

PETITIONER:
SALEEM

Vs.

RESPONDENT:
DISTRICT JUDGE, MUZAFFARNAGAR & ORS.

DATE OF JUDGMENT: 15/09/1998

BENCH:
S.B.MAJMUDAR, M.JAGANNADHA RAO.,

ACT:

HEADNOTE:

JUDGMENT:
JUDGMENT

S.B.Majmudar.
Leave granted.

We have heard learned counsel for the appellant and learned counsel for respondent No. 3 who is the real contesting respondent finally and are disposing off this appeal by their consent by this judgment.

The appellant is the tenant and the respondent No. 3 is the landlord. We will refer to tenant and landlord in the later part of this judgment for the sake of convenience. The landlord filed a suit from which the present proceedings arise, in 12991 on the ground that the relevant provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Act 13 of 1972) (hereinafter to be referred to as the 'Rent Act') did not apply to the suit premises which is a shop occupied by the tenant who is carrying on his profession as barber. The rent of the shop is Rs. 350/- per month. It is the contention of the landlord that the disputed shop is newly constructed and it was first assessed to house tax on 1.4.1982 under order of the Municipal Board, dated 20.3.1982. The suit shop is situated in village Kandhala in district Muzaffarnagar in the State of Uttar Pradesh. The contention of the landlord was that as the Rent Act was not applicable for a period of 10 years from the date of first assessment of the shop and as the tenant was in arrears of rent he was liable to be evicted. For that purpose, he had served a notice to him demanding the rent and terminating the tenancy on 16.8.1991 which was served on him on 17.8.1991. The defendant in spite of the service of the said notice neither paid the rent nor vacated the premises and committed the default. Hence the suit.

The tenant contesting the suit submitted before the Court of Civil judge, Senior Division, Kandhala where the suit was filed that he was not in arrears of rent, the rent demanded was excessive and it was not Rs. 350/- per month but was only Rs. 150/- per month and that the building was an old one and he was occupying the same since 1977 and therefore, the Rent Act as a whole was applicable to the suit shop. The trial court after recording the evidence

offered by the parties came to the conclusion that the tenant was in arrears of rent and the question of applicability of the protection of the Rent Act would depend upon the other question as to when the assessment of the shop was first made and considering the said date i.e. 1.4.1982 it was held that on the date of filing of the suit in 1991 as 10 years had not elapsed from the date of first assessment of the suit shop, the Rent Act was not applicable. Consequently, the suit for possession was decreed.

The tenant unsuccessfully carried the matter in revision before the District Judge, Muzaffarnagar. After the revision was dismissed he approached the High Court of Judicature at Allahabad invoking its writ jurisdiction. Learned judge who decided the writ petition came to the conclusion that the protection of Rent Act was not available to the suit shop in view of provisions of Explanation I to sub-section (2) of Section 2 as 10 years were to be counted for the purpose of such explanation from 1.4.1982 when the suit shop was first assessed by the Municipal authority. Rent of Rs. 350/- per month was held to be the correct rent payable by the tenant. The writ petition was accordingly dismissed. That is how the tenant is before us on obtaining leave to appeal under Article 136 of the Constitution of India.

Learned counsel for the appellant submitted that the courts below including the High Court were in error in taking the view that the Rent Act was not applicable to the suit shop. It was submitted placing reliance on house connection register extract issued by the Municipal Board Kandhala that the construction was already existing on the plot as water connection was taken by the respondent-landlord on 1.11.1973 for domestic purpose. If that is so, then by 1991 more than 10 years had elapsed since the construction of the house and consequently, the relevant provisions of the Rent Act cannot be said to have not applied to the suit premises.

It may be mentioned that the landlord has relied upon an extract of tax assessment register of the same Municipality which showed that from 1972-73 upto 31.3.1982 the place where the suit shop is constructed was only a plot being 515 plot (II) and the annual value of the same was Rs. 72/- and house and land tax was Rs. 2.52 paise per year. It was thus attempted to show that there was no house till 1982. Therefore, the contention of the tenant that he was a tenant since 1977 in the constructed shop and therefore, more than 10 years had elapsed since construction of the shop was thus tried to be repelled.

