

ALLAHABAD HIGH COURT

Tilak Chand

Vs.

Rent Control

Civil Misc. Writ No. 5193 of 1981

(K.J. Shetty, C.J., B. N. Sapru and A.N. Varma, JJ.)

06.02.1987

JUDGMENT

K.J. Shetty, C. J.

1. A Division Bench of this Court has referred this case to a Larger Bench while doubting the correctness of the decision in *Vinaya Kumar v. District Supply Officer*,¹ The question raised lies in a narrow compass and it arises in the following circumstances.

2. Sri Trilok Chandra, petitioner is the owner of the land which is under occupation of the tenant-respondent 2. The land was given under a lease dated May 10, 1948 for a period of 10 years. The rent payable there under was Rs. 25/- per month. The tenant was at liberty to raise construction but must remove the same and deliver vacant possession of the land to landlord after the term of the lease. The original lease was entered into by respondent 2 with the father of petitioner. Later on there was a family settlement by which the land came to be allotted against the share of petitioner who became the owner thereof.

3. Petitioner moved the Rent Control and Eviction Officer for determining the annual rent payable in respect of the land. The application was filed under Sub-Sec. (5) of Section 29-A, U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. 1972 ("Act" for short). The Rent Control and Eviction Officer upon hearing the parties rejected the application on the ground that there has been an agreement between parties for payment of rent in respect of the land and, therefore, the landlord has no right to have the annual rent determined. He has, however, recorded a finding that the original lease which was of the year 1948 has expired in 1958.

4. Challenging the validity of the order of Rent Control and Eviction Officer, petitioner has preferred the writ petition under Articles 226 of the Constitution.

5. Before examining the contention urged for the parties, it will be necessary to refer to provisions under which the landlord wants to have annual rent of the land determined. Originally the Act did not cover vacant land. It regulated letting, rent and eviction of only building. The tenant in possession of a land where he had erected permanent structure was left high and dry. He had no protection from eviction. In 1976, legislature stepped in to give protection even to such tenants. Section 29-A has been introduced by U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976 (Act No. 28 of 1976). It was brought into force with effect from July 5, 1976.

6. Sub-Sec. (2) of Section 29-A provides that the Section would apply only to land let out, where the tenant, with the landlord's consent has erected any permanent structure and incurred expenses in execution thereof. Sub-Section (3) extends to such tenants protection similar to those available to a tenant occupying any building. Sub-Sections (4) and (5) are crucial to this case. They are as follows :-

"(4) The tenant of any land to which this Section applies shall be liable to pay to the landlord such rent as may be mutually agreed upon between the parties, and in the absence of agreement, the rent determined in accordance with Sub-S. (5).

(5) The District Magistrate shall on the application of the landlord or the tenant determine the annual rent payable in respect of such land at the rate of ten per cent per annum of the prevailing market value of the land, and such rent shall be payable, except as provided in Sub-Sec. (6) from the date of expiration of the term for which the land was let or from the commencement of this Section. whichever is later."

7. The next Sub-Section of importance is Sub-S. (7). It reads :-

"(7) The provisions of this Section shall have effect, notwithstanding anything to the contrary contained in any contract or instrument or in any

other law for the time being in force."

8. The question raised in this petition relates to the right of petitioner under Sub-Ss.(4) and (5) of Section 29-A. For petitioner. Mr. Sudhir Agarwal, Senior Advocate contended that the parties after coming into force of Section 29-A have not mutually agreed as to rate of rent payable in respect of the land and in the absence of any such agreement, the rent has to be determined in accordance with Sub-S. (5). The counsel urged that the agreement as to rent must have been entered into after Section 29-A came into force and the existence of any antecedent agreement is no bar for determining the rent under Sub-S. (5). Mr. Rishi Ram, on the other hand, contended to the contrary. He submitted that if there has been an agreement between the parties as to payment of rent, then Sub-S. (5) cannot be invoked by the landlord. He strongly relied upon the decision of this Court in Vinaya Kumar Shukal case (1980 All LJ 462) in support of his contention.

