
(2009) 05 AHC CK 0839
In the Allahabad High Court

State of U.P. and Others

APPELLANT

Vs

Km. Sarita Goel and Others

RESPONDENT

Date of Decision : 27-05-2009

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)

Citation : (2009) 4 AWC 3233

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.P. Singh, J.—Heard, counsel for the petitioner and Sri M. K. Gupta for the contesting respondent.

2. This petition is directed against concurrent orders dated 20.12.2004 and 3.3.2006 by which the application of the respondent landlord for enhancement of rent u/s 21(1)/(8) of U.P. Act No. XIII of 1972 (here-in-after referred to as the Act) has been allowed.

3. The office of the District Cane Officer, Muzaffarnagar was situated in a rented premises No. 406, Kambalwala Bagh, commonly known as "Shyam Kutir" (here-in-after referred to as the disputed premises). It stands on an area of about 1459.35 sq. meters, including land appurtenant. Admittedly, the respondent Nos. 1 and 2 are the landlords and respondent No. 3 was their agent and power-of-attorney holder receiving rent from the petitioner tenant. An application u/s 21(8) of the Act for enhancement of the rent was moved by the three respondents which was registered as Case No. 31 of 1998 claiming enhancement of rent to the tune of Rs. 36,250. The respondents also filed a copy of the map of the premises along with the application. In support of their case, they filed a report of the Government approved valuer dated 9.9.1998 together with the power-of-attorney and other documents. The petitioner filed his objection dated 17.12.1998 denying the allegations.

4. The trial court after considering the report of the valuer, the circle rate fixed for the area by the District Magistrate, Muzaffarnagar under the Stamp Rules and also considering the fact that no rebuttal evidence has been filed, vide order dated 20.12.2004, returned a finding fixing valuation of the land at Rs. 29,90,720 and valuation of the building at Rs. 7,48,024 and after finding the combined value at Rs. 37,38,744, applying the method adopted in Section 21(8) of the Act, fixed the rate of rent at Rs. 31,156 per month. However, it held that the enhanced rent would be payable from 1.1.2005 since the increase was about 300 per cent and that the petitioner tenant had filed his own valuation report. The respondent landlord filed an Appeal No. 19 of 2004 against that portion of the order where the enhanced rate was to be paid with effect from 1.1.2005 while the petitioner tenant filed their Appeal No. 4 of 2005 against the entire order. The revisional court dismissed the appeal of the petitioner tenant and allowed that of the respondent landlord vide its judgment dated 3.3.2006.

5. It is admitted to the parties that during the pendency of the proceedings, the premises has been vacated by the petitioner-tenant and they have deposited the entire decretal amount together with enhanced rent which has been paid to the respondents. Nevertheless, the learned standing counsel insist for a decision on merits.

6. It is firstly urged that Smt. Ashok Lata Mittal was neither the landlord nor her affidavit could be considered in favour of the landlords as the alleged power-of-attorney was forged. It is admitted case of the parties and is also evident from the record that the application for enhancement was filed on behalf of respondent Nos. 1 and 2 also who, even according to the petitioner, are the owners of the building apart from respondent No. 3. It is evident that she was their real "bua" (real sister of the father of respondent Nos. 1 and 2) and the legal agent, who was realizing the rent from 1971 onwards and issuing receipts thereof. u/s 3 (j) of the Act, "landlord" has been defined as a person to whom rent is paid or payable and includes agent or attorney of such person. There is voluminous evidence on record to show that the petitioner himself has been paying rent to the respondent No. 3 since 1971 and there is a series of correspondence exchanged between the petitioner and respondent No. 3, thus, there can be no doubt that for the purposes of this Act, even the respondent No. 3 would be covered by definition of landlord. Both the courts below have considered this argument in detail and have returned convincing finding which has not been shown to be perverse. Accordingly, the argument cannot be sustained.

7. It is then urged that both the courts below have erred in law in calculating the market rate by taking into consideration the circle rate prescribed by the District Magistrate for the purposes of payment of stamp duty and therefore, the finding to this effect are vitiated.

