(2009) 07 AHC CK 0232

In the Allahabad High Court

U.P. State Road Transport Corporation APPELLANT

Vs

XIVth Additional District Judge and Others RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 4 AWC 3872

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Poonam Srivastav, J.—Heard Sri Sameer Sharma, learned Counsel for the petitioner and Sri R.K. Pandey, Counsel for the contesting respondent.

2. The orders dated 20.2.1992 and 17.9.1991 passed by respondent Nos. 1 and 2 are impugned in the instant writ petition. The U.P.S.R.T.C. is a tenant of the accommodation in question, which is half portion of 96, Gwalior Road, Agra and remaining half portion is in occupation of the landlord.

3. An application u/s 21(8) of U.P. Act No. 13 of 1972 was preferred for enhancement of rent. Rent at the relevant date when the application was instituted, was @ Rs. 195.31 paise per month. Constructed area in occupation of U.P.S.R.T.C. is 693.527 square metre and the total area including appurtenant land and out house is 19876 square metre. Claim of the landlord was that at the relevant time, market rate of the accommodation in occupation of the tenant was approximately Rs. 50 lakhs and, therefore, the rent if calculated in the prescribed manner, while enhancing rent, the tenant is liable to pay rent at the rate of Rs. 41,667 per month. This application was filed on 10.5.1989. An objection was also preferred by the petitioner/tenant that rate of rent is too excessive. According to map of the tenanted portion, a report of the architect valuer Yogendra Mohan Saxena, accompanied by his affidavit was filed. However, the prescribed authority fixed rate of rent after enhancement Rs. 15,000 per month vide order

dated 17.9.1991.

4. Rent Control Appeal No. 26 of 1991 was filed by the landlady and Rent Control Appeal No. 27 of 1991 was filed by the General Manager, U.P.S.R.T.C. The claim of the landlady was, that rent enhanced was very low and not in accordance with provision of Section 21(8) of the Act on the contrary claim of U.P.S.R.T.C. is that the court below has committed an error taking into consideration valuation of the entire land, which is too excessive. Besides, the tenanted premises is in cantonment area and certificate from the Cantonment Board, Agra was also brought on record. Thus, in accordance with the rate of rent prevalent in the cantonment area cannot be said to be proper assessment and the order of prescribed authority is liable to be quashed.

5. The appellate court came to a conclusion that condition of the tenanted premises is very sound but agreed that since it is in the cantonment area, therefore, market rate prevalent in other area is definitely high and therefore, on the basis of assessment by the assessor that market rate of the accommodation is between Rs. 400 to Rs. 600 per square metre. Calculation of enhanced rent was done. So far the objection regarding sale of the accommodation, conclusion arrived at by the appellate court was that it can be sold by permission of Military State Officer. Area in occupation of U.P.S.R.T.C. is 19645.152 square metre but the trial court had only taken 4200 square metre and had not calculated area of appurtenant land.

6. It is settled principle of law that appurtenant land along with the construction let out to the tenant is also to be treated as tenanted area and, therefore, while calculating the enhanced rate of rent, it cannot be ignored. Appeal No. 27 of 1991 filed on behalf of U.P.S.R.T.C. was dismissed with cost and Appeal No. 26 of 1991 filed by the landlady was allowed to the extent that the tenanted area is 19645.152 square metre, cost of the constructed area was Rs. 33,63,675 or Rs. 33,63,000 and rent was fixed at the rate of Rs. 28,025 per month. Both the judgment and orders are challenged In the Instant writ petition.

7. The Counsel for the petitioner has placed reliance on Section 5 of the Act In support of his argument that building was in occupation of U.P.S.R.T.C. since the date of advent of U.P. Act No. 13 of 1972, therefore, only standard rent is payable. Thereafter, he has also placed provisions of Section 21(8) of the Act and tried to impress the Court that enhancement can only be made in conformation with the standard rent. Section 21(8) of the Act was enacted keeping in view embargo levelled upon the owner and landlady of the building. In fact it was for the benefit of the tenant.

8. Admittedly, U.P.S.R.T.C. is Government undertaking and there is a bar imposed by the Act from its eviction even in case where the landlady is in need of building for her personal use. The huge area was in occupation of the tenant. The Legislature In its wisdom drafted Section 21(8) of the Act by way of compensation to the landlady.

