
(2008) 11 AHC CK 0153
In the Allahabad High Court

Chandra Bali

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 12-11-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 1 AWC 259

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. The only point involved in this writ petition is regarding interpretation of the word "building" used in Section 2 (1) (g) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, which is quoted below:

2. Exemptions from operation of Act.—(1) Nothing in this Act shall apply to the following, namely:

(a) to (f) ... (not relevant).

(g) any building, whose monthly rent exceeds two thousand rupees.

3. The precise point involved and argued is as to whether the word "building" used in the aforesaid clause means only the tenanted building or in case tenanted accommodation is part of a big building, then the word "building" means the entire building of which tenanted accommodation is a part.

4. Landlord-respondent No. 3, Ajay Kumar filed S.C.C. Suit No. 95 of 1998 against tenant petitioner for his eviction from the accommodation in dispute, which is a shop, rent of which is Rs. 400 per month. It was also stated that tenant had agreed to enhance the rent to Rs. 800 per month but he did not pay the enhanced rent w.e.f. June, 1998. Notice of termination of tenancy and

demand of rent was given on 18.8.1998 in which it was stated that rent @ Rs. 800 per month had not been paid since 1.6.1998.

5. As admittedly tenant was not defaulter for more than three months when notice was served, (as required by Section 20 (2) (a) of the Act) hence eviction decree could be passed only if it was held that the Act was not applicable to the building in dispute.

6. Landlord's case was that he was owner landlord of the whole building containing several shops of which tenanted accommodation was a part and the rent of the whole building (all the shops) was more than Rs. 2,000 per month, hence aforesaid exemption clause was attracted. J.S.C.C, Varanasi decreed the suit for eviction holding that the aforesaid exemption clause was attracted. Arrears of rent w.e.f. 1.6.1998 @ Rs. 400 per month were also awarded through the said decree. Against the aforesaid judgment and decree, tenant petitioner filed S.C.C. Revision No. 54 of 1999, which was dismissed on 5.1.2000 by District Judge, Varanasi, hence this writ petition.

7. The courts below placed reliance upon *Manager, Punjab National Bank v. District Judge, Agra*, 1997 (1) ARC 211 : 1997 (1) AWC 378 and *Nepal Singh v. 1st A.D.J., Shahjahanpur*, 1997 (1) ARC 656 : 1997 (2) AWC 966 . Before the courts below on behalf of tenant reliance was placed upon *Ajay Kumar Jaiswal Vs. Smt. Shanti Singh and others*, taking the contrary view. In the authority of *Kuldeep Singh v. R. C. & E.O.*, 1997 (1) ARC 376 : 1997 (2) AWC 772, it has been held that the word "building" used under the aforesaid clause covers only the tenanted building and not the entire accommodation of which tenanted building may be a part.

8. As far as the authority of *Manager, Punjab National Bank* (supra) is concerned, Supreme Court set aside the said judgment on 1.8.1997 on the ground that delay in filing appeal had not been condoned by the lower appellate court and the said order was not set aside by the High Court hence writ petition could not be considered and allowed on merit. The Supreme Court remanded the matter to the High Court. Thereafter, the said writ petition was dismissed in default on 3.1.2008.

9. Learned Counsel has cited the following authorities of the Supreme Court:

1. *D.C. Bhatia and Others Vs. Union of India (UOI) and Another*,
2. *Vasu Dev Singh and Ors. v. Union of India and Ors.* 2006 (12) SCC 753.
3. *Ramanlal Bhailal Patel and Others Vs. State of Gujarat*,

10. The Supreme Court in *D. C. Bhatia's* case (supra) upheld the validity of similar provision contained in Delhi Rent Control Act, holding that fixation of cut-off point (rent) at Rs. 3,500 per month was not arbitrary as tenant is paying rent more than Rs. 3,500 per month and he cannot be said to belong to the weaker section in India so as to get protection under the Act. From the above authority,

it is quite clear that capacity of the particular tenant and his strength/ weakness is the main criteria. A particular tenant has got no concern with the rent or capacity of tenants of adjoining portions forming part of the same bigger building.

11. The authority of Ramanlal Bhailal Patel (supra) relates to Gujarat Agricultural Land Ceiling Act and deals with the definition of "person" and interpretation of the words "includes" and "means" used in definition clause of a particular Act.

12. Learned Counsel for the landlord has mainly placed reliance upon the Supreme Court authority of Vasu Dev Singh (supra). In the said authority, the aforesaid exemption Clause of U. P. Act was considered in paragraph 54 onwards. Para 78 of the said authority is quoted below:

The word "building" includes a part of building let out for any purpose whether being actually used for that purpose or not. The Act applies to rented building. Section 3 refers to "a building". While constituting [sic construing) the term "building", it is to be read as "rented building" and having regard to the definition of "building", a part of the building would also come within the purview thereof. In that view of the matter, rent of a building, which has been let out, would be a relevant criterion for classification of the tenanted premises.

