

PETITIONER:
VINAYA KUMAR SHUKAL

Vs.

RESPONDENT:
LAKHPAT RAM AND ANOTHER

DATE OF JUDGMENT 22/08/1990

BENCH:
AGRAWAL, S.C. (J)
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AGRAWAL, S.C. (J)
SAIKIA, K.N. (J)

CITATION:
1990 AIR 2171 1990 SCR (3) 965
1990 SCC (4) 246 JT 1990 (3) 563
1990 SCALE (2) 343

ACT:

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972: Section 29-A, sub-sections (4), (5) and (7)--'Such rent as may be mutually agreed upon between the parties'--Interpretation of-- Rent agreement entered into prior to commencement of s. 29-A-Whether bars determination of rent after the incorporation of s. 29-A-Expression 'may be'--Scope of.

HEADNOTE:

In 1957, the appellant let out a plot of land to Respondent No. 1 at an annual rent of Rs. 170. Respondent No. 1 constructed a building on the plot of land in 1968, with the consent of the appellant. After the insertion in 1976 of Section 29-A in the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, appellant filed an application before the delegated authority under the Act for fixation of appropriate rent for the said land under Section 29-A(5) of the Act. The application was dismissed by the authority on the ground that Section 29-A(5) was applicable only to those cases in which there was no agreed rent and since the parties, by mutual agreement, have accepted the annual rent at Rs. 170 there was no question of re-fixation of the rent.

Aggrieved, the appellant filed a Writ Petition in the High Court, which was dismissed.

The appellant has preferred this appeal, by special leave, against the said order of the High Court.

Allowing the appeal,

HELD: 1. The words "such rent as may be mutually agreed upon between the parties" in sub-section (4) of Section 29-A of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 envisage an agreement with regard to rent entered by the landlord and tenant after the coming into force of Section 29-A. An agreement prior to the commencement of Section 29-A would not preclude determination of rent under sub-section (5) of Section 29-A. Generally, the words 'may be' are much oftener used with reference to the future than the

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past or present. In sub-section (4) of Section 29-A the

words 'may be' are preceded by the word 'as' and are allowed by the words 'mutually agreed upon' which indicate that the words are used with reference to the future. The provisions of sub-section (7) which give overriding effect to the provisions of section 29-A over an existing contract also lend support to this construction. The High Court was not correct in holding the view that there could be no enhancement of the rent under subsection (5) of Section 29-A in view of the agreement between the appellant and the tenant that the tenant shall pay rent at the rate of Rs. 170 per annum. [970A-D]

Trilok Chand v. Rent Control and Eviction Officer & Anr., [1988] 1 R.C.R. 633; approved.

Brown v. Batchelor, 25 L.J., Ex. 299; referred to.

Stroud's Judicial Dictionary,, 5th Edn. p. 1575; referred to.

2. The Judgment and order of the High Court dated February 19, 1990 as well as the order dated April 14, 1978 passed by the Delegated Authority are set aside and the matter is remanded to the Delegated Authority for consideration of the application submitted by the appellant for fixation of rent under Section 29-A of the Act in accordance with law. [970E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5933 1983.

From the Judgment and Order dated 19.2. 1980 of the Allahabad High Court in Civil Misc. Petition No. 5860 of 1978.

R.K. Jain, Ms. Abha R. Sharma and R.P. Singh, for the Appellant.

M .C. Dhingra for the Respondents.

The Judgment of the Court was delivered by

S.C. AGRAWAL. J. This appeal by special leave involves the question as to the interpretation of the provisions of Section 29-A of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as 'the Act').

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The Act was enacted by the U .P. State legislature to provide, in the interest of the general public, for the regulation of letting and rent of, and the eviction of tenants from certain classes of buildings situated in urban areas, and for matters connected therewith. The Act, as originally enacted, was confined in its application to buildings only. It was amended by U.P. Act XXVIII of 1976 whereby Section 29-A was inserted with a view to give protection against eviction to certain classes of tenants of land on which building exists. The relevant provisions of Section 29-A read as under:

"(2) This Section applies only to land let out, either before or after the commencement of this Section, where the tenant, with the landlord's consent has erected any permanent structure and incurred expenses in execution thereof.

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(4) The tenant of any land to which this Section applies shall be liable to pay to the landlord such rent as may be mutually agreed upon between the parties, and in the absence of agreement, the rent determined in accordance with subsection (5).

(5) The District Magistrate shall on the application of the landlord or the tenant determine the annual rent payable in

respect of such land at the rate of ten per cent per annum of the prevailing market value of the land, and such rent shall be payable, except as provided in sub-section (6) from the date of expiration of the term for which the land was let or from the commencement of this Section, whichever is later.

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(7) The provisions of this section shall have effect, notwithstanding anything to the contrary contained in any contract or instrument or in any other law for the time being in force."

