(1999) 12 AHC CK 0048

In the Allahabad High Court

Case No : C.M.W.P. No. 47425 OF 1999

Smt. Sudha Rani Garg APPELLANT

Vs

Vth Additional District Judge, Saharanpur and others RESPONDENT

Date of Decision : 22-12-1999

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 1, 12(5), 2, 2(2), 20(2)

Citation : (2000) 1 AWC 692

Hon'ble Judges : Yatindra Singh, J

Bench : Single Bench

Advocate : A.K. Gupta, for the Appellant; S.C. and Shri Prakash Krishna, for the Respondent

Final Decision : Dismissed

Judgement

Yatindra Singh, J.—When a construction of a building is completed within the meaning of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (the Act)? What is the meaning of the word ''Q September. 1982'' in an extract of the house and water tax register? Does it mean recording of completion of building on 1.7.1982? These are the questions involved in this writ petition. They arise on the following facts.

FACTS

2. Respondents 3 to 7 (the contesting respondents) are the landlords of the shop in question. Smt. Sudha Rani Carg (the petitioner) is the tenant of the same. The contesting respondents filed a suit for ejectment against the petitioner after terminating her tenancy. The ground was that the provisions of the Act are not applicable and the tenancy being at will, the petitioner was liable for eviction.

3. The parties led their evidence and also filed an extract of the register of house and water tax (Annexure-6 to the writ petition) for the year 1980-85. This is the first assessment of the shop. The column 10 of the extract is meant for details of

orders of enhancement or reduction. In this column ''Q September, 1982'' is mentioned. The contesting respondent also examined one Haridas son of Pancham Singh, clerk in the Nagar Palika in the relevant ward to explain its meaning. He stated that ''Q'' stands for quarter and ''September'' means third quarter. He also stated that this assessment came into effect from 1.4.1983. Even otherwise, there is no dispute that this assessment came into effect from 1.4.1983. The trial court dismissed the suit holding that :

(a) The third quarter is from 1st July to 30th September. The entry ''Q'' September, 1982 shows that completion of shop is recorded in the municipal records in this quarter. This quarter starts on 1.7.1982 and building would be deemed to be constructed on 1.7.1982.

(b) 1st of July, 1982 is the date of construction of the shop as it is earlier than 1.4.1983 -when first assessment came into effect.

(c) The suit was filed on 21st August. 1982, Le.. ten years after 1.6.1982, and as such provisions of the Act were applicable.

(d) The suit is not maintainable as no grounds u/s 20(2) of the Act are made out.

The contesting respondents filed a revision. The revisional court held that even if entry is taken to be entry of completion of the shop in the municipal records. It would be of September. 1982 and as the suit was filed in August, 1982 before the expiry of ten years, the provision of Act are not applicable. The revision was allowed and the suit was decreed. Hence the present writ petition.

POINTS FOR DETERMINATION

4. I have heard Sri A. K. Gupta, counsel for the petitioner and Shri Prakash Krishna for the respondents. The counsel for the respondents have stated that he does not propose to file any counter-affidavit and the writ petition be decided at this stage. The following points arise for determination in the case :

(i) When a building is completed under the provisions of the Act. What is the relevant date for construction of a building?

(ii) What is the meaning of ''Q September. 1982'' in the extract of tax register? Does it mean that construction of the shop was otherwise recorded in the municipal records on 1.7.1982?

IST POINT : RELEVANT DATE-- CONSTRUCTION OF BUILDING

5. The preamble of the Act states that it is ''An Act to provide, in the interest of the general public, for the regulation of letting and the eviction of tenants from, certain classes of buildings situated in urban areas, and for matters connected therewith. It is beneficial piece of legislation and in tune with the preamble the Courts have taken the view that it applies to all buildings unless proved to the contrary. The burden to prove that a building is exempted is on the landlord. It is not on the tenant to prove that the Act applies to a building.

