in 1980 ARC 192, has not been correctly considered by the authority below. Learned counsel for the petitioner has placed reliance in a case In Smt. Shakila Khatoon v. Ist Additional District Judge, 1984 (1) ARC 662, wherein the Court held that the rent should be determined in accordance with the provisions of Section 9 (2) of the Act. He has further placed reliance in a case in Smt. Prem Kumari Gupta v. District Judge. Saharanpur and others 1984 (2) ARC 332. Sri R. C. Srivastava, learned senior counsel appearing on behalf of the petitioner has further placed reliance in a case Alkesh Mittal v. Chandan Lal Mittal 1982 ARC 243.

11. Sri Manish Tiwari, learned counsel appearing on behalf of the respondents has submitted that as presumptive rent was fixed in accordance with the provisions of Section 16 (9) of the Act, the authorities below were justified for fixing standard rent on the basis of the rent paid by the last tenant. Therefore, no errors were committed by the Rent Control authorities or by the appellate court.

12. After hearing learned counsel for the parties I am of the view that there is much force in the argument of Sri R. C. Srivastava. Admittedly, there was no rent agreed between the landlord and the tenant. The rent was fixed by the District Magistrate u/s 16 (9) of the Act and that was presumptive rent. When application u/s 9 (2) of the Act was filed a prayer was made for fixing Rs. 40 per month as rent and Court was convinced that Rs. 40 cannot be fixed then it should have considered the factors and circumstances mentioned u/s 9 (2) of the Act. As it has not been considered and the rent has been fixed on the basis of the payment made by the last tenant, the Judgment is Illegal. Therefore, the orders passed by both the authorities are hereby quashed and the matter is being sent back to the Rent Control and Eviction Officer to redetermine the standard rent as provided u/s 9 (2) of the Act.

13. Accordingly, the writ petition succeeds and is allowed. The Judgments and orders passed by the 1st Additional District Judge, Mathura. dated 20.11.1981 and the Rent Control and Eviction Officer. Mathura, dated 16.8.1980 are hereby quashed and the matter is being sent back to the Rent Control and Eviction Officer, Mathura to decide the application filed by the petitioner afresh keeping in view the provisions of Section 9 (2) of the Act. There will be no orders as to cost.