

Court No. - 9

Case :- MATTERS UNDER ARTICLE 227 No. - 8312 of 2016

Petitioner :- Ajai Kumar Garg

Respondent :- Shri Ashok Kumar Pachauri

Counsel for Petitioner :- Aklank Kumar Jain

Counsel for Respondent :- Pankaj Agarwal,S.C.

Hon'ble Anjani Kumar Mishra,J.

Heard Shri P.K. Jain, learned Senior Advocate assisted by Shri Aklank Kumar Jain for the petitioner and Shri Pankaj Agarwal for the contesting respondent.

This petition arises out of a JSCC Suit No. 99 of 1998 filed by the respondent for eviction and damages for use an occupation at the rate of Rs. 770 per month.

The suit was decreed vide judgment dated 11.11.2011 and the consequential revision no. 34 of 2011 has been dismissed vide judgment dated 20.08.2016. Hence this petition.

It appears that the parties entered into a registered lease agreement dated 19.08.1988 for the period of 10 years. On the expiry of the period of lease, a notice dated 21.08.1988 is alleged to have been sent to the petitioner tenant and, thereafter the suit was filed. The dispute pertains to a shop situated on Subhash Road, Kol Aligarh.

The submission of counsel for the petitioner is that the accommodation in question was an old construction and, therefore governed by the provisions of U.P. Act No. 13 of 1972. In support of this contention, it has been submitted that the landlord obtained it by a compromise decree in Original Suit No. 881 of 1987, which was for declaration about a family settlement of 1973. A copy of the decree has been filed along with a supplementary.

With this same supplementary affidavit a copy of the interim order in SCC Revision No. 482 of 2014 has also been filed, which arises from a suit regarding another shop situated in the same building. Therefore the submission also is that an identical dispute regarding the applicability of the U.P. Act No. 13 of 1972 to the building where a shop in dispute is situated is pending consideration before this Court.

It would however be relevant to note that it is not disputed that the documents, which have been annexed along with the

supplementary affidavit dated 07.10.2016 were not before the courts below in the proceedings wherefrom this petition arises.

It is next submitted that the registered lease agreement contained a renewal clause being clause no. 8 of the said agreement. The petitioner on 09.09.1998 sent a notice to the plaintiff-respondent for renewal of the lease and since there was no violation of the terms of the lease agreement, by him, the lease was liable to be renewed but was not renewed by the landlord.

It has additionally been submitted that the map sanctioned at the instance of the landlord on 03.05.1988 was only for renovation of the building whose first assessment is of the year 1975. The burden of proving building is a new one is upon the landlord, in view of Section 2(2) Explanation 1(a) of U.P. Act No. 13 of 1972 and that the plaint contains no pleading as regards 'b' and 'c' of this Explanation 1.

In support of his contention, counsel for the petitioner has relied upon the following three judgments:-

1. ***Ram Saroop Rai Vs. Smt. Lilawati, 1980 ARC page 466.***
2. ***Shiv Charan Dass Vs. Ujagar Mal and others, 1998 (2) ARC page 20, especially paragraph 8 thereof.***
3. ***Puran Singh Vs. Dr. R.P. Agarwal, 1994 (2) ARC page 433, especially paragraph 24 thereof.***

Counsel for the respondent has also relied upon ***Delhi Development Authority Vs. M/s Anant Raj Agencies Pvt. Ltd., 2016 (4) AWC 3688.***

Shri Pankaj Agarwal, counsel appearing for the landlord in support of the impugned orders has stated that clause 1 of the Registered rent agreement between the parties states that the shop had been reconstructed and the reconstruction was completed in August 1988. This clause in the registered rent agreement amounts to waiver of rights and the protection of U.P. Act No. 13 of 1972, especially when this clause is read in conjunction that the judgments of the Apex Court in ***Lachoo Mal Vs. Radhye Shyam, AIR 1971 SC 2213*** and ***The Rajasthan State Industrial Development and Investment Corporation & Anr. Vs. Diamond and Gem Development Corporation Ltd. & Anr., AIR 2013 SC 1241.***

Elaborating further he has submitted that once a fact had been admitted in the rent agreement, it is not open for the tenant to

approve and disapprove and also because the words used in the registered rent agreement have to be given their literal meaning. He has also referred to the finding in this regard recorded by the Small Causes Court on page 85 of the paper book.

He has also submitted that the tenancy was for a fixed term and the same stood determined by efflux of time. No notice was thereafter, required to be sent to the tenant. Merely because the tenant had demanded renewal of the lease agreement, the same would not confer any right upon him, especially when no rent has been tendered by him upon expiry of the term of lease.

In rejoinder counsel for the petitioner has submitted that the entire rent due had been deposited by him on the first date of hearing of the suit.

The Supreme Court in *Ram Saroop Rai* has held it is for the landlord to prove that he is entitled to the exemption from U.P. Act No. 13 of 1972, in view of section 2(2) thereof.

Similarly, the High Court in *Shiv Charan Dass* has held that the landlord has to prove his plea of demolition and reconstruction of an old building by reliable oral or documentary evidence.

In *Puran Singh* the High Court has expressed the opinion that an admission by a tenant regarding the age or date of construction of the building, by itself, is not conclusive.

Per contra, the Apex Court in *Rajasthan State Industrial Development and Investment Corporation* has held that a person who, knowingly, accepts the benefits of a contract, is estopped from denying its validity or its binding effect in view of the doctrine of estoppel by election. It has further gone on to hold that an agreement between the parties is to be interpreted giving a literal meaning to the words used therein, except in the case of ambiguity, failing which, the Court would end up creating a new agreement.

In *Lachoo Mal* the Apex Court has held that a party can waive a benefit available to it under the Rent Control Act (U.P. (Temporary) Control of Rent and Eviction Act) by an agreement if it is not illegal or unlawful.

Upon a consideration of the case law noticed above, coupled with the fact that the rent agreement was a registered agreement, not denied by any of the parties thereto, and the petitioner tenant sought renewal/extension of his tenancy, he is estopped from claiming that something stated therein was, incorrect.

Besides, there does not appear to be any evidence on record to hold that the construction was an old one, contrary to clause 1 of the rent agreement. The documents filed along with the supplementary affidavit before this Court were not filed before the Courts below and therefore, cannot be looked into to judge the validity or legality of the orders impugned.

In view of the above, I do not find any merit in the submissions made by Counsel for the petitioner, while submission of Counsel for the respondent that the tenancy stood determined by efflux of time and that the lease was neither extended or renewed, has force. For the same reason the orders impugned do not suffer from any illegality that would warrant interference.

Accordingly, the writ petition fails and is dismissed.

Order Date :- 02.07.2018

Mayank