
(2011) 11 AHC CK 0196
In the Allahabad High Court
Case No : Writ A No. 60788 of 2011

Dr. Pankaj Garg

APPELLANT

Vs

Yaduraj Narain and Others

RESPONDENT

Date of Decision : 17-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Provincial Small Cause Courts Act, 1887 — Section 2, 2(2), 20(4), 25

Citation : (2011) 11 AHC CK 0196

Hon'ble Judges : Shashi Kant Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon'ble Shashi Kant Gupta, J.—This writ petition is directed against the order dated 5.10.2011 passed by the Additional District Judge, Court No. 10, Meerut upholding the judgment and decree dated 2.4.2011 passed by the Judge Small Causes Court whereby the suit filed by the respondent-landlords for arrears of rent and ejectment was decreed in their favour.

2. Brief facts of the case are as follows;

3. The plaintiff-respondents filed a SCC Suit No. 98 of 2001 in the Court of Small Causes, Meerut for arrears of rent and ejectment of the petitioner from the Shop No. 3 and 4 situated in Hotel Yadu Nandan Cinema Compound, Garh Road, Meerut. It was, inter alia, pleaded in the said suit that UP Act No. 13 of 1972 (in short "Act") is not applicable in the matter since the construction of the building in dispute was completed after 1985. The petitioner filed written statement and contested the suit. Both the parties led evidence oral and documentary in support of their respective cases. The trial court vide order dated 2.4.2011 decreed the suit holding that the construction of the building in question was completed after 1985, as such, UP Act No. 13 of 1972 was not applicable in the matter and also, inter alia, held the petitioner to be a defaulter in payment of rent. Being aggrieved and dissatisfied with the judgment and order dated

2.4.2011, the petitioner filed a revision u/s 25 of the Provincial Small Causes Court Act, 1887 which was registered as SCC Revision No. 35 of 2011. The revisional court by judgment and order dated 5.10.2011 dismissed the revision and affirmed the judgment and order dated 2.4.2011 passed by the trial court. Hence, the present writ petition.

4. Learned counsel for the petitioner has submitted that the courts below have erred in law while holding that UP Act No. 13 of 1972 is not applicable in the matter. It was further submitted that despite the cogent and convincing evidence on record, the courts below recorded an adverse finding that the Act is not applicable in the matter. In support of his contention that the building is an old construction constructed much prior to 1985, learned counsel for the petitioner further referred to the various documents.

5. Per contra, learned counsel for the respondent-landlords has supported the judgment and orders passed by the courts below and submitted that the courts below have recorded a finding that the first assessment of the disputed premises was made in the year 1987, as such, UP Act No. 13 of 1972 was not applicable in the matter in terms of the Explanation I to Sub-Section (2) of Section 2 of the Act.

6. Heard the learned counsel for the parties and perused the record.

7. The main dispute between the parties is as to whether the Act No. 13 of 1972 is applicable in the present matter or not.

8. Learned counsel for the respondent-landlords has referred to the oral testimony of the petitioner wherein the petitioner has stated as follows;

Yah Kahna Sahi Hai Ki Prasangat dukan jis building ka bhag hai us building me pratham baar Nagar Palika dwara grihkar 1-4-87 me lagaya gaya kyoki vadi ki ore dakhil kiya gaya chiththa dekha tha.

9. Thus, the petitioner himself in his oral testimony has admitted that the first assessment by the local body Nagar Nigam, Meerut of the building was made with effect from 1.4.1987. This apart, assessment order with respect to the building was also filed wherein it was categorically mentioned that the assessment of the building was made "vide U. N. A. (Up Nagar Adhikari) order dt. 16.2.88 w.e.f. 1.4.87". The petitioner has not been able to place any assessment order or any document with respect to the disputed premises to demonstrate that any assessment of the disputed premises was made by the Nagar Nigam prior to 1.4.1987. The petitioner in the counter affidavit has also annexed the letter dated 20.6.2011 issued by the Nagar Nigam Department stating that the assessment of the premises in dispute was, for the first time, made with effect from 1.4.1987 and the copy of the intimation sent by the Nagar Nigam dated 2.11.2010 has also been filed wherein it has been mentioned that Chittha of 1976 to 1981 was used upto 31.3.1992. It appears that the assessment orders passed by the Nagar Nigam subsequent to assessment year

1976-1981 continued to be passed in the old format prescribed for the assessment year 1976-81, without scoring out the heading meant for the assessment year 1976-81. Subsequent assessment orders upto 1992 were passed in the same old format. Moreover, the format containing the heading "1976-81" in the assessment order is not at all relevant since the assessment order itself clearly indicates that the building was assessed vide order dated 16.7.1988 with effect from 1.4.1987 and this fact also has been reiterated by Nagar Nigam in its letter dated 20.6.1981 as indicated herein above stating that the building was assessed vide order dated 16.12.1988 w.e.f 1.4.1987. Moreover, it is not the case of the petitioner that the building for the first time was assessed w.e.f. 1976.

