
(1979) 11 AHC CK 0089
In the Allahabad High Court
Case No : Civil Misc. Writ No. 299 of 1977

Ishwari Prasad Singh

APPELLANT

Vs

III Addl. District Judge and Others

RESPONDENT

Date of Decision : 12-11-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 2
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 3, 8, 9

Citation : (1980) AWC 30

Hon'ble Judges : B.D. Agarwala, J

Bench : Single Bench

Advocate : K.M.L. Hajela, for the Appellant;

Final Decision : Allowed

Judgement

B.D. Agarwal, J.—This petition under Article 226 of the Constitution of India has been filed by the tenant of the upper portion of premises No. 18, Faltoonganj, District Bareilly. The Petitioner was allotted this accommodation under an allotment order dated June 24, 1972. The building in which this accommodation is situate is a very old and the provisions of U.P. Temporary (Control of Rent and Eviction) Act, 1947 applied. The Petitioner Sled an application u/s 8 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 for determination of the standard rent in respect of the accommodation in question. The building in question consisted of several houses. The Municipal Board had assessed this building in the year, 1955. So far as the houses Nos. 17 and 18 were concerned, the same were jointly assessed at Rs. 45/- by the Municipal Board. Accordingly, it was the case of the Petitioner that there is a reasonable annual rent in respect of the accommodation bearing No. 18 and hence standard rent had to be determined accordingly. This application was contested on behalf of the landlord who came with the case that there was an agreed rent in respect of the accommodation in question and, accordingly, the application made by the tenant

was not maintainable; and that the rent was liable to be determined in accordance with the principles laid down u/s 9 of the Act.

2. The rent Control and Eviction Officer recorded a finding that there was no agreed rent in respect of the accommodation in question. He also noticed the fact that there was municipal assessment in respect of the accommodation No. 17 and 18 and the assessment was made at Rs. 45/- p.m. He, however, proceeded to decide the question of determination of standard rent after complying the principles laid down u/s 9 of the Act. The Rent Control and Eviction Officer determined the standard rent at Rs. 40/- p. m. The Petitioner thereafter filed an appeal against this order. The appeal was also dismissed and the determination of rent at Rs. 40/- p.m. by the Rent Control and Eviction Officer was upheld. The Petitioner has filed the present petition.

3. Learned Counsel for the Petitioner has submitted that on the facts found the present case was not a case for determination of standard rent upon an application of the principles laid down u/s 9 of the Act. According to him Section 9 of the Act is not applicable. The accommodation in question was an accommodation, to which the old Act applied. The standard rent has been defined u/s 3(k) of the Act. Sub-clause (a), (b) and (c) of Clause (i) apply to cases of a building covered by the old Act and let out at the commencement of the U.P. Act No. XIII of 1972. Sub-clause (a) deals with the case where there is both an agreed rent as well as reasonable annual rent as defined in Sub-clause (2) (f) of U.P. Act III of 1947. Sub-clause (b) applies to a case where there is no agreed rent but there is reasonable annual rent and Sub-clause (c) applies where there is neither agreed rent nor reasonable annual rent. In a case covered by Sub-clause (b) the standard rent is the reasonable rent plus 25 per cent thereon. In a case to which Sub-clause (c) applies, the standard rent would be the rent as determined u/s 9 of the Act. In the instant case, since there was a reasonable annual rent and upon a finding arrived at by the authorities below there was no agreed rent, Sub-clause (b) would apply. The reasonable annual rent ought to have been first arrived at and then the standard rent ought to have been determined after applying Clause (b) of Section 3(k)(i) of the Act. Since the present was a case of an accommodation which was part of the accommodation assessed by the Municipal Board, the proportionate amount of the Municipal assessment ought to have been arrived at as provided for in Section 2 (f) (ii) of U.P. Act No. III of 1947.

4. Both the Rent Control and Eviction Officer as well as III Additional District Judge, Bareilly have committed manifest error of law in applying the principles for determination of standard rent as provided for u/s 9 of the Act. As already observed above, the standard rent in the instant case was liable to be determined upon an application of Sub-clause (b) of Clause (i) of Section 3(k) of U.P. Act No. XIII of 1972 and Section 2(f) of U.P. Act No. III of 1947.

5. The Writ petition is, accordingly, allowed. The judgment and order dated 9-12-1975 of the Rent Control and Eviction Officer, Bareilly and 10-12 1976 of

the III Additional District Judge, Bareilly are quashed. The Rent Control and Eviction Officer is directed to decide the application u/s 8 of the U.P. Act No. XIII of 1972 filed by the Petitioner in accordance with law and in the light of the observations made above.

6. In the circumstances of this case, however, the parties will bear their own costs.