

Court No. - 17

Case :- WRIT - A No. - 1000106 of 2010

Petitioner :- Ali Ahmad Khan S/O Mohiuddin Khan

Respondent :- Smt. Badshah Khatoon W/O Mukhtar Ali Khan And Ors.

Counsel for Petitioner :- Shafiq Mirza, Syed Husain

Counsel for Respondent :- C.S.C., Mohiuddin Khan

Hon'ble Manish Mathur, J.

1. Heard Mr. Syed Husain learned counsel for petitioner and Mr. Mohd. Aslam Khan learned counsel for opposite parties 1 to 5. Notice to opposite parties 6 and 7 being merely proforma in nature is dispensed with.

2. Petition has been filed challenging order dated 13th April, 2006 passed by court concerned in the SCC Suit filed by predecessor-in-interest of private opposite parties for arrears of rent and ejection which was allowed. Also under challenge is the revisional order dated 14th July, 2010 whereby SCC revision preferred by petitioner as tenant was dismissed.

3. It has been submitted that the predecessor-in-interest of private opposite parties had instituted SCC suit bearing No.9 of 1999 for arrears of rent and ejection pertaining to a shop in question which had been let out to the petitioner. It has been submitted that trial court framed three issues with the first issue pertaining to whether any default of arrears of rent could be determined, second issue pertaining to validity of notice dated 13th November, 1998 under Section 106 of the Transfer of Property Act and the third issue pertaining to whether the premises in question were outside the scope of U.P. Act No.13 of 1972.

4. It has been submitted that the first issue was decided in favour of the tenant-petitioner and it was held that he was not a defaulter of the rent. The second issue was decided in favour of

the plaintiff-land lord in view of admission of the defendant/petitioner that he had received notice dated 13th November, 1998. It is submitted that however the trial court has committed an error in deciding issue No.3 in favour of plaintiff inasmuch as relevant statutory conditions and admission on the part of plaintiff-land lord made in the plaint were overlooked.

5. It is submitted that the SCC Revision No.8 of 2006 was thereafter preferred by the petitioner primarily raising challenge to decision of issue No.3 which also has been decided against petitioner by the revisional court.

6. It is also submitted that as per admission of land-lord, premises should have been determined to be constructed in 1979 and not 1986. If it had been so determined, exemption from Act was available only for 10 years and was thus unavailable as on date of filing of suit. He submits that both the courts erred in determining date of construction as 1986 and therefore exempting premises from the Act for 40 years.

7. Learned counsel for petitioner has drawn attention to paragraphs 2,3 and 5 of the plaint to submit that it is the admitted case of plaintiff that the shop in question was let out to petitioner by means of an agreement dated 20th January, 1979 and he was put in possession of the shop in question in pursuance thereof. It is submitted that it was also pleaded in the plaint that subsequently in the year 1989, renovation and alteration was made to the shop in question whereafter by mutual consent, rent of the premises was increased to Rs. 125.00 per month. It was also indicated that the premises was outside the purview of the U.P. Act No.13 of 1972 and that a notice for determination of tenancy dated 13th November, 1998 was issued to the petitioner.

8. Learned counsel has also drawn attention to the written statement to submit that the factum of non applicability of U.P. Act No.13 of 1972 was thereafter disputed by the petitioner

although receipt of notice was admitted.

9. Learned counsel has therefore submitted that once the plaintiff/land-lord in paragraph No.2 of the plaint himself has admitted the fact that petitioner was admitted into tenancy in pursuance of the agreement dated 20th January, 1979, it would be deemed that the premises in question were actually constructed prior to 20th January, 1979 and therefore the exemption of 10 years as provided under Section 2 of U.P. Act No. 13 of 1979 would not be applicable and the premises in question would therefore come within purview of Act of 1972. He has also submitted that the aspect of municipal records has been misconstrued by both the courts inasmuch as the assessment only indicated entry of petitioner as a tenant in the premises but not the date of construction. It is submitted that once the premises were constructed in the year 1979 with petitioner being granted possession thereof as a tenant, it was but natural that his name would be entered in the first assessment only in the year 1986 and not prior thereto and is a fact which has not been considered in its correct perspective by both the courts below. He has placed reliance on judgment rendered by Supreme Court in the case of Ram Saroop Rai versus Smt. Lilawati 1980 Allahabad rent Cases 466 as well as judgment rendered by Co-ordinate Bench of this Court in the case of Virendra Prasad Nigam versus Kalika Swaroop 1999 (17) Lucknow Civil Decisions 405.

10. Per contra learned counsel appearing on behalf of private opposite parties has refuted submissions advanced by learned counsel for petitioner with submission that mere assumption and admission by the parties pertaining to the lease agreement dated 20th January, 1979 loses importance in view of the subsequent alterations made in the shop in the year 1989 as was pleaded in the plaint. He has also adverted to the Explanation I

to paragraph 2(2) of the Act of 1972 to submit that oral evidence pertaining to possession and construction of a premises can be taken into account only in case the assessment records of municipal corporation were unavailable.

