

(1985) 05 AHC CK 0071

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3443 of 1983

Lt. Col. Kripal Singh Khera

APPELLANT

Vs

The Additional District Judge (Special Judge) and Others

RESPONDENT

Date of Decision : 16-05-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 136, 14, 226
Municipalities Act, 1916 — Section 146, 147
Provincial Small Cause Courts Act, 1887 — Section 25
Transfer of Property Act, 1882 — Section 106
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2, 2(2), 39, 40

Citation : (1985) AWC 756

Hon'ble Judges : R.K. Shukla, J

Bench : Single Bench

Advocate : Keshari Nath Tripathi, for the Appellant; S.C. and Chandra Prakash, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Shukla, J.—By this writ petition under Article 226 of the Constitution of India, the Petitioner has claimed relief for issue of writ of certiorari, quashing the orders dated 14-2-1983 (Annexure VIII) and 11-2-1980 (Annexure VII), passed by the Additional District Judge, Bareilly and Judge Small Causes Court, Bareilly, Respondents Nos. 1 and 2 respectively.

2. Brief facts of the case are that the Petitioner Kripal Singh Khera, a retired Lt. Col. entered into an agreement with Dr. Kunwar Bahadur Pradhan, owner of the property in dispute on 1-7-1970 regarding a newly constructed residential accommodation, bearing municipal No. 187-A/3 in the compound of a big building known as "Kalyan Bhavan", bearing municipal No. 187-A on a monthly rent of Rs. 175/- payable in advance on the first of every month to the owner, Dr. Kunwar Bahadur Pradhan, Respondent No. 3. It was also agreed upon between

the parties that the Petitioner shall also pay to the owner of the house the proportionate water charges on the common water meter and the electric charges. Later on Respondent No. 3, Dr. Kunwar Bahadur Pradhan, owner of the house filed a suit on 28-1-1976 after giving notice u/s 106 of the Transfer of Property Act on 15-9-1975, which was served on the Petitioner on 22-9-1975 in the court of the Judge Small Causes Court, Bareilly for ejectment and for recovery of 118-50 as arrears of rent for 1-10-1975 to 21-10-1975, Rs. 564.50 33 damages from 22-10-1975 to 28-1-1976 and Rs. 450/- as water charges. The case set up by Respondent No. 3 in the plaint was that the Petitioner was a tenant of the premises in dispute which was constructed in the year 1970 and hence was out side the purview of U.P. Act No. 13 of 1972 that the Petitioner's tenancy had been determined by a notice but he failed to vacate the premises and to pay the rent and water charges etc. The Petitioner filed a written statement contesting the suit on the grounds inter alia that the premises in dispute had been constructed long ago before the year 1970 and the provisions of U.P. Act No. 13 of 1972 were applicable to the case. The Judge Small Causes Court, Bareilly decreed the suit for ejectment and recovery of arrears of rent and damages in favour of the Plaintiff Respondent No. 3 vide his judgment dated 11-2-1980. He however, dismissed the Plaintiff's claim for water charges. The Petitioner filed a revision before the District Judge, Bareilly, which has been dismissed by the learned Additional District Judge, Bareilly vide his judgment dated 14-2-1983.

3. Thereafter the Petitioner filed this writ petition in this Court, which was summarily rejected by Hon'ble M.N. Shukla, J. as he then was for the reasons given in the order passed in writ petition No. 2824 of 1983 on the same day, i.e. 17-5-1983. From a certified copy of the said order passed in writ petition No. 2824 of 1983, it appears that Sri S.S. Bhatnagar, the learned Counsel for the Petitioner had canvassed only one point before Hon'ble M.N. Shukla, J. challenging the validity of Clause (a) of Explanation I of Sub-section (2) of Section 2 of the Act on the ground that it provides for an artificial date to be taken as the date of construction of the building and is for that reason violative of Article 14 of the Constitution.

4. The Petitioner, thereafter, filed a special leave to appeal (civil) No. 10897 of 1983 in the Supreme Court of India against the aforesaid order of summary dismissal of the Petitioner's writ petition by Hon'ble M.N. Shukla, J. as he then was. The Hon'ble Supreme Court was pleased to grant special leave to appeal on 26-9-1983 and heard the appeal itself on the same day ex parte as Special Appeal No. 8447 of 1983 and allowed the Petitioner's appeal vide its judgment and order dated 26-9-1983 and set aside the aforesaid order of Hon'ble M.N. Shukla, J. The Supreme Court also directed that the Petitioner's case be sent back to the High Court for disposal afresh. In view of the order of the Supreme Court dated 26-9-1983, allowing the Special Appeal petition this writ petition was admitted on 7-12-1983 by this Court.

