(1994) 02 AHC CK 0021

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 11788 of 1989

Deepak Kumar Tyagi and Others — APPELLANT

Vs

Vth Additional District Judge and Others — RESPONDENT

Date of Decision : 14-02-1994

Acts Referred:

Uttar Pradesh Stamp Rules, 1942 — Rule 341
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 21(1), 21(8)

Citation : (1994) 3 AWC 1449

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Y.S. Saxena and A.K. Sharma, for the Appellant; Nalin Kumar Sharma, Murlidhar and P. Kumar, for the Respondent

Judgement

Sudhir Narain, J.—This writ petition is directed against order dated 15th March, 1989 passed by Respondent No. 1. I have heard Sri Y.S. Saxena, learned Counsel for the Petitioners and Sri Murlidhar, Senior Advocate, for Respondent No. 3.

2. The facts, in brief, are that a portion of the building situate at Haridwar was let out to Oriental Bank of Commerce, Respondent No. 3 (hereinafter referred to as the Bank). The Petitioner filed an application u/s 21(1)(8) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction), Act, 1972 (hereinafter referred to as the Act). The value of the property was to be determined in accordance with market value of the building under tenancy of Respondent No. 3 as provided under Sub-section (8) of Section 21 of the Act For the purpose of determining the market value the reports of the Engineers were submitted. The Prescribed Authority-by his order dated 14th August, 1987, determined the value of the accommodation, under she tenancy of Respondent No. 3 at Rs. 5,11,875/-. He held that Respondent NO. 3 is in occupation of 2275 sq feat and after taking into consideration the valuation of this portion, he fixed the rent at Rs. 2.50 per sq. feet. Aggrieved against the said order the Petitioners filed Rent Control Appeal No. 189 of 1987 and Respondent No. 3 filed Rent Control Appeal No. 186 of 1987

before the District Judge, Saharanpur. The appeal filed by the Petitioners was dismissed and the appeal filed by Respondent No. 3 was allowed. The Petitioner have filed writ petition against this order.

3. The Petitioner is a tenant of a portion of the building on the ground floor consisting of an area of 2275 sq. feet. The building is a double storied building and there is a basement. The landlord is carrying on his dry-cleaning business on the basement and residing on the first floor of the same building. The question Is of determination of the market value of the portion in occupation of the Bank The market value has not been defined in the Act. It is now settled law that the market value means what the willing purchaser would pay to a willing seller for the property having regard to the advantages available to the land and the development activities which may be going on in the vicinity and the potentiality of the land, vide Mahabir Prasad Shantuka v. Collector 1987 ALR 308.

4. The market value of a property can be determined by producing exemplars of the similar property sold in a particular area or near relevant date as contemplated in any statute. u/s 21(8) of the Act the relevant date would be the date of submitting an application under the provision before the District Magistrate In case no relevant exemplar is available, the other methods may be adopted for determining the market value of the property in question.

5. Where no other data are available, two methods are adopted for determining the market value of a building-

(i) The rent normally realised if let, or if not let, the expected rent and capitalising it by number of years'' purchase of the annual rent derived from the property; and

(ii) By valuing the land and the building separately and adding the value of one to the other.

6. The first method cannot be adopted in the case where the rent of the building has to be enhanced on the basis of the market value. It is then the last method i.e., by ascertaining the value of the land and the cost of the construction on it. The last method has been taken as very weak method because some times it does not represent the real market value of the property. In a case where the building on the ground floor is used for commercial purpose and first floor for residential purpose and basement for different purpose each one has its own independent value. If a willing purchaser goes to purchase shops or commercial portion of the building he will pay a higher price and for residential portion on the first floor he will pay lesser price. The value of the basement will be differently assessed. In Ram Shekhar v. Chairman City improvement Board, Mysore AIR 1957 Mys 57, it was held that the valuation of land with building thereon by valuing the land and the building separately and adding the value of one to the other does not furnish the reliable estimate of the property.

7. In a case, however, there is no other possible method to assess the market

value of the property the Court is left with no other method except to ascertain the market value of the property taking into consideration the value of the land and the cost of the construction existing on such land

8. The Petitioner relied upon the value of the building in question estimated by the Government approved valuer Sri S.K. Gupta who submitted his report on 19-8-1985. According to this report the market value of the land is Rs. 3.000/- per sq yard and the cost of the construction over the aforesaid building is Rs. 1,79,394-25 P. The Bank relied en the report of one Sri Rajiv Jain who estimated the cost of the construction at Rs. 1,67,435-10 P. and the value of the land at Rs. 71,757-90 P. at the rate of Rs. 544/- per sq yards. The cost of construction assessed by the valuer of the Bank and valuer of the Petitioner were not materially different. The main difference was in regard to the value of the land. Respondent No. 1 took the view that the report submitted by the valuer of the Bank was authentic as he had relied upon the circle rate of the land fixed by the State Government for that area.

9. The circle rate cannot determine the value of the land conclusively. The circle rate is fixed by the State Government for the purpose of realization of the stamp duty in the event of sale of land of a particular area. The value is fixed under Rule 341 of U.P. Stamp Rules 1942. In Kaka Singh v. Additional Collector/District Magistrate (Finance & Revenue) Bulandshahr 1986 ALJ 49, a Division Bench of this Court while considering the effect of the value fixed under Rule 341, held that Rule 341 has been framed by the Government only for the limited purpose of providing a guideline. It is not conclusive. If the Registering Officer is satisfied that the market value is less than even the minimum value, he may refer the document to Collector for determination of the value of such property. The value of the property may be higher. In a case where a part of the property on the same land is being utilised for commercial purpose and another portion for residential purpose, the value of the land so far as the portion of the building which is being used for commercial purpose can also not be taken a* same for residential purpose The value of the land has to be determined after taking into consideration various factors. Respondent No. 1 has solely relied upon the value of the land on the basis of the circle rate fixed by the State Government. This approach is not correct.

10. The second question is the value of the land in relation to the portion of the building in occupation of the Bank. The Petitioner is carrying on this dry-cleaning business on the basement and residing on the first floor. In case the cost of the land is taken into consideration and divided into three for the purpose of ascertaining the market value of the land in occupation of the Bank, it will not be a proper method. The value of the basement would be different. The value of the first floor residential portion will be different from the ground floor portion which is in occupation of the Bank. The Court has to apply a method by which proper market value can be determined. In such a situation taking the total value of the land and divided by half would be nearly to the value of the property in

occupation of the Bank. The basement portion and the residential portion of the building taken together may be treated as half of the total market value of the land.

11. The last question is regarding the cost of construction of the building. One method suggested is chat the total cast of the building may be ascertained and divided into three. This approach would not be correct in the circumstances of the case. The cost of basement, ground floor and the first floor would differ, it would be appropriate that the cost of the construction as regards the portion in occupation of the Bank should be separately assessed,

12. The ascertainment of the market value is a little guess work. The Court has to take into consideration the locality where the property is situate, its commercial value, potential value and other circumstances. As Respondent No. 1 has not adopted the correct approach for determination of the market value of the property in dispute, the order dated 15th March 1989 is hereby quashed. Respondent No. 1 is directed to decide both the appeals keeping in view the observations made above and in accordance with law within three months from the date of production of a certified copy of this order.

13. The parties shall bear their own costs.