
Atul Krishna Goel Vs Special Judge, Mathura & Ors.

Civil Miscellaneous Writ Petition No. 6054 of 1989

Court: Allahabad High Court

Date of Decision: May 27, 2005

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 " Section 18, 2(2)

Hon'ble Judges: S.U.Khan, J

Final Decision: Allowed

Judgement

S. U. Khan, J.

Landlordpetitioner filed a release application under Section 21 (1) (b) of U.P. Rent Act (U.P. Act No. 13 of 1972) against

his previous tenant Mangal Sen in respect of a big two door shop. Release application was allowed in appeal which order was maintained by this

High Court as well as by Supreme Court. Thereafter, the said shop was demolished and two new shops were constructed in the year 1982 leaving

10 feet passage in between them. One of the new shop was given to previous tenant Mangal Sen. The dispute in the instant writ petition relates to

the other shop. In respect of shop in dispute petitioner entered into partnership with one Hardeep Kumar. Respondent No. 3 Krishna Kumar Jain

filed allotment application in respect of shop in dispute alleging that it was old construction and U.P. Act No. 13 of 1972 was applicable

thereupon. Some other persons had also filed allotment applications. R.C. and E.O. by order dated 3111984 rejected all the allotment applications

holding that the shop in dispute was new construction hence provisions of the Act were not applicable. Against the said order revision was filed by

respondent No. 3. District Judge, Mathura by order dated 12101984 allowed the revision, set aside the order of R.C. and E.O. and remanded the

matter to him with the direction that the shop in dispute must be inspected/got inspected by R.C. and E.O. The said judgment of the Revisional

Court was upheld by the High Court and writ petition filed against the said order was dismissed. Thereafter, R.C. and E.O. made inspection of the

shop in dispute on 18/4/1987 and placed on record inspection report and site plan. Petitioner also filed notice issued by Municipal Authorities in

April, 1983 in respect of new construction and house tax. R.C. and E.O. again by order dated 30/11/1987 rejected the allotment application and

held that the shop was newly constructed in the year 1982. Against the said order revision was filed by respondent No. 3 being Civil Revision No.

160 of 1987. Additional District Judge/Special Judge, Mathura again allowed the revision on 13/1/1989, set aside the order of R.C. and E.O. and

remanded the matter to him for disposal in accordance with the observations made in the body of the judgment. The said remand order dated 1

31/1/1989 has been challenged by the landlord through this writ petition.

2. The Revisional Court observed that whether the changes introduced in the building were so substantial that it converted the old building into new

construction, should be decided on the basis of principles laid down in K.C. Sharraf v. D.J., Lalitpur & Ors., 1980 ARC 16. The Revisional Court

also held that R.C. and E.O. was not an expert in the matter of civil engineering hence he should not have recorded the finding on the basis of his

inspection and building should have been got inspected by some expert. Concluding sentence of para 6 of the Revisional Court's judgment is as

follows:

“In fact a report in the light of the above could be made by an expert only.”

3. The Additional District Judge did not keep in mind that in the earlier remand order passed by his Predecessor the matter was remanded only for

inspection by R.C. and E.O. There is one more aspect of the matter. It is not the duty of R.C. and E.O. or any other Court to call the experts for

inspection by himself. None of the parties particularly applicant for allotment/respondent No. 3 applied for inspection through expert. In view of

this it was not possible for R.C. and E.O. to get the inspection of the building done by some expert. Court has got no business to direct or advise

the parties to produce particular type of evidence. The Revisional Court has held that reconstruction of two walls does not amount to new

construction. If two walls are reconstructed it means that first these two walls must have been demolished. If, out of four walls two have been

demolished then it is inevitable that roof must also have been demolished. A roof cannot stand only on two walls. If roof and two walls of a shop

are newly constructed then by no stretch of imagination it can be said to be old construction on the ground that two of the walls are old. Moreover,

R.C. and E.O. had taken into consideration house tax assessment also. For determining date of construction house tax record is most effective

evidence by virtue of Explanation 1 of Section 2 (2) of the Act. The Revisional Court did not touch this aspect of the matter.

4. Accordingly, I am of the view that instead of remanding the matter Revisional Court should have dismissed the revision as no such illegality was

pointed out in the order of R.C. and E.O. before Revisional Court, which could warrant interference in exercise of revisional jurisdiction under

Section 18 of U.P. Act No. 13 of 1972.

5. Writ petition is accordingly allowed. Judgment and order dated 13/11/1989 passed by A.D.J./Special Judge, Mathura in Civil Revision No. 160 of

1987, Krishna Kumar v. Atul Krishna Goel, is quashed. Order dated 20/11/1987 passed by R.C. and E.O., Mathura in Case No. 94 of 1987,

Rajendra Kumar v. Atul Krishna Goel, is restored.