5. Respondent No. 3 has filed a counter affidavit and rejoinder affidavit has also been filed by the Petitioner. Relying on a decision of the Supreme Court in the case of Vineet Kumar v. Mangal Sen 1984 AWC 128, the learned Counsel for the Petitioner, Mr. K.N. Tripathi contended that on 31-3-1985 ten years have completed. Therefore, the Petitioner is now entitled for the benefit of Section 39 of the Act, and the case should be remanded back to the trial court for disposal according to law. In support of his contention he has placed reliance on two Single Judge decisions of this Court in the cases of (i) Pooran Chandra Bhatt v. 7th Additional District Judge, Lucknow 1984 AWC 749 : 1985 ALR 178 and (ii) Gopal Prasad v. 4th Additional District Judge, Mataura 1984 ARC 268. According to the contention of Mr. Tripathi the word "litigation" used by the Supreme Court in Vineet Kumar's case (supra) is wide enough to cover writ petition also.

6. After hearing the parties at great length I find it difficult to agree with the contention of Mr. Tripathi that the Petitioner is entitled to the benefit of Section 39 of the Act. According to the finding of fact arrived at by the courts below house No. 187-A/3 in dispute was for the first time assessed by the Municipal Board with effect from 1-4-1975 and as such in view of the Explanation 1(A) attached to Section 2(2) of U.P. Act No. 13 of 1972, the accommodation will be deemed to have completed on 1-4-1972 and consequently Act XIII of 1972 did not apply to the accommodation in question. I find no sufficient reason to differ with this finding of fact on this point.

7. Section 39 of the U.P. Urban Buildings {Regulation of Letting, Rent and Eviction) Act, 1972 applies to suits, whereas Section 40 of the Act applies to an appeal or revision arising out of a suit for eviction of a tenant from any building to which the old Act did not apply and which was pending on the date of the commencement of this Act. There is no mention of "writ" in either Section 39 and 40 of the Act. Therefore, it is not possible to apply Section 39 and 40 to a writ, as the said sections do not apply to it. To read the word "writ" in Sections 39 and 40 of the Act would amount to legislation, which is not permissible, as this Court as well as the Supreme Court have observed in a number of cases that the court must not undertake to make the legislature say what it is not said.

8. The argument of the learned Counsel for the Petitioner, Mr. K.N. Tripathi was solely based on the word "litigation" used by the Supreme Court in Vineet Kumar's case (supra) without considering the context in which it was used. My attention was drawn by Mr. Tripathi to the dictionary meaning of word "litigation" given in the Webster Dictionary, which reads "to carry on legal contest by judicial process." The dictionary meaning of the word "litigation" is of no help, because the word "litigation" is not used either u/s 39 and 40 of the Act. The word "litigation" used by the Supreme Court should not be interpreted like the words used in the statute. There is no such word u/s 39 and 40 of the Act. The only words used are suits, appeal or revision. After careful scrutiny of facts given in paragraphs 12 and 13 of Vineet Kumar's case (supra) I have no doubt in my mind that the word "litigation" used by the Supreme Court was meant for

revision and appeal and not for writs.

9. Vineet Kumar's case (supra) is distinguishable on facts from the case in hand. It is quite clear from paragraphs 12 and 13 of the judgment of the Supreme Court in Vineet Kumar's case (supra) that the building in dispute was deemed to have been completed on the date of assessment, which was 1-10-1971 in that case. The Additional District Judge decided that revision on 23-2-1982. By that time the disputed building, in that case, had completed ten years. But in the instant case the building in dispute, which was subject to assessment will be deemed to have been completed on the date of assessment, i.e. 1-4-1975 as held above. The Additional District Judge decided the revision u/s 25 of the Provincial Small Cause Court Act on 14-2-1983, by that time the building in dispute had completed only about seven years and ten and a half months and not ten years as required by the Act. Thereafter the Petitioner filed a writ petition in this Court on 23-3-1983, which was summarily rejected as aforesaid on 17-5-1983. A special leave under Article 136 of the Constitution was allowed by the Supreme Court and the writ petition was remanded on 26-9-1983. A restoration application was moved on 1-11-1983. Thereafter the writ petition was admitted on 7-12-1983. On 31-3-1985 the building has completed ten years according to the statement of the learned Counsel for the Petitioner. Therefore, mere use of word "litigation" in Vineet Kumar's case (supra) is of no help to the Petitioner. The use of word "litigation" by the learned Judge is not to be read as the provisions of the statute. The observations must be read in the context in which they appear. In *Herrington v. British Railways Board* (1971) 2 WLR 537 Lord Morris has observed as under:

There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.

