

(2004) 11 AHC CK 0054
In the Allahabad High Court
Case No : C.M.W.P. No. 45258 of 2002

Ishwar Singh and Others

APPELLANT

Vs

Up-Zila Adhikari/Rent Control and Eviction Officer and
Another

RESPONDENT

Date of Decision : 16-11-2004

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12(5), 2(2), 21(1A), 24(2), 24A

Citation : (2005) 3 AWC 2237

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Advocate : Arjun Singhal, for the Appellant; M.D. Agarwal, C.S.C., for the
Respondent

Final Decision : Dismissed

Judgement

Vikram Nath, J.—This petition has been filed by the tenant against order dated 16.5.2002 passed by Rent Control and Eviction Officer, Shamli, Muzaffarnagar, in proceedings u/s 29A(5) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act).

2. Brief facts of the case are that Satya Prakash (Respondent 2) is the owner of the plot measuring 210.97 Sq.m. situated in the town of Shamli, Tehsil, Shamli, District Muzaffarnagar (in short referred as the land in dispute). By means of agreement dated 12.6.1970, the land in dispute was let out to Shri Bhagwan Singh, father of the Petitioners, at annual rent of Rs. 240. It is alleged that the building was raised by the tenant in the year 1994 and the landlord by an application u/s 29A (5) of the Act sought enhancement of the rent of the land in dispute. According to landlord the market value of the land in dispute was assessed as Rs. 4,21,947 and, therefore, as per the provisions contained in Sub-section (5) of Section 29A of the Act, monthly rent should be determined at Rs. . 3516/20 p. per month. The application was contested by Petitioners. It was

alleged in paragraph 16 of the written statement that no constructions were raised by the tenant from his own funds and expense of constructions had been incurred by the landlord himself. The tenant further denied raising any construction in 1994. A further contention was raised that constructions having been raised in the year 1994 provisions of the Act did not apply.

3. In support of his case the landlord filed a valuation report of Singhal Associates. The report was also supported by an affidavit of Sri S.P. Singhal, who was the Consulting Engineer of the said Associates. On behalf of the tenant Petitioner a report was filed by Engineer Virendra Singh of Baliyan Associates. This report is in respect of age of construction only and did not relate to the valuation of the land in dispute. The Rent Control & Eviction Officer upon consideration of the valuation report came to the conclusion that the valuation of the land, as determined by the valuer of the landlord at the rate of Rs. 2,000 per Sq. meter was fair and reasonable market value. Accordingly vide order dated 16.5.2002, Respondent No. 1 allowed the application of the landlord for enhancing of the rent of the land in dispute and fixed the same as Rs. 3,516.20p. per month. Aggrieved by the said order the present petition has been filed.

4. I have heard Sri Arjun Singhal, learned Counsel for the Petitioners and Sri M.M.D. Agarwal, learned Counsel for the Respondent No. 2. Counter and rejoinder-affidavit have been exchanged. With the consent of the learned Counsel for the parties this petition is being finally disposed of.

5. Learned Counsel for the Petitioners has raised 3 questions in this petition. Firstly, the provisions of the U. P. Act No. 13 of 1972 did not apply to the present land in dispute, on the ground that the constructions have been raised in the year 1994 as alleged by the landlord and ten years period had not expired. Secondly, that the Rent Control and Eviction Officer has not recorded any finding that the constructions were raised by the tenant Petitioners and therefore, Section 29A of the Act had no application and thirdly, that the valuation report is not based upon any document and cannot be relied upon.

6. Sri M.M.D. Agarwal learned Counsel for the Respondent No. 2 stated that the provisions of the Act were applicable, the Rent Control and Eviction Officer had recorded findings regarding the constructions having been raised by the Petitioners, the valuation has been recorded on the basis of the evidence on record. According to him the submission made by the learned Counsel for the Petitioners are not tenable in law.

7. Examining the first question, the contention of the learned Counsel for the Petitioners is that in view of the exception clause contained in Sub-section (2) of Section 2 of the Act, which does not include Section 29A therefore, in respect of any building constructed within a period of 10 years, the provisions of the Act would not apply. Section 2 (2) of the Act is quoted below:

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:

[Provided that where any building is constructed substantially out of funds obtained by way of loan or advance from the State Government or the Life Insurance Corporation of India or a bank or a co-operative society or the Uttar Pradesh Avas Evam Vikas Parishad, and the period of repayment of such loan or advance exceeds the aforesaid period of ten years, then the reference in this Sub-section to the period of ten years shall be deemed to be a reference to the period of fifteen years or the period ending with the date of actual repayment of such loan or advance (including interest), whichever is shorter]:

[Provided further that where construction of a building is completed on or after April 26, 1985, then the reference in this Sub-section to the period of ten years shall be deemed to be a reference to a period of (forty years) from the date on which its construction is completed].

8. It was contended that as per the landlord the constructions had been raised in 1994 period of 10 years has not elapsed as the application was filed in the year 1999. It was, therefore, not maintainable.

