
(1979) 10 AHC CK 0056
In the Allahabad High Court
Case No : Civil Misc. Writ No. 1850 of 1977

Kastoor Chand Sarraf

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 19-10-1979

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2(2)

Citation : (1979) AWC 766

Hon'ble Judges : Murlidhar, J

Bench : Single Bench

Advocate : K.N. Saxena, for the Appellant;

Final Decision : Allowed

Judgement

Murlidhar, J.—By this writ petition the landlord has questioned an order of allotment, dated 17-2-1977 by the Rent Control and Eviction Officer and the revisional order, dated 13-10-77 by the District Judge by which the disputed premises were allotted to one B.N. Srivastava after rejecting the landlord's plea that the same were a new construction because of extensive changes effected by him in the year 1975. The contention of the Petitioner is that on the material it should have been found that the construction was new. None of the opposite parties has filed any counter in this case and indeed have not put in appearance. Having heard the Learned Counsel for the Petitioner. I have come to the conclusion that the order of the District Judge is unsustainable.

2. Where an old construction is converted into new premises by additions and alterations, the provision applicable is Section 2(2) Explanation 1(c) Act XIII of 1972 which runs as follows:

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.

3. The crucial question for determining the status of a building in which alterations have been made for purposes of determining its age which bears allotability is whether such substantial additions have been made that the old building becomes a minor part. If so the building will be treated as a new building. Additions would cover new structures increasing the area of the building as well as changes and improvements in existing structures. The word minor according to its ordinary meaning conveys the idea of lesser and in case of two entities would mean less than half. Therefore, the authority has to consider (i) added cost relative to present value of the old utilized structure ; (ii) new structure area and costwise relative to the old one utilized ; (iii) actual cost of alterations and improvements in the old structure utilized in the previous and then decide whether the old structure utilized in the building has become a minor part. If the changes constitute the major part the building must be treated to be a new structure otherwise it will remain the old building for purposes of Section 2(2).

4. In the present case the findings recorded by the District Judge are that a godown 90" x 12" was converted into a number of rooms by making walls in that godown. Roof and the four walls remained the same. Outside the old structure a kitchen, bath room, latrine, store and a fuel shed had been added. In fact the plan shown by the Learned Counsel also shows boundary of the court-yard to have been made. The four walls mentioned by the District Judge are obviously the four outer walls of the original building of which apparently the disputed premises utilize only two or three walls rest of the walls in the premises being all new partition walls. It was also found that the rooms and verandah made within the old go-down building measure approximately 500 sq.ft. covered area while the new additions are approximately 350 sq.ft. enclosed courtyard. But as noted already in the old building godown also, most of the walls are new. Rent Control and Eviction Officer had referred to the relative cost of old and new structures but the District Judge has not at all considered the extent of additions cost or areawise compared to the old structure utilized in the present premises and after enumerating the changes observed that these could not be regarded as substantial changes and additions. This order cannot stand.

5. The petition is allowed. The order of the District Judge, dated 13-10-1977 is quashed and the District Judge is directed to decide the revision afresh in the light of the observations made in this order. "There shall be no order as to costs.