
(1997) 01 AHC CK 0128
In the Allahabad High Court
Case No : C.M.W.P. No. 24301 of 1996

Manager, Punjab National Bank and Others	APPELLANT
Vs	
District Judge and Others	RESPONDENT

Date of Decision : 06-01-1997

Acts Referred:

Limitation Act, 1963 — Section 29(2), 3, 5
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 10(1), 2, 2(1), 21(8), 22

Citation : (1997) 01 AHC CK 0128

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : K.L. Grover, for the Appellant; S.C. and N.S. Chauhan, for the Respondent

Final Decision : Allowed

Judgement

S.R. Singh, J.—Prescribed Authority allowed the landlord's application u/s 21(8) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short the U.P. Act No. 13 of 1972) and enhanced the monthly rent of the building under tenancy of the Petitioner from Rs. 2,000 to Rs. 14,533.33 vide order dated 30.12.1995. The appeal preferred against the said order having been dismissed as barred by time by the District Judge, Agra vide order dated 30.5.1996, the tenant-Petitioner has filed the instant writ petition.

2. Sri. K.L. Grover, learned Counsel appearing for the Petitioner urged that as a result of Clause (g) of Section 2(1) of U.P. Act No. 13 of 1972 inserted by Section 2 of U.P. Act No. 5 of 1995. the building in question stood exempted from the purview of the Act with effect from 26.2.1994 and consequently, proceeds the submission, the Prescribed Authority had no Jurisdiction to pass the impugned order dated 30.12.1995 enhancing the monthly rent of the building. Sri. Grover urged that "building" means the building as a whole and when a building is let out in part, it is the sum total of rent of the entire building so let out which would

determine whether the building let out on monthly rent exceeding Rs. 2,000 and not the rent of a part of the building which is under the tenancy of a tenant. It was also urged that the rent would include the tax payable by a tenant u/s 7 of the Act. Sri. Ravi Kant appearing for the Respondent, landlady refuted the submission made by Sri. Grover and placed reliance on a decision of this Court in *Chunnu Lal v. 2nd Additional District Judge, Allahabad* and Ors. 1975 AWC 930, wherein it has been held that the word "building" under the Act has a special meaning and not the meaning ordinarily understood and that the term "building" does not mean the entire super-structure but means only a portion of superstructure which is Independently liable to be dealt with for purposes of letting out, that is to say, a building under the Act means only an independent lettable accommodation whether singly situated or as a part of a building complex.

3. Having carefully considered the submissions aforesaid, I veer around the view that the word "building" has been used in Clause (g) of Section 2(1) of the Act in the sense of the building as a whole having one municipal number and where a building has been let out in parts, it is the cumulative monthly rent of the whole building so let out which would determine whether the monthly rent of the building exceeds rupees two thousand and subject to any contract in writing to the contrary, the monthly rent of the building shall include the tax liability fastened upon the tenant by Section 7 of the Act. In other words, where a building is let out in parts, it would be exempted from the application of the Act in case, the sum total of the monthly rent including taxes payable by the tenant of the parts so let out exceeds rupees two thousand.

4. The term "building", as defined in Section 3(i) of U.P. Act No. 13 of 1972, 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.

5. The word "building" used in Clause (g) of Section 2(1) of the Act means the entire residential or non-residential roofed structure and includes any land, garages and outhouses appurtenant to such building ; any furniture supplied by the landlord for use in such building and/or any fitting for the more beneficial enjoyment thereof. In *Zenobia Bhanot Vs. P.K. Vasudeva and another*, it has been held that in cases where the building is let out in parts "the parts so let out will form part of the building itself". The observations made by the Supreme Court in the aforesaid case make it abundantly clear that where a building is let out in parts, the parts so let out shall continue to be the parts of the building until, of course, such parts are separately numbered, as a result of partition or structural alteration, etc., in the municipal records. The word "building" as

defined in Section 3(i) of the Act certainly includes such part or parts of the building as may be independently lettable but each lettable part would continue to be the part of the building itself subject to the observations made above and. therefore, I find it difficult to hold that for the purpose of Section 2(1)(g) of the Act, the term "building" does not mean the entire superstructure but means only a portion of superstructure which is independently lettable as held in Chunnu Lat's case (supra). Contrary view if taken would lead to absurdity. Take for example, a building comprising of seven rooms, major part of which is let out on monthly rent of Rs. 2,500.00 and the rest on monthly rent of Rs. 1,500.00. It would be incongruous with the object sought to be achieved by Clause (g) of Section 2(1) of the Act to hold that the building is partly exempt and partly not exempt from the application of the Act. In my opinion the building as a whole would be exempt from the application of the Act. Similarly if the building is let out in two parts on a monthly rent say Rs. 1,500.00 each, Clause (g) of Section 2(1) would be attracted in relation to such building as well.

6. Learned Counsel for the Petitioner also urged that the appellate Court was not justified in rejecting the application u/s 5 of the Limitation Act filed by the Petitioner for condonation of delay in filing the appeal. Learned Counsel submitted that there is no provision in the U.P. Act No. 13 of 1972, unlike the provisions contained in the Limitation Act, 1963, providing for dismissal of appeal on the ground of being barred by time. Submission made by the learned Counsel cannot be countenanced. Section 3 of the Limitation Act would apply in relation to appeal under the Act by virtue of Section 29(2) of the Limitation Act, 1963. The U.P. Act No. 13 of 1972 is a special Act and prescription of 30 days period of limitation for filing appeal by Section 10(1), which section would apply also for the purposes of Section 22 of the Act, is tantamount to prescribing the period of limitation under special or local law within the meaning of Section 29(2) of the Limitation Act, 1963 and that being so, the provisions of Section 3 as also Section 5 of the Limitation Act would apply in relation to an appeal under the Act and an appeal u/s 22 of the Act may be dismissed as barred by time if the delay in filing the appeal is not explained satisfactorily. In any case, the Petitioner having already invoked the provision of Section 5 cannot be permitted to say, after having lost the case, that the said provisions were not applicable. However, having regard to the discussion made in the prescribed paragraphs of this judgment, I am inclined to quash the appellate order in the ends of Justice and direct the appellate Court to entertain the appeal and decide it on merit after affording due opportunity to the parties to lead evidence on the question as to whether the monthly rent of the building exceeds rupees two thousand as well as the question as to what is the market value of the building under tenancy.

7. In the result the petition succeeds and is allowed in part. The appellate order dated 30.5.1996 is quashed. The appellate authority is directed to entertain the appeal and decide it on merit in accordance with law and in the light of the observations made in the body of this judgment.