

(1989) 07 AHC CK 0030

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4703 of 1981

Waqf Masjid

APPELLANT

Vs

Additional District Magistrate/Rent Control and Eviction
Officer and Others

RESPONDENT

Date of Decision : 25-07-1989

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 3, 9A, 9A(1)

Citation : (1989) 2 AWC 1152

Hon'ble Judges : M.P. Singh, J

Bench : Single Bench

**Advocate : Shahid Masud, for the Appellant; K.B. Mathur and S.C., for the
Respondent**

Final Decision : Allowed

Judgement

M.P. Singh, J.—The Petitioner is a Waqf and is covered within the meaning of Section 3(s) of the U.P. Act XIII of 1972 (hereinafter referred to as the Act).

2. The Petitioner filed an application u/s 9-A of the Act The present writ petition is confined to the question of enhancement of rent against Respondent No. 2 Mahadeo Prasad only.

Section 9-A of the Act provides:

9-A. Revision of rent of commercial buildings 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 therefor, 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.

(2) The rent revised under Sub-section (1) shall be payable by the tenant from the commencement of the month of tenancy next following the date of the application.

(3) Where the rent of any building had been revised in accordance with Sub-section (1), then the landlord shall not be entitled to move a fresh application under the said Sub-section within a period of five years from the date of the final order.

Explanation.--In this Section, the expression "shop" and "commercial establishment" shall have the meaning assigned to them in the Uttar Pradesh Dookan Aur Vanijya Adhistan Adhiniyam, 1962, as amended from time to time.

3. A reading of this section nowhere indicates that before the provisions of the said section are attracted the landlord must lead evidence and prove that the entire rent was being used for the benefit of the trust.

4. The Rent Control and Eviction Officer has rejected the application only on the ground that there is no evidence led by the Petitioner that the entire income derived from the rent of the shop in question is wholly utilised for the religious purposes of the Waqf though it has been held by him that the building in question is a Waqf property.

5. The impugned order is beyond the ambit of Section 9A of the Acf. It suffers from error apparent on the face of the record.

6. The writ petition is allowed. The order dated 24-1-1981 is quashed. The case is sent back to the Additional District Magistrate/Rent Control and Eviction Officer, Allahabad to decide the application for enhancement of rent, only in accordance with law. Since it is a very old case pending since 1978, the Rent Control and Eviction Officer is directed to dispose of the application within three months from the date of presentation of a certified copy of this order before him.