

MUNNALAL AGARWAL
v.
JAGDISH NARAIN AND ORS.

NOVEMBER 16, 1999

[V.N. KHARE AND S.N. PHUKAN, JJ.]

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

Sections 3(k) and 5—Notice for enhancement of rent—Effect of—Held, landlord automatically becomes entitled to the enhancement of rent not exceeding the standard rent—Failure to exercise option under Section 5—Effect of—Held, landlord can still apply for fixation of standard rent.

Section 5—Notice for enhancement of rent—‘Given’—Interpretation of—Held, to derive benefit of notice it should be delivered to tenant within 3 months from date of commencement of the Act—Mere sending, dispatching or posting notice within 3 months is not the requirement of the Section.

Section 5 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 provided a condition under which landlord could enhance the rent payable to any amount not exceeding the standard rent by a notice in writing, given within three months from the date of commencement of the Act, i.e. 15.7.1972. As Section 5 was applicable, landlord sent a notice of enhancement of rent on 8.10.1972 which was received by the tenant on 19.10.1972. Since tenant failed to pay the enhanced rate of rent, landlord filed a suit for ejection on the ground of default of payment of rent which was decreed by the trial court. Revision filed by tenant was allowed on the ground that landlord was not entitled to derive any benefit of the said notice as it was given to the tenant after three months of the commencement of the Act. Against the said order landlord filed a petition under Article 226 of the Constitution which was dismissed by the High Court. Aggrieved by the judgement of the High Court, landlord has filed the present appeal.

The appellant contended that word ‘given’ occurring in Section 5 of the Act means the date when the notice was sent to the tenant and not the date when it was received by him; and that if notice is not given in three months then landlord would forfeit his right for enhancement of standard rent for all

A times to come;

Dismissing the appeal, the Court

HELD: 1. If the interpretation as canvassed by the appellant is accepted, then the date on which notice was served to the tenant is immaterial and in that case a tenant can be subjected to default in payment of enhanced rent. The word 'given' occurring in Section 5 of the U.P. Rent Act distinctly shows that the legislature intended that notice must actually be delivered to the tenant within three months from the date of commencement of the Act. Mere sending notice or dispatching or posting the notice within three months is not the requirement of Section 5 of the Act. What the provision of the Act contemplated is that notice should be tendered, offered or handed over to the tenant within three months from the date of commencement of the Act and in case the service of notice is after three months of the commencement of the Act, the landlord is not entitled to take benefit of such notice. The notice of the landlord having been served on the tenant after expiry of three months from the date of commencement of the Act the landlord was not entitled to take benefit of such notice. [456-C, D, E]

2. What Section 5 provides in that by notice given within three months of the date of commencement of the Act, automatically the landlord becomes entitled to the enhancement of rent. Standard rent has been defined in Section 3 (k). If the landlord has not exercised his option as contemplated under Section 5 of the Act, it would still be open to the landlord to apply for fixation of standard rent. [456-H, 457-A, E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3122 of 1995.

F From the Judgment and Order dated 5.9.94 of the Allahabad High Court in C.M.W.P. No. 4986 of 1981.

Manoj Swarup, Ms. Lalita Kohli and Ms. Maulina Swarup for the Appellant.

G H.K. Puri for the Respondents.

The Judgment of the Court was delivered by

V.N. KHARE, J. The appellant herein is the landlord of shop No. 142, Mohalla Parwaran in the town of Jhansi and the respondent is the tenant of the said shop on rent at the rate of Rs. 10 per month. It appears that there

is long standing dispute between the parties regarding payment of rent with the result the respondent tenant had been depositing rent under Section 7-C of the U.P. Act No. III of 1947. By U.P. Act No. XIII of 1972, U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short the Act) which came into force on 15th July, 1972, the Act No. III of 1947 was repealed. After coming into force of the Act, the respondent continued to deposit rent under Section 30 of the Act. Section 5 of the Act provided that in case of tenancy continuing from before the commencement of the Act, in respect of a building to which the old Act was applicable, the landlord may, by notice in writing, given within three months from the commencement of this Act, enhance the rent payable therefore to any amount not exceeding the standard rent.

In pursuance of the aforesaid provision, the landlord sent a notice on 8th October, 1972 enhancing the rent. Admittedly, the said notice was received by the tenant on 19th October, 1972. The period of three months from the date of commencement of the Act expired on 16th October, 1972. Since the tenant did not pay the enhanced rate of rent to the landlord, the landlord brought a suit for ejection of the tenant of the ground of default in payment of rent. The said suit was decreed by the trial court. However, on revision filed by the tenant the decree of the trial court was set aside and the suit was dismissed. The revisional court held that since the notice was given to the tenant on 19th October, much after three months of the commencement of the Act, the said notice was illegal and void and the landlord was not entitled to derive any benefit arising therefrom. The landlord thereafter filed a petition under article 226 of the Constitution. The High Court dismissed the said writ petition while affirming the order of the revisional court. It is in this way the appellant is before us.

