

(2001) 01 AHC CK 0044

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6156 of 1983

Mohd. Shaqir

APPELLANT

Vs

Addl. District Judge/Special Judge (E.G.Act), Etawah and
Others

RESPONDENT

Date of Decision : 20-01-2001

Acts Referred:

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

Citation : (2001) 01 AHC CK 0044

Hon'ble Judges : O.P.Garg, J

Final Decision : Disposed Of

Judgement

O.P. Garg, J.—This is tenant's writ petition under Article 226 of the Constitution of India whereby the order dated 24/11/1983 passed by Special Judge (Essential Commodities) Act, Etawah exercising powers of the Additional District Judge has allowed the revision application filed by the landlord Mohd. Hanif Respondent No. 3, under Section 25 of the Provincial Small Causes Courts Act and remanded the case for decision afresh in view of the observations made in the body of the judgment.

2. List has been revised but none appears on behalf of the landlord Respondent No. 3. Heard Sri Ajit Kumar learned counsel for the tenant petitioner at some length.

3. Mohd. Hanif Respondent No. 3 filed S.C.C. Suit No. 18 of 1976 against the present petitioner for his eviction and recovery of arrears of rent as well as damages. The said suit was dismissed by the Judge Small Causes Court Etawah for the relief of ejectment on 4/9/1980 on the ground that the petitioner tenant had not committed default in payment of arrears of rent and the suit was, therefore, barred by the provision of Section 20 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Act No. XIII of 1972) (hereinafter referred to as "the Act").

4. The landlord preferred revision application No. 118 of 1980 which was allowed and as said above, the case was remanded for decision afresh by order dated 24/11/1983. Sri Ajit Kumar, learned counsel for the petitioner pointed out that the order of remand is clearly against the well established proposition of law and since the decision of the trial Court is clearly in consonance with the decision of the apex Court in the case of *Ratan Lal Singhal v. Smt. Muni Devi*, 1919 (5) ALR 595 (SC), followed by this Court in the case of *Mohammad Shamim Ashmi v. The 1st Addl. District Judge, Allahabad and others*, 1980 (6) ALR 193, there was no occasion for remanding the case and instead revision application filed by the landlord should have been dismissed.

5. The moot point for consideration in the present case is whether the provisions of the Act applied to the tenanted accommodation or not which was admittedly constructed in the year 1968/69. The landlord/Respondent had taken plea before the trial Court that the provision of subsection (2) of Section 2 of the Act which prescribes a period of ten years for application of the Act is not attracted to the accommodation which was constructed in the year 1968/69 as the Act came into force on 15/7/1972. The trial Court has negated this submission of the landlord and held that the provisions of the Act apply and since no ground for ejectment as mentioned in Section 20 (2) of the Act has been established order of ejectment cannot be passed against the tenant/petitioner by merely serving a notice under Section 106 of the Transfer of Property Act. It appears that the revisional Court was having some doubts and confusion about the legal position and adopted an easy course of remanding the case.

6. Sri Ajit Kumar, learned counsel for the petitioner rightly pointed out that the revisional Court has ignored the well established legal position that the provisions of subsection (2) of Section 2, which reads as follows:

“Except as provided in subsection (5) of Section 12, subsection (1A) of Section 2, subsection (2) of Section 24, Sections 24A, 24B, 24C or subsection (1) of Section 29, nothing in this Act shall apply to a building during a period of ten years from the date on which its construction is completed.”

are prospective in nature and did not apply to any construction, which had been completed before 15th July, 1972. In *Ratan Lal Singhal's* case (supra) the view taken by the apex Court is that the provision, aforesaid, was prospective and meant to be applied only to the building constructed after the enforcement of the Act. The buildings which had been constructed prior to 15/7/1972 are within the sweep of the provisions of the Act. To such buildings, Section 2 (2) of the Act was not available. The law laid down in *Mohammad Shamim Ashmi's* case (supra) is fully applicable to the instant case. Though the tenancy of the petitioner could be terminated by serving a notice under Section 106 of the Transfer of Property Act, there was a restriction against his ejectment as contemplated under Section 20 of the Act.

7. In view of the wellsettled legal position, the order of remand was not called

for, it was unnecessary. The revisional Court has erred in taking the view contrary to the well embedded legal position. The order passed by the revisional Court is not according to law and, therefore, it is liable to be quashed.

8. In the conspectus of the above facts, the writ petition is allowed and the impugned order dated 24/11/1983 in S.C.C. revision No. 118 of 1980 passed by the revision Court, a copy of which is Annexure 4 to the writ petition, is hereby quashed. The suit of the landlord respondent No. 3, for the relief of ejectment shall stand dismissed. No order as to costs.