9. Sub-section (2) of Section 29A reads as under:

This section applies only to land let out, either before or after the commencement of this section, where the tenant, with the landlord's consent has erected any permanent structure and incurred expenses in execution thereof.

10. And Section 29A (1) (5) reads as under:

The District Magistrate shall on the application of the landlord or the tenant determine the annual rent payable in respect of such land at the rate of ten per cent per annum of the prevailing market value of the land, and such rent shall be payable, except as provided in Sub-section (6) from the date of expiration of the term for which the land was let or from the commencement of this section, whichever is later.

11. From perusal of Section 2(2) of the Act, it is clear that it refers to a building, which is constructed during period of 10 years, would not be covered by this provision of the Act. The word building under Sub-section (2) of Section 2 of the Act cannot be meant to include the land as referred to in Section 29A, but would only mean to include building as defined u/s 3(i) of the Act meaning a residential, non-residential construction and may also include any land including any garden, garage and out-houses, appurtenant to such building, furniture, fittings and fixtures affixed to building. However, Section 29A will not be applied for the purpose of the exception clause covered in Section 2(2) of the Act. Tenancy of the building may include land. But Section 29A is concerned with the tenancy of the land and will not include the constructions as the same are to be raised by the tenant. The constructions raised by the landlord will not be covered u/s 29A but will be covered by the definition clause of building in Section 3(i) of

the Act.

12. Section 2(2) of the Act refers only to building and not to the tenancy of land given for constructions to be raised by the tenant. In case Section 2(2) of the Act was to include land covered u/s 29A of the Act the word land would have been mentioned alongwith building. The Legislature was clear that the exception provided in Section 2(2) of the Act was only in respect of building and not in respect of letting of land.

13. In the circumstances the contention of the Petitioners cannot be accepted and is accordingly rejected.

14. The second contention of the Petitioners is that the Rent Control and Eviction Officer has not recorded finding that the constructions were raised by the tenant or the landlord. This contention cannot be accepted in view of the specific finding recorded by the Rent Control and Eviction Officer on issue Nos. 1 and 2 in the judgment. Even before this Court the Petitioner has not been able to show from any material, which could indicate that the construction was raised by the landlord. The Rent Control and Eviction Officer has given good reason to hold that the construction was raised by the tenant. The land had been rented out at Rs. 30 per month as per the agreement. It is not the case of the Petitioners that as per the initial agreement building had been let out and not the land. In case the landlord had raised the construction then it would fall within the definition of building and the landlord would rent out the building on higher rent rather than let out the land. In the circumstances this contention of the Petitioners also fails. There is no averment that the rent was enhanced at any time after the initial agreement dated 12.6.1970.

15. Third contention is regarding market value of the land being not correct. The valuer Singhal Associates, who had submitted report on behalf of the landlord had assessed the value of the land at Rs. 2000 per Sq. meter. He had also filed affidavit in this respect. No evidence was led by the tenant to rebut the valuation as claimed by the landlord. The report of the valuer submitted by the Petitioners was only with respect to the age of the building and not its value. Even in the written statement nothing has been stated by the tenant that the rent, as claimed by the Petitioners was excessive. Counsel for the Petitioner has relied upon judgment of this Court in the case of State of U. P. and others Vs. Rent Control and Eviction Officer, Mathura and another, , for the purpose that the circle rate has to be considered by the Courts for determining the market value.

16. In the judgment referred to by the counsel for the Petitioners what has been held is that in the absence of any evidence circle rate may be treated as final. It was also observed in the same judgment that the circle rate cannot be sole basis of determining the market value. In the present case the valuation report of the Singhal Associates supported by affidavit was sufficient evidence to determine the market value. Further in the absence of any evidence to the contrary the Rent Control and Eviction Officer was fully justified in accepting the market value

at Rs. 2,000 per Sq. meter. In the circumstances third ground also fails and market value of the land determined by the Rent Control and Eviction Officer is held to be correct.

17. There is another aspect of the matter. This petition was filed in October, 2002 and the Petitioner was granted an interim order of stay of operation of the impugned order dated 16.5.2002 subject to the condition that he continues to pay rent to Respondent No. 2 with effect from November, 2002 at the rate of Rs. 3,516.20 per month. Under the said interim order, payment of arrears from 1994 had been stayed. It is stated by learned Counsel for the Respondent that the interim order has not been complied. This fact is not controverted by the Petitioners. They have not shown any deposit receipt regarding compliance of the interim order. This is serious matter. Obtaining interim order and not complying with the same cannot be allowed to be tolerated. Petitioners will have to be subjected to costs for not complying with the terms of the interim order and enjoying its benefit at the same time. Considering the facts and circumstances costs of Rs. 10,000 is imposed upon the Petitioners.

18. In these circumstances the writ petition fails and is dismissed with costs quantified at Rs. 10,000.