Learned counsel appearing for the appellant urged that the word 'given' occurring in Section 5 of the Act may be given a literal meaning. According to learned counsel the meaning of the word 'given' means, when the notice was sent to the tenant and not the date when it was received by the tenant and if such a meaning is assigned to the word 'given', the notice of enhancement of rent sent by the landlord on 8th October, 1972 was a valid notice and the tenant having not complied with the notice had committed default in payment of arrears of rent; rendering himself liable for ejection from the premises in dispute. It is not disputed that the Act came into force on 15th July, 1972 and three months of commencement of the Act expired on 16th October, 1972. The notice for enhancement of rent was sent by the

A landlord on 8th of October 1972 which was served on the tenant on 19th October 1972. The question that arises for consideration is what meaning should be assigned to the word 'given' within three months occurring in Section 5 of the Act. Section 5 of the Act runs as under:

B "5. Rent payable in case of old buildings.-In case of a tenancy continuing from before the commencement of this Act, in respect of a building to which the old Act was applicable, the landlord may, by notice in writing, given within three months from the commencement of this Act, enhance the rent payable therefore to an amount not exceeding the standard rent, and the rent so enhanced shall be payable from the commencement of this Act."

C If the interpretation as canvassed by learned counsel for the appellant is accepted, then the date on which notice was served on the tenant is immaterial and in that case a tenant can be subjected to default in payment of enhanced rent. The word 'given' occurring in Section 5 of the Act distinctly shows that the legislature intended that notice must actually be delivered to the tenant within three months from the date of commencement of the Act. Mere sending notice or dispatching or posting the notice within three months is not the requirement of Section 5 of the Act. What the provision of the Act contemplated is that notice should be tendered, offered or handed over to the tenant within three months from the date of commencement of the Act and in case the service of notice is after three months of the commencement of the Act, the landlord is not entitled to take benefit of such notice. Of course, if the notice for enhancement of rent is sent to the tenant is refused by him within three months from the commencement of the Act, it would be valid notice. But it is not the case here. Notice for enhancement of rent was sent on 8th October, 1972 which was received by the tenant on 19th October, 1972.

F We are, therefore, in agreement with the view taken by the High court that he notice of the landlord having been served on the tenant after expiry of three months from the date of commencement of the Act the landlord was not entitled to take benefit of such notice.

G Learned counsel for the appellant then urged that if such interpretation is given to the word 'given' then Section 5 itself would be discriminatory. His argument is if notice is not given in three months, the landlord would forfeit his right for enhancement of standard rent for all times to come. What Section 5 provides is that by notice given within three months of the date of commencement of the Act, automatically the landlord becomes entitled to

H

the enhancement of the rent, otherwise he has to apply for fixation of standard rent. The standard rent has been defined in Section 3 (k), which reads as thus: A

“3(k): “standard rent”, subject to the provisions of Section 6, 8 and 10, means

(i) in the case of building governed by the old Act and let out at the time of the commencement of this Act— B

(a) where there is both an agreed rent payable therefore at such commencement as well as a reasonable annual rent (which in this Act has the same meaning as in Section 2(f) of the old Act, reproduced in the Schedule) the agreed rent or the reasonable annual rent plus 25 per cent thereon, whichever is greater; C

(b) where there is no agreed rent, but there is a reasonable annual rent, the reasonable rent plus 25 per cent thereon;

(c) where there is neither agreed rent nor reasonable annual rent, the rent as determined under Section 9; D

(ii) in any other case, the assessed letting value, for the time being in force, and in the absence of assessment, the rent determined under Section 9;”

If the landlord has not exercised his option as contemplated under Section 5 of the Act, it is still open to the landlord to apply for fixation of Standard rent. We, therefore, do not find any merit in the submission of the learned counsel. E

Learned counsel for the appellant lastly urged that the tenant has not deposited the arrears of time barred rent and, therefore, was not entitled to the benefit of sub-section 4 of Section 20 of the Act. It appears that neither any issue was struck on this question nor the trial court or the revisional court addressed themselves on this issue. Therefore, the High Court was justified in not entertaining the said argument. F

For the aforesaid reasons, we do not find any merit in this appeal. It is, therefore, dismissed. There shall be no order as to cost. G

A.K.T.

Appeal dismissed.