

(2002) 08 AHC CK 0044

In the Allahabad High Court

Case No : C.M.W.P. No's. 5572 and 5569 of 1998

State of U.P. and Others

APPELLANT

Vs

IIIrd Additional District and Sessions Judge, Mathura and
Others

RESPONDENT

Date of Decision : 14-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(8)

Citation : (2002) 5 AWC 3819

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

**Advocate : B.N. Mishra and S.C, for the Appellant; Rajesh Tandon and D.K.
Tripathi, for the Respondent**

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—With the consent of the learned Counsel for the parties, the matter is being heard and decided on merits. Since both the writ petitions raise common questions of fact and law and the impugned judgments and orders in both the petitions are same, therefore, they are being dealt with together by common order.

2. The State-Petitioners have come up before this Court by means of the present writ petition under Article 226 of the Constitution of India against the order dated 29.10.1997, Annexure-15 to the writ petition, passed by the appellate authority under the provision of U.P. Act No. 13 of 1972, hereinafter referred to as the "Act", whereby the appellate authority modified the order dated 11.7.1995, Annexure-13 to the writ petition, passed by the prescribed authority on an application moved by the landlord u/s 21(8) of the Act for enhancement of the rent as the building was under the tenancy of the State. The appellate authority has considered the material evidence on record and given a finding that the

prescribed authority erred in calculating the market value of the land as the prescribed authority has solely relied upon the certain rates fixed by the Collector. The appellate authority has observed that it is clear that the market value of the land would be a value for which any buyer may be a prospective buyer, has purchased the land. The appellate authority, therefore, has considered the evidence on record after calculating the value with regard to the value of the land and arrived at the conclusion that in fact the Petitioners-State is liable to pay the enhanced rate for the accommodation under his tenancy to Rs. 5,800 (rupees five thousand eight hundred) per month and allowed the appeal filed by the landlord and rejected the appeal filed by the Petitioners-State. As already stated above, it is this order, which is being challenged by means of the present writ petitions.

3. Learned Counsel for the Petitioners-State urged that for the purposes of determination u/s 21(8) of the Act, the appurtenant land and its value cannot be taken into account. Learned Counsel for the Petitioners has relied upon a judgment of learned single Judge of this Court in Assistant Commissioner of Sales Tax, Bareilly and Ors. v. Additional District Judge, Vth, Bareilly and Ors. 1989(2) ARC 14, wherein dealing with the enhancement under the provision of Section 21(8) of the Act learned single Judge has held, which reads thus:

"7. In so far as the first contention of the learned Counsel for the landlady is concerned, I have examined the statement made by Sri R. C. Goyal, which has been attached as Annexure-6 to the Writ Petition No. 4945 of 1985. The relevant portion of the statement of Sri R. C. Goyal is as follows: "Kirayadari Ke main building jismain lagbhag solah ya satraha kamre thhe kiraya pur liya gaya uske mutabik pichhe ke ore jo servant quarter thhe tatha mukhaya bhawan ka kuch khula sthan bhi karyalaya ke upabhog main tha, Khuli hui jagaha karyalaya ke upabhog main lagbhag do dhai hazar varg jamin thi.

On the basis of this statement, it has been urged that 2,500 square yards was also let out along with the building. In my opinion, this cannot be urged from his statement. What Sri R. C. Goyal in fact meant was that 2,500 square yards of land was also used by the office of the Sales Tax Department. The mere user of an open space of land lying in front of a building does not by itself create a tenancy in respect of the said land in favour of the tenant. In case any land is lying in front of a building let out and if it is used by the tenant, it cannot be said that the said land becomes a part of the tenancy of the building, whether any land has been let out along with the building or not has to be proved by specific evidence. Mere casual user of land will not create a tenancy. In the circumstances merely on the basis of the statement of Sri R. C. Goyal, it cannot be said that 2,500 square yards land was let out to the Sales Tax Department along with the building. In the circumstances, so far as the first contention of the learned Counsel for the landlady is concerned, this, in my opinion, is not substantiated.

4. Learned Counsel appearing for the Respondents-landlord Sri Rajesh Tandon

has relied upon a decision in *State of U.P. and Others Vs. VII Additional District Judge and Others*, wherein the Apex Court has held upholding the another decision of this Court that the value of two similar buildings or structure standing on similar parcel of land may differ substantially on account of locational advantage of the site in question. Paragraph 7 of the aforesaid judgment is being quoted below:

"7. After giving our anxious consideration to the facts and circumstances of the case, it appears to us that in the definition of building u/s 3(i) of the Act, there is no express exclusion of the value of the land on which the building stands. In the absence of such express exclusion, the land being intrinsically inseparable from the building standing thereon, the value of the land and the value of the structure or building should be taken into consideration and in our view the land on which the building stands together with the building or structure constitute one composite unit. It may be indicated that the value of two similar buildings or structure standing on similar parcel of land may differ substantially on account of locational advantage of the site in question. The difference of valuation of land because of such locational advantage creeps into the ultimate valuation of the building or structure making one building more valuable than the other although from the structural point of view, both the buildings are identical. In the aforesaid circumstances, the determination of valuation of the building by taking into consideration the value of the land in addition to the value of the structure, does not appear to be illegal and improper. In any case, the definition of "building" under the Act clearly shows that the building thereon means roof structure including the land underneath the said structure. Inclusive part of the definition only relates to the land appurtenant to such building and not to the land underneath the roof structure.

5. In view of the law laid down by the Apex Court, the argument advanced on behalf of the Petitioners-State is liable to be rejected. Learned Counsel for the Petitioners-State tried to assail the findings arrived at by the appellate authority. This Court in exercise of its powers under Article 226 of the Constitution of India will not sit in appeal over the findings recorded by the appellate authority as the same are well considered findings. In my opinion, this writ petition deserves to be dismissed and is hereby dismissed. The interim order/orders stands vacated. However, the parties shall bear their own costs.