The appellant is the owner of a plot of land measuring 30 x 65 sq. ft. situated at Garhmukteshwar Road (Azad Road) Meerut. The said plot of land was let out by the appellant to the respondent No. 1 on March 20, 1957 at an annual rent of Rs. 170. After the said plot of

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land had been let out to him, respondent No. 1 with the consent of the appellant constructed a building over the said plot in 1965. After the enactment of Section 29-A the appellant submitted an application on September 29, 1976, before the District Supply Officer/Delegated Authority, Meerut, for fixation of appropriate rent for the plot of land under sub-section (5) of Section 29-A. The said application of the appellant was dismissed by the District Supply Officer Delegated Authority by order dated April 14, 1978 on the view that the provisions of sub-section (5) of Section 29-A for fixation of rent are applicable to those cases only in which there is no agreed rent and that in this case both the parties have accepted that the rent of land is Rs. 170 per year has been fixed on the basis of mutual agreement and, therefore, the question of re-fixation of rent does not arise. Feeling aggrieved by the said order of the District Supply Officer the appellant filed a writ petition in the High Court of Judicature at Allahabad under Article 226 of the Constitution of India. The said writ petition was dismissed by a Division Bench of the said High Court by order dated February 19, 1980. The learned Judges have held that under Section 29-A the District Magistrate has jurisdiction to determine the rent only in those cases where there is no agreement relating to rent and if there is an agreement between the landlord and the tenant then the District Magistrate has no jurisdiction to determine the rent. The learned Judges have further found that in the instant case admittedly an agreement existed between the appellant and the tenant that the tenant shall pay rent at the rate of Rs. 170 per annum to the appellant and as such there could be no enhancement of the rent under sub-section (5) of Section 29-A. Feeling aggrieved by the said decision of the High Court the appellant has filed this appeal after obtaining special leave to appeal.

Shri R.K. Jain, the learned counsel for the appellant has urged that sub-section (4) of Section 29-A postulates determination of rent in accordance with sub-section (5) in cases where the rent has not been mutually agreed upon between the parties. The submission of Shri Jain is that the expression "such rent as may be mutually agreed upon between the parties" in sub-section (4) of Section 29-A means rent which has been mutually agreed upon after the enactment of Section 29-A and any agreement prior to the said enactment would not preclude determination of rent under Section 29-A of the Act. In support of this submission Shri Jain has invited our attention to the decision of the Full Bench of the Allahabad High Court in *Trilok Chand v. Rent Control and Eviction Officer and Another*, [1988] 1 R.C.R. 633.

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In *Trilok Chand v. Rent Control and Eviction Officer* case (supra) a Full Bench of the High Court has considered the correctness of the decision of the Division Bench in the present case and has construed the provisions of Section 29-A of the Act. In that case it has been held that sub-section (4) of Section 29-A precludes determination of rent only in those cases where the agreement fixing the rent was entered into subsequent to the coming into force of Section 29-A. It has been observed:

"The reason is this, sub-section (4) applies to the land to which Section 29-A applies. It provides that the tenant shall be liable to pay to the landlord such rent as may be agreed between the parties. In the absence of such agreed rent, the sub-section further provides that the tenant is liable to pay the rent determined in accordance with sub-section (5). These terms are clear enough and indicate that the agreement envisaged thereunder is not the agreement, existed prior to coming into force of Section 29-A. It refers to subsequent agreement only. The words "such rent as may be mutually agreed upon between the parties" refers to future agreement and not the past agreement. Subsection (4) again emphasises "such rent". Such rent, in the context means the rent to be mutually agreed upon by parties. Sub-section (4) further states that in the absence of agreement, the rent has to be determined in accordance with sub-section (5)." (p. 636)

"Yet another reason to support our view could be found from sub-section (7). It provides that notwithstanding anything to the contrary contained in any contract or instrument or in any other law for the time being in force, the provisions of Section 29-A shall have effect. It means clearly that the agreement if any existing on the date of coming into force of Section 29-A is no bar for enforcing the rights under sub-section (5). Sub-sections (4) and (5) shall prevail and not the antecedent agreement, if any." (p. 636)

The learned Judges of the Full Bench have overruled the decision of the Division Bench in the present case.

We are in agreement with the view propounded by the Full Bench in *Trilok Chand's* case (supra). In our opinion, the words "such rent as may be mutually agreed upon between the parties" in subsection (4) of Section 29-A envisage an agreement with regard to rent entered by the landlord and tenant after the coming into force of Section 29-A. An agreement prior to the commencement of Section 29-A would not preclude determination of rent under sub-section (5) of Section 29-A. In this context it may be mentioned that the words "may be" used in sub-section (4) of Section 29-A are much oftener used with reference to the future than the past or the present (Pollock C.B. in *Brown v. Batchelor*, 25 L.J. Ex. 299, Stroud's Judicial Dictionary, 5th Edn. P. 1575). In sub-section (4) of Section 29-A the words "may be" are preceded by the word "as" and are followed by the words "mutually agreed upon" which indicate that the words are used with reference to the future. The provisions of sub-section (7) which give overriding effect to the provisions of Section 29-A over an existing contract also lend support to this construction. We are, therefore, unable to uphold the view of the learned Judges of the Division Bench of the High Court in this case that there could be no enhancement of the rent under sub-section (5) of Section 29-A in view of the agreement between the appellant and the tenant that the tenant shall pay rent at the rate of Rs. 170 per annum.

The appeal is, therefore, allowed. The judgment and

order of the High Court dated February 19, 1980 as well as the order dated April 14, 1978, passed by the District Supply Officer/Delegated Authority, Meerut, are set aside and the matter is remanded to the District Supply Officer/Delegated Authority, Meerut for consideration of the application submitted by the appellant for fixation of rent under Section 29-A of the Act in accordance with law. No order as to costs.

G.N.

Appeal allowed.

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