(2010) 02 AHC CK 0068

In the Allahabad High Court

State of U.P. and Another — APPELLANT

Vs

Ashok Kumar Tayal and Others — RESPONDENT

Date of Decision : 08-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 2
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 21(1), 21(8), 29A(5), 3, 8

Citation : (2010) 3 AWC 3077

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Poonam Srivastav, J.—Heard learned standing counsel for the petitioner and Sri M.K. Gupta, advocate for the landlord-respondents.

2. Two writ petitions on behalf of State of U.P. and Senior Superintendent of Police, Muzaffarnagar challenging the judgment and order dated 29.9.2005, passed by the Additional District Judge, Court No. 11, Muzaffarnagar in Rent Appeal No. 8 of 2002 and Rent Appeal No. 9 of 2002 confirming the order of the prescribed authority dated 23.9.2002 in Case No. 110 of 1989 in proceeding u/s 21(8) of U.P. Act No. 13 of 1972 (hereinafter referred to as the Act).

3. The respondent-landlords had let out the premises in question and they were paid rent @ Rs. 78.10. By virtue of impugned order, the rent has been enhanced to Rs. 24,229.16. However, during pendency of the writ petition, the petitioners vacated the premises but only 50% rent has been paid so far. Several adjournments have been sought for payment of remaining 50% but the claim of the respondents is that no dues have been paid till date.

4. The petitioners were in possession of building No. 183 South Civil Lines, Muzaffar Nagar in capacity of a tenant and Police Club was being run in the said premises which is a huge two storied bungalow consisting of 21 rooms, 2

verandah, courtyard, terrace and two staircase and open land on the eastern side of the main building. The accommodation in possession of the petitioners is admitted. The bungalow stands on lease which was let out to the respondents on rent of Rs. 9 per annum. In Case No. 10 of 2001 preferred by the principal lessor against the respondents u/s 29A(5), rent of open land was enhanced to Rs. 2,76,000 per annum which was evaluated on the market value of Rs. 27,60,000. The assertion of the landlords is that they are paying Rs, 2,76,000 as annual rent for land only, i.e., to a tune of Rs. 23,000 per month. The tenanted accommodation consists of constructed bungalow measuring 28 ft. x 100 ft.

5. The landlord-respondents initially filed an application for release of the demised premises on the ground of their personal need. The aforesaid application u/s 21(1)(a) of the Act was registered as P.A. Case No. 6 of 1978. It was dismissed by order dated 16.6.1989 as not maintainable in view of Section 21(8) of the Act as the respondent State Government is the tenant of the building. The respondent-landlords thereafter filed application u/s 21(8) of the Act for enhancement of rent which was registered as P.A. Case No. 110 of 1989. The prescribed authority enhanced rent to Rs. 4,100 per month. Aggrieved by the said order both the parties filed separate appeal. Appeal filed by the State Government was registered as Rent Control Appeal No. 9 of 2002 and the appeal filed by the respondent-landlord was registered as Appeal No. 8 of 2002. Both the appeals have been decided by a common judgment dated 29.9.2005 whereby rent has been enhanced to Rs. 16,455 per month. Aggrieved by the said order, the State Government has filed the above mentioned two writ petitions.

6. Two valuers'' report were brought on record, one filed on behalf of respondents. Mr. Surendra Prasad Garg gave his report and valued the building at Rs. 2,42,050 and valuation of 920 sq. yard land was calculated at the rate of Rs. 3,000 per sq. yard. Thus, the total valuation was Rs. 30,02,050. Valuer also filed his affidavit to prove the report. Mr. Mahavir Prasad filed another report on behalf of the petitioner wherein valuation of the building was Rs. 5,15,000 and Sub-Inspector Gopi Chand Yadav filed his affidavit in support thereof.

7. After institution of the writ petition, an interim order was passed directing deposit of entire arrears at the rate of Rs. 16,455 per month w.e.f. 26.11.1989. SLP was preferred vide SLP (Civil) No. 19243 of 2006. Initially an interim order was granted and finally the SLP was disposed of on 8.10.2007 with a direction that 50% arrears be paid to the landlords and the matter be expedited in High Court. The petitioners vacated the premises in question on 4.7.2007.

8. Learned standing counsel submits that the predecessor of the respondents Mr. Jai Prakash and Mr. Hari Prakash were not the owners of the land but were lease holders at the rate of Rs. 9 per annum granted to them by M/s. Dwarika Constructions, therefore, they were not entitled to claim full value of the land on the basis of market value. The basis of enhancement of the rent is valuer''s report and learned standing counsel has also challenged the affidavit filed by the valuer not being in accordance with Order XIX, Rule 2, C.P.C. The valuation

should be assessed from the time on which application u/s 21(8) of the Act was moved, i.e., in the year 1989 and therefore, the said report is inadmissible.

9. The next argument is that while enhancing rent the Court should have taken exemplar of the nearby land. This argument is based on a decision of this Court in the case of I.B.P. Company Limited (Business Group (Petroleum)), (Government of India Enterprises) Vs. Rent Control and Eviction Officer (Additional District Magistrate, Civil Defence) and Lala Manohar Lal, It is also argued on behalf of the State that market value of the land should be fixed at 50% of the circle rate. It is on the basis of decision of this Court, State of U.P. and Another Vs. District Judge and Others, it is argued last that the valuer''s report filed on behalf of the petitioner was arbitrarily rejected and, therefore, the judgment is liable to be set at naught.

