**(1981) 03 AHC CK 0036**

**In the Allahabad High Court**

**Case No :** Civil Mise Writ No. 4370 of 1979

Wakf Allahtala APPELLANT

Vs

Prescribed Authority and Another RESPONDENT

**Date of Decision :** 03-03-1981

**Acts Referred:**

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 9A, 9A(1)

**Citation :** (1981) AWC 343

**Hon'ble Judges :** K.N. Singh, J;A. Banerji, J

**Bench :** Division Bench

**Final Decision :** Allowed

## Judgement

K.N. Singh, J.—The Petitioner is a public charitable trust known by the name of Wakf Allahtala Masjid Sipiyan Bazar Ganj. Thakurdwara, district Moradabad. The Trust owns certain shops and other properties. One of its shops is in the tenancy of opposite party No. 2, Ashfaq Husain, on a rent of Rs. 20/- per mensem. Saghir Ahmad, Mutwalli of wakf, made an application before the Prescribed Authority u/s 9A of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) for revision of rent of the shop let out to Ashfaq Husain, to Rs. 40/- per month.

2. Ashfaq Husain, the tenant contested the proceedings. He prayed for the rejection of the application by the Petitioner and reduction of the rent to Rs. 15/- per month. The Sub-Divisional Magistrate by his order dated 31-3-1979 fixed the rent of the shop at Rs. 25/- per mensem. Aggrieved, Saghir Ahmad, Mutwalli of the wakf, has filed this petition under Article 226 of the Constitution challenging the aforesaid order of the Prescribed Authority.

3. Section 9-A of the Act provides for the revision of rent of commercial building let out by a public charitable or public religious institution to a tenant for the purposes of a shop or commercial establishment. Section 9A of the Act reads as

follows:

9-A. Revision of rent of commercial building let out by public religious institutions. (1) Where any building belonging to a public charitable or public religious institution has been let out to a tenant for the purposes of a shop or commercial establishment, then notwithstanding anything contained in this Chapter, or in any contract or lease, the landlord of such building may apply to the District Magistrate for revision of the monthly rent payable therefore ,and such rent shall be revised to a sum equivalent to one twelfth of ten per centum of the market value of the building under tenancy.

Provided that the rent revised under this Sub-section shall not exceed double the rent payable on the date of the application by the landlord under this sub-section.

The Section provides that notwithstanding anything contained in Chapter II of the Actor in any contract or lease, which relates to regulation of rent, the landlord may apply to the District Magistrate for revision of monthly rent payable for the building under tenancy. The District Magistrate is empowered to revise the rent and enhance it to a sum equivalent to one-twelfth of ten per centum of the market value of the building under tenancy. The proviso, however, lays down that the rent so revised shall not exceed double the rent payable by the tenant on the date the application is made by the landlord u/s 9-A (1) of the Act.

4. Sub-section (2) provides that the revised rent is payable by the tenant from the commencement of the month of tenancy. Sub-section (3) makes it clear that that landlord is not entitled to make another application within five years of the revision of rent under Sub-section (1) of Section 9-A of the Act.

5. Section 9-A (1) of the Act stipulates that the District Magistrate shall revise the rent when an application is made under the aforesaid provisions. The criteria for the revision of rent have also been laid down in Sub-section (1). Sub-section (1) empowers the District Magistrate to revise monthly rent to one-twelfth of ten per cent of the market value of the building under tenancy. The relevant consideration is the market value of the building under tenancy. The annual rent would be ten per cent of the market value and the monthly rent would be one-twelfth thereof. It is, therefore, imperative for the District Magistrate to arrive at the market value of the building under tenancy. The District Magistrate is under a legal duty to revise the rent of the building under tenancy only after determining the market value of the property. Where he does not determine the market value of the property, any figure arrived at by him as the suitable or appropriate rent for the building under tenancy would not be in accordance with the provisions of the Act. The Legislature having provided the criteria for revising the rent of a commercial building or shop let out by a public religious institution, it is the bounden duty of the district Magistrate or the official exercising his powers under this provision to act in accordance with the criteria laid down by the legislature. While revising the rent the District Magistrate must address himself to the market value and then calculate the rent, in accordance with the principles laid

 

down in Section 9-A of the Act. The District Magistrate cannot ignore the norms and principles laid down in Section 9-A of the Act and determine the rent in some other way.

6. The mode of ascertaining the market value of the building under tenancy has not been prescribed under the Act or the Rules made thereunder. However the principal for determining the market value of a property are well settled. The principles test is as to what would be the price which a willing buyer would like to pay for the property in case it is offered for sale. In arriving at the market value of a property the authority has to take into consideration the location of the building, its size, age and condition, materials used and- the amenities provided. The authority may also take into consideration the price of similar accommodation situated in the locality.

7. In the instant case, the Sub-Divisional Magistrate, who was exercising the power of the District Magistrate did not apply the principles laid down in Section 9-A of the Act, as he failed to ascertain the market value of the shop in dispute. In the absence of the market value the Sub-Divisional Magistrate could not determine one-twelfth of ten per cent of the market value. The Sub-Divisional Magistrate observed that the condition of the shop was not good and the landlord had failed to produce any evidence to show as to what amount it spent on the maintenance of the shop. He further observed that initially the rent of the shop was Rs. 7/- per month and, as such, the landlord was not entitled to a rent of more than Rs. 25/- per mensem. On these findings, the Sub-Divisional Magistrate fixed the rent of the shop in dispute at Rs. 25/- per mensem.

8. It is thus apparent that the Sub-Divisional Magistrate fixed the rent in violation of the principles laid down in Section 9-A of the Act. The impugned order of the Sub-Divisional Magistrate is, therefore, vitiated in law.

9. The Petitioner has asserted that it is a public charitable trust and, as such, is entitled to revision of rent of the shop in dispute u/s 9-A of the Act. Since no counter affidavit has been filed by opposite party No. 2 inspite of service of notice on him, the petitioner''s assertion must be accepted that it is public charitable trust and is thus entitle to the benefit of Section 9-A of the Act.

10. In the result, we allow the petition and quash the order dated 31-3-79 and direct the Prescribed Authority to revise the rent of the shop in dispute in accordance with law. Parties shall bear their own costs.

 