

## Ashok Kumar Bhatia Vs XIIIth Addl. District Judge and Another

**Court:** Allahabad High Court

**Date of Decision:** Feb. 9, 2001

**Acts Referred:** Transfer of Property Act, 1882 " Section 106

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 " Section 12(5), 2(2), 20, 21(1A), 24(2)

**Citation:** (2001) 2 AWC 997

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

**Bench:** Single Bench

**Advocate:** Ashok Bhatnagar, for the Appellant; S.C. and P.K. Sinha, for the Respondent

**Final Decision:** Dismissed

### Judgement

U.S. Tripathi, J.

This writ petition has been filed for quashing the order dated 18.1.2001 passed by respondent No. 1 in rent Appeal No. 67 of 2000.

2. The respondent No. 2 landlord of premises No. 67-S (123/690) Guru Nanak Motor Market, Gadarian Purwa, Kanpur city filed suit against

the Petitioner tenant for his ejectment and recovery of arrears of damages with the allegations that one shop in above premises was let out to

Petitioner through an agreement deed up to 31.10.1988 with an option to extend period of tenancy on execution of fresh deed. After 31.10.1988

option for extension of tenancy was not availed by the Petitioner tenant and, therefore, his tenancy stood terminated on 31.10.1988. The Petitioner

was liable to hand over vacant possession of premises in question along with damages at the rate of Rs. 40 per day. The tenancy of the Petitioner

was also terminated by notice u/s 106, Transfer of Property Act, which was served upon him on 18.2.1989. But neither he vacated the premises,

nor paid the damages.

3. The Petitioner contested the suit mainly on the ground that first assessment of the premises in question came in to effect with effect from

21.3.1979 and, therefore, provisions of U.P. Act No. 13 of 1972, (hereinafter called the Act), became applicable over the said premises on

21.3.1989, before filing of suit and, therefore, he was entitled to protection under the said Act and suit was not maintainable. The lease deed got

extended as the landlord respondent No. 2 accepted the rent at enhanced rate by enhancing 20% of the previous rent and, therefore, accepted the

Petitioner as tenant beyond 31.10.1988.

4. The trial court (Judge Small Causes Court) on considering the evidence of the parties held that first assessment of the premises in question came

into effect with effect from 1.4.1979, and suit was filed prior to that date, therefore, provisions of Act were not applicable to the premises in

question. No fresh deed of tenancy was executed between the parties after 31.10.1988 therefore, tenancy of the Petitioner expired on 31.10.1988

and also stood terminated on service of simple notice u/s 106 of Transfer of Property Act. With these findings, it decreed the suit, vide judgment

and decree dated 12.5.2000.

5. Aggrieved with the above Judgment and decree the Petitioner filed S.C.C. Revision before the District Judge, which was decided by XIIIth

Additional District Judge, who concurring with the findings recorded by the trial court, dismissed the revision.

6. The above order of revisional court has been challenged In this writ petition.

7. Heard Sri Ashok Bhatnagar. learned Counsel for the Petitioner and Sri P.K. Sinha, learned Counsel for respondent No. 2, learned standing

counsel for respondent No. 1 and perused the record.

8. The sole point raised by learned Counsel for the Petitioner in this petition was that the first assessment of the premises in question was done by

the Nagar Maha Palika Authorities on 21.3.1979, which could be presumed date of completion of construction of the premises In question, if not,

any date earlier to it, and suit was filed on 30.3.1989 and, therefore, provisions of the Act were fully applicable on the premises In question and

suit was not maintainable, as none of the grounds enumerated in Section 20 of the Act existed and tenant was entitled to the protection under the

Act. On the other hand, learned Counsel for respondent No. 2 contended that the Nagar Maha Palika authorities resolved that the first assessment

of the premises in question would come into effect with effect from 1.4.1979 and there was no evidence from the side of Petitioner to prove the

date of completion of construction of the premises In question prior to coming into effect the first assessment and, therefore, provision of Act were

not applicable to the premises in question, suit was maintainable and tenancy of Petitioner stood terminated on service of notice u/s 106 of Transfer

of Property Act. Therefore, the sole question, which arises for determination in this writ petition is whether the provisions of Act were applicable to

the premises in question on the date of suit, i.e., 30.3.1989.

9. The relevant portion of Section 2(2) of the Act is as follows:

Except as provided in Sub-section (5) of Section 12, Sub-section (1A) of Section 21, Sub-section (2) of Section 24, Sections 24A, 24B, 24C 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:

Provided...Provided further that where construction of a building is completed on or after April 26, 1985 then the reference in this Sub-section to

the period of ten years shall be deemed to be a reference to a period of (forty years) from the date on which its construction is completed.

Explanation 1--For the purposes 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.

10. As it is evident from the above wordings of Section 2(2) of the Act, 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 local authority having jurisdiction, and in the 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. As held by this Court in the case of Raj Kumar Sharma v. District Judge Haridwar and Ors. 1993 (2) ARC 103 the word "deemed" is

normally used to create a statutory fiction. While interpreting a provision creating a legal fiction, it has to be ascertained as to for what purpose a

fiction is created and it is only after ascertaining this, all those facts and consequences which are incidental or inevitable corollaries to the giving

effect to the fiction have to be assumed. As pointed out by the Apex Court in the case of Commissioner of Income Tax, Delhi Vs. S. Teja Singh, .

it is well settled that in construing the scope of legal fiction, it would be proper and even necessary to assume all those facts on which alone the

fiction can operate.

11. The Explanation 1 to Section 2(2) was also considered by the Apex Court in the case of Gopal Krishna Andely v. Vth Additional District

Judge Kanpur and Ors. 1982 (1) ARC 391 (SC) and the Apex Court took the following view:

A perusal of Explanation 1 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.

