

CASE NO.:
Appeal (civil) 4963 of 2000

PETITIONER:
Smt. Sudha Rani Garg

RESPONDENT:
Sri Jagdish Kumar (dead) and Ors.

DATE OF JUDGMENT: 08/09/2004

BENCH:
ARIJIT PASAYAT & PRAKASH PRABHAKAR NAOLEKAR

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J

The tenant is in appeal against the judgment of learned Single Judge of the Allahabad High Court. It was held by the High Court that the suit filed by respondents 1 to 5 in this appeal (Respondents 3 to 7 before the High Court) has been rightly decreed by the Revisional Court, as the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent, and Eviction) Act, 1972 (in short 'the Act') was not applicable to the case.

The respondents 1 to 5 filed a suit for ejection giving notice under Section 106 of the Transfer of Property Act, (in short the 'T.P. Act'). The ground set out in the suit was that the tenancy was at will and provisions of the Act being not applicable, the tenant was liable for eviction. The only issue which was taken up by the trial court related to applicability of the Act. Evidence was led. According to the respondents 1 to 5 as the assessment in respect of the building came into effect from 1.4.1983, and the suit was filed on 21.8.1992 the ten years period stipulated in Section 2(2) of the Act had no application, thereby making the Act inapplicable. Tenant on the other hand submitted that in the first assessment of the shop at column 10 it was clearly indicated as "Q September 1982". According to her the date of construction of building has to be taken as 1.7.1982 and, therefore, the period stipulated i.e. 10 years was over. The Trial Court accepted the plea, while Revisional Court reversed it and as noted above the High Court confirmed the Revisional Court's view.

In support of the appeal, learned counsel submitted that the Revisional Court and the High Court have not considered the provisions of Section 2(2) in the proper perspective. The burden is on the landlord to prove that the building is exempt from the operation of the Act. There was no specific pleading as to date of construction in the plaint or the date of reporting of the completion of construction. When the assessment clearly indicated that the period was "Q September 1982" the trial Court was right in concluding that the date of completion was 1.7.1982. Though mandated under Section 148, landlords have not reported the date of completion. They cannot be benefited for the lapse.

It is submitted that the legislation being a beneficial one the meaning given by the trial Court should have been accepted. It was submitted that in the absence of details which the landlord was to furnish, reference to the Explanation to Section 2(2) as done by the Revisional Court and the High Court has no relevance because the landlord was to prove that he was exempt from the requirements of Section 2(2).

In response, learned counsel for the contesting respondents submitted that the Revisional Court and the High Court have taken note of the Explanation correctly and, therefore, there is no infirmity to warrant interference.

Section 2(2) of the Act reads as follows:

"2. Exemptions from operation of Act: (1) Nothing in this Act shall apply to \026

xxx xxx xxx

(2) Except as provided in sub-section (5) of Section 12, sub-section (1-A) of Section 21, sub-section (2) of Section 24, Sections 24-A, 24-B, 24-C or sub-section (3) of Section 29, nothing in this Act shall apply to a building during a period of ten years from the date on which its construction is completed:

Provided that where any building is constructed substantially out of funds obtained by way of loan or advance from the State Government or the Life Insurance Corporation of India or a bank or a co-operative society or the Uttar Pradesh Avas Evam Vikas Parishad, and the period of repayment of such loan or advance exceeds the aforesaid period of ten years than the reference in this sub-section to the period of ten years shall be deemed to be a reference to the period of fifteen years or the period ending with the date of actual repayment of each loan or advance (including interest) whichever is shorter.

Explanation I: For the purposes of this sub-section,

(a) the construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction and in the case of a building subject to assessment, the date on which the first assessment thereof comes into effect and where the said dates are different, the earliest of the said dates, and in the absence of any such report, record or assessment, the date on which it is actually occupied (not including occupation merely for the purposes of supervising the construction or guarding the building under construction) for the first time:

Provided that there may be different dates of completion of construction in respect of different parts of a building which are occupied separately by the landlord and one or more tenants or by different tenants;"

The Explanation provides for four different dates for determining the date of completion of building. The dates are :

- (1) When the completion of the building is reported to the local authority.
- (2) When the completion of the building is otherwise recorded by the local authority.
- (3) When the first assessment of the building comes into effect.
- (4) When it is actually occupied.

