

Neutral Citation No. -2025:AHC:93155

A.F.R.

Reserved on 09.05.2025

Delivered on 30.05.2025

Case :- MATTERS UNDER ARTICLE 227 No. - 1199 of 2025

Petitioner :- Virendra Kumar Tripathi

Respondent :- Amit Dua And Another

Counsel for Petitioner :- Anil Babu, Ashwaini Mishra

Counsel for Respondent :- Manas Bhargava

Hon'ble Neeraj Tiwari, J.

1. Heard Sri Shashi Nandan, learned Senior Counsel, assisted by Sri Anil Babu, learned counsel for the petitioner and Sri Atul Dayal, learned Senior Counsel, assisted by Sri Manas Bhargava, learned counsel for the respondents.

2. Present petition has been filed with the prayer to set aside order dated 08.08.2024 passed by Rent Tribunal/ADJ Court No. 17 Kanpur Nagar in Rent Appeal No. 34/2024 as well as order dated 31.01.2023 passed by ADM(Judicial) in case no. 1616/2022 and the Execution order dated 17.12.2024 passed by ADM(Judicial) in Execution Case No. 7221/2024.

3. As only question of law i.e. interpretation of Section 9 and 10 of the UP Act No. 16 of 2021 (hereinafter, referred to as, 'Act, 2021') is involved, therefore with the consent of learned counsel for the parties, petition is being decided at the admission stage itself without asking for counter affidavit.

4. Brief undisputed facts of the case are that, petitioner was tenant of Sri Purushotam Lal Arora, who was owner of House No. 124/239 C Block Govind Nagar, Kanpur Nagar and petitioner is still running steel furniture shop in that house. Sri Purushotam Lal Arora sold out the aforesaid house to respondents by way of sale deed dated 05.03.2022. After purchasing the house in question, respondents sent notice dated 01.06.2022 to petitioner for execution of rent agreement on revised rent @ Rs. 45,000/- per month, but no rent agreement could be signed. At this stage, respondents filed application under Section 10 of the Act, 2021, which was registered as Misc. Case No. 1616 of 2022. The said case was allowed vide order dated 31.01.2023 fixing the rent @ Rs. 25,000/- per month. Against the said order, petitioner preferred Rent Appeal 34 of 2023, which was rejected vide order dated 08.08.2024 affirming the order dated 31.01.2023 passed by the Rent Authority in Misc. Case No. 1616 of 2022. Hence, present petition.

5. Sri Shashi Nandan, learned Senior Counsel, appearing for the petitioner submitted that Section 9 and 10 of the Act, 2021 provides for

revision of rent. Section 9 of the Act 2021 clearly provides the formula to revise rent and as per section 9(3) of the Act, 2021 where the premises have been let out prior to 15.07.1972, it shall be deemed to have been let out on 15.07.1972 and in case premises has been let out on or after 15.07.1972, the date of revision of rent shall be one year after the date of the commencement of tenancy. It also provides that in case of residential accommodation, the rent shall be increased @ 5 per cent per annum and in case of non residential premises @ 7 per cent per annum.

6. In the present case, the building is non residential, therefore, rent has to be enhanced @ 7 per cent per annum. He next submitted that Rent Authority, while determining the rent in terms of Section 10 of the Act, 2021 has ignored the provision of Section 9 and only considering the market rent in the surrounding area has decided the rent. He next submitted that as per Section 9(5) of the Act, 2021, in case of tenancy entered into before the commencement of this Act, landlord shall by notice in writing to tenant, demand the enhanced rent and the rent so enhanced as prescribed under Section 9(3) of the Act, 2021 shall be payable within 30 days of service of notice. He next submitted that while revising the rent under Section 10 the Act, 2021, Section 9(3) and 9(5) has to be taken into consideration. He lastly submitted that while determining the rent under Section 10 of the Act, 2021, compliance of Section 9(3) is mandatory, therefore, without considering Section 9(3) of the Act, 2021, any order passed under Section 10 of the Act, 2021 is liable to be set aside.