In *London Graving Dock Co. Ltd. v. Horton* 1951 ACC 737 Lord Mac Dermot has observed as under:

The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge.

In *Home Office v. Dorset Yacht Co.* (1970) 2 All ER 294 Lord Reid said.

"Lord Atkin's speech...is not to be treated as if it was statutory definition. It will require qualification in new circumstances." Approving the aforesaid views the Supreme Court in the case of *Amar Nath Om Prakash and Others Vs. State of Punjab and Others*, has observed as under:

We consider it proper to say, as we have already said in other cases, the judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to

embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statute.

Therefore, the argument of the learned Counsel for the Petitioner is misconceived, which must be rejected. Cases Pooran Chandra and Gopal Prasad (supra) are also distinguishable from this case on facts. In Pooran Chandra's case, the matter was pending before the trial court after remand and an application u/s 39 of the Act for relief had been made before the trial court and benefit was not given to the Petitioner in that case. Against that order a writ petition was filed by Pooran Chandra. In the circumstances of that case, following Vineet Kumar's case, benefit of Section 39 was given to the Petitioner by Hon''ble R.C. Deo Sharma, J.

10. In Gopal Prasad's case (supra) the revisional authority allowed the revision and remanded the case to the Prescribed Authority. Thus, suit was pending before the trial court. During the period ten years had completed. In those circumstances Hon''ble A.P. Misra, J. keeping in view the principle laid down in Vineet Kumar's case (supra) held that the building in question came within the purview of the aforesaid Act XIII of 1972 and the Petitioner was entitled for the benefit for Section 39 of the Act and remanded the case to the revisional authority to decide the revision afresh after taking into consideration the consequences according to law, as observed by the Supreme Court. Thus none of these two cases are of any help to the Petitioner of this case.

11. On the other hand I am supported in my view by four single Judges' decisions of this Court, namely, Mohd. Shamim Hashmi v. Additional District Judge 1980 ALJ 251, Murari Lal Gupta v. Additional District Judge, Gorakhpur 1982 ARC 462, Sudershan Kumar Grover v. Additional District Judge, Bijnor 1982 ARC 546 and Mangay Ram v. Additional District Judge, Meerut 1982 ARC 430. In Mohd. Shamim Hashmi's case (supra) Hon''ble K.C. Agrawal, J. has held as under:

The next argument was that the Petitioner was also entitled to the benefit of Section 39. Counsel urged that according to the view of this Court, the Act became applicable to the shop in dispute in 1979, and since the entire deposit had been made in accordance with the requirement of Section 39, the decree for ejectment is liable to be set aside. Section 39 applied to suits whereas Section 40 applies to an appeal or revision arising out of a suit for ejectment of a tenant from any building to which the Act did not apply and which was pending on the date of commencement of this Act. The argument was solely based on Section 40 of the Act. This Section does not apply to a writ proceeding. It applies only to an appeal or revision. Hence, the Petitioner will not be entitled to get the benefit of Section 39.

Following the above observation, in Sudershan Kumar's case (supra), Hon''ble M.P. Mehrotra, J. has observed that benefit of Sections 39 and 40 of the U.P. Act

No. XIII of 1972 is not available if the Act became applicable during pendency of incompetent revision and such benefit could not be claimed in a writ petition also. In Murari Lal Gupta's case (supra) Hon''ble N.D. Ojha, J. has observed that the benefit of Section 39 can be given only if deposit contemplated by the said section is made before the court where the suit is pending, If the second revision u/s 115 of the CPC was not at all maintainable, it cannot be said that the suit was pending in this Court on account of the finding of the said revision. Thus I find no merit in the argument of Mr. K.N. Tripathi on this point and reject it.

