
(1995) 11 AHC CK 0023
In the Allahabad High Court
Case No : C.M.W.P. No. 7504 of 1990

State of U.P. and Another	Vs	APPELLANT
Additional District Judge XIII and Others		RESPONDENT

Date of Decision : 29-11-1995

Acts Referred:

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

Citation : (1996) AWC 525 Supp

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—The Regional Food Controller, Bareilly, is tenant of a portion of House No. 156 Civil Lines, Bareilly. This accommodation was let out to the Food and Civil Supply Department on 2.10.1975 for a period of five years on monthly rent of Rs. 1.350 Respondent No. 3 is the land-lady of this house. She filed application u/s 21(8) of U.P. Urban Buildings (Regulation of Letting. Rent and Eviction) Act, 1972 (hereinafter referred to as the Act). It was stated that the rent be fixed according to the market value of the property as provided u/s 21(8) of the Act, and accordingly the rent was sought to be enhanced at the rate of Rs. 5.000 per month. Petitioners opposed this application.

2. Main objection was that the annual letting value of the building in question as assessed by the Nagar Mahapalika was Rs. 12.000 only and on the basis of this assessment, the market value of the building comes to only Rs. 1.20.000.

3. The sole question was regarding the valuation of the property in question. The rate of rent was to be determined on the basis of market value of the building. The tenant is liable to pay a sum equivalent to one-twelfth often per cent of the market value of the building under tenancy.

4. Respondent 3 submitted the report of valuer and Petitioners also submitted report of the valuer. Both the valuers valued the market-value of the property taking into consideration (i) the cost of the land and (ii) cost of construction of the building after taking into consideration the depreciation value of the construction valuer of Respondent No. 3 took the rate of land at Rs. 700 per sq. mtr. and valuer of Petitioners took the rate of land at Rs. 600 per sq. mtr. The valuer of Respondent No. 3, admitted that the location is best in town and rate in this area was Rs. 600 to 700 per sq. mtr., but according to him there was the office of Life Insurance Corporation adjoining having a common wall, he took the value at the rate of Rs. 600 per sq. mtr.

5. The Rent Control and Eviction Officer did not record any independent finding regarding the value of the land and the cost of the construction and its depreciation. He had, however, accepted the cost of construction at Rs. 2.13,262, and enhanced the rent accordingly to Rs. 3.400 from Rs. 2.500. per month.

6. Respondent No. 3 filed Rent Control Appeal No. 47 of 1988 and the Petitioners also filed Rent Control Appeal No. 43 of 1988. Both the Appeal were decided together.

7. Respondent No. 1 took the view that mere fact that there was office of Life Insurance Corporation adjoining the accommodation in dispute having a common wall, would not reduce the value of rate of land and. Respondent No. 1 accordingly held that value of the land was at the rate of Rs. 700 per sq. mtr. Admittedly, the total area of land is 435 sq. mtrs. He fixed value of the land at Rs. 3.04,500.

8. As regards the cost of construction, there is not much difference between the two reports, submitted by respective valuers. The main difference is as to whether depreciation value should be at 45% or 76% of the cost of construction. The relevant chart will indicate the difference of the reports of valuers of Petitioners and Respondent, which is as under:

Construction of building:		Landlord's	Tenants	valuer	valuer
					(a) Year
of Construction 1937		1937			
(b) Total Life assumed		100 years	100 years		
(c) Age In 1987		50 years	50 years		
(d) Residual Balance Age in 1987		50 years	50 years		
(e) Present Cost of Construction		Rs. 3.87,730	Rs. 3,72,420		
(f) Depreciation of Construction		Rs. 1,74,478	Rs. 2,83,039	(Dep. Value)	(i.e. 45%) (.e. 76%)
(g) Net Depreciated Value		Rs. 2,13,252	Rs. 89,380	Total Value	
of	Property	Rs. 5,17,000	Rs. 3,50,000		

9. The appellate authority has found that the depreciation value of the construction at 76% was without any basis and against the formula provided for calculating depreciated value.

10. in authoritative book "Estimating and Costing" by B. N. Dutta, method of calculating depreciated value has been discussed at page 630, which is quoted below:

6. Depreciation method of valuation.--According to this method of valuation, the building should be divided into four parts viz.--(i) Walls, (ii) Roofs, (iii) Floor and (iv) Doors and windows; and the cost of each part should first be worked out on the present day rates by detailed measurements. The life of each of the four parts should then be ascertained with the help of table in page 631, (Form 1, Annexure (B) to Chapter XIII of the Financial Hand Book Volume V, Part I) and the depreciated value of each part is ascertained by the formula where D is the depreciated value, P is the cost as present market rate and rd the fixed percentage of depreciation, (rate of depreciation, stands for rate and for depreciation) and the number of years the building had been constructed. The value of rd may be taken as below:

Structures, with 100 years life, rd=10, Structures with 75 years life, rd= 1.3, Structures with 50 years life, rd=2.0 Structures with 25 years life. rd=4.0, Structures with 20 years life rd=5.0.

11. Another method of determination of depreciation has been given at page 629 of the same Book, which is quoted as under:

Determination of depreciation.--After deciding the cost of the building or structure by any one of the above method it is necessary to allow a suitable depreciation on the cost. The depreciation depends on the ultimate use of the building, the present age of the building, nature of maintenance, etc. Generally, for the first 5 to 10 years there is little depreciation of the building or structure. The depreciation increases with the life.

For building whose life is considered as 80 years, if well maintained the following may be reasonable depreciation:

Depreciation	per	years	Total	Depreciation
				0 to 5
years - Nil				
5 to 10 years @ 1/2 per cent = 2.5 per cent				
10 to 20 years @ 3/4 per cent = 7.5 per cent				
20 to 40 years @ 1 percent = 20 per cent				
40 to 80 years @ 1 1/2 per cent = 60.0 per cent				
----- Total = 90.0 per cent				

The balance 10% represents the net scrap value on dismantling at the end of the utility period.

12. Even according to this formula, the depreciation of the value at 75% as given by the valuer of the Petitioner is wrong. The valuer of the Petitioner has misinterpreted the abbreviation as D for depreciation whereas it is depreciated value itself. According to the formula referred to above, depreciation value would be at 45%.

13. Appellate authority in these circumstances was justified in relying upon the depreciation value of the construction @ 45% as given by the valuer in his report submitted on behalf of Respondent No. 3. After taking into consideration the value of the land and the value of the construction, it came to the conclusion that the value of the property was Rs. 5,70,00 and accordingly fixed the value of the property. This finding does not suffer from any error of law.

14. Further, the learned Counsel for the Petitioners has submitted that the property in question is governed by the relevant provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The property was let out in the year 1975 when the Act was applicable. There is no allotment order in favour of the Petitioners and, therefore, the provisions of Section 21(8) of the Act is not applicable.

15. Section 21(8) of the Act is applicable whenever building is let out to State Government or to a local authority or to a public sector. The landlord has right to file application for enhancement of the rent under the aforesaid section.

16. The Petitioners have never challenged that the kitting was illegal and, therefore, they are unauthorised occupants on the ground that there is no allotment order in their favour.

17. It is open to the Petitioners to vacate the disputed accommodation.

18. In view of the above, there is no merit in this petition and the writ petition is, accordingly, dismissed.