
(2007) 07 AHC CK 0053
In the Allahabad High Court

Madan Lal Gupta

APPELLANT

Vs

XVIIth Additional District Judge and Others

RESPONDENT

Date of Decision : 05-07-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 4 AWC 3812

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. This writ petition has been filed challenging the validity and correctness of the judgment and orders dated 26.10.1991 and 6.1.1995 passed by the Prescribed Authority/VIIth Additional Civil Judge, Meerut, respondent No. 2 and XVIIth Additional District Judge, Meerut, respondent No. 1.

3. The petitioner filed an application u/s 21(2) of U. P. Act No. 13 of 1972 for release of the surplus land before the Prescribed Authority, Meerut which was registered as P.A. Case No. 208 of 1988 on the ground that respondent No. 3 is the tenant of ahata with two rooms each measuring 12ft. 6" x 8 ft. 3", i.e? 103.1250 sq. ft. ; that the total area covered under the tenancy of respondent No. 3 is 206.25 sq. ft.; that respondent No. 3 is entitled to retain only double of the covered area, i.e., area of the room viz., 412.50 sq. ft. only plus area of the two rooms viz., 206.25 sq. ft. and the remaining area out of the ahata in dispute is surplus land which is bona fide required by the petitioner for constructing a house.

4. Respondent No. 3 contested the release application on the grounds that besides two rooms there is a hall. The roof of the hall has fallen down; that he has constructed tin-shed in the open land appurtenant and has installed his machinery there. It was averred that the total constructed area under his

tenancy is 240 sq. yards whereas the total area let out to him is 455 sq. yards and thus there is no surplus land.

5. After taking into consideration the evidence led by both the parties, the prescribed authority vide judgment and order dated 26.10.1991 rejected the release application of the petitioner holding that the tin-sheds shall be deemed to be permanent construction as they were put in 26 years ago.

6. Aggrieved by the aforesaid judgment and order dated 26.10.1991, the petitioner filed Misc. Appeal No. 393 of 1991 before the District Judge, Meerut which too was dismissed vide judgment and order dated 6.1.1995 holding that u/s 21(2) of the Act covered area had to be taken into consideration irrespective of the fact that the covered area was building or not and that tin-sheds were part of the covered area and there was no surplus land in the accommodation in dispute, hence the instant writ petition has been filed.

7. The counsel for the petitioner submits that Explanation II of Section 21(2) of U.P. Act No. 13 of 1972 provides that where the appurtenant land including passage exceeds double of the covered area of the building, the excess area shall be deemed to be surplus land; and that in the circumstances, the judgment dated 6.1.1995 of the lower appellate court that it was not relevant to consider that whether tin shed was building or not is wrong on the face of it.

8. He further submits that the covered area of only that building which may be "a building" under the provisions of U.P. Act No. 13 of 1972 can be taken into consideration for deciding the excess vacant area; and that it is evident from the deed of compromise that the total area of the tin sheds is 518 sq. ft. which even if is assumed to be part of tenanted building there is a vacant surplus land of 1,899.75 sq. ft. which was liable for release to the petitioner landlord.

9. He also submits that the impugned judgments and orders of the courts below are against the law and the petitioner is entitled to get released surplus vacant land measuring 4072.5 sq. ft. (452.5 sq. yard)-724.25 sq. ft. 3348.25 sq. ft. after doubling area of the tin sheds.

10. In support of his above submissions, the counsel for the petitioner has placed reliance upon the following rulings.

1. Harish Chandra and Anr. v. Mohd. Ismail and Ors. 1990 (2) ARC 357 ; and

2. Smt. Prakasho v. IInd Additional District Judge, Dehradun and Ors. 1992 (2) ARC 226.

11. The counsel for the respondents submits that respondent No. 3 has taken on rent two rooms as well as the land appurtenant thereto on which tin-shed has been put by him for the purpose of his work shops and the courts below have held that tin-sheds put by the tenant on a tenanted portion is a building; that there exists tin-sheds over land appurtenant as such there is no surplus land; and that the tin-sheds have been put by him and are in existence since

beginning of the tenancy for the last 26 years and the same have been deemed to be permanent construction and not temporary construction by the courts below as such whether the tin-sheds are building or not has to be decided only by taking into consideration the total covered area.

12. The counsel for the respondents in support of his above submission has placed reliance upon the case in *Om Prakash v. IIIrd Additional District Judge, Meerut and Ors.* 1981 ARC 278 and submits that if the tenant has taken the building on rent and has put the tin-shed or structure, it would not come under the definition of building.

13. He further submits that there is no illegality or infirmity in the impugned orders of the courts below, hence no interference is required by this Court under Article 226 of the Constitution.

14. The case of the respondent is that there exists tin-sheds over the ahata, as such there is no surplus land whereas the case of the petitioner is that the tin-sheds were put by the tenant himself and were never given under tenancy.

15. To decide the controversy at hand the relevant facts and provisions of law may be referred to.

In the backdrop of the following admitted or undisputed facts:

(a) Petitioner is owner of plot No's. 1677M and 1679M, which was given on lease to the firm.

(b) The tin-sheds have been erected by the tenant after taking the building on rent with land appurtenant and were not part of the building when it was taken on lease.

(c) Clause 6 of the lease agreement itself provided that tin-sheds were temporary structures put by the tenant and he can take away the same on termination of his tenancy which itself goes to establish that it was not a permanent structure or part of "building" under tenancy.

It is as under:

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(d) The tin-sheds have been undisputedly put up by the tenant with the permission of the landlord after executing the agreement for the building in execution and the land appurtenant.

16. In the facts and circumstances of this case the tin-sheds erected by the tenant do not fall under the definition of building hence its area cannot be taken into consideration while deciding the covered area of the excess vacant land. Building has been defined in Section 3(i) of the U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972 which is as under:

3 (i) "building" means a residential or non-residential roofed structure and includes:

(i) any land (including any garden), garages and outhouses, appurtenant to such building;

(ii) any furniture supplied by the landlord for use in such building:

(iii) any fittings and fixtures affixed to such building for the more beneficial enjoyment thereof.

17. The findings of the courts below that tin-sheds are in existence since beginning of the tenancy for the last 26 years, hence the permanent construction and not temporary construction are wrong and against the material on record.

18. Section 21(2) of U.P. Act No. 13 of 1972 provides that:

(2) The prescribed authority may on an application of the landlord in that behalf order eviction of a tenant from any surplus land appurtenant to the building under tenancy if it is satisfied that the land is required for constructing one or more new buildings, or for dividing it into several plots with a view to the sale thereof for purposes of construction of new buildings; and in either case, that the competent authority under any law for the time being in force has approved a plan for the said purpose.

Explanation.--Where the appurtenant land including passage exceeds double the covered area of the building, excess area shall be deemed to be surplus land.

19. A bare perusal of the section would go to show that the application of the landlord was maintainable. In the cases cited by the counsel for the petitioner it has been held by the Court that if the tin-shed has been constructed by the tenant himself the same shall not be a building under the provisions of U.P. Act No. 13 of 1972. Had the tin-sheds been erected from before and given on rent to the tenant alongwith the 2 rooms as part of the same then and only in that case, the case of Om Prakash (supra) cited by counsel for the respondents would have been relevant and have applied to his case.

20. In the circumstances, the findings recorded by the courts below that there is no surplus land is perverse and against the record. The petitioner is entitled to get released surplus vacant land 4072.5 sq. ft. (452.5 sq. yard)-724.25 sq. ft. 3348.25 sq. ft.

21. For the reasons stated above, the writ petition is allowed and the impugned orders are quashed.