12. The learned Counsel for the Petitioner further contended that as per wordings of Explanation 1 to Section 2(2) of the Act, if there are two

dates of completion of the building reported to or otherwise recorded by the Local Authority having jurisdiction and the date on which the first

assessment thereof comes into effect and where the said dates are different, the earliest of the said dates would be material for purposes of

operation of the Act. He further pointed out that extract of assessment, shows that assessment was done on 21.3.1979 and it means the

construction of the building completed on or before the said date and, therefore, the above date was material for the purposes of computation of

10 years for operation of the provisions of the Act. But having gone through the extract of quinquennial assessment, (Annexure-4 to the writ

petition), I find no force in the above contention. It has nowhere been mentioned in the above document that completion of construction of building

was reported to or otherwise recorded by local authority on 21.3.1979. It simply shows that by the resolution of the committee dated 21.3.1979

the assessment would come into effect from 1.4.1979. Parties had not filed any other document before the trial court or the revisional court to

show that the completion of construction of building was reported to or otherwise recorded by the local authority on any prior date and virtually

there is no evidence to show the date of completion of the construction of the building, reported to or otherwise recorded by the local authority.

Therefore, the only date on which the first assessment came into effect was before the Courts below to ascertain the applicability of provisions of

Act. There being no other earlier date, the Courts below were justified in taking into consideration the date on which the first assessment came into

effect for purposes of Explanation 1 to Section 2(2) of the Act.

13. The learned Counsel for the Petitioner placed reliance on Apex Court decision in Suresh Kumar Jain v. Shanti Swamp Jain 1997 (1) ARC

640. In the said case both the dates, namely, the date on which the completion of the building was reported to the local authority and the date on

which the completion of the building was otherwise recorded by the local authority having Jurisdiction were available. On January 30, 1978 the

building constructed by, the respondent landlord was inspected by the Section Head Clerk of the Etah Municipality and a report was filed by the

said Head Clerk recording that the ground floor and first floor had been rented at Rs. 75 and Rs. 60 per month respectively and the second floor

of the building was in possession of the respondent owner. In the said report, it was also indicated that the shop was well constructed. The Etah

Municipality thereafter issued a letter on January 30, 1978 to the respondent landlord that the date of hearing of the objection to the assessment of

house tax was fixed at 11 a.m. on February 1, 1978. Held that such notice as a consequential action about the report of the Head Clerk only

indicated that the Municipality had also noted the factum of completion of the building at least from the date of receipt of the said report. Such

recording of the date of completion of the tenanted premises in question fully satisfies the recording of deemed date of construction u/s 2(2) of the

Act and it is not necessary to investigate whether for the purpose of assessment of rates and taxes of a building, inspection of the building had been

done strictly in accordance with the Municipalities Act.

14. No such report or notice or any evidence otherwise to this effect have been adduced in the instant case and, therefore, the above case law is

of no help to the Petitioner.

15. Further reliance was placed on Apex Court decision in the case of Surendra Kumar Jain alias Sunni v. Shanti Swaroop Jain and Ors. 1996 (1)

ARC 316 It was held in the said case law that it appears that in terms of Explanation 1 (1)(a), the construction is deemed to have been completed

on the date on which the completion thereof is reported to or otherwise recorded by local authority having jurisdiction, if such reporting or

recording happens to be on the earliest point of time vis-a-vis various dates referred to hereinbefore. It was contended in the said case that

Municipal Authority having given notice for assessment on 15.11.1977, such date should be held to be the date when the Municipal Authority had

already taken note of the construction of the building. Since that date is the earliest of the dates as referred to in Explanation 1(a), that date

becomes relevant for the purpose of considering deemed date of construction. No such date has been shown or proved in this case and, therefore,

this case also does not help the Petitioner.

16. The Petitioner has also annexed copy of application moved for filing additional evidence before revisional court as Annexure-7 to the writ

petition, by which copy of assessment was sought to be filed, which indicated that the first assessment of the premises in question would come into

effect with effect from 21.3.1979. The revisional court appears to have not passed any orders on this application. Moreover, the earlier document

filed by the respondent landlord that first assessment came into effect from 1.4.1979 is not disputed and, therefore, subsequent document when

first one was not challenged was not to be taken into consideration.

17. The learned Counsel for the Petitioner further contended that undisputedly Nagar Mahapalika, Kanpur made the assessment prior to 1.4.1979

and, therefore, the date of completion of building was available and if the parties could not file any document regarding the date of completion of

construction of reporting to or recovered by local authority, it was the duty of the Court to have summoned the said record. Reliance was also

placed in this regard on cases Mangat Singh v. Sunder Lal 1985 (1) ARC 47 Mulkraj v. District Judge Dehradun and Ors. 1982 (Supp) ARC

547 Mohd. Hanif Khan v. VIth ADJ Bulandshahr and Ors. 1991 (1) ARC 161 and Ayodhya v. Special Additional District Judge Jaunpur and

Anr. 1988 (2) ARC 176. But it is not disputed that the Petitioner had not made any attempt for filing the date of completion of construction

reported or otherwise recorded by Nagar Mahapalika, nor moved any application for summoning record of Nagar Mahapalika in this regard and,

therefore, at this stage this exercise is not permitted.

18. In view of what has been discussed above, the only date available in this case was date from which the first assessment of the building in

question came into effect and, therefore, in the absence of any other dates, the Courts below were justified in accepting that date for purposes of

Explanation 1 to Section 2(2) and rightly concluded that provisions of the Act were not applicable to the premises in question on the date of suit.

19. No other point was pressed.

20. In view of above discussions and observations, I find no force in the petition. The petition is, accordingly, dismissed.