

(2010) 07 AHC CK 0246
In the Allahabad High Court
Case No : Writ A. No. 47135 of 2009

Vishal Kumar Gupta and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 13-07-2010

Acts Referred:

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

Citation : (2010) 07 AHC CK 0246

Hon'ble Judges : Devendra Pratap Singh, J

Final Decision : Disposed Of

Judgement

Devendra Pratap Singh,J.

1. Heard learned counsel for the parties. The petitioner is the landlord of premises no. 129, The Mall having total area of about 564 sq. meter wherein the private respondents are tenants at Rs.600/ per month. According to the pleadings, considering the market rate and the rent of adjoining buildings, the rate of rent is Rs.50 per sq. ft. and therefore the rent ought to be Rs.2,50,000/ per month, but due to the provisions in the Act the rent cannot be enhanced and the petitioner is suffering huge loss and has to pay taxes which is much more than the rent received by him. It has further been pleaded that though there is provision for periodical increase in rent of certain buildings under section 21 (8) of the Act, but the landlords of other buildings have been discriminated. The petitioner has basically filed this writ petition claiming rent at the market value and has also sought declaration for declaring certain Sections as ultra vires.

2. The basic ground is that the rent under the U.P. Act No. 13 of 1972 has been freezed under the Act and though the price and living index etc. have gone up many fold, the rent has not been increased and no attempt has been made by the Legislature to intervene.

3. This is not a new issue and has been engaging the attention of the Apex Court and this Court.

4. A 3 Judge Bench of the Apex Court in the case of Malpe Vishwanath Acharya & others vs. State of Maharashtra & another (1998 {2} SCC 1), while dealing with freezing of rent under the statute when enacted was justified may, with the passage of time, become arbitrary and unreasonable and it went on to hold that it should not be unjust to him and give disproportionate benefit to the other but did not strike down the law as the provision was itself coming to an end on 31.3.1998.

5. Our Court in the case of Mipal Chandra Jain & others vs. State of U.P. & others [2001 (2) ARC 488] was confronted with a claim for holding those provisions of the Act which related to determination of standard rent and freezing it declare Section 3 (k) and the corresponding provisions under Sections 4(2), 5,6,8 and 9 as ultra vires being unreasonable. Whereafter, as it was a matter of policy, it directed the State Government "to consider the matter in the light of observations and to redefine the "standard rent" or "fair rent" in accordance with the model rent control legislation published by the Government of India in July 1992 at least in respect of the buildings which were in the possession of the tenants at the commencement of U.P. Act No. XIII of 1972 to remove injustice done to a class of landlords. The proper legislation in this respect is expected to be enacted at the earliest."

6. Another learned Single Judge in the case of Bal Kishan vs. IV Addl. District Judge, Etawah (2003 (2) ARC 545) after noting the observations of the Apex Court in paragraph 51 of Mapes" case had passed the following order :

"In view of the above it is expected that the State Legislature will consider the desirability and necessity for incorporating the provision for periodical enhancement of rent regarding tenancies governed by U.P.Rent Control Act."

7. Though the State Government issued a notification dated 23rd of August 2003 ensuring compliance of the judgment of Mipal Chand Jain"s case again expected the Government in the case of Abdul Jalil vs. Special Judge, E.C. Act [2007) ARC 292] to intervene.

8. Learned Additional Advocate General has stated that the State Government was conscious of the aforesaid decision and had referred the matter to the U.P. State Law Commission which has submitted a report dated 18.6.2010 along with a model draft of the Uttar Pradesh Regulation of Rent and Eviction Bill, 2010 and the Regulation is under active consideration and as such the matter may be adjourned for two months to enable the Government to take a final decision.

9. The Court has gone through the model draft but it appears that there does not appear to be any provision for fixation of market rent or fair rent. However, since the model draft has yet to be finalized, it is expected that some deliberation would be made by the Competent Authority.

10. Accordingly, list this petition on 17th of September, 2010 alongwith the record of Writ Petition No.32715 of 2010.