7. Per contra, Sri Atul Dayal, learned Senior Counsel, appearing for the respondents submitted that there is no doubt that Section 9 of the Act, 2021 provides for revision of rent, but that shall only be applicable in case of rent agreement between the parties. He next submitted that as per Section 9(3) of the Act, 2021, in case of any agreement between the parties prior to commencement of the Act, 2021, rent shall be revised in terms of Section 9(3) of the Act, 2021. He further submitted that if there is no tenancy agreement prior to commencement of the Act, 2021 and after sending of notice, if the tenant and landlord fails to execute the tenancy agreement, rent shall be decided in accordance with Section 10 of the Act, 2021 and Section 9 of the Act, 2021 would not be applicable. In the present case, it is undisputed that there is no rent agreement between the parties and after purchasing the house in question, respondent-landlord has given notice to petitioner to execute the tenancy agreement for enhancement of rent, but the same could not be signed as the tenant did not show any willingness to execute the rent agreement pursuant to notice dated 01.06.2022. Therefore, rent authority has rightly fixed the rent in terms of Section 10 of the Act, 2021 read with Section 9(5) of the Ac, 2021 and there is no infirmity or illegality in the order of rent authority.

8. I have considered the submission advanced by the learned counsel for the parties and perused the record.

9. For the present controversy, Section 9 and 10 of the Act, 2021 are relevant and the same are being quoted hereinbelow:

“9. Revision of Rent.”-(1) *The revision of rent between the landlord and the tenant shall be in accordance with the terms of the tenancy agreement.*

(2) Where, after the commencement of tenancy, the landlord has entered into an agreement in writing with the tenant prior to the commencement of the work and has incurred expenditure for carrying out improvement, addition or structural alteration in the premises occupied by the tenant, which does not include repairs necessary to be carried out under Section 15, the landlord may increase the rent of the premises by an amount as agreed to between the landlord and the tenant, and such increase in rent shall become effective from one month after the completion of such work.

(3) Subject to any agreement in writing, where the premises have been let out before the commencement of this Act, the rent thereof shall be liable to be revised for a further period of two years from the commencement of this Act, according to the formula indicated below-

(a) where the premises have been let out prior to 15.07.1972, it shall be deemed to have been let out on 15.07.1972;

(b) where the premises have been let out on or after 15.07.1972, the date for revision of rent shall be one year after the date of commencement of tenancy.

The rate of rent payable in above cases shall be liable to be increased at the rate of 5% per annum in case of residential accommodation and 7% per annum in case of non-residential premises, and the rate of increase of rent shall be compounded on an yearly basis. The amount of rent so arrived at shall again be liable to be increased at the aforesaid rates per annum in similar manner up to the commencement of this Act.

Notwithstanding anything mentioned above, if rent of premises had been revised during continuance of tenancy after 15.07.1972, the formula of revision of rent mentioned above shall be applicable from the date of such revision of rent:

Provided that notwithstanding anything mentioned above, the revised rent payable as per formula indicated in aforesaid provision, shall be payable as below from the date of commencement of this Act:

(i) in the first year, half of the rent so computed; and

(ii) in the second year, full amount of rent so computed.

(4) Notwithstanding anything contained in sub-section (1) of Section 3 wherein any premises referred to, has been let out to a tenant, the landlord of such premises shall also be entitled for revision of rent in accordance with provisions of clause (3) and the relevant provisions of this Act shall apply to such cases.

(5) In the case of tenancy entered into before the commencement of this Act the landlord shall, by notice in writing to the tenant, demand the enhanced rate of rent as specified under sub-section (3) and the rate of rent so enhanced shall be payable within 30 days of the service of notice. In such event the tenancy agreement shall be deemed to be amended and enhanced rate of rent shall be the rent payable under Section 8:

Provided that if there was no tenancy agreement before the commencement of this Act, the landlord and the tenant may mutually agree to execute tenancy agreement for enhanced rate of rent failing which the rent authority shall determine the enhanced rent subject to the provisions of Section 10.

(6) No arrears of aforesaid enhanced rent shall be payable or recoverable for the period prior to commencement of this Act.

