(1982) 07 AHC CK 0001

In the Allahabad High Court

Case No : Writ Petition No. 209 of 1979

Sahu Seetal Prasad Dharamshala APPELLANT

Vs

Distt. Supply Officer (Rent Control) and Others RESPONDENT

Date of Decision : 14-07-1982

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 9A, 9A(1), 9A(3)

Citation : (1982) 07 AHC CK 0001

Hon'ble Judges : S.C. Mathur, J

Bench : Single Bench

Advocate : Jitendra Prakash, for the Appellant;

Judgement

S.C. Mathur, J.—This is landlord''s petition directed against rejection of its application for enhancement of rent u/s 9A of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972).

2. The Petitioner moved the aforementioned application against Smt. Kamla Devi, opposite party No. 2 before the District Supply Officer (Rent Control) Lucknow, who it appears was competent to exercise the powers of the District Magistrate referred to in Sub-section (1) of Section 9A of the Act. In this application it was claimed by the Petitioner that it was a public charitable institution and it was the landlord of the commercial establishment in the tenancy of the opposite-party No. 2. The claim of the Petitioner was that according to the market value of the premises in the tenancy of the opposite party No. 2 the rent in accordance with the principle prescribed under Sub-section (1) of Section 9A would come to Rs. 150.00 per month while the opposite-party No. 2 was paying rent at the rate of Rs. 75.00 only.

3. The facts about which there appears to be no dispute are that at the time of the enforcement of U.P. Act No. 13 of 1972 the opposite party No. 2 was paying to the Petitioner rent at the rate of Rs. 60.00 per month. This rate of rent remained in operation upto March, 1977. From April, 1977 by mutual agreement

the rate of rent was enhanced to Rs. 75.00 per month. The District Supply Officer (Rent Control) rejected the application of the Petitioner on two grounds. In the first place he held that since the rent had already been enhanced in April, 1977 after the insertion of Section 9A in the Act with effect from 5-7-1976 there appeared to be no occasion to enhance the rent further through the application which was moved within one year of this enhancement. Secondly, he observed that there had been no difference in the market value of the property between April, 1977 and the day when the application u/s 9A was moved.

4. The learned Counsel for the Petitioner has argued that both the grounds on which the application was rejected are illusory. According to the learned Counsel the rent could not be enhanced for a period of five years provided the same had been enhanced in accordance with the provisions of Sub-section (1) of Section 9A of the Act and since the enhancement of rent from Rs. 60.00 to Rs. 75.00 was not in accordance with the provisions of Sub-section (1) of Section 9A the present application was not barred. Section 9A of the Act reads as follows:

9A. Revision of rent of commercial buildings let out by public religious institutions-

(1) 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 in any contract or lease, the landlord of such building may apply to the District Magistrate for revision of the monthly rent payable therefore ,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 Sub-section shall not exceed double the rent payable on the date of the application by the landlord under this Sub-section.

(2)....

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

Explanation-....

5. From a perusal of Sub-section (3) it is apparent that successive applications for enhancement of rent under Sub-section (1) of Section 9A are maintainable. The restriction, however, is that between the two applications a period of five years should elapse. The manner in which and the extent to which the rent is to be enhanced are prescribed under Sub-section (1). The restriction against moving of an application under Sub-section (1) contained in Sub-section (3) applies only where rent has been enhanced in accordance with Sub-section (1). For enhancement of rent in accordance with the provisions of Sub-section (1) an application has to be moved before the District Magistrate and the District

Magistrate has to find out the market value of the building under tenancy. In the present case when the rent was enhanced from Rs. 60.00 to Rs. 75.00 the District Magistrate was not approached nor there was any determination regarding the market value of the building under tenancy. In circumstances it cannot be said that the enhancement of rent from Rs. 60.00 to Rs. 75.00 was in accordance with Sub-section (1) of Section 9A so as to debar the Petitioner from moving a fresh application within a period of five years as prescribed under Sub-section (3). In my opinion, therefore, the first ground for rejecting the application was illusory.

6. So far as the second ground for rejecting the application is concerned the same is also not sustainable. The District Supply Officer (Rent Control) has observed that there was no material change in the market value between the date on which the rate of rent was enhanced to Rs. 75.00 and the date on which the application u/s 9A was moved. As observed earlier at the time the rent was enhanced to Rs. 75.00 there was no determination of the market value of the building. The rent was enhanced by mutual agreement. Under Sub-section (1) of Section 9A the District Magistrate was required to determine the market value of the building under tenancy at the time of the moving of the application. This not having been done the impugned order cannot be sustained.

7. In view of the above the petition is allowed and the order dated 2-12-1978 (Annexure No. 6 to the writ petition) passed by the District Supply Officer (Rent Control) Lucknow, is hereby quashed. The District Supply Officer (Rent Control), Lucknow, or whoever now is the relevant authority shall dispose of the Petitioner''s application afresh in accordance with law taking into account the observations made hereinabove. Since no one has put in appearance on behalf of the opposite-party No. 2 the costs of this petition shall be easy.