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Rajendra Shanker Shah and Others Vs Suneeta Devi and Others

Civil Miscellaneous Writ Petition No. 53272 of 2002

Court: Allahabad High Court

Date of Decision: Jan. 31, 2012

Acts Referred:
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 â€" Section 12(5), 2, 2(2), 20(4), 21(1A)#Uttar Pradesh Urban Planning and Development Act, 1973 â€" Section 27, 28

Citation: (2012) 2 ADJ 443

Hon'ble Judges: Dilip Gupta, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Hon. Dilip Gupta, J.
The petitioners are the plaintiffs of SCC Suit No. 74 of 1989 that had been filed for ejectment of the defendants from

the shop situated on the ground floor of building No.K-47/343, Bara Ramaganj, Bishesharganj, Varanasi and for recovery of arrears of rent. The

said suit was decreed on 15th January, 1992 against which the defendants filed Revision No. 49 of 1992 which was allowed on 16th September,

2002 and the judgment and decree dated 15th January, 1992 was set aside. This petition has been filed by the plaintiffs for setting aside the

judgment dated 16th September, 2002.

2. The dispute in this petition is whether the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 (hereinafter referred to as the

"Act") is applicable to the building and this will depend on the date of completion of the construction of the building because Section 2(2) of the

Act provides that the Act shall not apply to a building during the period of ten years from the date on which its construction is completed.

3. The Judge, Court of Small Causes decreed the suit filed in 1989 holding that the Act will not apply since the suit was filed within 10 years from

the date of completion of the construction of the building on 15th April, 1983 but the Revisional Court set aside the decree holding that the Act will

apply as the Suit was filed after ten years from the date of completion of the construction of the building on 1st April, 1976.

4. In order to appreciate the contentions advanced by the learned counsel for the parties, it is necessary to reproduce the relevant portion of

Section 2(2) of the Act which is as follows:

2(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.

....

Explanation I.--For the purpose 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 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.

(b) ""construction"" includes any new construction in place of an existing building which has been wholly or substantially demolished;

(c) where such substantial addition is made to an existing building that the existing building becomes only a minor part thereof the whole of the

building including the existing building shall be deemed to be constructed on the date of completion of the said addition.

5. The Legislature was conscious of the fact that difficulties may arise in ascertaining the exact date on which the construction of the building is

completed. It, therefore, added Explanation I to sub-section (2) of Section 2 of the Act. Clause (a) of the Explanation I provides for the

determination of the date of completion of construction of a building. This date will be either:(1) the date on which the completion of the building is

reported or otherwise recorded by the local authority having jurisdiction, or (2) the date on which the first assessment of the building comes into

effect, or (3) where the dates of completion of construction of building reported or otherwise recorded by the local authority and the date of first

assessment are different, the earliest of the said dates, or (4) in the absence of any report, record, or assessment, the date on which it is actually

occupied for the first time. Clause (b) of Explanation I provides that ""construction"" includes any new construction in place of an existing building

which has been wholly or substantially demolished. Clause (c) deals with the determination of the said date when substantial addition is made to an

existing building.

6. It is also clear from the aforesaid Explanation I to Section 2(2) of the Act that if the building is assessed, then the date on which the tenant

actually occupies the building is not relevant. This is what was also observed by the Supreme Court in Bishan Chand Vs. Vth Additional District

Judge, Bulandshahr (Uttar Pradesh) and Another, :-

As a second limb to the first argument, it is contended that the building will be deemed to have been constructed, on the date of occupation on

16th of June, 1967 and not on the date of the first assessment, and that if this be so, the appellant would be entitled to the benefit of Section 39 of

the Act on the date when the revision came to be decided by the High Court on 23rd of March, 1978. In order to appreciate this argument it will

be expedient to refer to Explanation I to sub-section (2) of Section 2 which has already been extracted. Explanation I provides that the building

shall be deemed to have been completed on the date on which completion thereof is reported to or otherwise recorded by the local authorities

having jurisdiction, and in 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.... for the first time. A perusal of Explanation I makes it abundantly clear that the date of occupation would be taken to be the date of

completion of the construction only when there is no report or record of the completion of the construction or no assessment thereof. If there is an

assessment, as in the present case it is, it will be the date of the first assessment which will be deemed to be the date of completion of the

construction, and in that view of the matter the building had not become more than ten years'' old on the date when the revision came to be

decided by the High Court, and, therefore, there was no question of giving the benefit of Section 39 of the Act to the appellant.

