(2002) 07 AHC CK 0129

In the Allahabad High Court

Case No : C.M.W.P. No''s. 41552 of 1997 and 11836 of 2001

Smt. Har Piari Devi Gupta and Others — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 05-07-2002

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 21(8)

Citation : (2002) 3 AWC 2379

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Dhan Prakash, for the Appellant;

Final Decision : Allowed

Judgement

Anjani Kumar, J.—These two writ petitions, namely. Writ Petition Nos. 41552 of 1997 and 11836 of 2001 filed by petitioner, Smt. Har Piari Devi Gupta and the landlord, the State of U. P. through Collector, Moradabad, challenging the orders passed by the Prescribed Authority as well as by the appellate authority under the provision of Section 21 (8) of U. P. Act No. 13 of 1972, (hereinafter shall be referred to as the ''Act''), since raise common question of facts and law, thus being disposed of by this common judgment together.

2. The facts leading to the filing of present writ petition being Writ Petition No. 41552 of 1997 are that the respondent No. 1 (petitioner in Writ Petition No. 11836 of 2001) is admittedly tenant of the aforesaid accommodation in question. The petitioner-landlord filed an application u/s 21 (8) of the Act with the prayer that the rent be enhanced. The said application for enhancement of the rent has been decided by the Rent Control and Eviction Officer (Prescribed Authority) holding that the provisions of U. P. Act No. 13 of 1972 are applicable and according to the evidence on record, there are sufficient grounds to enhance the rent of the accommodation in question, whose market value has been assessed to Rs. 9,21,498 and in view of the provision of U. P. Act No. 13 of 1972, the

enhanced rent has been fixed as Rs. 2,000 per month, which shall be payable by the tenant since 1.9.1990. It is on this ground, the application filed by the petitioner-landlord was allowed in part.

3. Aggrieved by the aforesaid order, the petitioner-landlord preferred an appeal before the appellate authority and appellate authority accepted the market value to be Rs. 9 lacs and odd and has enhanced the rent from Rs. 2,000 to Rs. 4,000 per month w.e.f. 1.9.1990. It is these two orders, which have been challenged by the petitioner-landlord on the ground that according to the provision of Section 21 (8) of the proviso, the rent should be enhanced to 1/12th of 10 per cent of the current market value. The Prescribed Authority and the appellate authority having come to the conclusion that the market value of the accommodation in question being Rs. 9,21,498, the enhancement to the extent to Rs. 2,000 by the Prescribed Authority and to Rs. 4,000 per month by the appellate authority is non-application of mind and, therefore, deserves to be set aside and rent should be fixed according to the formula given under the Statute, i.e., 1/12th of 10 per cent of the market value. l/10th of the market value comes to Rs. 92,149 and l/12th of this amount, i.e., Rs. 9,21,498 comes to roughly about seventy six thousand and odd per month. Since both the authorities have already arrived at the conclusion that the market value of the accommodation in question under the tenancy would be Rs. 9,21,498, there was absolutely no justification in not fixing the rent payable on the basis of the aforesaid formula. The orders dated 21.11.1996 and 1.9.1997 passed by Prescribed Authority as well as by the appellate authority, respectively, therefore deserve to be quashed to the extent the version of the quantum of the rent payable by the respondent-tenant.

4. I am in full agreement with the arguments advanced by learned counsel for the petitioner-landlord. The orders dated 21.11.1996 and 1.9.1997 passed by Prescribed Authority as well as by the appellate authority deserve to be quashed to the extent that the Rent Control and Eviction Officer shall fix the rent on the basis of the market value arrived at and affirmed by the appellate authority with effect from the date when the order was passed, i.e., from 21.11.1996 taking market value as Rs. 9,21,498 and fixed the rent payable calculating at the rate of 1/12th of 10 per cent of the aforesaid market value per month w.e.f. 21.11.1996.

5. In view of what has been stated above, both the writ petitions are allowed. The orders dated 21.11.1996 and 1.9.1997 are hereby quashed. The Rent Control and Eviction Officer is directed to calculate and fix the rent taking the market value as Rs. 9,21,498 and l/12th of 10 per cent of the aforesaid market value with effect from the date when the original order passed, i.e., on 21.11.1996.

6. In the result both the writ petitions are allowed. Order accordingly. However, in the facts and circumstances of the case, the parties shall bear their own costs.

