

Vindhyachal Prasad Jaiswal

Vs

VIIth Additional District Judge, Varanasi, and Others

Civil Appeal No. 2849 of 1993

(K. Ramaswamy, R. M. Sahal JJ)

29.04.1993

ORDER

1. Special leave granted.

2. The appellant is the tenant in Shop Nos. K-47/3 and K-47/343 situated in Varanasi town at a monthly rent of Rs. 180. The landlord issued notice under Section 106 of the Transfer of Property Act terminating the tenancy and laid the suit for ejection alleging that the appellant committed default in payment of rent. The trial court decreed the suit. On appeal, the District Judge confirmed the same. In writ petition under Section 227, the High Court in Civil Miscellaneous Writ Petition No. 14340 of 1992 dated September 21, 1992 confirmed the order of ejection. Thus this appeal by special leave.

3. The limited question argued across the bar is whether the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 for short the Act would apply to the building in question. Sub-section (1) of Section 2 exempts certain categories of buildings specified therein from the operation of the Act itself. Section 2(2) gives operational holiday to newly constructed buildings for a period of ten years from the date of the construction. The computation of ten years was envisaged in three-pronged manner thus :

"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.

Explanation I. - For the purposes 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 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;

(b) 'construction' includes any new construction in place of an existing building which has been wholly or substantially demolished;

(c) where such substantial addition is made to an existing building that the existing building becomes only a minor part thereof the whole of the building including the existing building shall be deemed to be constructed on the date of completion of the said addition.

Explanation II. - ....

Explanation III. - ...."

A reading of these provisions clearly indicates that nothing in this Act shall apply to a building during a period of ten years from the date on which its construction is completed. Explanation I specifies as to when the building for the purpose of Section 2 is completed. It postulates, firstly, that where there is a report of completion of the construction of the building the period of ten years would start from the date on which the report was made. Equally if recorded in the records of the local authority from the date of such recording. In its absence, the second method of computation of the period is the assessment of the building to property tax under the Municipal Law. The date on which the first assessment thereof came into effect would be the crucial date. If there are different assessments on different dates in that behalf then earliest date is the date for the computation of the period of ten years. In the absence of either of the three methods, the last method is the date on which the building was actually occupied. If there are different dates of completion of construction of different portions or parts of a building by operation of the proviso and if separately occupied the computation would be in the aforesaid manner. If the building is wholly or substantially demolished and reconstructed, it would be a new construction. If a substantial addition was made to an existing one, being minor part the building shall be deemed to be constructed on the date of the completion of the said addition. It is the case of the appellant that he is in occupation in the ground floor. It was existing prior to 1976. The suit was filed on October 12, 1987, ten years had already elapsed by October 11, 1977 and therefore, the Act gets attracted to the demised building. By operation of Section 20(4) he is entitled to the notice being given by the landlord calling upon him for payment of arrears and if he does not pay within one month from the date of the receipt of the order or summons by the Court then he becomes liable for ejection. Since this procedure was not adopted in the suit for ejection in the civil court, the decree is a nullity as being without jurisdiction. Shri V. N. Ganpule, learned senior counsel for the appellant, sought support for that contention from the record produced by the respondent-landlord himself. In assessment orders Ex. 33 etc., it was admitted that the building was assessed to property tax from the years 1976 to 1988 which would establish that the ground floor was in existence prior to 1976, the exempted period of ten years came to a terminus by the date of suit and Section 2 has no application to the facts of this case. Mr. J. P. Goyal, learned senior counsel for the landlord resisted the contention contending that the ground floor was demolished and the reconstruction was started from the year 1978 and was completed in 1979 and the first floor was started in the year 1980 and was completed before 1983. As a result, the appellant occupied the shop in 1979 and therefore, exemption under Section 2 gets attracted. In view of this rival contention the only question for consideration is whether Section 2(2) of the Act gets attracted to the facts of this case or not. The District Court had proceeded on the footing that the ground floor was in existence as admitted by the witness Murari Lal examined on behalf of the appellant and the landlord commenced first floor in 1980 and took two or three years for

construction thereof and completed in the year 1983 inferentially a substantial addition added though no such finding was recorded. The assessment was made from the year April 1, 1983. Therefore, the exemption of ten years' limitation as envisaged in sub-section (2) of Section 2 of the Act is attracted. It was affirmed by the High Court. We have carefully considered the evidence on record. The basis on which the District Court proceeded and the High Court also affirmed does not appear to be well founded. It is not the case of the landlord that the ground floor was demolished though attempted to be argued so in this Court for the first time. It is also not the case that first floor is a substantial addition and as such clause (c) of Explanation to Section 2(2) is attracted. Each are independent. It is seen from the evidence that there is no clinching material to establish that the ground floor was demolished and new construction was made. On the other hand, the evidence as agreed to in the first instance by the District Court appears to be that the ground floor was in existence before the start of construction of the first floor. The assessment orders, Ex. 33 produced by the landlord himself, clearly shows that the building was assessed from the year 1976 to 1988. The circumstances would incline us to prima facie accept the contention of the tenant that the ground floor was assessed to property tax from the year 1976. But unfortunately, the High Court had fallen into an error in accepting the premise on which District Court proceeded and concluded that the exemption in Section 2(2) would apply. The evidence was not considered in the light of the law and the existing facts. The assessment of the evidence thus obviously is illegal. When the evidence was not properly considered in its proper perspectives, it is an error of law and the High Court would have corrected that error. Therefore, it is a case for the High Court to reconsider the matter afresh and decide it according to law. The order of the High Court is set aside and the matter is remitted for reconsideration and to decide it according to law. The appeal is allowed. Since the matter is pending for a long time, the High Court is requested to dispose of the matter as expeditiously as possible preferably within a period of six months from the date of receipt of the order. The parties shall bear their own costs.

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