

(2012) 11 AHC CK 0086
In the Allahabad High Court
Case No : Writ - A No. 54263 of 1999

Rahamatullah

APPELLANT

Vs

S.D.M./Rent Control & Eviction Officer & Others

RESPONDENT

Date of Decision : 23-11-2012

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 29A

Citation : (2012) 11 AHC CK 0086

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard Sri P.K.Jain, learned Senior Advocate assisted by Sri Amitabh Agarwal, Advocate for the petitioner and Sri Ateek Ahmad Khan, Advocate for the respondents.

2. It is contended by Sri P.K.Jain, Advocate that in the present case there was no agreement which was due to expire at a particular time since it is a case of perpetual lease of continuing tenancy and therefore determination of rent under Section 29A(5) of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act, 1972") could not have been made. He drew my attention to application of landlord and contended that there is no averment that there existed any agreement for a particular period which has expired so as to attract Section 29A(5) of Act, 1972.

3. Per contra, learned counsel appearing for the respondent submitted that initially only a land was leased out with a right to raise construction and since more than hundred years have already passed, respondentlandlord rightly moved application for determination of rent under Act, 1972. Under the peculiar facts and circumstances of this case, this is a fit case where this Court may not exercise its discretionary jurisdiction under Article 226 of the Constitution.

4. There is no dispute between the parties that no written agreement is available to demonstrate terms and conditions on which land in question initially came into

possession of petitioner's predecessor in interest. In the application filed under Section 29A(5) of Act, 1972, respondent landlord have not referred either to any agreement or to the fact that term on which agreement was executed, has come to an end.

5. The short question up for consideration would be, whether in above facts and circumstances, Section 29A(5) of Act, 1972 is applicable in the case in hand or not. It reads as under:

"The District Magistrate shall on the application of the landlord or the tenant determine the annual rent payable in respect of such land at the rate of ten per cent per annum of the prevailing market value of the land, and such rent shall be payable, except as provided in subsection(6) from the date of expiration of the term for which the land was let or from the commencement of this section, whichever is later."

6. This provision came to be considered by a Full Bench of this Court in Trilok Chand Vs. Rent Control and Eviction Officer, 1987(1) ARC 290 and thereafter by a Single Judge in Roshan Lal Mittal Vs. Rent Control & Eviction Officer, 2007 (4) AWC 3174. In Roshan Lal Mittal (supra) in para 22 and 23 of the judgment the Court said:

"22. ... on a plain reading of Subsection (5) of Section 29A, the intention of the Legislature is clear that fixation of rent under Section 29A shall be applicable from the date of expiration of term for which the land was let out or from the commencement of Section 29A of the Act whichever is later. ...

23. Three situations can be visualized(i) where a lease has expired before the commencement of Section 29A of the Act, (ii) where a lease has expired after commencement of Section 29A of the Act, and (iii) where a lease has not yet expired and Section 29A of the Act has come into operation. Situations (i) and (ii) are covered within the ambit and scope of Section 29A of the Act. But in my opinion, Section 29A of the Act is not attracted in situation (iii), as is the present case, on a plain and simple reading of Subsection (5) of Section 29A of the Act. Otherwise, a lessee, for whose benefit Section 29A of the Act has been enacted, would be placed in a worst position to pay the enhanced rent proportionate to the prevailing market value of the land on the date of commencement of Section 29A of the Act and not at the agreed rate."

7. Further the Full Bench decision in Trilok Chand (supra) was also referred to in Roshan Lal Mittal (supra) and in para 15 of judgment the Court said as under:

"15. ... The said observation of the Full Bench should be understood in the background facts of the case. Facts were that the lease had already expired in the year 1958. In that fact situation the aforesaid objections were made. It has taken care to observe that Subsection (5) has made a provision "that the terms of the original lease have been kept undisturbed and the rights of parties thereunder are kept unimpaired." in the case of an unexpired lease, the mutually

agreed rent is always there and this supports the view which is proposed in the judgment that in such cases an application under Subsection (5) shall not be maintainable."

8. The above exposition of law squarely apply to the case in hand and if there is nothing to show that an agreement has expired, question of application of Section 29A(5) of Act, 1972 would not arise for the reason that either it is a date of commencement of said statute or the date of expiry of agreement, whichever is later. Unless that stage comes, question of determination of rent under Section 29A(5) shall not arise.

9. In view of above, I have no hesitation to hold that impugned order lacks jurisdiction and therefore cannot sustain.

10. The writ petition is accordingly allowed. The impugned order dated 10.2.1999 (Annexure 5 to the writ petition) passed by Rent Control & Eviction Officer, Khurja, Bulandshahar is hereby quashed.

11. However, there shall be no order as to costs.