6. Section 1 of the Act defines short title, extent, application and commencement of the Act. Section 2 of the Act talks about exemption of a building from the operation of the Act. It, among the other things provides that the Act does not apply to a building for a period of ten years from the date of its completion. The Explanation (1) to this section provides a legal fiction for determining the date of completion of construction of a building. It provides for following four different dates, namely.-

(i) the completion of building is reported to local authority ;

(ii) the completion of building is otherwise recorded by the local authority :

(iii) the first assessment of the building (subject to assessment) comes into effect :

(iv) when it is actually occupied. This does not include the date of occupation merely for the purposes of supervising the constructions or guarding the building under construction.

The Explanation (1) further provides that in case the first three dates are available, then the earliest of the first three dates will be the date of completion of a building and in case any of the first three dates are not available, then the fourth date will be the date on which the construction of the building is completed. In this case counsel for the parties agree that : the first and the fourth dates are unavailable ; and third date is available. They disagree about the second date. One (counsel for the petitioners) submits it is available ; the other (counsel for the contesting respondents) submits otherwise. Let''s consider it.

IIND POINT : THE MEANING OF ''Q SEPTEMBER, 1982''

7. An extract of house and water tax assessment, 1983 is on the record. The first assessment came into effect from 1.4.1983 ; it is the third date provided in the Explanation. The column 10 of this extract is for record the details of the order regarding enhancement or the reduction of tax. In this column against the shop in dispute ''Q September, 1982'' is recorded. According to the counsel for the petitioner, it means that completion of the shop has been recorded in the local authority on 1.7.1982. Is it so? Let''s consider it this submission is correct.

8. The entry in the extract of register merely states that ''Q September, 1982''. This entry by itself does not explain anything. The contesting respondents had also examined one Shri Hariram, clerk in the Nagar Pallka and he has explained the meaning of the word of ''Q September, 1982''. According to him ''Q'' stands for quarter and this entry means third quarter of the year. 1982. It shows that the assessment was made sometimes in the third Quarter of 1982. The third quarter in the year 1982 started from 1.7.1982 and ended on 30.9.1982. This entry undoubtedly shows that the assessment for the building was made in the third, namely, between 1.7.1982 to 30.9.1982, which could only be after recording completion of the shop in dispute, but this does not indicate the date

on which this assessment was made. It cannot be taken that this assessment deemed to have been made on 1.7.1982. There is neither any legal fiction nor any presumption of law warranting such conclusion. If this order was made between 1.7.1982 to 20.8.1982, then the suit filed by the contesting respondent on 21.8.1982 was after 10 years, but if this entry was between 21.8.1982 and 30.9.1982, then the suit was well within 10 years from that date and the provisions of the Act were not applicable.

9. No exact date is available. In its absence, it cannot be said that second date as contemplated in the Explanation 1 to Section 2 is available. It leaves only one date. namely, the third one. which is 1.7.1983. This will be the date of completion of the shop. The suit was filed on 21.8.1992 ; it was within ten years of completion of the shop. The suit has been rightly decreed by the revlsional court as the Act is not applicable.

CONCLUSION

10. The E;tplanafion I of Section 2 provides for four dates (paragraph 6). The fourth date will be relevant only if any of the first three dates are not available. If more than one of the first three dates are available, then the earliest of the first three dates will be the date of completion of a construction. ''Q'' September, 1982 means that assessment was made in the third quarter of 1982. But in absence of any date mentioned therein, neither any date can be attributed to it nor it can be said that second date is available. Only the third one that first assessment came into effect from 1.7.1983 was available. This would be the date of completion of the construction and the provisions of this Act are not applicable to the shop.

11. The suit was rightly decreed by the revisional court. The writ petition has no merits. It is dismissed. However, the petitioner may not be evicted from the premises in dispute for a period of six months provided he deposits the entire decreetal amount within one month before the executing court and files an undertaking in form of an affidavit that she will handover the possession of the shop in six months and pay the damages for the period of her occupation.