
(2009) 08 AHC CK 0276
In the Allahabad High Court

Union of India (UOI) and Another	Vs	APPELLANT
Brij Mohan and Others		RESPONDENT

Date of Decision : 06-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 1 AWC 145

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Poonam Srivastav, J.—Heard Sri S.K. Mishra, counsel for the tenants/petitioners and Sri M.K. Gupta, counsel for the landlord/respondents.

2. The writ petition is listed for admission but as already agreed between the counsels for respective parties, it is being heard finally under the High Court Rules.

3. The judgment and order impugned in the instant writ petition is dated 27.8.2008, passed by Additional District Judge, Court No. 2, Muzaffar Nagar in S.C.C. Revision No. 32 of 2007, Union of India and Anr. v. Brij Mohan and Ors. arising out of judgment and order dated 10.8.2007, passed by Civil Judge (Senior Division) Muzaffar Nagar in S.C.C. Suit No. 28 of 1999. Both the orders are annexed as Annexures-1 and 2 to the writ petition.

4. Facts giving rise to the dispute are that petitioners" department runs post office from the tenanted accommodation situated in Kasba Budhana, district Muzaffar Nagar. An agreement was executed for a period of five years tenancy at the rate of Rs. 300 per month on 9.12.1985. The said agreement is annexed as Annexure-3 to the writ petition. However, after lapse of the agreed period of five years, postal department continued to be in occupation of the disputed premises.

5. Contention on behalf of the petitioners is that before expiry of five years,

petitioner No. 2 sent a letter dated 6.6.1990 to landlords for renewal of lease on terms and conditions of the aforesaid agreement. The landlords asked petitioners' department to pay rent on current market value. However, it was decided that rent shall be increased from Rs. 300 to 360 per month on the condition that a registered lease deed will be executed for further period of five years. This was also confirmed by a letter dated 13.12.1990. Copy of the letter is annexed as Annexure-4 to the writ petition. Enhancement of rent was not agreed by petitioner department and it expressed its inability to pay rent at the enhanced rate of Rs. 360. However, rent continued to be paid at the rate of Rs. 300 per month only. Subsequently, S.C.C. Suit before the Civil Judge (Senior Division) Muzaffar Nagar, was instituted for arrears of balance at the rate of Rs. 360 per month. Written statement denying allegations was filed by postal department. Suit was decreed. Subsequent to it, judgment and order dated 10.8.2007 was challenged by filing S.C.C. Revision, which also stood dismissed.

6. Submission made by counsel for the petitioners is that in fact, plaintiffs accepted contention of petitioners/tenants that premises in dispute was registered by Nagar Panchayat, Budhana, w.e.f. 1.4.1985 but the court below completely ignored this fact and recorded finding that provision of U.P. Act No. 13 of 1972 (hereinafter referred to as the Act) is not applicable.

7. Learned Counsel has placed pleadings to the effect where landlords have asserted that first assessment by Nagar Panchayat, Budhana is 1.4.1985. In the circumstances, provision of U.P. Act No. 13 of 1972 is applicable. According to petitioners' counsel, they were entitled for benefit u/s 20 (4) of the Act as entire amount of arrears of rent alongwith necessary requirement u/s 20(4) of the Act was completed on the first date of hearing.

8. The counsel for petitioners has placed reliance on a decision of the Apex Court Bishan Chand Vs. Vth Additional District Judge, Bulandshahr (Uttar Pradesh) and Another, , regarding a date when building will be deemed to have been constructed. Next case relied upon by him is Suresh Kumar Jain v. Shanti Swaroop Jain and Ors. 1997 (1) ARC 114 (SC).

9. Learned Counsel submits that period of exemption from applicability of the Act as held by the aforesaid decisions is 10 years. Determination of this period is guided by Explanation 1, proviso to Section 2 Sub-section (2) of the Act. Since landlords have themselves stated that building is old one and period of 10 years elapsed long back, therefore, provision of Act No. XIII of 1972 is applicable in the present case.