11. It is therefore submitted that since in the present case, assessment records were very much present, they have been rightly relied upon by both the courts below ignoring the oral testimony of parties pertaining to the first date of construction. Learned counsel has placed reliance on certain judgments in the cases of Om Prakash Gupta versus Digvijendrapal Gupta reported in 1982(1) ARC 391 and (Smt.) Prakash Rani @ Prakashwati versus VIth Additional District Judge, Bulandshahr and others reported in 2006(2) ARC 296.

12. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, the factual aspect as indicated herein above is undisputed. In paragraph 2 of the plaint, it has been specifically stated that tenancy over the premises in question was created vide agreement dated 20th January, 1979. Details of the shop have also been indicated therein whereafter it has been stated that substantial renovations were carried out in the premises in April, 1989.

13. On the basis of pleadings of parties, trial court framed three issues with first issue pertaining to whether the tenant was defaulter, second issue pertaining to validity of notice dated 13th November, 1998 and third issue pertaining to applicability of U.P. Act No.13 of 1972.

14. It is evident from perusal of the order passed by trial court that the defendant/petitioner was held not to be defaulter of rent of the premises in question while issue No.2 was decided in favour of plaintiff upholding the validity of notice dated 13th November, 1998 under section 106 of the Transfer of Property

Act.

15. The only dispute is with regard to issue No.3 regarding applicability of U.P. Act No.13 of 1972 which the trial court as well as revisional court held in favour of plaintiff.

16. Upon perusal of the decision rendered by trial court pertaining to said issue, it becomes apparent that trial court has considered the assessment registers pertaining to the years 1950-51, 1964-65, 1975-76, 1986-87 and 1994-95 to record a conclusion that the shop in question was entered into the municipal assessment records for the first time in the years 1986-87 with name of defendant-petitioner being indicated therein for the first time. The trial court has adverted to the earlier assessment registers to arrive at a conclusion that prior to 1985-86, the said shop was never entered in the municipal records nor was the petitioner indicated as a tenant thereupon prior to 1986-87 and on that basis came to a conclusion that since first assessment pertaining to the shop in question was only in the year 1986-87, then 27.6.1987 would be deemed to be the date of construction and not 1979 whereby trial court held that the premises in question would be exempt from provisions of Act of 1972 for a period of 40 years from the date of its first assessment.

17. The same reasoning and analogy has been followed by revisional court which also rejected petitioner's revision pertaining to issue No.3 while affirming the findings recorded by the trial court regarding issues No.1 and 2.

18. For determination of aforesaid dispute, it would be conducive to advert to Section 2(2) which is as follows:-

" (2) [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]:

[Provided that where any building is constructed substantially out of funds obtained by way of loan or advance from the State Government or the Life Insurance Corporation of India or a bank or a co-operative society or the Uttar Pradesh Avas Evam Vikas Parishad, and the period of repayment of such loan or advance exceeds the aforesaid period of ten years then the reference in this sub-section, to the period of ten years shall be deemed to be a reference to the period of fifteen years or the period ending with the date of actual repayment of such loan or advance (including interest), whichever is shorter.]:

[Provided further that where construction of a building is completed on or after April 26, 1985 then the reference in this sub-section to the period of ten years shall be deemed to be a reference to a period of [forty 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 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."

19. From the aforesaid, it is evident that the explanation 1(a) provides that the construction of a building shall be deemed to have been completed on the date on which completion thereof is reported to or otherwise recorded by local authority having jurisdiction and in case of a building subject to assessment, the date on which the first assessment thereof comes into effect with the earliest of different dates being the date of actual occupancy.

20. It is thus evident that the date of actual occupancy of premises and the date of construction is required to be seen only from the municipal assessment records.

21. Here the question which comes into play is the admission of

land-lord of having entered the petitioner into tenancy in pursuance of agreement dated 20th January,1979 viz-a-viz the provisions of Explanation 1(a) of Section 2(2) of the Act of 1972. The aforesaid aspect has already been considered by Hon'ble Supreme Court in the case of Ram Saroop Rai (supra) cited by learned counsel for petitioner in the following manner:-

" 7. It is common case that Shop Nos. 65 and 66 were owned by a common owner, Shri Brij Mohan, DW2. He sold only Shop No. 66 to the respondent. So, there is no doubt, that there was an existing building, Shop No. 66, long prior to the ten-years period mentioned in the statute. According to the testimony of Shri Brij Mohan, DW2, the old construction continued, but certain additions and remodelling were done. He had submitted a plan to the local authority indicating the original construction and the proposed additions, and that is marked as Exhibit in the case. This shows the existence of a prior building, the proposal being for addition or partial reconstruction and not for total demolition. If we go by the plan, it is not possible to conclude automatically that there is a new construction. If we go by Brij Mohan's evidence, the owner of the building at the relevant time, we cannot necessarily hold that the existing building has been substantially demolished and reconstructed. Indeed, his evidence is to the effect that the construction such as was made was beyond the 10 years period.