9. Emphasis of the Counsel for the petitioner on the standard rent and enhancement of rent accordingly appear to be incorrect. Valuation report is annexed as Annexure -1 to the writ petition. On perusal of the same, It transpires that valuer while fixing value of building in question has taken into consideration that the land is situated in the cantonment area and is controlled by the Cantonment Board Regulation, therefore, its value is far below as compared to market rate, which is Rs. 400 to Rs. 600 per square metre, therefore, it may be taken to Rs. 200 per square metre. Since half of area is in occupation of the tenant, only Rs. 100 per square metre was taken into consideration while calculating enhanced rent. I do not think that calculation by any stretch of imagination is excessive.

10. The Counsel for the petitioner has placed reliance on a decision of this Court; State of U.P. and Another Vs. IInd A.D.J. and Others, of which is quoted herein below:

In order to determine the market value the two standard modes are capitalization 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.

11. Another decision of this Court cited by the Counsel for the petitioner is; State of U.P. and Anr. v. Amrish Chandra and Anr. 2005 (2) ARC 828. Paragraph No. 3 of which is quoted hereinbelow:

On behalf of the landlords in both the cases report of Architect was submitted regarding valuation of the property. In both the reports land had been valued at Rs. 1,000 per sq. yard on the basis of circle rate determined by the Collector under Stamp Act/Rules. For determining the market value of the land circle rate is not a safe criteria. Circle rates are only tentative in nature. While determining market value in land acquisition cases circle rate cannot be taken as final criteria. In cases u/s 21(8) of the Act also some principle for determining market value has to be kept in mind which is applied to land acquisitions cases. The best evidence to determine the market value is sale deed of similar land in the recent past.

12. The Counsel for the petitioner has placed reliance also on the following decisions; United India Insurance Co. and Anr. v. IXth Additional District Judge, Agra and Ors. 2000 (2) ARC 657; Punjab National Bank v. Vth Additional District

Judge, Bulandshahr and Ors. 1999 (2) ARC 740 and Zafar Ibrahim Vs. Additional District Judge and Others, Judgment of this Court, in the first two cases was on the analysis that where there is a valuer report adduced in evidence by either party or both parties and the Courts accepted the report and on its basis the enhanced rent is calculated then it cannot be interfered in exercise of Article 226 of the Constitution of India. The Court cannot enter believing or disbelieving the evidence, which is a question of fact. Subsequently, in the case of Zafar Ibrahim (supra), the Court had taken into consideration following case laws:

1. State of U.P. and Others Vs. VII Additional District Judge and Others,

2. State of U.P. through District Commandant, Home Guard, Sitapur v. Roop Kishore Tandon and Ors. 1987 (2) ARC 359;

3. Punjab and Sind Bank Vs. Addl. District Judge VII, Bulandshahr and others,

4. Indian Overseas Bank Vs. VIIIth Additional District Judge, Muzaffarnagar and Others,

5. Smt. Har Piari Devi Gupta and Others Vs. State of U.P. and Others, and

6. Institute of Co-operative Management 224 Rajpur Road, Dehradun v. State of U.P. and Ors. 2004 (3) Suppl ARC 595 (Utt).

13. The Court had come to a conclusion that the landlady was entitled for the enhanced rate of rent.

14. The valuer had given the value as Rs. 200 per square metre and the Court had assessed the enhanced rent at the rate of Rs. 100 per square metre. Since half of portion was in occupation of the tenant/petitioner, I do not think that there is any illegality whatsoever committed by the courts below while enhancing rent at the rate of Rs. 28,025 per month. The impugned judgment and orders do not call for interference. The writ petition lacks merits and is, accordingly, dismissed.

15. I am informed by the Counsel for the respondent that arrears which is to a tune of Rs. 15 lakhs or odd was deposited by the U.P.S.R.T.C., which has not been disbursed to the respondent but after filing of the writ petition, rent is being paid at the enhanced rate. The petitioner shall continue to pay enhanced rent in future. The deposit of arrears shall be disbursed to the landlady/respondent within ten days from the date a certified copy of this order is produced before the authority concerned when the deposit is made.

