

(2001) 04 AHC CK 0018

In the Allahabad High Court

Case No : C.M.W.P. No. 38718 of 1994 with No. 38312 of 1994

State of U. P. and others

APPELLANT

Vs

Rent Control and Eviction Officer, Mathura and another

RESPONDENT

Date of Decision : 10-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 29A, 29A(4), 29A(5), 29A(7)

Citation : (2001) 2 AWC 1363

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

Bench : Single Bench

Advocate : S.C, for the Appellant; M. D. Singh, for the Respondent

Judgement

U. S. Tripathi, J.—These writ petitions under Article 226 of the Constitution of India have been filed for issuance of a writ, order or direction in the nature of certiorari quashing and modifying the impugned judgment and order dated 30.8.1994 passed by respondent No. 1. The petitioner of Writ Petition No. 38312 of 1994 has further prayed for fixing market value of land in question @ Rs. 1,000 per square yard and determining annual rent on said value.

2. The landlords Colonel Sawai Brijendra Singh, Ex. Maharaja, Bharatpur and his son Sri Vishwendra Singh through Mukhtaram moved an application before the Rent Control and Eviction Officer. Mathura u/s 29A (5) of U. P. Urban Buildings (Regulation of Letting. Rent and Eviction) Act, 1972 (U. P. Act No. 13 of 1972) (hereinafter called the Act), for determination of annual rent of the land over which Government Inter College (Babu Briridatan Das Pushpawati Inter College, General Ganj, Mathura) was being run under the tenancy of State of U. P. according to prevailing market value of the land in question. The State of U. P. contested the above application mainly on the ground that there was agreed rent between the parties and therefore, Section 29A (5) of the Act was not applicable and the rate of market value as well as area under tenancy were highly

exaggerated.

3. The learned Rent Control and Eviction Officer, on considering the evidence and material on record, held that initially a portion of land in question was let out to the State of U. P. on 18.11.1867 on annual rent of Rs. 21. According to extract of Wazibul Arz of 1284 Fasali and map of Mathura city for the year 1872-1873 A.D. Native School was recorded in plot No. 64 and according to Wazibul Arz land of Madarsa belonged to Raja Sahib Bharatpur and buildings over said land were let out to State Government on annual rental of Rs. 21. On 18.11.1867 only 3 bighas. 15 biswansis land was given on annual rental of Rs. 21. On 10.4.1871 some more land was given on rent and area of entire tenanted land became 4 bighas, 9 biswas, and 14 biswansis. on annual rental of Rs. 25, aanas 6. paise 3 and lastly in the year 1877 and 1898 an area of 5.86 acres was given on tenancy to the State of U. P. on annual rental of Rs. 32 paise 9. The said rent remained in force till 1940 and after 1940 rent was increased to Rs. 32, aana 1. Thus. total area in the tenancy of State of U. P. was 5.86 acres of which the respondent Nos. 2 and 3 were landlords. It further held that rent agreed for the purposes of Section 29A (5) of the Act was the rent agreed between the parties after enforcement of the Act. Since, no rent was agreed after enforcement of the Act. provisions of Section 29A (5) were applicable. The application was properly verified and filed. He further held that circle rate of land in the area was Rs. 1.125 per square metre and landlord had claimed determination of price of land at the rate of Rs. 1,000 per square yard, but he assessed the market value of the land at the rate of Rs. 100 per square yard. Accordingly, he assessed the annual value of land in question at Rs. 23.71.500 and annual rent of it at Rs. 2,37,150 and allowed the application accordingly.

4. The tenant, i.e.. State of U. P. and landlord both have challenged the above order of Rent Control and Eviction Officer in these writ petitions.

5. Both the petitions arise out of same order and therefore, are taken up together for decision.

6. Heard the learned standing counsel on behalf of State of U. P. and Sri M. D. Singh advocate on behalf of landlords and perused the record.

7. The first point raised by learned counsel for State of U. P. was that since there was agreed rent between the parties in respect of land in question, the provisions of Section 29A (5) of the Act are not applicable by virtue of Section 29A 14) of the Act.

8. The applicability of Section 29A (5) was considered by this Court in a Full Bench decision in Trilok Chanda v. Rent Control and Eviction Officer, S.D.M. Naku. district Saharanpur and another 1987 (1) ARC 290. (FB) and it was held as below :

"Sub-section (4) applies to the land to which Section 29A applies. It provides that the tenant shall be liable to pay to the landlord such rent as may be agreed

upon between the parties. In the absence of such agreed rent, the sub-section further provides that the tenant is liable to pay the rent determined in accordance with sub-section (5). These terms are clear enough and indicate that the agreement envisaged thereunder is not the agreement, existed prior to coming into force of Section 29A. It refers to subsequent agreement only. The words "such rent as may be mutually agreed upon between the parties" refer to future agreement and not the past agreement. Sub-section (4) again emphasised "such rent". Such rent, in the context, means the rent to be mutually agreed upon by parties. Sub-section (4) further states that in the absence of agreement, the rent has to be determined in accordance with sub-section (5).