10. Mr. M.K. Gupta, counsel for the landlords/respondents has disputed argument on the sole ground of question of applicability of Act No. 13 of 1972. He accepted the fact that in the plaint, landlords have written first date of assessment as 1.4.1985 but this was by mistake and mistake was brought to the notice of the courts below. He has invited my attention first pointing out decision of the Judge Small Causes Court on issue No. 1. The Court has clearly recorded a finding that

landlords have admitted that date of first assessment mentioned in the plaint as 1.4.1985 is by mistake. In fact, it is July, 1985.

11. The counsel appearing on behalf of landlords in support of his argument before the court below produced extract of assessment and demonstrated that first assessment is in July, 1985 and not on 1.4.1985 as wrongly mentioned in the plaint. While deciding issue No. 1, the trial court has recorded categorical findings that first assessment is July, 1985. This was also confirmed and upheld in S.C.C. Revision and, therefore, it is finding of fact on the basis of original assessment. I do not think that it can be interfered in exercise of jurisdiction under Article 226 of the Constitution of India.

12. Besides, this Court in the case of *Raj Kumar Sharma v. District Judge, Haridwar and Ors.* 1993 (2) ARC 103 : 1993 (3) AWC 1503, held that date of occupation of building prior to the first assessment is of no significance whatsoever. It was also ruled that in case building in question stood exempted from clutches of the Act on the date of institution of suit, the fact that period of 10 years was completed during pendency of litigation is wholly irrelevant. In fact, while deciding case of *Raj Kumar Sharma (supra)*, reliance was placed on a decision of the Apex Court *Om Prakash Gupta (supra)*. It is interesting to note that reliance has also been placed by the petitioners' counsel on the said decision.

13. I have perused the decision of the Apex Court and also considered contention of *Sri M.K. Gupta*, that while interpreting Explanation to Section 2 Sub-section (2) of the Act, the Apex Court observed that primarily the language employed is the determining factor of intention of the Legislature. First and primary rule of construction is that intention of the Legislature must be found in the words used by the Legislature itself. Thus, language of Sub-section (2) of Section 2 of the Act was implicit and unambiguous and further it was not capable of two interpretations. The date of occupation should, therefore, be taken to be date of completion of construction only when there was no report or record of completion of construction or no assessment thereof.

14. Since in the instant case, date of assessment is already there as accepted in the case of *Om Prakash Gupta (supra)*, I come to a conclusion that first date of completion is July, 1985 and, therefore, conclusion arrived at by the courts below that Act No. 13 of 1972 is not applicable stands confirmed. The Apex Court has taken similar view in the case of *Ram Swaroop Rai v. Smt. Lilawati* 1980 ARC 466.

15. In the end, learned Counsel for petitioners submits that since main grievance of landlords was regarding agreed rent @ Rs. 360 per month but this rate was not agreeable to the department initially. In the chain of circumstances, especially after an order was passed by this Court in the writ petition on 18.12.2008, counsel for Union of India discussed the matter with petitioners and they agreed to pay rent at the rate of Rs. 1,200 per month from today in case landlords are ready to execute a fresh lease deed.

16. Sri M.K. Gupta, has clearly refused this proposal and landlords cannot be compelled to let out their building especially when they are in possession of a decree in their favour since 10.8.2007.

17. In view of the aforesaid discussion, the writ petition fails and is, accordingly, dismissed.

18. Petitioners' counsel made a request for some time to vacate premises in question. This request is allowed subject to filing an undertaking within three weeks from today before the trial court by competent authority of the postal department stating unequivocally that vacant possession of accommodation in question shall be handed over to landlords/respondents on expiry of three months. The date for handing over possession shall be given in the undertaking in form of an affidavit as 13.11.2009. The tenant shall deposit entire decretal amount alongwith interest and he shall also continue to pay rent at the rate of Rs. 500 per month w.e.f. 27.8.2008.

19. If tenants/petitioners fail to file an undertaking within a period of three weeks from today before the trial court and pay the entire amount, liberty of three months shall automatically come to an end. Landlords will be at liberty to get accommodation vacated forthwith.