(1999) 12 AHC CK 0050

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 54086 of 1999 and CMWP No. 54428 of 1999

State Bank of India		APPELLANT
	Vs	
Sri Ram Kishore Varsaiya and Another		RESPONDENT

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 2091999 whereby the appeal filed by Ram Kishore Varsaiyalandlord 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 1551992 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 properly 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

landlordrespondent 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 tenantSlate 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 slated 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 duly 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 properly.

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 2091999 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.