8. It is apparent from the record that except for a bald denial, no evidence worth the name was filed on behalf of petitioner before either of the two courts below

to show the market rate. The respondent had claimed value of land at the rate of Rs. 2,400 per sq. meter which was also supported by the report of the valuer submitted by them. The valuer had also proved this report by filing his affidavit. The District Magistrate was a party to the proceedings and the circle rate fixed by him was also filed before the Court showing that land situated on a road of less than 20 ft. width was Rs. 2,000 per sq. meter beyond 20 ft. width it was Rs. 2,500 per sq. meter. The courts below while considering this aspect have held the market value to be Rs. 2,000 per sq. meter. No doubt, the Court is not bound by the circle rate fixed by the District Magistrate under the Stamp Rules but in the present case there was absolutely no material except the report of the valuer and the notification fixing circle rate by the District Magistrate. The valuer had determined its rate @ Rs. 2;400 per sq. meter, but the courts below have fixed it at only Rs. 2,000. This Court in the case of State of U.P. and Anr. v. Narendra Nath Dixit and Ors. 1993 (2) ARC 89 : 1993 (3) AWC 1451, was faced with a similar contention but repelled it in the following words:

The Rent Control and Eviction Officer relying on this document fixed value of the open land at the rate of Rs. 700 per sq. yard. The appellate authority has, however, disagreed with this finding thus fixed the value of land at the rate of Rs. 1,000 per sq. yard. The reason given is that the accommodation in dispute is situated by the side of the municipal road and for such land the value prescribed is Rs. 1,000 per sq, yard. The rate of Rs. 700 per sq. yard is prescribed for such land which is situated away from the road. In my opinion, the finding given is based on material on record. 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 record. In absence of any evidence by the side of the petitioners the authorities have rightly determined the value of the land on the basis of the notification issued on 31st January, 1988. The orders do not suffer from any error of law.

9. Again another learned single Judge in the case of Ishwar Singh and Others Vs. Up-Zila Adhikari/Rent Control and Eviction Officer and Another, , has held that in the absence of any other evidence, circle rate should be treated as final. Recently, another single Judge of this Court in the case of State of U.P. and Ors. v. Aradhya Awasthi and Ors. 2008 (2) ARC 80, has held in paragraph Nos. 5 and 6 to the following effect.

5. Under the provisions of relevant Stamp Act and Rules, the Collector is under obligation to prescribe the circle rate on the basis of the prevailing market rate in the area. These prices are fixed as per the statutory provisions. The rates so prescribed are binding on the State until shown or proved to be incorrect. In the present case the tenants had failed to establish before the District Magistrate and

the District Judge the circle rates determined by the District Magistrate were incorrect.

6. Accordingly, the valuation of the disputed building was to be taken into account as Rs. 6,81,000 which was not taken as excessive or unreasonable by the District Judge as there was no material on record to controvert the findings. The District Judge has also assessed the material brought before it. The disputed building situate on the piece of land is 335.67 sq. mt. Its covered area on the ground floor and the first floor was about 223.79 sq. mt. The Rs. 226.55 to Rs. 27 per month as rent for such a big property was too meagre and it could not be defined as rent in the eye of law.

10. As noted hereinabove, since there was no other evidence before the courts below including any exemplar, the Courts were fully justified in relying upon circle rate fixed by the District Magistrate himself. Thus, accordingly, the argument cannot be accepted.

11. Lastly, it is urged that the revisional court had illegally rejected the amendments sought by the petitioner.

12. It is apparent from the record that after the Rent Control and Eviction Officer had allowed the application for enhancement vide order dated 21.12.2004, an application was moved on behalf of the petitioner-tenant that the said order dated 20.12.2004 be set aside on the ground that it was obtained on the basis of fraud. The Rent Control and Eviction Officer acting upon the said application, stayed the operation of the enhancement order vide its order dated 10.1.2005 and accordingly, the appellate authority remitted this application to the Rent Control and Eviction Officer vide order dated 27.10.2005 to be treated as misc. case and be heard. The respondent-landlord challenged the aforesaid two orders through Writ Petition No. 69533 of 2005 and learned single Judge of this Court, after hearing the parties and finding that an appeal filed by the petitioner was pending before the appellate authority, it quashed the two orders on the ground of the pendency of the statutory appeal vide its order dated 5.1.2006. It is also apparent from the record that the sole ground in the alleged amendment was that the case of the landlord was based on a fraudulent power-of-attorney and therefore Smt. Ashoka Lata Mittal could not sue the application for enhancement. The Court has already considered in detail as to how she was also covered by the definition of landlord u/s 3(j) of the Act. Assuming that the alleged power-of-attorney was not legal, it would make no difference so far as maintainability of the application is concerned. Accordingly, this argument also cannot be accepted.

13. For the reasons above, there is no merit in the petition and accordingly, it is dismissed, but costs are made easy.