(Emphasis supplied)

7. The Judge, Court of Small Causes found as a fact that the building was first assessed after reconstruction on 1st April, 1983 and so the date on

which the construction of the building was completed was determined as 1st April, 1983, while the Revisional Court held that the said date is 1st

April, 1976 since the building was first assessed on this date.

8. The plaintiffs filed the suit for ejectment from the shop and for recovery of arrears of rent with the allegation that the plaintiffs are the

owners/landlords of the building situated in premises No.K-47/343 Bara Ramaganj, Bishesharganj, Varanasi; that the defendant had taken one

shop on the ground floor of the building from the plaintiffs @ Rs.100/-per month besides water tax with effect from 1st October, 1977 for a period

of ten years and a lease deed dated 28th January, 1978 was also executed between the parties; that the defendants failed to pay rent from 1st

February, 1983 despite repeated demands; that since the building was reconstructed after demolition and was first assessed w.e.f. 1st April, 1983,

the provisions of the Act are not applicable to the building; that the lease period expired on 30th September, 1987 and though the tenancy of the

defendants was terminated by the notice dated 9th March, 1988, the defendants did not pay the arrears of rent and nor did they vacate the

premises.

9. The defendants filed a written statement in which it was asserted that the construction of the building had been completed before 1977 and,

therefore, the provisions of the Act are applicable; that rent had been paid through money-order which was refused by the plaintiffs and, therefore,

the defendants are not in arrears of rent and that the defendants are also entitled to the benefit of Section 20(4) of the Act.

The Judge, Court of Small Causes framed the following issues:

(1) Whether the plaintiffs are the landlords of the disputed shop?

(2) Whetherthe constructions are new and whether the Act is applicable to the building?

(3) Whether the defendants committed default in payment of rent?

(4) Whether the notice is illegal?

(5) Whether the defendants are entitled to the benefit of Section 20(4) of the Act?

(6) To what relief are the plaintiffs entitled?

10. Issue No.1 was decided in favour of the plaintiffs and it was held that they are the landlords of the disputed shop. Issue No.2 was also decided

in favour of the plaintiffs and it was held that the building was first assessed on 1st April, 1983 after reconstruction and so the date on which the

construction of the building was completed will be 1st April, 1983 and as the suit had been filed in 1989 within ten years of the date of completion

of the construction of the building, the Act will not be applicable. Issue Nos. 3 and 5 were also decided in favour of the plaintiffs by holding that the

benefit of Section 20(4) of the Act cannot be given since the Act was not applicable. Issue No.4 was also decided in favour of the plaintiffs. The

suit was, accordingly, decreed.

11. Feeling aggrieved, the defendants filed Revision No.49 of 1992 which was allowed by the judgment and order dated 16th September, 2002.

The Revisional Court, after noticing that the Judge, Court of Small Causes had determined the date of completion of the construction of the

building on the basis of the assessment of the building made on 1st April, 1983, observed that the Judge, Court of Small Causes failed to take into

consideration Paper No.33-C in which it was specifically mentioned that assessment of the building was made in 1976 for the period 1st April,

1976 to 31st March, 1988. The Revisional Court also observed that after the construction of the first floor and second floor in 1983, the map was

compounded in 1980 and so the assessment of 1983 is of the first floor and the second floor. The Revisional Court has, therefore, concluded that

the date of completion of the construction of the building shall be 1st April, 1976 and since the suit was filed after ten years in 1988, the Act was

applicable and, accordingly, the benefit of Section 20(4) of the Act was also available to the defendants. The Revisional Court, therefore,

concluded that the decree for eviction could not have been passed. The Revision was, therefore, allowed and the judgment and order of the Judge,

Court of Small Causes was set aside.