The Explanation further provides that in case for the first three categories the dates are available then the earliest of the three dates will be the date of completion of the building and in case the first three dates are not available, then the fourth date will be the date on which construction of the building shall be taken to have been completed.

The Explanation I is a deeming provision. The word 'deemed' is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible". (per Lord Radcliffe in *St. Aubyn (L.M.) v. A.G.* (No.2)(1951) 2 ALL E.R. 473 (HL).

"Deemed", as used in statutory definitions "to extend the denotation of the defined term to things it would not in ordinary parlance denote, is often a convenient device for reducing the verbiage of an enactment, but that does not mean that wherever it is used it has that effect; to deem means simply to judge or reach a conclusion about something, and the words 'deem' and 'deemed' when used in a statute thus simply state the effect or meaning which some matter or thing has the way in which it is to be adjudged; this need not import artificially or fiction; it may simply be the statement of an undisputable conclusion" (per Windener J. in *Hunter Douglas Australia Pty. V. Perma Blinds* (1970 (44) A.L.J.R.257)

When a thing is to be "deemed" something else, it is to be treated as that something else with the attendant consequences, but it is not that something else (per *Cave J. R. v. Norfolk County Court*, 60 L.J.Q.B.380)

"When a statute gives a definition and then adds that certain things shall be 'deemed' to be covered by the definition, it matters not whether without that addition the definition would have covered them or not: (per Lord President Cooper in *Ferguson v. McMillan*, 1954 S.L.T. 109).

Whether the word "deemed" when used in a statute established a conclusive or a rebuttable presumption depended upon the context (See *St. Leon Village Consolidated School District v. Ronceray* (1960 (23) D.L.R. (2d) 32).

"I...regard its primary function as to bring in something which would otherwise be excluded." (Per Viscount Simonds in *Barclays Bank v. I.R.C.* (1961) A.C.509)

"Deems" means "is of opinion" or "considers" or "decides" and there is no implication of steps to be taken before the opinion is formed or the decision is taken." (See *R. v. Brixton Prison Governor ex.p.Soblen* (1962 (3) All E.R. 641) (See *Ali M.K. and Ors. v. State of Kerala and Ors.* (2003 (11) SCC 632)

It is not in dispute that the first assessment came into effect from 1.4.1983 and in the relevant column relating to enhancement or reduction of the tax "Q September 1982" is recorded.

According to learned counsel for the appellant it means that the completion of the shop has been recorded by the local authority on 1.7.1982. The plea is clearly untenable. A quarter is a period of time, covering in the instant case from 1st July 1982 to 30th September, 1982. It only shows that when assessment was made, construction was completed earlier sometime in the third quarter of September 1982. The quarter started from 1st July, 1982. It cannot mean that the construction of the building was completed by the date. The date of completion of construction can be any date falling between two terminals i.e. 1st July, 1982 to 30th September, 1982. The hypothetical presumption that the first date of the quarter being 1st July 1982 it shall be deemed to be the date of completion of construction has no basis. In case the first three dates are available then the modality for working out the date of completion is provided in the Explanation. As the records go to show, the first assessment came into effect on 1.4.1983. That is the third date provided in the Explanation.

Above being the position, the High Court's judgment confirming the Revisional Court's order is in order and needs no interference.

A residual plea was raised by learned counsel for the appellant that the tenant occupied the premises for nearly two decades and a reasonable time for vacating the premises may be granted. Considering the peculiar circumstances of the case, we permit the tenant to occupy the premises till the end of 2005 subject to filing the usual undertaking before the Trial Court with a clear stipulation that the rent fixed shall be paid within the stipulated time, and arrears, if any, shall be paid within two months.

Appeal is dismissed. No costs.