In our view the contention of the tenant cannot be accepted. What is to be seen is the date on which the construction can be said to have been put up by the landlord for the purpose of earning immunity from applicability of the Rent Act. Learned counsel for the appellant in this connection relied upon a decision of this Court in the case of Surendra Kumar Jain alias Sunni vs. Shanti Swaroop Jain and others reported in 1995 Supp. (3) SCC 413 wherein a Bench of two judges of this Court (wherein one of us, Majmudar J. was a Member) considered the very same explanation to the Rent Act. It observed that in terms of Explanation I to sub-section (2) of Section 2 of the rent Act construction of a building is deemed to have been completed on the date on which completion thereof is reported or otherwise recorded by local authority having jurisdiction and in the case of 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 date would be relevant for deciding the question of date of construction of the premises. On the facts of that case it was found that the Municipal authorities had given notice of assessment on 15.11.1977 and the date of assessment was thereafter. It was held that in such a situation the earliest of the dates would be relevant for Explanation I to sub-section (2) of Section 2 of the Act and as that aspect was not considered by the High Court the proceedings were remanded for reconsideration. We may note that after remand the High Court came to the conclusion that the construction could be said to have been completed when the Municipal authority recorded such fact of construction and gave notice for assessment of tax. The said decision was again brought in challenge before this Court and that decision was upheld in the case of Surendra Kumar Jain vs. Shanti Swarup Jain and Ors. reported in AIR 1977 SC 2291 wherein once again justice G.N.Ray speaking for the Court held that as the Municipality had issued the letter on 30.1.1978 to the respondents and even the building constructed was inspected by the Section Head Clerk of the Municipality on 30.1.1978 the first of the dates on which the Municipality had given such a notice would be relevant for the purpose of Explanation I.

The Rent Act provides that relevant provisions thereof will not apply to buildings for a period of 10 years from the date of completion of their construction. Under the scheme of Section 2 of the Rent Act, only the newly constructed buildings are given immunity from being governed by the protective provisions of the Rent Act. This immunity is for a period of 10 years and the said period starts from the date of completion of the construction of the buildings concerned. This provision is enacted presumably to give fillip to construction activities. However, for deciding the question of immunity the deemed date of construction of building is provided in Explanation I to sub-section (2) of Section 2 of the Rent Act.

It will be appropriate to refer to these relevant provisions.

"2. Exemption from operation of Act - (1)

Nothing in this Act shall apply to the following, namely:-

(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 to this Act shall apply to a building during a period of ten years from the date on which its construction is completed:

Explanation I- For the purpose of this 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 either designed as separate units or are occupied separately by the landlord and one or more tenants or by different tenants:

In our view, the aforesaid decisions cannot be of any avail to the appellant in the facts of the present case. The reason is obvious. No evidence is available on record to show as to whether the municipal authorities had issued any notice or it recorded construction of the premises at any time prior to the date of assessment i.e. 1.4.1982. Once such evidence is absent and was not available and the only evidence available was the date of first assessment i.e. 1.4.1982 as per Explanation I to sub-section (2) of Section 2, the only date which could have been taken into consideration for deciding the question whether 10 years had elapsed from the date of construction of the building was the date of assessment i.e. 1.4.1982. 10 years had to be counted from that date.

In fact, the present controversy is squarely covered against the appellant by a decision of three Judge Bench of this court in the case of Om Prakash Gupta vs. DIG Vijendrapal Gupta reported in (1982) 2 SCC 61. Considering the very same explanation Justice Misra speaking for the Bench in paragraph 6 of the report observed that a perusal of Explanation I makes it abundantly clear that the date of occupation would be taken to be the date of completion of the construction only when there is no report or record of the completion of the construction or no assessment thereof. If there is an assessment, as in the present case it is, it will be the date of the first assessment which will be deemed to be the date of completion of the construction and in that view of the matter the building had not become more than ten years' old on the date when the revision came to be decided by the High Court. It is also to be noted that in the said decision the argument was that the building was occupied prior to the first date of assessment. That evidence was not held to be relevant for deciding the question of applicability of Explanation I as prior occupation by the tenant was not mentioned by the Legislature as one of the requirements for applicability of Explanation I to sub-section (2) of Section 2 of the Rent Act.

Consequently, the submission of learned counsel for the appellant that even de hors the explanation and the condition mentioned therein prior occupation of the premises by the tenant should be relevant cannot be countenanced. Even that apart reliance placed by the learned counsel for the appellant on the extract of sanction of water connection by the Municipality especially column 4 thereof wherein the word 'house' is mentioned, is of no avail to her as water connection might have been taken on 1.11.1973 but that by itself would not show that the construction of the suit shop had come into existence on that date and on the contrary, the document relied upon by the respondent to which we have already referred clearly indicates that the premises continued to be open plot till 31.3.1982. It is therefore, obvious that the suit premises had come into existence some where in the beginning of the financial year 1982. However, the date of actual construction of the shop would pale into insignificance in view of express terminology of Explanation I to sub-section (2) of Section 2 of the Rent Act as clearly ruled by the three Judge Bench of this Court in the case of Om Prakash Gupta (supra).

In the result, the appeal fails and is dismissed.

However, at the request of learned counsel for the appellant, time to vacate the suit premises is granted to the appellant till 31.3.1999 on condition that the appellant files usual undertaking within four weeks from today in this Court. If such undertaking is not filed or any of the conditions is committed breach of, grant of time will stand recalled and the decree for possession will become executable forthwith. In the facts and circumstances of the case there will be no order as to costs.

JUDIS