

ALLAHABAD HIGH COURT

Tilak Raj

Vs

Sardar Devendra Singh

(Hariswarup,J.)

09.09.1976

JUDGEMENT

Hariswarup,J

(1.) THIS revision arises out of a suit for ejection of the defendant from the building in dispute. The plaintiff claimed that the defendant was the tenant and the tenancy having been terminated he was liable to be ejected. In defence it was urged that the suit for ejection was not maintainable in view of the provisions of the U. P. Urban Buildings (Regulation of letting, rent and Eviction) Act 1972. The trial court held that the building was constructed within ten years of the enforcement of the Act and hence it was not covered by the Act. The defendant went up in revision and urged that the finding of the trial court was perverse. Some further evidence was led in the revisional court by the defendant and in rebuttal evidence was led by the plaintiff. The learned Additional District Judge also on the basis of the evidence subsequently produced before him, agreed with the finding of the trial court and dismissed the revision.

(2.) THE contention of the learned counsel for the applicant is that evidence of the defendant before the revisional court consisted of large number of documents but the same have not been considered. It is immaterial because the other evidence which relate to actual occupation of the building could not have led to a finding other than the one recorded by the learned District Judge. The evidence relied upon by the court below is the evidence regarding the assessment of the building to the property tax. A resolution of the Municipal Board dated 30th March 1967 was produced on the basis of it the court came to the conclusion that this building was subjected to assessment for the first time with effect from April 1, 1967. On that finding, the court below has held that the building is not covered by the 1972 Act. Section 2 (2) of the Act provides exemptions of buildings from the operation of the Act. It provides: "(2) Except as provided in sub-section (2) of section 24 or subsection (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-For the purposes of this sub-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." ;