12. Sri Rahul Sripat, learned counsel for the petitioners, has submitted that the finding of the Revisional Court is perverse and the date of

completion of the construction of the building is 1st April, 1983 as it was first assessed by the Municipal Authorities after reconstruction on this

date. In this connection he has pointed out that the map for construction of the building after demolition was sanctioned by the Varanasi

Development Authority (hereinafter referred to as the "Development Authority") on 10th November, 1975 and after the construction of some of

the shops on the ground floor in 1977, the shop in dispute was let out to the defendants-respondents on 1st October, 1977 for a period of ten

years. However, as the Development Authority noticed that the constructions were not in accordance with the sanctioned plan, a show-cause

notice dated 17th November, 1978 was issued under Sections 27 & 28 of the U.P. Urban Planning Development Act, 1973 (hereinafter referred

to as the "1973 Act") to the landlord but the subsequently the constructions were compounded by Development Authority on 5th December,

1980. Thereafter, the landlord filed a fresh map for the ground floor, first floor and the second floor which was sanctioned by the Development

Authority on 17th January, 1981 and after the completion of the construction of the building, it was assessed for the first time on 1st April, 1983. It

is, therefore, his submission that the date of completion of the construction of the building is 1st April, 1983 in accordance with Explanation I

contained in Section 2(2) of the Act but the Revisional Court committed an illegality in holding that the date of completion of the construction of the

building is 1st April, 1976 on the basis of the assessment of the building which had since been demolished. Learned counsel for the petitioners has

also pointed out that the dispute regarding date of completion of the construction of the building also arose in respect of the adjoining shop of the

building, which had been let out to the same tenants by the landlord and in Civil Revision No.602 of 1988 between the same parties, the High

Court held that the Act will not be applicable as the construction of the building was completed on 1st April, 1983 and ten years had not lapsed

when the suit was filed.

13. Sri B.K. Srivastava, learned Senior Counsel for the respondents submitted that the building was first assessed on 9th July, 1976 for Rs.4176/-

per annum for the period 1976 to 1988 and, therefore, the date of completion of construction of the building is 1st April, 1976. He has also

pointed out that the landlord filed an appeal against this assessment which appeal was allowed by the order dated 9th May, 1977 and the

assessment amount was reduced to Rs.3090/-. It is his submission that the assessment was done in 1976 after the map of the building for new

constructions was sanctioned on 10th November, 1975 and so the assessment made in 1976 is with respect to building that was constructed after

demolition of the existing building. In this connection, he has also pointed out that after the sanction of the map on 10th November, 1975 when the

building was being constructed, a notice dated 17th November, 1978 was issued by the Development Authority that the constructions were not in

accordance with the sanctioned plan and the landlords made a statement that constructions on the ground floor were as per the sanctioned map

dated 10th November, 1975. It is also his submission that the map that was subsequently submitted by the landlords on 16th October, 1980 was

with respect to the first floor and the second floor and it is this map which was sanctioned on 17th January, 1981. According to the learned Senior

Counsel for the petitioner, the construction of the first floor and the second floor was assessed on 26th March, 1983 at Rs.60,816/-and in the

appeal filed by the landlords against this assessment, it was stated by the landlords that after the passing of the order dated 9th May, 1977 nothing

new was added in the premises and the enhancement in the annual rent from Rs.3090/-to 60,816/-was, therefore, not justified. Learned counsel

for the respondents has also placed reliance upon the judgment of the Supreme Court in respect of the shop under the tenancy of Vindhyachal

Prasad and has contended that the date of completion of construction of the building is 1st April, 1976.

14. I have considered the submissions advanced by learned counsel for the parties.

15. The dispute in this petition is, therefore, with regard to the date on which the construction of the building was completed because this will

actually determine whether the Act was applicable to the building when the suit was filed in 1989. Explanation I (a) to Section 2(2) of the Act

provides that the construction of the building shall be deemed to have been completed on the date on which the first assessment comes into effect.

Explanation I (b) to Section 2(2) of the Act provides that ""construction"" includes any new construction in place of an existing building which has

been wholly or substantially demolished.

