

(2000) 10 AHC CK 0052

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 17637, 17639 and 22576 of 1999

State of U.P.

APPELLANT

Vs

District Judge, Jhansi and Others

RESPONDENT

Date of Decision : 17-10-2000

Acts Referred:

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

Citation : (2000) 10 AHC CK 0052

Hon'ble Judges : Khem Karan, J

Final Decision : Disposed Of

Judgement

Khem Karan, J.—All the three writ petitions, mentioned above, are connected with each other, hence they are being disposed of by this common order.

2. Heard Sri Haider Hussain, the learned standing Counsel for the State and S/Sri B.N. Agrawal and J.P. Likhdhari, learned counsel for the landlord.

3. Admittedly the accommodation in question is in the tenancy of the State and Pooran Mal Agrawal is its landlord. It transpires from the perusal of the record that Pooran Mal Agrawal moved one application under Section 21 (8) of Act No. 13 of 1972 for enhancement of the rent. The State of U.P. opposed it. During the course of the proceedings before the Prescribed Authority, the landlord filed a valuation report prepared by some engineer and according to it, the valuation of the building as well as the land was Rs. 10,60,000 (XX). The State also filed its valuation report and according to it, the valuation of the building (excluding the vacant land) was Rs. 5,30,000. The Prescribed Authority also perhaps suo motu called for a report from the Tahsildar on the point of valuation of the building in question. Tahsildar gave a report that the valuation of the building and the land was Rs. 8,50,000. Thus, there were three valuation reports before the Prescribed Authority.

4. Learned Counsel for the State has informed during the course of arguments, which has not been disputed by the other side, that the State did not file

objection disputing that part of the report of Tahsildar, by which he valued the land besides the building.

5. The Prescribed Authority disposed of the matter vide its order dated 12/1/98. He accepted the valuation report submitted by the Tahsildar and accordingly valued the building and the land measuring 2058 sq. feet at Rs. 7,69,000. According to him, the rent on such valuation was to be fixed at Rs. 6,400 a month, but he reduced this amount to Rs. 4,000 taking into consideration the miserable condition of the building and the fact that the increase in the rent was to put a burden on the State Exchequer.

6. The State as well as the landlord both preferred appeals under Section 22 of the said Act. The learned District Judge, disposed of both the appeals by his judgment and order dated 17/1/98. He accepted the valuation put by the Tahsildar and accordingly increased the rent to Rs. 7,100 and to that extent allowed the appeal of the landlord. The appeal preferred by the State was dismissed in toto.

7. Now the State has filed two writ petitions aggrieved by the order of the Prescribed Authority and the order of dismissal of appeal passed by the Appellate Court and the landlord has filed the writ petition aggrieved by the fact that valuation report given by his engineer, has not been accepted and according to him, valuation should have been fixed at Rs. 10,60,000.

8. Learned Counsel for the State has contended that looking to the definition of the 'building' as given in Section 3 (5) of U.P. Act No. 13 of 1972, the land measuring 2058 sq. feet, which is an approach land on the spot to the rented accommodation and also an approach road to the house of the landlord, should not have been taken into consideration, while determining the valuation of the building. He has referred to Paras 13 and 14 of the writ petition and the corresponding paras of the counter affidavit.

9. Learned Counsel for the landlord has submitted that it was nowhere in dispute during the course of the proceedings before the Prescribed Authority or in Appeal before the District Judge that the land measuring 2058 sq. feet was not part of the rented accommodation. He says that Tahsildar included this land also, while giving his valuation report and the State did not object to it before the Prescribed Authority nor such ground was taken in appeal before the Appellate Court. He has also submitted that the averment in the writ petition, to the effect that this land is also being used by the landlord for approaching his residence, is not factually correct. He has also said that the Court observed in its judgment that both the parties agreed as regards the valuation put by the Tahsildar and so it is not now open to the learned Counsel for the State to say that the report of the Tahsildar which includes the valuation of the land also, should not be taken into consideration.

10. After considering the respective submissions and the material available on the record of these petitions, I am of the view that it is difficult to accept the

contention of the learned Counsel for the State on the point that the valuation of the land measuring 2058 sq, feet has wrongly been added to the valuation of the building under tenancy. The reason in that it was never agitated before the Prescribed Authority or the Appellant Authority that the said land was not an appurtenant land to the building under tenancy or this land was also being used by the landlord for reaching his residence. The second reason is that when the Tahsildar included this land while giving valuation of the rented accommodation State never raised objection against it on that point. So such a point cannot be accepted now at this stage.

11. The second submission of the learned Counsel for the State is that the Appellant Authority was not justified in enhancing the valuation of the building and in adding an amount of Rs. 2,400, which the Prescribed Authority had earlier deducted for the reasons stated in his judgment. The learned Counsel for the landlord has said that by accepting valuation put by the Tahsildar, in the face of the agreement, referred to in the judgment, there was nothing wrong on the part of the Appellate Authority. He has also said that the deduction of Rs. 2,400 a month as done by the Prescribed Authority, was not justified in the facts and circumstances of the case and so the District Judge was perfectly justified in not approving that approach.

12. Learned Counsel for the State has said that the observation of the District Judge that there was no valuation report from the side of the State, is not correct. I think the learned District Judge has made this observation in the context of the question, whether valuation of the land was to be taken into consideration and whether there was any valuation report of the land from the Side of the State. There is no dispute that the valuer from the side of the State excluded the land, so the learned Judge was wrong in making such observation on the point which he was discussing in the judgment.

13. No other point was pressed from the side of the State.

14. In the result, the two writ petitions filed by the State have no substance and deserve to be dismissed.

15. Coming to the writ petition filed by the landlord, the learned Counsel for the landlord has not seriously pressed it. In other words, he does not want to question the judgment of the Appellate Court on the point of valuation. So this petition of the landlord is to be dismissed as not pressed.

16. In the result, all the three writ petitions stand disposed of accordingly. The two writ petitions, filed by the State, result in dismissal on merits and the writ petition filed by the landlord results in dismissal, because it has not been pressed on merits. Stay Orders passed earlier stand vacated. No orders as to costs in all the three writ petitions. Petitions dismissed.