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(2003) 09 AHC CK 0192

In the Allahabad High Court

Case No : C.M.W.P. No. 12399 of 1991

Laxmi Talkies and Others APPELLANT

Vs

Rent Control and Eviction Officer and Another RESPONDENT

Date of Decision : 10-09-2003

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 29A, 29A(5)

Citation : (2003) 4 AWC 3117

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : R.P. Goyal, for the Appellant; Manish Kumar Nigam and Rahul Sahai and S.C., for the Respondent

Final Decision : Partly Allowed

Judgement

S.U. Khan, J.—This writ petition filed by the tenants arises out of the proceedings u/s 29A of U. P. Act No. 13 of 1972, initiated by landlord respondent No. 2 for enhancement of rent. The application was filed on 29.11.1988. The lease deed in between the parties was executed on 2.6.1970. Prior to execution of the lease deed building in the form of cinema hall was existing over the lease land. The building had been constructed by the previous tenant and sold by him to the petitioners to whom the land over which the building was constructed was also let out through the aforesaid lease deed of 1970! The monthly rent provided for under the lease deed was Rs. 70 per month. The lease was initially for a period of 7 years with the clause for renewal/continuance after 7 years also on enhancement of rent. There is no dispute that after 7 years, i.e., from June, 1977 rent was enhanced from Rs. 70 to Rs. 105 per month. In the application for enhancement of rent it was alleged that the market value of the lease land was Rs. 20 lakhs. The provision of enhancement of rent, i.e., Section 29A was inserted in U. P. Act No. 13 of 1972 with effect from 5.7.1976. The area of the lease land is 915 square yards. Rent Control and Eviction Officer, Mathura allowed the application of landlord respondent u/s 29A (5) of the Act by order

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dated 13.3.1991 and enhanced the rent to Rs. 12,808 per month with effect from 1.6.1977. This writ petition Is directed against the said order.

2. Rent Control and Eviction Officer in the impugned order has held that the cinema hall known as Lakshmi Talkies built over the lease land is situate in the middle of the city on the road where the valuation of the land was more than of other lands and the circle rate determined by the Collector under Rule 340A of U. P. Stamp Rules at the relevant time was Rs. 350 per square metre. After taking into consideration all these factors R. C. and E.O. fixed the market value at the rate of Rs. 1,400 per square yards.

3. The first point urged by the learned counsel for the petitioner is that proceedings were not maintainable as there was provision of renewal/automatic renewal in the lease deed itself after every 7 years with enhancement in rent and as rent had been enhanced with effect from 1.6.1977, hence, application for enhancement of rent was not maintainable. Interpreting a similar provision of enhancement of rent u/s 21 (8) of the Act, it has been held in 1993 (2) ARC 21 that existence of clause in the lease deed of periodical enhancement of rent is no bar to enhancement of rent in accordance with the said section. The same view is equally applicable to the proceedings u/s 29A (5) of the Act. It has been held in Full Bench decision in 1987 (1) ARC 290, that the expression agreement used in Section 29A (4) refers to agreement entered into between the parties after coming into force of Section 29A, i.e., after 5.7.1976 and not an agreement of prior date. In the Instant case the agreement regarding rent (lease) was entered into in the year 1970, i.e., much prior to Insertion of Section 29A in the Act. Merely because there was a provision of enhancement of rent in the lease deed and accordingly rent was enhanced in 1977, it will not render the agreement regarding rent to be of post July, 1976 period. The agreement will remain of 1970.

4. As far as quantum of increase is concerned, the R.C. and E.O. has determined the market value at the rate of Rs. 1,400 per sq. yard as against the market value of Rs. 350 per sq. yard determined under Stamp Rules. On the ground that the rates fixed by District Magistrate under Stamp Rules are minimum rate. This approach of R.C. and E.O. is wholly illegal. The rates determined by District Magistrate under Stamp Rules are rather on the higher side. No exemplar showing sale of nearby land at higher price was filed. Mere oral offer of purchasing on higher price by some witnesses of landlord means nothing. Accordingly I hold that the rate fixed by District Magistrate under Stamp Rules should be taken to be the market value. On the said basis the market value comes to around Rs. 3,15,000 (900 x 350). 1/120 of the said value comes to Rs. 2,625 which in round figures is determined to be Rs. 2,500 per month. The third question which is to be considered is regarding the date from which the enhanced rent must be payable. It has come in the order of R.C. and E.O. that after execution of the Initial lease deed in the year 1970 no other lease deed was executed in the year 1977. In the lease deed which is Annexure-11 to the writ

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petition. It is mentioned in para 9 "that at least one month before the expiry of the lease the lessee shall communicate to the lessor for getting the lease renewed. In case lessee falls to get executed the renewed lease the lessee shall continue for another term." In para 1 of the said lease deed it is mentioned that the lease is for a term of seven years commencing from first of June, 1970. By virtue of the aforesaid clauses in the absence of fresh lease deed executed in June, 1977, the Initial lease deed continued till 31.5.1984 (i.e., for 14 years). Section 29A (5) of the Act provides that the enhanced rent shall be payable, "from the date of expiration of the term for which the land was let out or from the commencement of this section whichever is later." The term expired on 31.5.1984, hence rent could be enhanced from 1.6.1984.

5. Learned counsel of the petitioner has also argued that Section 29A is not applicable as the structure was not erected by tenant/petitioner as required by Section 29A (2). In my opinion the argument is not tenable as tenant/petitioner purchased the structure which had been erected by the previous tenant for the purposes of the said sub-section erecting the structure or purchasing the erected structure does not make any difference.

6. Accordingly, writ petition is allowed in part. The order dated 13.3.1991 passed by R.C. and E.O., Mathura in Case No. 146 of 1988 is modified to the extent that rent is enhanced to ,Rs. 2,500 per month payable w.e.f. 1.6.1984.

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