16. Learned counsel for the landlord-petitioners has placed reliance upon the assessment of the building made on 1st April, 1983 while learned

counsel for the tenant-respondents has placed reliance upon the assessment of the building made on 1st April, 1976.

17. According to the petitioners, there was a building standing on Premises No.K-47/343 in which there were certain shops. One shop on the

ground floor in this building was also let out to the respondent-tenants in the year 1946-47. The landlords wanted to demolish the building and

reconstruct it as the building was in a dilapidated condition. For this purpose, the landlord submitted a map before the Development Authority for

the ground floor, first floor and the second floor. The map was sanctioned by the Development Authority on 10th November, 1975. The

construction of the building started in a phased manner and when some shops, including the shop let out to the respondent-tenants on 1st October,

1977, were constructed, the Development Authority issued notices under Sections 27 and 28 of the U.P. Urban Plaining and Development Act,

1973 (hereinafter referred to as the "1973 Act") since the constructions were not in accordance with the sanctioned plan. The landlords submitted

a reply and also applied for compounding of the construction. The Development Authority ultimately compounded the constructions on 5th

December, 1980 and thereafter a fresh plan was submitted by the landlords for the ground floor, first floor and the second floor, which plan was

sanctioned by the Development Authority on 17th January, 1981. Thereafter, the remaining construction of the building was done and after the

completion of the construction of the building, it was first assessed at Rs.60,816/-w.e.f. 1st April, 1983 which amount was subsequently reduced

to Rs.12,470/-in appeal. The assessment made on 1st April, 1976 for Rs.4176/-was of the building which had since been demolished and in the

appeal filed for reducing this assessment, the Appellate Authority by the order dated 9th May, 1977 reduced the assessment to Rs.3090/-.

18. The respondents have, however, placed reliance upon the assessment made on 1st April, 1976 and it is contended that this assessment was of

the ground floor of the building in which the shop is situated since the map for the ground floor was earlier sanctioned on 10th November, 1975.

The respondents have also asserted that the map of the first floor and the second floor was subsequently sanctioned on 17th January, 1981 by the

Development Authority and the assessment of 1st April, 1983 is with respect to the first floor and the second floor of the building.

19. It is seen from the records that the map that was sanctioned by the Development Authority on 10th November, 1975 relates to the ground

floor, first floor and the second floor and is not of the ground floor alone, as has been contended by learned Senior Counsel for the respondents.

The landlords started construction of the building in a phased manner and when some of the shops on the ground floor were completed, one shop

was let out to the respondent w.e.f. 1st October, 1977 and a lease deed was also executed between the parties for this shop on 28th January,

1978. The lease deed mentions that the map for construction of the new building was sanctioned by the Development Authority on 10th

November, 1975 and some shops on the ground floor have been constructed out of which one shop was being given to the tenant w.e.f. 1st

October, 1977 on a monthly rent of Rs.100/-. The tenant in his cross examination also stated that the disputed shop, which was newly

constructed, was part of Building No.47/343 and later on said that the shop was constructed prior to 1st October, 1977, but the construction of

the building continued even after 1977 and after the construction of the building was completed, the assessment was made in 1983. The lease deed

and the aforesaid statement of the tenant supports the case of the petitioners that only a portion of the ground floor of the building was constructed

in 1977 when the shop was let out to the defendant and later, the remaining constructions including the constructions on the first floor and the

second floor were made and after the construction of the building was completed, it was assessed for the first time in April, 1983.

20. It is also seen from the records that when some shops were constructed on the ground floor, including the shop that was let out to the tenants

on 1st October, 1977, the Development Authority initiated proceedings under Sections 27 & 28 of the U.P. Urban Planning Development Act,

1973 on 16th November, 1978 as the constructions on the ground floor were not in accordance with the sanctioned plan but the matter was

ultimately compounded by the Development Authority on 5th December, 1980. A fresh plan was submitted by the landlord for the ground floor,

first floor and second floor and it was sanctioned by the Development Authority on 17th January, 1981. Thereafter the remaining construction of

the building was done and after the completion of the construction of the building, it was assessed for the first time at Rs.60,816/-w.e.f. 1st April,

1983 which was subsequently reduced in Appeal to Rs.12,470/-.

