

State of U.P. and Others

Vs

VII Additional District Judge and Others

Civil Appeal No. 1082 of 1992

(Kuldip Singh, G. N. Ray JJ)

16.09.1992

JUDGEMENT

G. N. RAY, J.:-

1. The question for our consideration in this appeal is whether the expression "Building" in Section 3(i) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (the Act) means only the superstructure or it includes the land underneath it also.

2. It is not necessary to go into the history of litigation between the parties, suffice it to say that the building in dispute was let out to the Sales Tax Department of the Government of Uttar Pradesh by one Devender Singh. His application under proviso to Section 21(8) of the Act for enhancement of rent was allowed by the Rent Control and Eviction Officer and he enhanced the rent of the building from Rs. 300/- to Rs. 5,622.87 per month. The appeal filed by the State of Uttar Pradesh before the Additional District and Sessions Judge, Saharanpur was dismissed. The State of Uttar Pradesh challenged the order of the courts below before the High Court by way of a writ petition under Article 226 of the Constitution of India which was dismissed by the High Court by its Order dated February 7, 1991. This appeal by way of special leave is against the judgment of the High Court.

3. Section 3(i) and the proviso to Sec.21(8) of the Act are reproduced hereunder:

Sec. 3(i) "building" means a residential or non-residential roofed structure and includes

(i) any land (including any garden), garages and out-houses, appurtenant to such building;

(ii) any furniture supplied by the landlord for use in such building;

(iii) any fittings and fixtures affixed to such building for the more beneficial enjoyment thereof.

Sec. 21(8) provided that in the case of such a building the District Magistrate may, on the application of the landlord, enhance the monthly rent payable therefor to a sum equivalent to one-twelfth of ten per cent of the market value of the building under tenancy, and the rent so enhanced shall be payable from the commencement of the month of tenancy following the date of the application.

Provided further that a similar application. for further enhancement may be made after the expiration of five years from the date of the last of enhancement.

4. The Rent Control and Eviction Officer and the Appellate Authority under the Act determined the value of the superstructure and also of the land separately and thereafter adding both the values, the monthly rent payable by the appellant was determined. The High Court upheld the reasoning and findings of the courts below.

5. Learned Counsel for the appellant has contended that the plain meaning of the expression "building" under Section 3(i) of the Act shows that it only means the superstructure constructed on the land and does not include the land underneath the building. According to him the inclusive definition of "building" is indicative of the fact that the expression "building" does not include the land underneath it.

6. Mr. R. K. Jain, learned Counsel appearing for the respondent-landlord has contended that the definition of "building" under Section 3(i) of the Act on the face of it is clear and according to him an inclusive part of the definition is only pertaining to the land appurtenant to the building and not the land underneath the building. He plausibly contended that the land under the superstructure apparently comes within the expression 'building' itself. Even otherwise there can be no justification for excluding the land underneath the building while construing the definition under Section 3(i) of the Act as there cannot be any superstructure without the land underneath it. Mr. Jain has, therefore, contended that within the definition of the building comprising roofed structure, the land on which the building stands automatically comes in and no valuation of such roofed structure can be completed without reference to the value of the land on which the roofed structure stands. Mr. Jain has relied on the judgment of this Court in *Dr. Kishore Chand Kapoor v. Dharam Pal Kapoor*, AIR 1987 SC 66. In Kapoor's case valuation of a building in the proceedings under Partition Act came for consideration before this Court. This Court upheld the value of the building which was determined by including the value of the land underneath the superstructure. In the said case this Court relied on an earlier judgment in *State of Kerala v. P. P. Hasan Koya*, AIR 1968 SC 1201, wherein while determining compensation under the Land Acquisition Act it was held that the value of the land and the break-up value of the building cannot be determined separately. It was further held that land and the building constitute one unit and the value of the entire unit has to be determined with all its advantages and potentialities.

7. After giving our anxious consideration to the facts and circumstances of the case, it appears to us that in the definition of building under S. 3(i) of the Act, there is no express exclusion of the value of the land on which the building stands. In the absence of such express exclusion, the land being intrinsically inseparable from the building standing thereon, the value of the land and the value of the structure or building should be taken into consideration and in our view the land on which the building stands together with the building or structure constitute one composite unit. It may be indicated that the value of two similar buildings or structure standing on similar parcel of land may differ substantially on account of locational advantage of the site in question. The difference of valuation of land because of such locational advantage creeps into the ultimate valuation of the building or structure making one building more valuable than the other although from the structural point of view, both the buildings are identical. In the aforesaid circumstances, the determination of valuation of the building by taking into consideration the value of the land in addition to the value of the structure, does not appear to be illegal and improper. In any case, the definition of "building" under the Act clearly shows that the building thereon means roof structure including the land underneath the said structure. Inclusive part of the definition only relates to the land appurtenant to

such building and not to the land underneath the roof structure.

8. We, therefore, find no reason to interfere with such determination made by the Rent Control and Eviction Officer since affirmed by the Appellate Authority and also by the High Court of Allahabad. The appeal, therefore, fails and is dismissed without any order as to costs.

Appeal dismissed.

</html