

## State Bank of India Vs Sri Ram Kishore Varsaiya and Another

**Court:** Allahabad High Court

**Date of Decision:** Dec. 22, 1999

**Acts Referred:** Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 " Section 21(8)

**Hon'ble Judges:** S.N.Agarwal, J

**Final Decision:** Allowed

### Judgement

Sudhir Narain,J.

1. In both these writ petitions, the petitioners have challenged the order of the appellate authority dated 20/9/1999 whereby the appeal filed by Ram

Kishore Varsaiya landlord has been allowed partly. The reference to the parties in this order has been taken from Writ Petition No. 54086 of

1999 for the purpose of convenience.

2. Briefly, stated the facts, are that Ram Kishore Varsaiya respondent No. 1 is the landlord of the premises in question of which the State Bank of

India the petitioner, is the tenant. The premises was let out to the petitioner in the year 1980 at monthly rent of Rs. 975. The landlord submitted an

application under Section 21(8) of U.P. Act No. 13 of 1972 (in short the Act) before the Prescribed Authority on 15/5/1992 for enhancement of

rent from Rs. 975 per month to Rs. 7500 per month with the allegations that according to the market value of the property in question, the rent

should be enhanced. The petitioner submitted objection and denied that the valuation of the property as suggested by the landlord. The landlord

submitted report of the Valuer Sri P.O. Agarwal. The petitioner tenant also submitted certain papers. The Prescribed Authority held that the rent

should be enhanced to Rs. 2000 per month and if the landlord makes necessary arrangement for water etc. then further a sum of Rs. 500 per

month shall be payable by the petitioner. The landlord respondent preferred an appeal before the District Judge. The appellate authority allowed the

appeal taking the valuation of the constructions at Rs. 5.51 lacs and determined the rate of rent of Rs. 4600 per month. This order has been

challenged by the tenant State Bank of India in Writ Petition No. 54086 of 1999 and the landlord has also challenged this order by filing Writ

Petition No. 54428 of 1999.

3. I have heard Sri Navin Sinha, learned counsel for the petitioner and Sri Punit Kumar Gupta, learned counsel for the respondent.

4. The contention of the learned counsel for the petitioner is that the appellate authority while considering the report of the Valuer made an

observation that the learned counsel for the parties had given implied consent. The following observation was made:

With the implied consent of the learned counsel for the parties the valuation after depreciation of the construction costs of the building as

assessable at Rs. 5.51 lacs.

5. The appellate authority has not stated as to whether the counsel had any authority to give consent. Secondly, it has not been disclosed what it

meant by implied consent.

6. Thirdly, the appellate authority took a view that as the respondent No. 1 has not obtained any valuation report, the report submitted by the

landlord respondent appears to be correct. It was the duty of the appellate authority to examine the report of the valuer even though the tenant

petitioner had not filed any report of its own. It has to examine as to whether the market value of the land assessed by the Valuer was based on

any material evidence, the costs of constructions had been fixed on a certain principle and whether there was any depreciation of the value of the

property taking into account the age of the building and other relevant factors.

7. The Prescribed Authority relied upon certain documents, which were filed by the petitioner but they have been ignored by the appellate

authority. The Prescribed Authority referred to the certificate issued by the Town Area, Ranipur, copies of letters of District Cooperative Bank

etc. The appellate authority was to examine these documents as to whether they establish the version of the petitioner and are relevant for

determining the valuation of the property.

8. Sri Gupta, has also challenged this order on the ground that the valuation of the property should have been fixed taking into account the cost of

the land as well as the costs of the building. The valuer has submitted his report indicating the value of the land at Rs. 2,88,149 and the valuation of

the constructions at Rs. 5,01,300 but the appellate authority totally ignored the valuation of the land. It is true that valuation of the land and the cost

of the constructions both are to be taken into account for determining the valuation of a building. He has further to take into consideration the

depreciation of the building taking into account the age of the building and other relevant factors.

9. In view of the above, both these writ petitions are allowed. The impugned order of the appellate authority dated 20/9/1999 is hereby quashed.

He will decide the appeal afresh keeping in view the observations made above and in accordance with law possibly within a period of two months

from the date of production of a certified copy of this order.