21. What is further to be noticed is that in respect of the adjoining shop of the same building, which was also let out to the same tenant, the

landlord had instituted SCC Suit No.2 of 1986 for eviction of the defendant with the same assertion that the Act was not applicable since the

building had not completed ten years from 1st April, 1983. The Suit was decreed on 16th July, 1988 holding that the Act was not applicable since

the building had not completed ten years from 1st April, 1983. Feeling aggrieved, the present respondent, who was the defendant in SCC Suit No.

2 of 1986, filed Civil Revision No. 602 of 1988, which was dismissed by the High Court by the judgment and order dated 6th July, 2007 holding

that the Act was not applicable since the building had not completed ten years and in this connection the assessment made on 1st April, 1983 was

relied upon. The relevant portion of the judgment is quoted below:

The trial court has relied upon a statement of the plaintiff no.1 that the entire building including portion in the tenancy of the defendants was

reconstructed in the year 1981-82. The trial court also relied upon Paper No. 51-C, which is a copy of the assessment for the year 1976-86,

which shows that the assessment was revised from 1.4.1983. Paper No.52-C was relied upon to show that the assessment of House No.

K47/343 was formerly Rs. 3090/-, which was enhanced to Rs. 12,470/-from 1.4.1983. Reliance was placed by the trial court upon a copy of the

assessment of income tax of the landlord for the year 1980-81, which shows that there was an investment of Rs. 1,75,000/-in the construction of

this house. The trial court also relied upon Paper No. 60-C, which is the notice issued on 26.3.1983 by the Nagar Mahapalika for enhancement of

assessment from 1.4.1983. The plaintiff/landlord also filed the sanctioned map of the year 1981 and another map paper No.64-C, which is a map

in respect of which compounding charges were accepted on 26.9.1980. Further more there were documents regarding the purchase of cement in

the year 1981-82 all of which have been relied upon by the trial court. That apart the trial court relied upon the admission of the

defendants/applicants in their deposition and found that it was clear from the statement of the defendant D.W.1 that new pillars were constructed

and old ones were demolished and new walls were made. The trial court considered the material on the record and found that the entire building

was reconstructed in the year 11 1981-82 as alleged by the plaintiffs including the portion in the tenancy of the defendants. The finding recorded

by the trial court is a finding of fact.

Learned counsel for the applicants submitted that it was not open to the trial court to have considered the oral evidence or other evidence for

determining the date of construction of the building and that the only record, which is relevant for the propose is the record of the first assessment.

He placed reliance upon the provisions of Explanation 1 (a) of sub-section 2 (2) of the Act. The trial court has considered this aspect of the matter

and has found that after new constructions had been made the assessment of the building was revised and made effective from 1.4.1983.

Learned counsel for the applicants submitted that the revised assessment could not be regarded as the first assessment. In my opinion the

submission does not appear to be correct. No doubt if a building is altogether a new construction and not a reconstructed one the first assessment

would be the first assessment for the purpose of determining the date of construction of the building but under Clause (b) of Explanation 1 of

Section 2(2) the construction of a building would include a new construction in place of an existing building and under Clause (c) where substantial

additions are made to a building so that the existing building becomes a minor part, the whole of the building including the existing one shall be

treated as having been completed when the addition is made. In a case where Clause (b) or (c) of Explanation I applies the relevant assessment

would be the one which is made after the reconstruction or addition has been made. In this view of the matter the assessment, which was made

effective from 1.4.1983 in the present case would be the first assessment of the building for the purpose of determining the date of construction. In

the present case it has been found that the whole building including the portion in the tenancy of the applicant was reconstructed in the year 1981-

82. The finding of the trial court is one of fact and supported by material on record and I see no reason to differ from it. The assessment with effect

from 1.4.1983 was raised from Rs. 3,090 to Rs. 12,470/-. The tenanted portion was also reconstructed. Clause (b) of Explanation 1 to Section

