**SUPREME COURT OF INDIA**

Munnalal Agarwal

Versus

Jagdish Narain and others

(V.N. Khare and S.N. Phukan, JJ)

Civil Appeal No. 3122 of 1995

16.11.1999

**JUDGMENT**

V.N. Khare, J.

The appellant herein is the landlord of Shop No. 142, Mohalla Parwaran in the town of Jhansi and the respondent is the tenant of the said shop on rent at the rate of Rs. 10 per month. It appears that there is a long-standing dispute between the parties regarding payment of rent with the result that the respondent tenant had been depositing rent under Section 7-C of U.P. Act 3 of 1947, By U.P. Act 13 of 1972, the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act 1972 ( in short "the Act") which came into force of the Act, the respondent continued to deposit rent under Section 30 of the Act. Section 5 of the Act provided that in case of tenancy continuing from before the commencement of the Act, in respect of a building to which the old Act was applicable, the landlord may, by notice in writing, given within three months from the commencement of this Act, enhance the rent payable therefore to any amount not exceeding the standard rent.

2. In pursuance of the aforesaid provision, the landlord sent a notice on 8.10.1972 enhancing the rent. Admittedly the said notice was received by the tenant on 19.10.1972. The period of three months from the date of commencement of the Act expired on 16.10.1972. Since the tenant did not pay the enhanced rate of rent to the landlord, the landlord brought a suit for ejectment of the tenant on the ground of default in payment of rent. The said suit was decreed by the trial court. However, on revision filed by the tenant the decree of the trial court was set aside and the suit was dismissed. The revisional court held that since the notice was given to the tenant on 19th October, much after months of commencement of the Act, the said notice was illegal land void and the landlord was not entitled to derive any benefit arising thereof. The landlord thereafter filed a petition under Article 226 of the Constitution. The High Court dismissed the said writ petition while affirming the order of the revisional Court. It is in this way the appellant is before us.
3. Learned Counsel appearing for the appellant urged that the word "given" occuring in Section 5 of the Act may be given a literal meaning. According to learned counsel the meaning of word "given" means, when the notice was sent to the tenant and not the date when it was received by the tenant and if such a meaning is assigned to the word "given", the notice of enhancement of rent sent by the landlord on 8.10.1972 ws a valid notice and the tenant having not complied with the notice had committed default in payment of arrears of rent,

rendering himself liable for ejectment from the premises in dispute. It is not disputed that the Act came into force on 15.7.1972 and three months of commencement of the Act expired on 16.10.1972. The notice for enhancement of rent was sent by the landlord on 8.10.1972 which was served on the tenant on 19.10.1972. The question that arises for consideration is what meaning should be assigned to the world "given" within three months occurring in Section 5 of the Act. Section 5 of the Act runs as under :

"5. *Rent payable in case of old building.*—In the case of a tenancy continuing from before the commencement of this Act, in respect of a building to which the old Act was applicable, the landlord may, by notice in writing, given within three months from the commencement of this Act, enhance the rent payable therefor to an amount not exceeding the standard rent, and the rent so enhanced shall be payable from the commencement of this Act."

If the interpretation as canvassed by learned counsel for the appellant is accepted, then the date on which notice was served on the tenant is immaterial and in that case a tenant can be subjected to default in payment of enhanced rent. The word "given" occurring in Section 5 of the Act distinctly shows that the legislature intended that notice must actually be delivered to the tenant within three months from the date of commencement of the Act. Mere sending notice or dispatching or posting the notice within three months is not the requirement of Section 5 of the Act. What the provision of the Act contemplated is that notice should be tendered, offered or handed over to the tenant within three months from the date of commencements of the Act and in case the service of notice is after three months of commencement of the Act, the landlord is not entitled to take benefit of such notice. Of course, if the notice for enhancement of rent is sent toot he tenant and is refused by him within three months from the commencement of the Act, it would be a valid notice. But it is not the case here. Notice for enhancement of rent was sent on 8.10.1972 which was received by the tenant on 19.10.1972.

4. We are, therefore, in agreement with the view taken by the High Court that the notice of the landlord having been served on the tenant after expiry of three months from the date of commencement of the Act the landlord was not entitled to take benefit of such notice.
5. Learned Counsel for the appellant then urged that if such interpretation is given to the word "given" then Section 5 itself would be discriminatory. His argument is that if notice is not given in three month, the landlord would forfeit his right for enhancement of standard rent for all times to come. What Section 5 provides is that by notice given within three months of the date of commencement of the Act, automatically the landlord becomes entitled to the enhancement of the rent, otherwise he has to apply for fixation of standard rent. The standard rent has been defined in Section 3(k), which reads as thus:

> "3.(k) ‘standard rent’, subject to the provisions of Sections 6, 8 and 10, means—
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> i. in the case of building governed by the old Act and let out at the time of the commencement of this Act—

a. where there is both an agreed rent payable therefor at such commencement as well as a reasonable annual rent [which in this Act has the same meaning as in Section 2(f) of the old Act, reproduced in the Schedule] the agreed rent or the reasonable annual rent plus 23 percent thereon, whichever is greater;

b. where there is no agreed rent, but there is a reasonable annual rent, the reasonable rent plus 25 percent thereon;

c. Where there is neither agreed rent nor reasonable annual rent, the rent as determined under Section 9;

i. in any other case, the assessed letting value, for the time being in force, and in the absence of assessment, the rent determined under Section9;"

2. If the landlord has not exercised his option as contemplated under Section 5 of the Act, it is still open to the landlord to apply for fixation of standard rent. We, therefore, do not find any merit in the submission of the learned counsel.
3. Learned counsel for the appellant lastly urged that the tenant has not deposited the arrears of time-barred rent and, therefore, was not entitled to the benefit of sub-section (4) of Section 20 of the Act. It appears that neither was any issue struck on this question nor did the trial Court of the revisional court address themselves on this issue. Therefore, the High Court was justified in not entertaining the said argument.
4. For the aforesaid reasons, we do not find any merit in this appeal. It is, therefore, dismissed. There shall be no order as to costs.