When sub-section (5) of Section 29A is considered, it confirms this conclusion. It confers powers on the District Magistrate to determine the annual rent at the rate of ten per cent per annum or the prevailing market value of the land. The rent so determined shall be payable from the date of expiration of the term for which the land was let or from the commencement of the Section 29A, whichever is later. It is clear from these provisions that the terms of the original lease have been kept undisturbed and the rights of parties thereunder are kept unimpaired. The landlord could get the annual rent of the land enhanced and determined under sub-section (5), but it could take effect from the date of expiration of term of the original lease or from the commencement of Section 29A of the Act, whichever is later.

Sub-section (7) of Section 29A also supports this view. It provides that notwithstanding anything to the contrary contained in any contract or instrument or in any other law for the time being in force, the provisions of Section 29A shall have effect. It means clearly that the agreement If any, existing on the date of coming into force of Section 29A is no bar for enforcing the rights under subsection (5). Sub-sections (4) and (5) shall prevail and not the antecedent agreement if any."

9. The above decision of the Full Bench was affirmed and approved by Apex Court in the case of Vinaya Kumar Shukul v. Lakhpat Ram and another 1990 (2) ARC 306. and it was held as below :

"We are in agreement with the view propounded by the Full Bench in Trilok Chand's case (supra). In our opinion, the words "such rent as may be mutually agreed upon between the parties" in sub-section (4) of Section 29A envisage an agreement with regard to rent entered by the landlord and tenant after the coming into force of Section 29A. An agreement prior to the commencement of Section 29A would not preclude determination of rent under sub-section (5) of Section 29A. In this context, it may be mentioned that the words "may be" used with reference to the future than the past or the present. Pollock C.B. in Brown v. Batchelor 25 LJ 299. Stroud's Judicial Dictionary. 5th Edn. p. 175. In sub-section (4) of Section 29A the words "may be" are preceded by the word "as" and are followed by the words "mutually agreed upon" which indicate that the words are used with reference to the future. The provisions of sub-section (7) which give

overriding effect to the provisions of Section 29A over an existing contract also lend support to this construction."

10. It is not disputed that after enforcement of Section 29A of the Act (with effect from 5.7.1976), there was no agreed rent between the parties and as such the provisions of Section 29A were rightly pressed into service in this case for determination of annual rent.

11. The next contention of the learned counsel for the State of U. P. was that the area of land and market value have wrongly been determined relying on circle rate. That the circle rate is only meant for realisation of stamp duty and it is not the sole criteria for determination of market value. Since the opposite party had not led any evidence regarding market value of the land in question, the Rent Control and Eviction Officer had no material before him to decide value of land.

12. The Rent Control and Eviction Officer held on the basis of various khasara entries that area of tenanted land and premises was 5.86 acres. There was no evidence on record from the side of tenant to prove otherwise as such the area of land under tenancy was rightly determined as 5.86 acres.

13. The learned counsel for the landlords argued that the circle rate prescribed by the State of U. P. is binding on it and though the learned Rent Control and Eviction Officer had accepted that circle rate is binding on the State and Tahsildar has also reported that circle rate of land was Rs. 1,125 per square metre, even then he determined the value of said land at the rate of Rs. 100 per square yard, which is arbitrary and against circle rate. He also placed reliance on decision of this Court In State of U. P. and another v. Narendra Nath Dixit and others 1993 (2) ARC 89. It was held in the said case as below :

"The submission of the learned standing counsel that there was no evidence of the market value, cannot be accepted. Under the provisions of the U. P. Stamp Rules, the Collector Is under obligation to prescribe these rates on the basis of the prevailing market rate in the area. As the prices are fixed under statutory provisions by the agency of the State itself, the rate so prescribed are binding on State until shown or proved to be incorrect. However, there is no evidence whatsoever adduced on behalf of petitioner in this regard. In absence of any evidence from the side of the petitioners the authorities have rightly determined the value of the land on basis of the notification issued by the Additional Collector (Finance)."

14. But a perusal of above decision shows that circle rate alone is not treated the sole basis for determination of market value and other evidence are also to be taken into consideration for determination of market value. The landlord claimed the market value at the rate of Rs. 1.000 per square yard. Circle rate of the area was Rs. 1,125 per square yard. But the parties had not adduced evidence on the market value. It was also observed by the Rent Control and Eviction Officer that the land in question was situated near graveyard and at low level from the public road. It was also adjacent to "nala" and, therefore, according to the State of U.

P. the price of land in suit cannot be Rs. 1,000 per square yard.

15. It is apparent from the order of the Rent Control and Eviction Officer that parties had not adduced any evidence regarding market value as well as situation of land in question. Therefore, the market value of the suit land could not be determined merely on the basis of circle rate and the parties be afforded opportunity to lead evidence on market value. As such determination of annual rent was not done properly and the case has to be sent back to the Rent Control and Eviction Officer for above purpose.

16. The Writ Petition No. 38718 of 1994 filed by State of U. P. and the Writ Petition No. 38312 of 1994 filed by landlords are allowed and the case is sent back to the Rent Control and Eviction Officer concerned with a direction to redetermine annual rent of the land after affording an opportunity to the parties to adduce evidence as observed above, at an early date. It is also made clear that till the determination of annual rent by the Rent Control and Eviction Officer the State of U. P. shall pay the rent at the rate of Rs. 2,37,150 per year, as determined earlier which will be subject to final determination of annual rent by the Rent Control and Eviction Officer.