2(2) is therefore applicable. The contention of the petitioners'' counsel that the building is an old construction cannot be accepted. Where building

already assessed is reconstructed or where additional constructions are made to an existing assessed building oral and documentary evidence can

be given to prove the fact of reconstruction or of additional construction. The date of completion of the reconstructed portion or of the building

after additional constructions are made however would also be determined in accordance with clause (a) of Explanation 1 to section 2(2). That

apart the other finding, which has been recorded by the trial court is that new shops were constructed on the ground floor and that the first floor is

a new construction. Learned counsel for the applicant submitted that in the appeal against the assessment the plaintiff admitted that no additions

were made after 1977. This aspect has been considered by the trial court and it has been found that the plea was taken to save municipal taxes.

The finding that additional constructions were made on the ground floor and first floor is based on oral and documentary evidence. The

enhancement of the assessment by about four times also supports the finding. Even if it is assumed, against the finding recorded, that the portion in

the tenancy of the applicant is not a new construction, substantial additions have been made to the existing building. The portion in the tenancy of

the applicant is a minor portion and therefore Clause (c) of Explanation I to Section 2(2) would be applicable. Learned counsel for the applicants

submitted that this was not the plea taken in the plaint. He refers to paragraph 3 of the plaint in which it is alleged that the whole premises K47/33

including the accommodation in the tenancy of the defendant was reconstructed. The plea that the entire building was reconstructed is wide enough

to cover the case of substantial additions having been made in the building. This contention of the learned counsel for the applicants, therefore also

cannot be accepted.

(Emphasis supplied)

22. The defendant-respondent filed SLP before the Supreme Court which was dismissed by the judgment and order dated 30th July, 2007 with

liberty to the petitioner to move the High Court for extension of time.

23. The defendant-respondent also moved a Review Petition in the High Court which was also rejected by the order dated 5th November, 2007

with the following observation:

It is submitted by Sri Yogesh Agarwal counsel for the applicant tenant that the order passed by this Court on 6.7.07 dismissing the tenant''s

revision is liable to be reviewed as in respect of the building in occupation of another tenant an order was passed by the Apex Court holding that

the building was not a new construction and that the Act No.13 of 1972 was applicable to it.

Counsel for the respondents Sri Rahul Sripat submits that the judgment of the Apex Court is in respect of another building. That case related to the

portion in the tenancy of Vindhyachal Prasad Jaiswal. The submission of Sri Rahul Sripat is that the address of the building was also different. It

appears from the judgment of the Apex Court that the case related to a separate building. Evidence led in that case was also separate. The

revisionist is therefore not entitled to any benefit of the judgment of the Apex Court which was passed upon separate evidence and in respect of

different tenement. No ground for review has been made out. Rejected.

24. In this connection it may also be pertinent to refer to the decision of this Court in Kali Ram (Deceased) Vs. Mistri Udai (Deceased) reported in

2010 (3) ARC 750. According to the tenant, the building was first assessed w.e.f. 1st April, 1980 whereas according to the landlords, the building

was assessed for the first time w.e.f. 1st April, 1986. The Court found that the landlord had submitted a map for raising constructions of the shops

and the shops were constructed after the permission was granted after which the building was subjected to assessment for the first time w.e.f. 1st

April, 1986. It was, therefore, held that the Act was not applicable since the suit was filed in 1992. The relevant portion of the judgment is as

follows:

Here is the building is subject to assessment, now the question remains as to what is the date of the first assessment of the building in question. The

plaintiff landlord has placed reliance upon Exhibit-A-7 (paper no. 37-C) which according to him is the first assessment of the property in dispute.

In this document the name of various tenants including that of the defendant tenant is recorded against the different shop numbers. As against the

entry of the defendant tenant Mistri Udai son of Raghubir, Shop No.274/12 has been mentioned. At the top of this document it is mentioned that

the assessment is for the period of 1st April, 1986 to 31st March, 1992. The landlord submits that this is first assessment of the property in

question.

On the other hand, the defendant tenant submits that Exhibit-A-6(paper no.36-C) which is also assessment list for the period of 1979 to year

1986 is the first assessment.....