12. Mr. Tripathi also urged on the points of issue of estoppel by pleadings on the ground of alleged admission made by the Respondent in para 1 of the plaint that the house was constructed in 1970. Therefore, the accommodation in dispute should be deemed to have been constructed in 1970, I find no merit in this argument also. For this purpose, reliance was placed on para 1 of the plaint (Annexure 2) wherein it is mentioned that the Plaintiff completed the constructions of the building known as "Kalyan Bhavan" in the year 1970. Just after this sentence it is also alleged that the provisions of Act No. XIII of 1972 did not apply to this buildings, An issue was framed whether U.P. Act No. XIII of 1972 is not applicable to the accommodation in suit. Evidence was led on behalf of the parties. No objection was raised by the Petitioner at the time of recording the evidence. It has come in evidence of Kunwar Bahadur Pradhan (Annexure 6 to the petition) that the house in dispute was constructed in the open land in the compound of his house No. 187. After considering the entire evidence on record, both the courts below have held that the accommodation in suit came in existence in the eyes of law only on 1-4-75 and not before that. Therefore, it is exempted from the regulation of the Act No. XIII of 1972 for a period of ten years from the date of completion of its construction i.e. up-to 1-4-85. This is a finding of fact and I do not find any convincing and cogent reason to interfere with this finding of fact. Moreover no estoppel can be pleaded against any provisions of an enactment. Section 2 of the Act provides various kinds of buildings to which the new Rent Act has no application. Sub-section (2) of Section 2 contemplates that the new Rent Act will not apply to a building during a period of ten years from the date on which its construction is completed. Explanation I to Sub-section (2) enumerates the date on which the building shall be deemed to have been completed:

- (i) The date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction.
- (ii) In case of building subject to assessment, that date on which the first assessment thereof comes into effect.
- (iii) Where the said dates are different, the earliest of the said dates.
- (iv) In the absence of any such report, record or assessment the date on which it is actually occupied for the first time.

13. In the instant case the building in dispute was subject to assessment

therefore, it will be deemed to have been completed on the date of first assessment, which was 1-4-75, as the Act provides that a building is deemed to have been completed when the first assessment is made.

14. It was further argued by Mr. Tripathi, counsel for the Petitioner on (he basis of Section 147 of the Municipalities Act, 1916 used in Annexure CA 1 to CA 3. On the other hand learned Counsel for the Respondent Sri Chandra Prakash urged that his client had no notice of the proposed assessment upto the stage of Section 146 of the said Act. Therefore, he filed objection against the proposed valuation and the house in dispute, i.e., house No. 187-A/3 was actually assessed for the first time on 1-4-1975. The argument of the learned Counsel for the Respondent finds support from the wordings Annexures CA-2, wherein it is mentioned that the Respondent may satisfy the committee on the ground on which the proposed valuation and assessment are disputed. Thus, I have no doubt in my mind that it was not an old construction and there was any old assessment which has been amended u/s 147. It was actually the first assessment which was finalised for the first time on 1-4-75 as" held by the courts below. Under these circumstances I find no merit in this argument also.

15. Mr. Tripathi has further drew my attention to the last line of Annexure CA II (at 240/- annual instead at Rs. 528/- estimated) and urged that it was not first assessment. On the other hand Sri C.P. Srivastava, counsel for the Respondent urged that it was the objection of the Respondent that the amount should be Rs. 240/- as annual assessment instead of Rs. 528/- as estimated on the proposed annual rental value of Rs. 2100/- and for decision of this question 24-12-74 was fixed. According to him this objection was considered on 24-12-74 regarding valuation and assessment of house No. 187-A/3 at Rs. 2100/- annual rental value along with the other houses which is clear from Annexure CA-III. This is a disputed question of fact which cannot be gone into this writ petition. There is concurrent finding of fact that the assessment of the building in dispute was finalised for the first time on 1-4-75. I find no adequate reason to interfere with that finding.

16. In the case of Syed Yafcoob v. K.S. Radha Kirshnan (1964) 5 SCR 64 a Constitution Bench of the Supreme Court indicated the scope of interference in a certiorari proceeding by saying that a writ of certiorari is issued for correcting the errors of jurisdiction committed by the courts or tribunals in cases where they exceed their jurisdiction or failed to exercise it or exercise it illegally, improperly i.e., where an order is passed without hearing the party sought to be effected by it or where the procedure adopted is opposed to principles of natural justice. A caution was indicated by saying that the jurisdiction to issue a writ of certiorari is a supervisory one and in exercising it, the court is not entitled to act as a court of appeal. That means that the findings of fact arrived at by the inferior court or tribunal are binding. An error of law apparent on the face of the record could be corrected by a writ of certiorari but not an error of fact, however, grave it may appear to be. The aforesaid rule in Yakoob's case (supra) when applied to the

facts of the present case, it would lead to the conclusion that the High Court has no jurisdiction to interfere with the order of the Additional District Judge, Bareilly, which is perfectly correct.

17. Learned Counsel for the Petitioner has also moved an application dated 26-4-85 before this Court u/s 151 Code of Civil Procedure, praying for remand of the case to revisional court for giving benefit of Section 39 read with Section 40 of U.P. Act No. XIII of 1972. In view of the above discussions, this application is not maintainable. Consequently it is rejected.

18. For the reasons discussed above, this writ petition fails and is dismissed with costs.