

(1995) 04 SC CK 0064

In the Supreme Court Of India

Case No : Civil Appeals Nos. 3092-93 Of 1980

Munni Lal and Another

APPELLANT

Vs

Town Rationing Officer, Gorakhpur and Another

Bhagwati Prasad Vs Town Rationing Officer and Another

RESPONDENT

Date of Decision : 18-04-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1995 SC 1953 : (1995) CriLJ 3605 : (1996) 11 SCC 373

Hon'ble Judges : Sujata V. Manohar, J;S. C. Agrawal, J

Bench : Division Bench

Advocate : Shri Yogeshwar Prasad,

Final Decision : Dismissed

Judgement

1. Both these appeals are filed by the tenants who have felt aggrieved by the enhancement of the rent payable by them in respect of the premises in a their occupation. The rent has been revised on the basis of the provisions contained in Section 9-A of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 (hereinafter referred to as "the Act"), which was introduced in the Act by U.P. Act 28 of 1976 with effect from 5/7/1976. Section 9-A provides as under :

"9-A. Revision of rent of commercial buildings let out by public religious institutions.- Where any building belonging to a public charitable or public religious institution has been let out to a tenant for the purposes of a shop or commercial establishment, then notwithstanding anything contained in this Chapter, or any contract or lease, the landlord of such building may apply to the District Magistrate for revision of the monthly rent payable therefor, and such rent shall be revised to a sum equivalent to one-twelfth of ten per centum of the market value of the building under tenancy:

Provided that the rent revised under this Ss. shall not exceed double the rent payable on the date of the application by the landlord under this sub-section.

(2) The rent revised under Ss. (1) shall be payable by the tenant from the commencement of the month of tenancy next following the date of the application.

(3) Where the rent of any building has been revised in accordance with Ss. (1), then the landlord shall not be entitled to move a fresh application under the said Ss. within a period of five years from the date of the final order.

EXPLANATION.- In this section, the expressions "shop" and "commercial establishment" shall have the meaning assigned to them in the Uttar Pradesh Dookan Aur Vanijya Adhishthan Adhiniyam, 1962, as amended from time to time."

The premises occupied by the appellants in these appeals are owned by the Jama Masjid Committee, Urdu Bazar, Gorakhpur, which is a religious trust covered by Section 9-A of the Act. An application was submitted by the landlord-trust for revision of rent under Section 9-A of the Act. The Town Rationing Officer exercising the powers of the District Magistrate, passed orders whereby, after estimating the market value of the premises, he has fixed the rent at double the rent which was being paid by the appellants prior to the date of the application submitted by the landlord-trust. The said order regarding fixation of the revised rent has been made effective from 31/1/1978. The writ petitions that were filed by the appellants in the Allahabad High court against the said order of the Town Rationing Officer were dismissed in limine by the High court by order dated 4/1/1980. These appeals are directed against the said order of the High court.

2. Shri Yogeshwar Prasad, the learned Senior Counsel appearing for the appellants, has submitted that under Section 9-A of the Act, as it stood at the relevant time, there was no provision for an appeal against an order passed under Section 9-A and that, on the other hand, finality has been attached to such an order under Section 37 of the Act and thus the appellants were denied a remedy to assail the correctness of the orders passed by the Town Rationing Officer. He has urged that at least one right of appeal should have been provided and that a right of appeal is provided under Section 10 of the Act against an order for determination of standard rent under Section 9. It has been pointed out that even in respect of orders passed under Section 9-A of the Act a right of appeal has now been conferred with effect from 18/5/1983 by U.P. Act 17 of 1985, whereby Section 10 has been amended so as to include an order passed under Section 9-A.

3. The fact that a right of appeal is not available against the order passed under Section 9-A of the Act does not render the said provision unconstitutional and void as being violative of Articles 14 and 19 of the Constitution on the ground of arbitrariness and reasonableness. Provision of a corrective machinery by way of appeal or revision to a superior authority to rectify an adverse order passed by an authority or body is only one of the several ways in which the power could be checked or controlled and its absence will be one of the factors to be considered

along with others before coming to the conclusion that the power so conferred is unreasonable or arbitrary. The factors which have a bearing are: the status of the person on whom the power is conferred, the nature of the power, i.e., whether the exercise of the power depends upon the subjective satisfaction of the authority or body or is to be exercised objectively by reference to some existing facts or tests; is it a quasi-judicial power requiring observance of the principles of natural justice and making of a speaking order etc. in which event the order would be subject to judicial review under Article 226 of the Constitution on the grounds of perversity, extraneous and irrelevant considerations, mala fides and other infirmities.

4. The power under Section 9-A is conferred on the District Magistrate or an officer authorised by the District Magistrate to exercise the power. The power is to be exercised objectively after observing the principles of natural justice. The order passed under Section 9-A is subject to judicial review by the High court under Article 226 of the Constitution. The finality attached to " the order by Section 37 of the Act does not preclude an aggrieved person to challenge the said order by moving the High court under Article 226 of the Constitution of India and the High court can grant appropriate relief in such proceedings. We are, therefore, unable to accept the contention urged by Shri Yogeshwar Prasad that Section 9-A suffers from the vice of arbitrariness and unreasonableness.

5. The other contention which has been urged by Shri Yogeshwar Prasad is that Section 9-A is confined in its application to buildings which have been let out for the purpose of a shop or a commercial establishment and that in Civil No. 3093 of 1980 a part of the premises have been let out for the purpose of shop and rest of the premises have been let out for residential purposes and that while revising the rent the Town Rationing Officer has failed to take into account this fact.

6. We find that this question was not agitated by the said appellant before the Town Rationing Officer and, therefore, it cannot be said that the Town Rationing Officer has committed any error in not adverting to it. It cannot, therefore, be said that the order passed by the Town Rationing Officer suffers from an error which requires interference by this court. This will not preclude the appellants in Civil No. 3093 of 1980 from agitating this matter in future proceedings with regard to revision of rent under Section 9-A of the Act.

7. The appeals, therefore, fail and are accordingly dismissed. No costs.