
(2012) 09 AHC CK 0073

In the Allahabad High Court

Case No : C.M.W.P. No's. 20541 and 20543 of 2004

Zila Basic Shiksha Adhikari and Another

APPELLANT

Vs

Ataullah Khan

RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

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

Citation : (2013) 1 AWC 1077 : (2013) 1 RCR(Rent) 432

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Ravi Shankar Prasad, for the Appellant; Iqbal Ahmad, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Both these writ petitions arise out of common proceedings as well as the judgment, therefore, as requested by learned counsel for the parties, both the writ petitions heard together, and are being decided by this common judgment. Writ petition is directed against the order dated 10.2.2004 passed by Additional District Judge. Court No. 3, Moradabad determining rent of the building in question, in which petitioners are running a primary school : @ Rs. 2.346.40 per month w.e.f. 1.1.1998.

2. The landlord moved an application stating that valuation of house and land in question is Rs. 3.47.401 and. therefore, appropriate rent of building should be Rs. 2,800 per month. In support of claim, he filed a report of Junior Engineer/ Valuer dated 13.5.1999 wherein he has valued the cost of the land at Rs. 2,65,110 and cost of construction at Rs. 82,291, total Rs. 3.47.401. The Rent Control and Eviction Officer (hereinafter referred to as "R.C.E.O."), by order dated 25.10.2002 Instead of relying on Valuer's report made his own assessment and valued the land @ Rs. 800 per sq. meter and the cost of construction at Rs. 40,000. He determined the rent u/s 21(8) of Uttar Pradesh

Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act, 1972") at Rs. 1.244.91 per month.

3. The landlord and petitioner-tenant, both, filed appeal against the aforesaid order whereupon appellate court dismissed petitioner's appeal but allowed landlord's appeal to the extent that monthly rent of premises in question has been enhanced to Rs. 2,346.40. Learned appellate court found that for the purpose of cost of land. Valuer has relied on circle rate but the same could not have been ignored by R.C.E.O. unless there is a specific reason and ground to take into account a different value of the land. With respect to the cost of construction, however, he accepted the cost determined by Valuer but since he has not taken into consideration depreciation on the aforesaid cost of construction, the appellate court deducted depreciation from the cost of construction and thereafter calculated the cost of construction at Rs. 16.458 and that is how he comes to the conclusion that the total cost of building would be Rs. 2.81.568.20.

4. Learned counsel for the petitioner submitted that the aforesaid cost is with respect to entire building though only 3 rooms are in his possession. However, no such issue has ever been raised before the courts below. In para 6 of the writ petition, the petitioner has filed copy of reply as Annexure-5 but therein no such averment has been made that the entire building is not in possession of, the petitioner. On the contrary in para 1 of the application. Annexure-3 to the writ petition, it has clearly been said that building in question has 7 rooms besides verandah and courtyard and total 200 sq. yard area but nothing has been placed on record to demonstrate that the said averment is not correct. No new issue, which was not raised before the Courts below can be allowed to be raised before this Court.

5. For determining rent u/s 21(8) of Act. 1972 there is no hard and fast rule laying down any particular procedure or method in which the rent can be determined. The proviso to Section 21 sub-section (8) only talks of market value of building under tenancy and a sum equivalent to 1/12 of 10% of market value shall constitute the appropriate rent payable by tenant under aforesaid provision. The term "market value" has not been defined in aforesaid Act nor any procedure for its determination has been prescribed under the Rules framed under Act, 1972.

6. In Mahabir Prasad Santuka and Others Vs. Collector, Cuttack and Others, , this Court has observed that the term "market value" means that the willing purchaser would pay to a willing seller for the property having regard to the advantages available to the land and the development activities which may be going on in the vicinity and the potentiality of the land and other relevant factors. Circle rate fixed by Collector under Rule 341 of U. F, Stamp Rules. 1942 are guidelines for the purpose of realisation of stamp duty in the event of sale of land of a particular area. It cannot determine the value of land conclusively.

7. In- Kaka Singh Vs. The Additional Collector and District Magistrate (Finance and Revenue), Bulandshahr and Another, , a Division Bench of this Court said that Rule 341 is only for the limited purpose of providing guideline to determine the market value. It is not conclusive. The value of land has to be determined after taking into consideration various factors, No hard and fast rule can be laid down therefor but now some of the guidelines have been laid down in U. P, Stamp (Valuation of Property) Rules, 1997 but this is also indicative, constitute relevant factors, but not conclusive. One of the relevant factor can be an exemplar of a similar property sold in that particular area on near relevant date when the matter came up for consideration before competent authority. i.e., the date of submission of application. It cannot be doubted that ascertainment of market value involves a little subjective satisfaction and a kind of guesswork. The authority concern. however, would have to take into consideration the locality where the property situate, its commercial value, potential value and other circumstances. In the present case, in absence of anything else, the appellate court has relied on the circle rate and I find no patent error in such approach.

8. Having gone through the impugned order, as also the exposition of law as above, I find that appellate court has taken into consideration relevant material to determine cost of land,

9. In view of the aforesaid, the writ petition lacks merit.

10. Dismissed. Interim order, if any, stands vacated,