10. Rent Authority to determine the revised rent in case of dispute. *-(1) In case of any dispute between the landlord and the tenant regarding revision of rent, the Rent Authority may, on an application made by the landlord or tenant, determine the revised rent and other charges payable by the tenant and also fix the date from with such revised rent becomes payable.*

(2) In determining the rent to be revised, the rent Authority may be guided by the prevailing market rent in the surrounding areas let out on rent.

(3) Once a determination under this section has been made, no application for fresh determination shall lie for a period of one year after the said determination.

(4) The Rent Authority may determine provisional rent during the proceedings for revision of rent which shall be subject to final determination.

10. There is no doubt that in case of agreement in writing, rent has to be revised strictly in accordance with Section 9(3) of the Act, 2021, which provides enhancement of 5 per cent per annum in case of residential accommodation and 7 per cent per annum in case of non residential accommodation. Section 9(5) of the Act, 2021 provides that in case tenancy entered into before the commencement of the Act, 2021, landlord shall by notice in writing to tenant demand the enhancement of rent as specified under Section 9(3) of the Act, 2021, but proviso to Section 9(5) of the Act, 2021 clearly provides that if

there was no tenancy agreement before the commencement of the Act, 2021 and after notice, tenant and landlord fails to execute any tenancy agreement, the rent authority shall determine the enhanced rent under the provision of Section 10 of the Act, 2021.

11. Therefore, from the perusal of Sections 9 and 10 of the Act, 2021 the legal position so emerges is that, in case of tenancy agreement between the parties, rent shall be revised in terms of Section 9(3) i.e. in case of residential property the enhancement would be @ 5 per cent per annum and for non-residential property, it would be @ 7 per cent per annum.

12. Further, in terms of Section 9(5) of the Act, 2021 in case tenancy agreement between the landlord and the tenant, the landlord by notice in writing to tenant, demand the enhanced rent in terms of Section 9(3) of the Act, 2021, which would be payable within 30 days from the date of notice. Further, tenancy agreement shall be deemed to be amended and enhanced rent shall be payable under Section 8 of the Act, 2021.

13. Proviso to Section 9(5) of the Act, 2021 provides that in case there is no tenancy agreement before the commencement of this Act, landlord and tenant may mutually agree to execute a tenancy agreement for the enhanced rent and in case they fail to do so, rent authority shall determine enhanced rent strictly in accordance with Section 10 of the Act, 2021. Section 10 of the Act, 2021 provides procedure for revision of rent in case of dispute. From conjoined reading of proviso to Section 9(5) and 10 of the Act, 2021, it is absolutely clear that in case of absence of rent agreement, if a dispute arose about the revised rent, same shall be decided strictly in terms of Section 10 of the Act, 2021 and the rent would be revised considering the prevailing market in surrounding area let out on rent.

14. So far as present case is concerned, it is undisputed that there is no tenancy agreement before the commencement of the Act, 2021 and further, after receiving of notice dated 01.06.2022, no tenancy agreement could be signed. Therefore, in light of proviso to Section 9(5), enhanced rent has to be fixed in accordance with Section 10 of the Act, 2021. Section 10 of the Act, 2021 provides that while determining the rent, rent authority may calculate the prevailing market rent in the surrounding areas let out on rent. While deciding the rent case, the rent authority has considered the rent agreement dated 10.08.2021 of same locality, which was Rs. 60,000/- per month. The rent authority has considered the prevailing market rate in surrounding areas and accordingly fixed the rent @ 25,000/- per month, which has also been affirmed by the rent tribunal.

15. Therefore, this Court is of the view that rent tribunal and rent authority have rightly fixed the rent in accordance Section 10 of the Act, 2021 read with proviso to Section 9(5) of the Act, 2021.

16. Accordingly, in view of facts and circumstances of the case, I find no infirmity or illegality in the order dated 31.03.2023, 08.08.2024 and 17.12.2024.

17. Petition lacks merit and is hereby **dismissed**.

18. No order as to costs.

Order date:- 30.05.2025

ADY