(2003) 10 AHC CK 0164

In the Allahabad High Court

Case No : C.M.W.P. No''s. 5761 and 5759 of 1998

State of U.P. and Another — APPELLANT

Vs

IInd A.D.J. and Others — RESPONDENT

Date of Decision : 21-10-2003

Acts Referred:

Uttar Pradesh Stamp Rules, 1942 — Rule 340
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 2, 21(8)

Citation : (2004) 1 AWC 220

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

Bench : Single Bench

Advocate : K.S. Singh, S.C, for the Appellant;

Final Decision : Allowed

Judgement

S.U. Khan, J.—Both of these writ petitions have been filed by the tenant, State of U. P. The building in dispute is in the tenancy occupation of State of U. P. in which office of Assistant Commissioner (Judicial) Trade Tax, Jhansi is situated. These writ petitions arise out of proceedings u/s 21 (8) of U. P. Act No. 13 of 1972, initiated by landlord respondent No. 2 for enhancement of rent.

2. R.C. and E.O., Jhansi, before whom case was registered as case No. 28 of 1989, by his order dated 3.6.1996 enhanced the rent of accommodation in dispute from Rs. 130 to Rs. 2,500 per month. Against the judgment and order passed by R.C. and E.O., both the parties, i.e., tenant as well as landlord filed appeals before the District Judge, Jhansi. The appeal of landlord, R. S. Agrawal was registered as R, C. Appeal No. 17 of 1996. The appeal of tenant was registered as R. C. Appeal No. 19 of 1996. The IInd Additional District Judge, by a common Judgment disposed of both the appeals on 8.10.1997, dismissing the appeal of the tenant and allowing the appeal of the landlord. The appellate court fixed valuation of the accommodation in dispute at Rs. 11,19,000 as against the valuation of 3,00,000 fixed by the R.C. and E.O. The appellate court determined

the rate of rent to be Rs. 9,325 per month. Rent was made payable with effect from the date of application, i.e., 1.8.1989. These two petitions by the tenant, i.e., State of U. P. and Assistant Commissioner have been filed against the said Judgment of the appellate court and R.C. and E.O.

3. The accommodation in dispute is situate within the cantonment area of Jhansi. It is also not disputed that the land over which the building in dispute is constructed is the property of Government of India (Ministry of defence), which has been given on lease to the landlord.

4. I have held in a Judgment of date passed in the Writ Petition No. 11450 of 1995 that U. P. Act No. 13 of 1972 applies to such building in cantonment area which have not been appropriated on lease by the Central Government for Military Officer or Military mess. The U. P. Rent Control Act is, therefore, held to be applicable to the building in dispute.

5. In reply to the allegations of the landlord that the valuation of the property in dispute was Rs. 11,19,000 tenant pleaded that the said value was highly excessive, The lower appellate court has held that the denial was evasive, hence, it was no denial, in view of Order VIII, Rule 4 and Rule 5 (1), C.P.C. The lower appellate court, therefore, concluded that there being no specific denial regarding quantum of valuation, the valuation given by landlord stands admitted by the tenant. In my opinion, in this regard the lower appellate court was wrong. Strict principles of pleadings as provided in C.P.C., are not applicable to proceedings under Rent Control Act particularly summary proceedings like proceedings for enhancement of rent u/s 21 (8) of U. P. Act No. 13 of 1972. R.C, and E.O. who entertains applications u/s 21 (8) of the Act as delegatee of District Magistrate, is an executive authority and not court, hence strict principles of procedure including pleadings are not applicable to proceedings before him.

6. The landlord in support of his case filed the report of valuer, P.D. Agrawal, according to which the total area is 3.87 acres. The valuer assessed the value of the building as Rs. 2,67,000 and valuation of the land as Rs. 8,43,000 at the rate of Rs. 5 per sq. feet. P. D. Agrawal is a Civil Engineer and registered with Jhansi Development Authority and is also valuer of L.I.C., Jhansi. The tenant did not adduce any expert evidence regarding the valuation. The R.C. and E.O. adopted an unusual mode by writing the letter to Executive Engineer, P.W.D., Jhansi and Tahsildar, Jhansi requesting them to give their report regarding valuation. The said letters remained unreplied. It has also come on record that there are 15 small and big pucca rooms in the building in dispute in addition to latrine, bathroom, water, electricity and telephone facility. According to circle rate prepared by the Collector, the valuation of land in Sadar Bazar is Rs. 50 per sq. feet, however, valuation of land in cantonment area is shown to be Rs. 5 per sq. feet. The lower appellate court has fixed the valuation of land on the basis of circle rate given in the list issued by the Collector under Rule 340, U. P. Stamp Rules.

7. In order to determine the market value, the two standard modes are capitalisation of recurring income or yield and exemplar method, i.e., the valuation on which similarly situate adjoining land (property) is sold. For determining the market value, the circle rate as determined by the Collector under Rule 340 of U. P. Stamp Rules may be taken as a guideline but not as conclusive proof. The landlord neither brought on record any evidence of sale of adjoining property, nor of rental value of similarly situate adjoining property. The application was filed in the year 1989, hence it will not be appropriate to remand the matter after 14 years. Looking to the facts and circumstances of the case, I consider that the most appropriate guess of the valuation will be half of the rates as determined by the Collector, under U. P. Stamp Rules. Accordingly, it is held that for the purpose of valuation the land must be valued as Rs. 2.5 per sq. feet.

8. In my opinion, determination of the rent at the said valuation will serve the ends of justice, even though the said formula may not be applicable in each and every case.

9. The R.C. and E.O. held that the boundary wall of the complex had fallen down and the open portion was not being used by the tenant. The R.C. and E.O. also held that the landlord could initiate release proceedings before competent court regarding release of open portion of land, which was not being used by the tenant. The R.C. and E.O. was quite wrong in its approach, firstly, no release application can be filed if the Government is tenant with regard to any portion of the tenanted accommodation including open land in view of Section 21 (8) of the Act. Secondly, non-user of a portion by tenant does not affect the right of landlord or tenant. The said portion, which is alleged not to be used by the tenant, is still in possession and tenancy of tenant. In case the tenant willingly hands over a portion of the tenanted accommodation (open land in the case in question) then the matter will be different.

10. The fact that the land on which the building in dispute is situate is on lease (perpetual or otherwise) with the landlord from Government of India will not affect its market value.

11. Accordingly, the writ petitions are allowed in part. It is held that the valuation of construction is Rs. 2,67,000 and the valuation of land Rs. 4,21,500, i.e., total Rs. 6,88,500. The monthly rent in round figure is determined as Rs. 5,700 payable with effect from the date of application, i.e., from 1.8.1989.

