

(1998) 10 AHC CK 0071
In the Allahabad High Court
Case No : C.M.W.P. No. 39191 of 1997

Som Nath Vaishya

APPELLANT

Vs

VIIth Addl. District Judge, Allahabad and others

RESPONDENT

Date of Decision : 14-10-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(8)

Citation : (1998) 3 AWC 2234

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : S.V. Goswami, for the Appellant;

Final Decision : Allowed

Judgement

J.C. Gupta, J.—This is landlord's petition arising out of the decision of the respondent No. 1 dated 27.9.1997 whereby the appeal filed by the petitioner has been dismissed and the one preferred by respondent No. 4 has been allowed.

2. The dispute is in relation to the rate of rent of a building situated at 16 C. Y. Chintamanl Road. George Town, Allahabad which is admittedly in the occupation of respondent No. 4 as tenant on behalf of the petitioner, at the rate of Rs. 1,250 per month. The petitioner filed an application u/s 21 (8) of the U. P. Act No. 13 of 1972, (hereinafter referred to as the Act), for the enhancement of rent alleging therein that the market value of the tenanted property is not less than sixty lakhs and accordingly, he is entitled to get rent at the rate of Rs. 50,000 per month. The accommodation in dispute consists of a double storey building with land. The same was got assessed by Sri G. S. Birdie, a Chartered Engineer and Consulting Civil Engineer, who is also an approved and registered valuer for Immovable property for Income Tax and other tax purposes. The report of the said expert was filed before the Rent Control and Eviction Officer from the side of the petitioner. According to the said report, the monthly rent of the building in

question comes to Rs. 51,000 as per the following calculations :

A.

Value of building

(i) Ground floor : Area measuring 829.02sq. mts. at the rate of Rs. 1,000 per sq. mts.

8.29 lacs

(ii) Ist floor : Area measuring 449.19 sq. mts. at the rate of Rs. 800 per sq. mts.

3.59 lacs

(iii) Servant Quarter : Area measuring 160.30 sq. mts. at the rate of Rs. 500 per sq mts.

0.80 lacs

Totsl value

12.68 lacs

B.

Value of Land

Area 4622.44 sq. mts. at the rate of Rs. 1,050 per sq. mts.

48.53 lacs

Total market value

61.21 lacs (12.68* 48.53)

Monthly rent = $[(61.21 \times 10) / 100] \times (1/12) = 61.00$

3. The respondents denied the claim of the petitioner on the ground that the building under tenancy is on lease land and is in a dilapidated condition and further that the lease has not been got renewed. No report of any valuer was, however, filed on their behalf, instead a copy of an application moved by one Chandra Pratap Singh u/s 133, Cr. P.C. and a letter purporting to be sent by Nagar Mahapalika in response to the letter of the City Magistrate, Allahabad were filed on behalf of the respondents in order to demonstrate that the building is not in a perfect and sound condition.

4. The Rent Control and Eviction Officer by the order dated 30.5.1986 allowed the petitioner's application in part after assessing the market value of the land as 4.85 lacs calculated at 10% of the value determined by the petitioner's valuer on the ground that the land was only a lease land. He accepted the value of the building at 12.68 lacs and thus the total market value was determined as Rs. 17.35 lacs and accordingly the monthly rent was enhanced to Rs. 14,853.

5. Aggrieved by the aforesaid order of the R.C and E.O. both the parties filed separate appeals which have been decided by the respondent No. 1 by a common judgment dated 27.9.1997 and the same has been challenged by the petitioner in this writ petition.

6. Sri S. V. Goswami, learned counsel for the petitioner attacked the impugned judgment contending that the appellate authority has rejected the uncontroverted report of the valuer filed on behalf of the petitioner on wholly untenable and irrelevant grounds and the report has been misread which has resulted in gross miscarriage of justice to the petitioner inasmuch as he has been deprived of his valuable statutory right of getting the rent enhanced as per the market value of the land and building in question under the provisions of Section 21 (8) of the Act. On examination of the record, I find substance in this submission of learned counsel for the petitioner. Irrespective of the fact that there was nothing on the record brought by the respondents challenging the correctness of the report of the valuer, the appellate authority has committed a gross error of law in rejecting completely the valuer's report filed on behalf of the petitioner on wholly irrelevant and extraneous considerations. The lower appellate court rejected the said report on the grounds that the report was based on documents furnished by the petitioner at the relevant time and it was stated in the report that the valuer would not be responsible if the documents were absolutely found to be false ; that there were no particulars or description of the documents furnished by the petitioner ; that the valuer made assessment of the land of the building at the prevailing rate of P.W.D. Department but the said rate was not placed on the record ; and that the value of the land has been assessed by the valuer on the basis of the circle rate fixed by the District Magistrate but no such document fixing the circle rate was produced before the Court. While discarding the said report, the Appellate Authority failed to take notice of the fact that the valuer had inspected the site himself and had prepared the plan attached with the report which shows that he measured every room to verify the material used therein and made an endorsement to the effect that if the major repairs of the building were made, the life of the building would extend to another 25 years. The value was accordingly reduced on account of depreciation of the building. The learned Judge also failed to consider the fact that there was no dispute about the ownership and Identity of the property, hence no documents in that respect were necessary to be brought on record and it was in this connection that the valuer in a printed proforma had stated that he was not responsible for the authenticity of the documents supplied by the petitioner to him. The valuer had filed his own affidavit which was also on record and the same was not controverted by the respondents. The said affidavit has not been read in its right perspective by the Courts below and the mind of the learned Judge appears to have been influenced by some documents filed on behalf of the respondents which in law neither had any relevance to the issue in question nor were readable in evidence. Some documents were filed in relation to the proceedings u/s 133, Cr. P.C. and on the basis of the same, the appellate

authority held that the valuation of the property could not be assessed at Rs. 12.68 lakhs without assigning any reason as to what was the defect in that assessment. The said documents could not be looked into in law as they were not in between the same parties nor any final order was passed in those proceedings. It was the duty of the appellate authority to have gone into the question as to what extent the building required repairs and what should be its correct market value. Merely because the building is an old building and requires extensive repairs, it does not become valueless. It will still have some market value and, therefore, it was necessary for the appellate authority to have determined the exact market value of the existing building after making allowance for its depreciation. The appellate authority also committed manifest error of law in holding that since the land of the building was a lease land, it conferred no valid right to the petitioner. This view of the appellate authority was wholly misconceived as according to the documents brought on the record, the lease was valid upto 31.12.1999 and admittedly the building in question existing on the lease land is owned by the petitioner. Even the leasehold land has a market value though it may not have the same value as a freehold land has. The appellate authority should have, therefore, examined the material on record to find out the market value of the land in question. For these reasons, the order of the appellate authority is not sustain able and is liable to be set aside.

7. For the reasons given above this writ petition is allowed and the order of the appellate authority dated 27.9.1997 is set aside and the appellate authority is directed to decide the matter afresh in accordance with law and in the light of the observations made above. In the circumstances there shall be no order as to costs.