8. Unfortunately, it is not possible for the purchaser-respondent or the tenant appellant to give direct testimony about the time of the construction or the nature of the construction vis-a-vis Explanation (b) or (c). The best testimony is the municipal records about the completion of the building and the verification by the municipal authorities as to whether a new construction has come into being or an old construction has been remodeled and, if so when exactly the completion took effect. The municipal assessment record produced in the court merely state "increased assessment". It may suggest the existence of an assessment which has been increased or it may perhaps be argued that when the building was reconstructed a new assessment was made which was more than the previous assessment and, therefore, was described as increased assessment. The oral evidence in the case, apart from what we have set out, is inconsequential, being second-hand testimony. Even the recital in the rent deed that there was a new construction in 1965-66 is by the appellant and the respondent, neither of whom has any direct knowledge about the construction. Of course, an admission by the appellant is evidence against, him but an admission is not always conclusive especially in the light of the municipal records such as are available and the burden such as has been laid by the statute.

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10. The statute makes it clear that reliance upon the municipal records, rather than on the lips of witnesses, is indicated to determine the date of completion and the nature of the construction. This statutory guideline has been wholly overlooked and the burden lying on the landlord has not been appreciated. The result is that the eviction order has to be demolished."

22. The aforesaid case is particularly applicable in the present case since there also the existence of prior building and its subsequent renovations and additions were admitted however Hon'ble Supreme Court discarding such admissions, has expounded that the best testimony is the municipal records about completion of building and verification by municipal authorities as to whether a new construction has come into being or an old construction has been remodelled and if so, when exactly the completion took effect. It has also been held that an admission is not always conclusive especially in the light of municipal record such as are available and the burden such as has been laid by statute.

23. It is thus evident that Hon'ble Supreme Court has clearly held that it is only the municipal records and entries made therein which are conclusive for determination of date of construction of the premises and not admissions made by the parties.

24. The aforesaid aspect has also been considered by Co-ordinate Bench of this Court in the case of Virendra Prasad Nigam (supra) which in turn has placed reliance on another judgment rendered by Hon'ble Supreme Court in the case of Vindhyachal Prasad Jaiswal versus VII. Additional District Judge Varanasi and others 1995 (1) Allahbad Rent Cases 318 SC in the following manner:-

"10. From the provisions of Explanation-1, referred to above, it is evident that construction of a building is to be deemed to have been completed on the date on which completion thereof is reported to or recorded by local authority having jurisdiction and in case of a building, subject to the assessment, the date on which first assessment thereof comes into effect, and where said dates are different, earliest of the said dates and in the absence of any such report, record or assessment, the date on which it is actually occupied, for the first time by any person.

11. Thus, completion of the construction of the shop in dispute had to be determined in the light of the aforesaid statutory provisions and not otherwise. In Vindhyachal Prasad Jaiswal v. VII Addl. District Judge, Varanasi and others (supra), it was ruled by the apex court as under:-

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-1 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 shall 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 these 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 of the building shall be deemed to be constructed on the date of the completion of the said addition."

25. The aforesaid judgment also indicates the proposition that it is only in the absence of municipal records that the last method of actual occupancy of a building would be determined to be the date of construction.

26. Trial court has also placed reliance on judgment rendered by this court in the case of Nand Ram Goel versus Abhai Singh 1994 (2) Allahabad Rent Cases 319 which also appears to be on the same aspect.

27. Upon applicability of aforesaid judgments in the present facts and circumstances of the case, it is thus apparent that the trial court as well as revisional court has placed reliance on the municipal records by discarding the oral testimony of the defendant/petitioner and the admission of plaintiff/land lord.

28. Learned counsel for petitioner has submitted that both the courts have misconstrued the entries made in the municipal records since the same pertains only to the entry of name of petitioner as tenant and does not at all advert to the date of first date of construction of the premises. However perusal of

Section 2(a) (Explanation-I) does not make any distinction between the same.

29. It is also evident from judgment rendered by trial court that assessment records from the year 1950 onwards were examined to determine the reporting and assessment on the premises in question and after detailed assessment of evidence, a finding that the premises in question was never assessed prior to 1986-87 has been recorded.

30. In view of concurrent finding of fact recorded by both the courts which are clearly based on municipal assessment records and are in conformity with Section 2(2) of the Act of 1972, no exception can be taken to the judgments under challenge.

31. Consequently the petition being devoid of merits is dismissed. Parties to bear their own cost.

Order Date :- 17.5.2024

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