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**(2003) 10 AHC CK 0187**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 668 of 1989

Qamaruddin

APPELLANT

Vs

Ati Ullah and Others

RESPONDENT

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**Date of Decision:** Oct. 13, 2003

**Acts Referred:**

- Transfer of Property Act, 1882 - Section 108
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 29

**Citation:** (2003) 6 AWC 5220

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

**Bench:** Single Bench

**Advocate:** R.V. Gupta, for the Appellant;

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

S.U. Khan, J.

This is tenant's writ petition.

2. The landlord-Respondents No. 1 to 3 filed a suit for ejectment against the tenant Petitioner being Suit No. 1711 of 1983 before Munsif City, Kanpur claiming that only Chabutra was in the tenancy of the Petitioner, which does not fall under the definition of building, hence there was no question of applicability of U.P. Act No. 13 of 1972. Suit for ejectment against tenant from a building is to be filed before J.S.C.C. whether Rent Control Act applies or not. However, if the premises let out is not a building but only land, suit is to be filed before regular Civil Court, i.e., court of Munsif or Civil Judge. The tenant pleaded that it was not open land but a building which had been let out to him consisting of tin shed and Chhajja as roof and wooden walls. The tenant also pleaded that a huge fire engulfed the whole area including the shop in dispute in 1983 and completely demolished the same and that

the Petitioner was paid compensation from the State Government for the loss due to fire and out of the said compensation, he constructed new wooden shop and tin shed. In the rent receipt, issued by the landlord, property in dispute was shown as Patthar/Chabutra. The trial court/Munsif dismissed the suit on the preliminary ground of jurisdiction, holding that the premises in dispute being building and covered by U.P. Act No. 13 of 1972 suit for ejectment before Munsif was not maintainable. The Munsif returned the plaint for filing before J.S.C.C., through judgment and order dated 31.3.1987.

3. The trial court referred to Section 108(e), T. P. Act but did not properly appreciate its application. Against the order passed by Munsif, City, Kanpur Nagar, dated 31.3.1987, directing the return of plaint for filing before J.S.C.C., Misc. Appeal was filed by the Respondents No. 1 to 3 before District Judge, under Order XLIII, Rule 1 (a) being Misc. Civil Appeal No. 138 of 1987, which was heard and decided by I Ind Additional District Judge, Kanpur Nagar.

4. The learned Additional District Judge, Kanpur Nagar, held that in view of the receipt and a notice given in the year 1958, it could not be said that any building was let out. In the notice the tenanted property was described as part of Patthar (stone). In the rent receipt the property was described as Chabutra.

5. Even otherwise even if the case of the tenant Petitioner that building was let out to him is accepted still he will not be entitled to any benefit. According to the own case of the tenant/Petitioner, building was totally gutted in fire and thereafter he constructed the same out of compensation provided by the State Government. Section 108, T. P. Act which describes rights and liabilities of lessor and lessee, provides in Clause (e) as under:

"If by fire ... any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let the lease shall at the option of the lessee be void." Interpreting the said clause, it has been held that even if the entire building is destroyed by fire etc., the Petitioner is entitled to continue as tenant of the open land on the same rent. However, the tenant is not authorised to make construction thereupon as they existed prior to the destruction through fire etc. without consent of the landlord. In this regard reference may be made to the Division Bench authority of the Kerala High Court, AIR 1995 Ker 99. Similar provision is there in Section 29 of U.P. Act No. 13 of 1972, with the difference that u/s 29(2) of the Act "where in consequence of fire..... any building under tenancy is wholly or partly destroyed the tenant shall have the right to re-erect or repair it wholly or partly as the case may be at his own expense after giving a notice in writing to the landlord within a period of one month from such injury." The lower appellate court has held that provisions of Section 29(2) of the Act were not complied with by the Petitioner as he had not given six months' notice. The lower appellate court also held that benefit of Section 29A will also not be available to the Petitioner as according to his own admission he made the construction without the

consent of the landlord.

6. Accordingly, I hold that the judgment and order dated 12.10.1988, passed by the lower appellate court/II Ird Additional District Judge, Kanpur Nagar, passed in Misc. Civil Appeal No 138 of 1987, is perfectly in accordance with law requiring no interference. Through the said judgment the suit has been remanded to the learned Munsif (Now Civil Judge, Junior Division) for deciding the issues No. 3, 4 and 5 after providing opportunity of evidence to the parties.

7. Accordingly, there is no merit in this writ petition, it is dismissed.

8. As the suit is pending since 1983, hence Civil Judge, Junior Division is directed to decide the suit within six months, from the date of the receipt of a certified copy of this order.