10. At this juncture, it is important to refer to Explanation 1 to Section 2 (2) of the UP Act No. 13 of 1972 which reads as under;

"Explanation 1. [For the purpose of this section]"

(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 :

Provided that there may be different dates of completion of construction in respect of different parts of a building which are either designed as separate units or are occupied separately by the landlord and one or more tenants or by different tenants;

(b) "construction" includes any new construction in place of an existing building which has been wholly or substantially demolished;

(c) where such substantial addition is made to an existing building that the existing building becomes only a minor part thereof the whole of the building including the existing building shall be deemed to be constructed on the date of completion of the said addition;

11. The aforesaid provision indicates four different dates for determining the date of completion of building. The dates are :

(1) When the completion of the building is reported to the local authority.

(2) When the completion of the building is otherwise recorded by the local authority.

(3) When the first assessment of the building comes into effect. (4) When it is actually occupied.

The Explanation further provides that in case for the first three categories the dates are available then the earliest of the three dates will be the date of completion of the building and in case the first three dates are not available, then the forth date will be the date on which construction of the building shall be taken to have been completed.

12. Learned counsel for the petitioner while referring to the entry made in the register kept by the Development Authority has submitted that an application for sanction of the map was filed by the landlord in the year 1979. On the contrary, the learned counsel for the landlords submitted that application for sanction was filed in the year 1979. Be that as it may, merely filing of any application for sanction of the map either in the year 1979 or 1983 has got no relevance for deciding the question of applicability of the Act. The completion of the construction has to be determined in accordance with the Explanation 1 to Section 2 (2) of the Act.

13. The documents with regard to registration of the Hotel Yadu under the Central Sales Tax Act or the Income Tax Assessment of Asha Traders has also got no relevance while determining the completion of the construction of the building. The construction of the building is to be considered strictly in accordance with Explanation 1 to Section 2 (2) of the UP Act No. 13 of 1972. The documentary evidence filed by the petitioner before the courts below does not indicate that the completion of the building was either reported or recorded by the local authority or the first assessment of the disputed building was made prior to 26.4.1984. Besides this, the petitioner in his oral testimony has admitted that the assessment of the building was made for the first time on 1.4.1987. Thus, the petitioner cannot wriggle out from his own admission even if the building was occupied prior to the first date of assessment, that fact will not be relevant for deciding the question of applicability of the Act in view of the Explanation I to Section 2 to Sub-section 2 of the Act.

14. In this connection reference may be made to the decision of the Apex Court in the case of Saleem Vs. District Judge, Muzaffarnagar and others (Supreme Court & Full Bench Rent Cases, 1998, 473) wherein in para 12 of the judgment it was held as follows;

12. In fact, the present controversy is squarely covered against the appellant by a decision of three Judge Bench of this court in the case of Om Prakash Gupta Vs. Dig Vijendrapal Gupta, . Considering the very same explanation Justice Misra speaking for the Bench in paragraph 6 of the report observed that a perusal of Explanation I makes it abundantly clear that the date of occupation would be taken to be the date of completion of the construction only when there is no report or record of the completion of the construction or no assessment thereof. If there is an assessment, as in the present case it is, it will be the date of the first assessment which will be deemed to be the date of completion of the construction and in that view of the matter the building had not become more than ten years" old on the date when the revision came to be decided by the

High Court. It is also to be noted that in the said decision the argument was that the building was occupied prior to the first date of assessment. that evidence was not held to be relevant for deciding the question of applicability of Explanation I as prior occupation by the tenant was not mentioned by the Legislature as one of the requirements for applicability of Explanation I to sub-section (2) of Section 2 of the Rent Act.

15. Both the courts below after perusal of pleadings and evidence available on record held that the UP Act No. 13 of 1972 is not applicable and also that the petitioner has committed default in payment of rent. Since the Act is not applicable, the alleged deposit u/s 20 (4) of the Act is also of no consequence. The finding of facts recorded by the courts below is based on material available on record and cannot be interfered with. The courts below have given cogent, convincing and satisfactory reasons while passing the order in favour of the respondent-landlord. The finding recorded by the courts below are neither perverse nor based on any extraneous or irrelevant material. This court under Article 226 of the Constitution of India can not substitute its own opinion for the opinion of the courts below unless it is found that the conclusion drawn by the lower court is erroneous being contrary to the mandatory provisions of law applicable or based on inadmissible evidence.

16. No other point has been pressed by the learned counsel for the petitioner.

17. I do not see any merit in the writ petition, the writ petition is, accordingly, dismissed.