13. Learned Counsel for the landlord has specifically referred to paragraphs No. 78, 83 and 95 of the said authority. However, in the said authority, it has nowhere been held that the whole building must be taken into consideration and not tenanted portion for determining the applicability of exemption clause based upon "rate of rent."

14. Learned Counsel for landlord has further argued that the word building used in different sections, Sub-sections and clauses of U. P. Act might be construed differently depending upon the context in which it was used. In this regard few books on interpretation have been cited. However, I do not agree that the said principle applies to the point in question.

15. In this regard reference may be made to the authority of the Supreme Court in M/s Rawalmal Naraindas and Sons Vs. B. Amarnath and Another, In the said authority in a slightly different context it has been held that entire building cannot be treated to be a single unit if it has got different portions having separate door numbers.

16. Accordingly, writ petition is allowed. Impugned judgments and order in respect of dispossession are set aside. Suit for possession is dismissed.

I have held in Smt. Khursheeda Begum and Others Vs. Additional District Judge and Others, and H. M. Kichlu v. A.D.J., 2004 (2) ARC 652. that while granting relief against eviction to the tenant in respect of building covered by Rent Control Act or while maintaining the said relief already granted by the courts below, writ court is empowered to enhance the rent to a reasonable extent.

17. In the aforesaid authority of Khursheeda (supra), I placed reliance upon the Supreme Court authority of Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another, where it was held that it was essential to provide for periodical enhancement of rent under the Rent Control Acts. The Supreme Court has further held that frozen rents are giving rise to lawlessness and landlords out of frustration are approaching muscle man to get the premises vacated and courts of law are becoming redundant in this sphere. This authority has recently been followed by the Supreme Court in Satyawati Sharma (Dead) by LRs. Vs. Union of India (UOI) and Another, of which are quoted below:

29. It is trite to say that legislation which may be quite reasonable and rationale at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equity and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent.

34. In Malpe Vishwanath Acharya and Ors. v. State of Maharashtra and Anr. (supra), the Court found that the criteria for determination and fixation of rent by freezing or by pegging down of rent as on 1.9.1940 or as on first date of letting, had, with the passage of time become irrational and arbitrary but did not strike down the same on the ground that extended period of Bombay Rent Act was coming to an end on 31.3.1998.

18. Under U. P. Rent Control Act, there is no provision of enhancement of rent after October, 1972 [Except where landlord is public charitable or public religious institution (Section 9A) or Government is tenant (Section 21 (8))]. In the aforesaid authority of Khursheeda, I have also placed reliance upon the authority of Supreme Court in Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another, of which is quoted below:

It is well-settled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priorly, before invoking the Jurisdiction of the High Court, the Court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief.

19. Thereafter in Para 8 of the aforesaid authority of Khursheeda, I held as under:

Rent Control Act confers a reasonable advantage upon the tenant of protection against arbitrary eviction. Tenant under the Rent Control Act cannot be evicted except on specific grounds like bona fide need of the landlord, arrears of rent, subletting and material alteration etc. This advantage is also coupled with the advantage of immunity from enhancement of rent. The latter advantage cannot

be said to be either reasonable or equitable. The Supreme Court in the aforesaid authority of Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another, has laid down that while granting relief to a party the writ court can very well ask the said party to shed the unfair advantage which it gained under the impugned order. By slightly extending the said doctrine it may safely be held that while granting the reasonable advantage to the tenant conferred upon him by the Rent Control Act the tenant may be asked to shed the unreasonable arbitrary advantage conferred upon him by the said Rent Control Act. The writ court therefore while granting or maintaining the relief against arbitrary ejection to the tenant can very well ask the tenant to shed the unreasonable benefit of the Rent Control Act granted to him in the form of immunity against enhancement of rent, however, inadequate the rent might be. Tenant will have to shed the undue advantage of immunity from enhancement of rent under the Rent Control Act to barter his protection from arbitrary eviction provided for by the said Act.

20. Thereafter in H. M. Kitchlu v. A.D.J. 2004 (2) ARC 652, I have held that the same principle of enhancement of rent to a reasonable extent may be made applicable while dismissing the writ petition of the landlord for the reason that by doing so writ court approves the protection of Rent Control Act granted to the tenant by the courts below, v

21. Rent of the shop in dispute is enhanced to Rs. 1,500 per month with effect from December, 2008.