
(2009) 04 AHC CK 0120
In the Allahabad High Court

Sanjay Parikh and Others

APPELLANT

Vs

IIIrd Addl. District Judge and Others

RESPONDENT

Date of Decision : 27-04-2009

Acts Referred:

Citation : (2009) 3 AWC 2397

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. These are landlords' writ petitions arising out of proceedings for enhancement of rent initiated by the landlords against their tenant respondent No. 3, District Commandant Home Guards Civil Lines, Moradabad. In the property in dispute office of respondent No. 3 is situated. Initially rate of rent was Rs. 321.25 per month. Total area of the property in dispute is 562.63 square metres. Application, which was filed by the landlords for enhancement of rent before R.C. & E.O., was registered as Case No. 5 of 1991, R.C. & E.O. through order dated 6.6.1994 enhanced the rent to Rs. 7,800 per month determining the total market value of the tenanted accommodation (land and building) as Rs. 9,36,320. Against the said order, both the parties filed appeals, which were numbered as R.C. Appeal Nos. 13 and 34 of 1994. Case of the landlords was that rent must be fixed at Rs. 10,936 per month and case of the tenant was that rent should not have been enhanced by R.C. & E.O. The land over which tenanted building is constructed is nazul land on lease with the landlords. The lower appellate court held that valuation of such land could not be added for determining the market value of the total tenanted property. This view is utterly erroneous in law.

3. Before the appellate court, a sale deed executed by the landlords was filed in which it was shown that property in dispute had been sold for Rs. 1 lac on 30.4.1998. Taking the said sale consideration as market value of the entire

property, Lower Appellate Court/III A.D.J., Moradabad determined the rate of rent at Rs. 833.30 per month (1/120 of Rs. 1 lac). The appeal of the landlord was therefore dismissed and appeal of the tenant was allowed in part accordingly, through judgment and order dated 31.10.2000 giving rise to the instant writ petitions.

4. On the basis of the sale deed, a substitution application was also filed, however that was dismissed by the lower appellate court through order dated 27.7.2000. The sale deed was executed in favour of Sudhir Sharma, Pritipal Singh and Harjeet Kaur.

5. Copy of the sale deed has not been annexed even alongwith counter-affidavit.

6. Even though the sale deed was executed, it could not be true indicator of the market value as the property was in occupation of the tenant on a very small rent. Such properties are not sold on their absolute market value. Landlords had fixed the market value of the land @ Rs. 1,440 per square metre, which was the circle rate at the relevant time. Supplementary counter-affidavit has been filed on 29.8.2008 annexing therewith the lease deed in between petitioner, landlords and tenant-respondent No. 3, which is dated 27.4.1973. The leased property as mentioned therein consists of five big rooms, five small rooms, three kitchens, two bath rooms and three latrines. Rent fixed is Rs. 351.25 per month.

7. Written statement filed by the tenant respondent No. 3 before R.C. & E.O. has not been annexed. However, in the judgment by R.C. & E.O. (Annexure-2 to the writ petition), it is mentioned that defendant admitted that maximum valuation of property in dispute was Rs. 3,75,000. At another place, it was mentioned in the written statement that valuation of the construction is by maximum Rs. 3,73,000.

8. 1/120 of Rs. 3,75,000 comes to slightly more than Rs. 3,000. If the formula of doubling the market value and consequently, the rent also after six or seven years is applied then also the rent of Rs. 350 per month fixed in the year 1973 will come to about Rs. 3,000 per month in the year 1991, when application was filed. Circle rate is not a safe criteria to determine the market value of the land. Moreover, the land was on lease, hence, its market value could not be as much as the market value of freehold land. Landlords also at some point of time executed a sale deed of the property in dispute for Rs. 1 lac. However, it appears that it was slightly doubtful sale deed and it is not clear whether it is still effective or not.

9. Taking all these things into consideration, in my opinion, the value of the entire tenanted property in dispute in the year 1991 was about Rs. 3,75,000, hence landlords are entitled to the rent of Rs. 3,000 per month w.e.f. April, 1991 (application for enhancement of rent was filed on 14.3.1991).

10. Accordingly, both the impugned orders are modified and it is directed that tenant shall pay the rent @ Rs. 3,000 per month, w.e.f. April, 1991. Entire

arrears shall be cleared within six months positively.

11. Writ petitions are accordingly disposed of as above.