

(2006) 03 AHC CK 0088

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9235 of 1988

Smt. Suman Bai Nirmale

APPELLANT

Vs

Ist Additional District Judge and Banaras Hindu University

RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

Companies Act, 1956 — Section 3

Uttar Pradesh Basic Education Act, 1972 — Section 2, 2(1), 3

Citation : (2006) 7 AWC 6841

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

Bench : Single Bench

Advocate : A.K. Rai, G.K. Singh, R.N. Singh and S.N. Singh, for the Appellant;
Dinesh Kakkar and V.K. Upadhayai and S.C., for the Respondent

Final Decision : Allowed

Judgement

S.U. Khan, J.—This is tenant's writ petition arising out of suit for eviction on the ground of default and for recovery of arrears of rent filed by landlord-respondent No. 2 Banaras Hindu University in the form of Suit (S.C.C. Suit) No. 728 of 1978 before the J.S.C.C. Varanasi. Property in dispute is two room residential accommodation on the second floor rent of which is Rs. 19/- per month.

2. Trial Court held that notice of termination of tenancy and demand of rent was not proved to be served upon the tenant. However, the trial court held in favour of the plaintiff-landlord that U.P. Act No. 13 of 1972 was not applicable on the building in dispute by virtue of Section 2(a) read with Section 3(o) and 3(p) of U.P. Act No. 13 of 1972, as they stood at that time. By virtue of the said provisions the Act was not applicable to a building belonging to public sector Corporation. The suit for eviction was, therefore, dismissed. However, it was decreed for recovery of arrears of rent through judgment and decree dated 19.7.1983. Against the said judgment and decree respondent No. 2 filed Civil Revision No. 211 of 1983.

3. Revisional Court/1st A.D.J. Varanasi held that service of notice was proved as

in para 20 of the written statement the only thing which was stated was that notice of the plaintiff was illegal. Revisional Court also recorded a finding that the tenant herself did not enter the witness box to deny service of notice. In para 4 of the plaint it was stated that notice was sent on 22.7.1977 and served on 26.7.1977. In reply to the said para tenant in para 20 of the written statement stated that notice was illegal. This clearly amounted to admission of service of notice. Accordingly I hold that on the issue of service of notice finding of the revisional Court is perfectly correct and legal. Contrary finding of the trial court was clearly erroneous in law.

4. The Revisional Court agreed with the finding of the trial court that U.P. Act No. 13 of 1972 was not applicable to the building in dispute, hence suit for ejectment was also decreed by the Revisional Court. The Revisional Court allowed the revision through judgment and order dated 17.2.1988, hence this writ petition.

5. As far as the finding of non-applicability of the Act during the period when suit was filed and decided by the trial court is concerned, I do not agree with the view of the courts below. Section 2(1)(a), (b), 3(o) & 3(p) and 3(q), as they stood at the relevant time are quoted below:

2. EXEMPTION FROM OPERATION OF ACT: (1) Nothing in this Act shall apply to-

(a) any public building; or

(b) any building belonging to or vested in a recognised educational institution, the whole or the income from which is utilised for the purposes of such institution;

XXX XXX XXX

3. DEFINITIONS:

XXX XXX XXX (o) "public building" means any building belonging to or taken on lease or requisitioned by or on behalf of the Central Government or a State Government (including the Government of any other State), and includes any building belonging to or taken on lease by or on behalf of any local authority or any public sector corporation;

XXX XXX XXX (p) "public sector corporation" means any corporation owned or controlled by the Government, and includes any company as defined in Section 3 of the companies Act, 1956, in which not less than fifty per cent of the paid up share capital is held by the Government;

(q) "recognized educational institution" means any institution recognised under the Intermediate Education Act, 1921 or the Uttar Pradesh Basic Education Act, 1972 or recognised or affiliated under the Uttar Pradesh State Universities Act, 1973;

6. The courts below held that University is included in the definition of "public sector corporation". It is correct that technically University may also be described

as Corporation vide The Board of Trustees, Ayurvedic and Unani Tibia College, Delhi Vs. The State of Delhi and Another, followed in Constitution Bench authority of Daman Singh and Others Vs. State of Punjab and Others, However, in the Act at the relevant time exemption from operation of the Act was granted to different types of buildings, including buildings belonging to Public Sector Corporation [Section 2(1)(a)] and building belonging to a recognised educational institution [2(1)(b)]. A University is more likely to fall under the clause of "educational institution" than Corporation". At the relevant time University was not included under the definition of recognised educational institution. Benaras Hindu University being a central University could not therefore claim to be included in the definition of recognised educational institution at the relevant time.

7. By U.P. Act No. 17 of 1985 made effective from 5.1.1985, Section 3(q) of the Act was amended and following was inserted thereto:

Any University established by law in India.

Thereafter it become quite clear that any building belonging to any University including Banaras Hindu University was exempt from operation of the Act.

8. Section 2(1)(a) and (b) as amended by U.P. Act No. 17 of 1985 are also quoted below:

2. EXEMPTIONS FROM OPERATION OF ACT: (1) Nothing in this Act shall apply to the following namely:

(a) any building of which the Government or a local authority or a public sector corporation or a Cantonment Board is the landlord; or

(b) any building belonging to or vested in a recognised educational institution, or....

9. In case legislature was of the opinion that University should be treated to be Corporation then there was no need to add university in the definition clause of Educational Institution provided u/s 3(q), as Act was made inapplicable to buildings of which Public Sector Corporation was landlord by virtue of Section 2(1) (a) amended by the same Act i.e. U.P Act No. 17 of 1985.

10. It has been held by Supreme Court in State of U.P. and Another Vs. Malik Zarid Khalid, that if suit was filed during the period when U.P. Act No. 13 of 1972 was not applicable then it cannot be applied in the said suit even if during its pendency it has been made applicable by amendment in the Act. Some principle will apply if the position is vice versa vide M/s. Ambalal Sarabhai Enterprises Ltd. Vs. M/s. Amrit Lal and Co. and Another,

11. Writ petition, therefore, deserves to be allowed on the ground that U.P. Act No. 13 of 1972 was applicable to the building in dispute and entire arrears of rent etc. had been deposited by the tenant on the first date of hearing.

12. Accordingly writ petition is allowed. Judgment and order passed by the

Revisional Court is set aside. Judgment and decree passed by the trial court is maintained although on different grounds.

13. I have held in *Khursheeda v. A.D.J.* 2004 (2) A.R.C. 64 that while granting relief against eviction to the tenant in respect of building covered by Rent Control Act, writ court is empowered to enhance the rent to a reasonable extent. The building in dispute is a two room residential accommodation situated on second floor. Rent of Rs. 19/- per month is virtually as well as actually no rent. Accordingly, it is directed that with effect from March 2006 onward tenant-petitioner shall pay rent to the landlord Respondent @ Rs. 500/- per month.