

(2011) 12 AHC CK 0230

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 43633 of 2007

U.P.Power Corporation, U.P., At Lucknow Through Its
Executive Engineer Transmission Division-II, Allahabad

APPELLANT

Vs

Santosh Kumari Anand and Others

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

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

Citation : (2011) 12 AHC CK 0230

Hon'ble Judges : Arun Tandon, J

Final Decision : Dismissed

Judgement

Arun Tandon, J.

Heard learned counsel for the parties.

Two objections have been raised to the orders passed under Section 21 (8) of the U.P. Act No. 13 of 1972, whereby the authorities under the U.P. Act No. 13 of 1972 have enhanced the rent of premises in question to Rs. 6,796/ from the first day of the month of tenancy following the date of application i.e. 1st February, 1992. The appeal filed by the U.P. Power Corporation has also been dismissed.

First ground raised is that in view of amendments made in U.P. Act No. 5 of 1995, premises went out to the provisions of said Rent Control Act as the rent was Rs. 2100/ on the date amendments were incorporated. The application under Section 21(8) of U.P. Act No. 13 of 1972 was liable to be rejected.

This objection of the petitioner has been turned down with reference to the judgements of the High Court in the case of Champa Devi & Another vs. Rent Control and Eviction Officer I, Allahabad and Another reported in 2002 (1) ARC192, wherein it has been held that pending application under Rent Control Act shall not be adversely affected because of amendments enforced by U.P. Act No. 5 of 1995.

This Court is in respectful agreement with the law so laid down by the High Court in the case of Champa Devi (*supra*). In the facts of the present case, application was pending since 1992 i.e. much prior to the enforcement of U.P. Act No. 5 of 1995. The application has rightly been adjudicated by the authority concerned on merits.

The second ground raised is that since under proviso to Section 21 (8) of U.P. Act No. 13 of 1972, no application can be entertained within a period of 5 years from making of the earlier order of enhancement of rent, the present proceedings were bad as between the tenant and the landlord there had been a determination of fresh rent in the year 1989. The period of 5 years had not elapsed with reference to the date on which the application under Section 21 (8) of U.P. Act No. 13 of 1972 was filed i.e. in the year 1992.

The second contention has also been raised only to be rejected by this Court, inasmuch as under proviso to Section 21 (8) of U.P. Act No. 13 of 1972, second application before the District Magistrate under Section 21 (8) of U.P. Act No. 13 of 1972 is prohibited within a period of 5 years of making of earlier order by the District Magistrate in exercise of powers under the same Section.

Any mutual agreement in the matter of rent will not debar the making of such application within a period of 5 years of such mutual enhancement. Admittedly no order was passed by the District Magistrate earlier in proceedings under Section 21 (8) of U.P. Act No. 13 of 1972, which could attract the prohibition contained in the proviso to Section 21 (8) of U.P. Act No. 13 of 1972.

The present writ petition lacks merit and is accordingly dismissed.

Interim order, if any, stands discharged.