10. However, a perusal of the judgment of the courts below, it is evident that reliance was placed on the copy of judgment in another proceeding u/s 21(8) of the Act with regard to a building in the close vicinity and which was in tenancy of Indian Overseas Bank wherein the market . value was calculated at the rate of Rs. 5,000 per sq. yard. The circle rate fixed by the Collector as Rs. 3,000 per sq. yard in the year 1992 was therefore decreased to Rs. 18,000 per sq. yard while fixing the circle rate in November, 1989, i.e., at the relevant date and time when the application u/s 21(8) of the Act was filed. This fact has also been brought on record in the counter-affidavit that circle rate fixed by the Collector on 2.7.2006 was Rs. 24,000 per sq. metre and the appellate court specifically took into consideration the location of the building in an area which was completely developed. Civil Lines, Muzaffarnagar is prime locality and, therefore. I do not think that any illegality has been committed by the courts below while enhancing the rent.

11. Sri M.K. Gupta appearing on behalf of the landlords has disputed each and every arguments of the learned standing counsel and has submitted that Section 8 of the Act speaks of standard rent which is defined u/s 3(k) of the Act and parameters on which standard rent is to be calculated, are detailed u/s 9 of the Act. So far in the instant case, I am not considering fixation of the standard rent or whether the authority has fixed standard rent in accordance with law. The application u/s 21(8) of the Act is sort of compensation granted to the landlords who after letting out his building to the State Government or public undertaking cannot move an application for release on the ground of personal need u/s 21(1)(a) of the Act. However, the landlords are entitled for enhancement of rent equivalent to 1/12 of 10% of the market value of the building thereof, contention raised by the petitioners on the basis of decision in the case of J.B.P. (supra) that while calculating the market value of the building in question, the same criteria should be adopted as it is done while calculating compensation under the Land Acquisition Act cannot be accepted.

12. I have perused the said judgment and it is just by way of obiter but no definite mode of calculation has been provided in the said decision. Thus, the

tenants of such a building which is in occupation of the State Government is distinct and are governed by a distinct provision, i.e., Section 21(8) of the Act. So far acceptance of the affidavit of valuer Surendra Prasad Garg is concerned, the contention is in complete contradiction of Section 34(1)(b) of the Rent Control Act. Sri M.K. Gupta has rightly pointed out that this controversy was settled long back in the case of Kripal Singh v. 1st Additional District Judge (Prescribed Authority), Meerut and Ors. 1995 (1) ARC 378 : 1997 (3) AWC 1548.

13. Suggestion made by learned Counsel for the petitioner that circle rate should not be made basis for determining market value of the land relying on judgments in the cases of Smt. Ishtiyaq Bano Begum, Tasdeeq Hasan Khan, Shafiq Hasan Khan and Smt. Siddiqui Sultana Begum Vs. Additional District Judge, Rent Control and Eviction officer/Prescribed Authority/City Magistrate, Basic Shiksha Adhikari and State of U.P., does not carry any weight. Perusal of the said judgment will show that it has not taken into consideration the judgment of the Apex Court in 1992 ALJ 1063, wherein the Hon''ble Supreme Court had approved the method of valuation by taking into consideration the value of the land and the super structure for purpose of Section 21(8) of the Act. In the other judgment, in the case of Smt. Ishttyaq Bono, the writ petition was by the landlady and the High Court had enhanced rent fixed by Rent Control and Eviction Officer at Rs. 1,042 per month to Rs. 2,650 per month. Further, perusal of paragraphs 18, 19 and 20 of the said judgment will show that the Hon''ble Court had itself admitted in the said judgment that fixation of rent in such manner is not by way of binding precedent but is purely guess work, and to bring to an end the litigation which is pending for last 13 years. Accordingly, both the judgments cited by the petitioner are distinguishable and is of no consequence.

14. The judgment of the courts below are absolutely valid and I am not in agreement with the arguments advanced on behalf of the petitioners. I do not subscribe to the view that while enhancing the rent u/s 21(8) of the Act. market value of the building is only to be taken into consideration and not the land. Perusal of Section 3(i) of the Act clearly includes the appurtenant land to the building and thus open land is to be valued by determining the market value of the entire building. While enhancing the rent, the appellate authority has taken the report of the landlord, architects and valuer Sri Surendra Prasad Garg duly proved by affidavit as well as copy of the judgment in another proceeding u/s 21(8) of the Act of the building in close vicinity which was in tenancy of the Overseas Bank as already held above. The circle rate fixed by the Collector as Rs. 3.000 per square yard in the year 1992 was decreased to Rs. 18,000 per square yard for ascertaining circle rate in November. 1989, i.e., when the application u/s 21(8) of the Act was moved. It has rightly been held that fixation of market value also involves some guess work and. therefore, the appellate court specifically took into consideration the location of the building being situated in a completely developed area. In fact the rent fixed by the appellate authority, i.e., Rs. 16,455 per month is on a lower side and it does not call for any interference whatsoever. The findings recorded are pure finding of fact and not open to

challenge in a writ Jurisdiction.

15. In the case of Ranjeet Singh v. Ravi Prakash 2004 (55) ALR 319 : 2004 (2) AWC 1721 (SC), the Hon''ble Supreme Court deprecated the judgment of the High Court while holding that it exceeded its jurisdiction and acted like an appellate court while entering in the realm of facts and reappraisal of evidence.

16. In view of all these aspects, I am of the considered view that there is no substance in the arguments advanced on behalf of the petitioners. The writ petitions have no merit and are accordingly dismissed. The remaining rent is liable to be deposited by the petitioners within a period of six weeks from today without fail and in the event, it is not deposited by end of sixth week, the petitioners shall be liable to pay interest at the rate of 9% per annum.