There are two aspects of the case. First aspect is that initially as is recorded in assessment list relating to year 1979 to year 1986 only adhere is on

record. It is also in evidence that the plaintiff landlord submitted a map for raising construction of the shops. The certified copy of the said map is

on record. Permission to raise the construction was granted. It was also brought on record. These documents are Exhibit-6, 7 & Paper No. 29-

Ka. The shops were raised which were raised and assessed to tax for first time with effect from 1st April, 1986. When the shops were raised and

assessed to tax, the gher in dispute was also assessed to tax with effect from 1st April, 1986....

...Sub-clause (c) of Explanation 1 to Section 2 of the Act which is reproduced below:

where such substantial addition is made to an existing building that the existing building becomes only a minor part thereof the whole of the building

including the existing building shall be deemed to be constructed on the date of completion of the said addition.

Sub-clause (c) of Explanation 1 to Section 2 of the Act as reproduced above, clearly provides that where substantial addition is made to an

existing building that the existing building becomes only a minor part thereof, the existing building shall be deemed to be constructed on the date of

completion of the said addition.

25. Learned Senior Counsel for the respondents has placed reliance upon the decision of the Supreme Court in Vindhyachal Prasad Jaiswal. It is

contended by the learned counsel for the petitioners that the shop was situated in a different building. It will not be necessary to examine whether

the shop is situated in a different building as the decision of the Supreme Court in the case of Vindyachal Prasad Jaiswal did not determine the

controversy and the matter was remitted to the High Court for deciding it afresh. It has also been stated by learned counsel for the petitioners that

after the mater was remitted, an affidavit was filed by Vindhyachal Prasad Jaiswal in the Writ Petition that the building was assessed for the first

time after completion on 1st April, 1983 and, therefore, it had not completed ten years when the suit was filed. In view of the aforesaid affidavit,

the writ petition was ultimately dismissed.

26. From what has been discussed above, it is clear that the building was constructed after demolition and it was assessed for the first time on 1st

April, 1983 after the completion of the construction of the building and, therefore, the building had not completed ten years when the suit was filed

in 1989. The Revisional Court committed an illegality in placing reliance upon Paper No.33-C which, as noticed hereinabove, was in connection

with the building which had since been demolished. The Revisional Court also committed an illegality in holding that in 1983 after the construction

of the first floor and the second floor, the building map was compounded in 1980. This statement, is not only on the face of it incorrect but even

otherwise, the compounding map that was sanctioned in 1981 is of the ground floor, first floor and the second floor and not of the first floor and

second floor only.

27. Such being the position, it has to be held that the date of completion of the construction of the building is 1st April, 1983 and if this be so, the

Act will not apply as the suit was filed within 10 years in 1989.

28. The judgment and order dated 16th September, 2002 passed by the IVth Additional District Judge, Varanasi, therefore, cannot be sustained

and is, accordingly, set aside and that of the Judge, Court of Small Causes is restored. The writ petition is, accordingly, allowed.

Date: 31.1.2012

29. After the judgment was delivered, learned counsel for the respondents made a prayer that three months'' time may be given to the respondents

to vacate the shop in dispute. He further states that the tenants shall now pay damages at the rate of Rs.1000/-per month instead of Rs.100/-per

month and that the tenant shall also furnish an undertaking before the Judge, Court of Small Causes within two weeks.

30. The tenant is, accordingly, granted time upto 30th April, 2012 to handover the peaceful possession of the shop to the landlord subject to the

tenants giving an undertaking within two weeks from today before the Judge, Court of Small Causes to the following effect :

1. That the tenants shall handover peaceful possession of the shop to the landlord on or before the 30th April, 2012.

2. That the tenants shall pay damages at the rate of Rs.1000/-per month up to the date they hand-over the possession of the shop to the landlord.

3. That the tenants shall not induct any other person in the shop.

31. It is made clear that in the event the tenant fails to give the undertaking within the aforesaid period or fails to comply with any of the terms of

the undertaking, it will be open to the landlord to get the decree executed.