

ALLAHABAD HIGH COURT

Samundri Devi

Vs

Nand Kishore Marwah

(V.K. Mehrotra, J.)

29.09.1986

JUDGEMENT

V. K. Mehrotra, J.

(1.) THESE are revisions under section 25 of the Provincial Small Causes Court Act. The applicant in Civil Revision No. 83 of 1986 is the plaintiff-landlord. The applicants in the other two revisions are tenants. THESE revisions were heard together as the principal question involved in each of them is the same. And, the question is whether the date of completion of construction of a building is to be determined in accordance with the 'deeming provision' contained in Explanation I to section 2 (2) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for brief, the Act) even where the plaintiff himself discloses a date of such construction which is different from the one contemplated by the Explanation. In Civil Revision No. 83 of 1986, an additional question was canvassed before me. The question is whether tenancy of distinct tenements can be terminated by a common notice under section 106 of the Transfer of Property Act and a single suit in respect of such tenements with distinct tenancies could be instituted. But, first the facts. In Civil Revision No. 83 of 1986 Smt. Samundri Devi, the plaintiff, made an admission through her counsel before the Income Tax authorities that the completion of construction of the premises in dispute in the suit was on August 31, 1975. The statement of the plaintiff's husband, as her attorney, under Order 10 Rule 2 CPC before the trial court that the accommodation in question was given on rent to M/s. Bahal and Duggal Company on June 25, 1976. The accommodation was, however, assessed for the first time to House Tax and Water Tax by the Nagar Palika, Ghaziabad with effect from October 1, 1976.

(2.) IN Civil Revision No. 390 of 1986 the assertion in paragraph 3 of the plaint is that the construction of the house was completed in the beginning of December, 1974. IN paragraph 4 of the plaint, it was added that the provisions of U. P. Act No. 13 of 1972 were not applicable to the accommodation. The building was, however, first assessed to tax by the Nagar Palika with effect from October 1, 1976. In Civil Revision No. 448 of 1986 the plaintiff obtained the possession of the house from the Ghaziabad Development Authority in the year 1974. It was assessed to tax by the Nagar Palika in the year 1977 with effect from April 1, 1977. Now, the Law. Section 2 of the Act which deals with exemption from the operation of the Act says in sub-section (2) that :- " (2)

Except as provided in sub-section (5) of Section 12, sub-section (1-A) of Section 21, sub-section (2) of Section 24, section 24-A 24-B, 24-C 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 : Provided that Explanation I. 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 : 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)..... (c) "The submission made on behalf of the tenants is that where the date of completion of construction is given out by the plaintiff-landlord or is admitted to him, recourse to Explanation 1 cannot be had for finding out the said date. In other words, where there can possibly be no dispute about the date of completion of the construction of a building like a case where the landlord himself gives it out or admits it, one cannot look to the 'deeming provision' contained in Explanation I to find it out. Three decisions of this Court have been cited in support of this submission. The first of these is of K. N. Goyal, J. in *Laxmi Shanker Srivastava v. Dr. J. C. Sharma*, 1980 ARC 43. In that case the tenant had approached the High Court in a writ petition against a decision of the Judge, Small Causes Court directing his ejection which had been affirmed in revision by the Additional District Judge. The premises under tenancy were situated on the first floor. The ground floor had been constructed earlier and had been assessed to House Tax by the Nagar Mahapalika in 1953. The accommodation in question was part of the first floor about which the tenant himself had mentioned in earlier proceedings in the Court of Munsif that the portion in which he was a tenant was built in the year 1967-68 and had been let out for the first time to him in the year 1968 after it has been completed. The date of occupation of the accommodation had been mentioned by the tenant in the writ petition as July 1, 1968. The case of the landlord was that the accommodation was constructed in the year 1968 and the tenant was its first occupant. U. P. Act No. 13 of 1972 was not applicable to it. The plea of the tenant was that the provisions of the Act were applicable to it because the main building had been assessed to tax in the year 1953 and it was only some addition and alteration which had been made by the landlord, after getting a plan sanctioned from the Mahapalika, in the year 1968. The whole building was, therefore, likely to be treated to having been assessed in the year 1953.

(3 .) THE learned Judge negated the submission made on behalf of the tenant that there could not be different dates of completion of construction in respect of different parts of a building designed or occupied as separate unit and, on the basis of the admission of the tenant himself that the accommodation in dispute had been occupied by him for the first time after its completion in the year 1968, he said further that the finding of the two courts below based on pleadings and evidence could not be deemed to be illegal. THEREafter, he observed, though it was not really necessary, that "Moreover, if the date of construction is, according to the rules of pleadings, to be deemed as impliedly admitted, under Order VIII, Rule 5 CPC read with section

58, Evidence Act then the question of ascertainment of various dates mentioned in the said clause (a) of the Explanation does not arise. I thus find no good ground, in exercise of the writ jurisdiction, to disturb the concurrent finding of fact of the two courts on this point. " The second decision is of A. Banerjee, J. in Fateh Chand v. Ratan Singh Sethi, 1985 (1) ARC 513. This too was a writ petition filed against the order of the Additional District Judge allowing a revision under section 25 of the Provincial Small Causes Court Act setting aside the decree of the trial Court dismissing the suit for ejectment filed by the petitioner. The Additional District Judge had held that the provisions of the Act were applicable to the premises in suit. ;