9. Interrupting the narration we may now refer to the decision of this Court in Vinaya Kumar Shukal Case (1980 All LJ 462). There the tenant, like in the present case, had an agreement for payment of rent when he was put in possession of a vacant land. After Section 29-A was brought into force, the landlord moved the Rent Control and Eviction Officer under Sub-Sec. (5) for determination of annual rent. This Court while rejecting his claim observed :-

"Learned counsel for the petitioner urged that the landlord was entitled to enhancement of rent under Section 29-A of the Act. We find ourselves unable to accept the contention. Section 29-A protects a tenant of land on which building may be existing against enhancement of rent. No tenant to whom the land may have been let out either before or after the commencement of Section 29-A is liable to eviction. Section 29-A lays down that tenant of any land over which he may have constructed building with the consent of the landlord shall be liable to pay rent as agreed between the parties but in the absence of agreement the tenant shall be liable to pay the rent as determined in accordance with Sub-S. (5). Section 29-A empowers the District Magistrate to enhance the rent and to determine annual rent on the basis of the prevailing market value of the land. The District Magistrate has jurisdiction to determine the rent

only in those cases where there is no agreement relating to rent. If there is an agreement between the landlord and the tenant then the District Magistrate has no jurisdiction to determine the rent. In the instant case admittedly an agreement existed between the petitioner and the landlord the tenant shall pay rent at the rate of Rs. 170/- per annum to the landlord as such there could be no enhancement of the rent under Sub-S. (5) of Section 29-A. The Rent Control and Eviction Officer has, therefore, rightly rejected the petitioner's application".

10. It will be clear from these observations, that the Rent Control and Eviction Officer has no jurisdiction to determine the annual rent under Sub-S. (5) of Section 29-A if there existed an agreement relating to rent payable in respect of the land. To reach that conclusion this Court relied upon an agreement which was entered into by the parties before Section 29-A was brought into force.

11. The question for consideration is whether the landlord in such a case is precluded from exercising his right under Sub-S. (5) of Section 29-A. If Sub-S. (4) takes within its fold the agreement entered into even before coming into force of Section 29-A. then the landlord in the present case has no sustainable case. If on the other hand, Sub-S. (4) covers only the agreement entered into subsequent to Section 29A was brought into force then the landlord must succeed in this case.

12. We gave our anxious consideration to the rival contentions urged for the parties. We find ourselves unable to agree with the submission of Mr. Rishi Ram. The reason is this, Sub-S. (4) applies to the land to which Section 29-A applies. It provides that the tenant shall be liable to pay landlord such rent as may be agreed upon between the parties. In the absence of such agreed rent the subsection further provides that the tenant is liable to pay the rent determined in accordance with Sub-S. (5). These terms are clear enough and indicate that the agreement envisaged there under is not the agreement existed prior to coming into force of Section 29-A. It refers to subsequent agreement only. The words "such rent as may be mutually agreed upon between the parties" refer to future agreement and not the past agreement. Sub-Sec. (4) again emphasizes "such rent". Such rent in the context means the rent to be mutually agreed upon by parties. Sub-Sec. (4) further states that in the absence of agreement, the rent has

to be determined in accordance with Sub-S. (5).

13. When we turn to Sub-S. (5) our conclusion is further confirmed. Sub-Sec. (5) confers power on the District Magistrate to determine the annual rent at the rate of ten per cent per annum of the prevailing market value of the land. The rent so determined shall be payable from the date of expiration of the term for which the land was let or from the commencement of Section 29-A. whichever is later. It is clear from these provisions that the terms of the original lease have been kept undisturbed and the rights of parties there under are kept unimpaired. The landlord could get the annual rent of enhanced rent determined under Sub-S. (5), but it could take effect from the date of expiration of the term of the original lease or from the commencement of Section 29-A of the Act whichever is later.

14. Yet another reason to support our view could be found from Sub-S. (7). It provides that notwithstanding to the contrary contained in any contract or instrument or in any other law for the time being in force, the provisions of Section 29-A shall have effect. It means clearly that the agreement, if any, existing on the date of coming into force of Section 29-A is no bar for enforcing the rights under Sub-S. (5). Sub-Sections (4) and (5) shall prevail and not the antecedent agreement if any.

15. Viewed from any angle, we see no justification to reject the application of the landlord filed under Sub-Sec. (5). With respect, if we may say so, the decision in Vinaya Kumar Shukal case did not consider properly the effect of Sub-Sections (5) and (7) of Section 29-A and is overruled.

16. In the result, the writ petition succeeds and is allowed. The impugned order of the Rent Control and Eviction Officer is quashed. The matter stands remitted to him to dispose of the matter in accordance with law.

17. In the circumstances of the case, the parties shall bear their own costs.

Petition allowed.

Cases Referred.

1. 1980 All LJ 462