

(2007) 07 AHC CK 0242

Allahabad High Court

Case No: None

Roshan Lal Mittal

APPELLANT

Vs

Rent Control and Eviction
Officer/S.D.M. and Another

RESPONDENT

Date of Decision: July 2, 2007

Acts Referred:

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 29A

Citation: (2007) 4 AWC 3174

Hon'ble Judges: Prakash Krishna, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Prakash Krishna, J.

These two writ petitions were heard together and are being disposed of by a common judgment, as jointly agreed by the learned Counsel for the parties. To appreciate the controversy involved in both the writ petitions, facts are noted from the leading case, i.e., Writ Petition No. 19926 of 1995 which will suffice.

2. Raising a short controversy, the present writ petition is on behalf of a permanent lessee in whose favour a lease has been created by means of a registered lease deed dated 17.4.1916 in respect of a vacant piece of land whereupon shops No. 848 and 848(1) are situate at Nayaganj (Glrbarganj), Bulandshahr.

3. Whether Section 29A of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act") (U.P. Act No. 13 of 1972) is applicable to an unexpired lease of land is the only question involved in these two writ petitions.

4. An application u/s 29A(5) of the Act was filed by the landlord respondent No. 2 herein, for determination of rent payable under aforesaid Section 29A of U.P. Act No. 13 of 1972 by the petitioner (tenant) herein. It is admitted case of the parties that the present petitioner is a lessee under a registered lease deed dated 17.4.1916 executed by Badri Kishan and Girbar Kishan in favour of Khichchu Mal, the father of the petitioner Roshan Lal Mittal, at the rate of 12 Anna per month, i.e., Rs. 9 per annum. On the death of Khichchu Mal, the tenancy right has been devolved on the present petitioner. An application was filed for fixing the monthly rent at Rs. 3,592.50 paise as per the formula laid down u/s 29A of the said Act. The enhanced rent was claimed w.e.f. 1.8.1976, though the application was filed in the year 1993. In rebuttal, besides other pleas, it was pleaded by the petitioner that the provisions of Section 29A(5) of the Act are not attracted to a lease whose term has not yet expired.

5. The Rent Control and Eviction Officer/Deputy District Magistrate, Sikandrabad, by the order dated 26.5.1995, allowed the said application and fixed the liability on the petitioner to pay rent at the rate of Rs. 3,590.75 paise w.e.f. August, 1976. Questioning the legality and validity of the said order the present writ petition is.

6. Sri M.K. Gupta, learned Counsel for the petitioner submits that the provisions of Section 29A(5) of the Act are not attracted in the present case, as the lease in question is a permanent lease or a lease in perpetuity. His submission is that Section 29A(5) of the Act, on true and correct interpretation, is attracted only in those cases wherein the lease has expired and the lessee has made permanent construction with the consent of the landlord. In my view of the matter, the enhancement of rent could not be ordered w.e.f. August, 1976, i.e., for the period anterior to the date of the application. Elaborating the argument, he submits that the application itself was filed in the year 1993 and, as such, the enhancement, if at all, can take place from the date of the application and not prior to it. The valuation report relied upon by the respondent-landlord depicts the market value of the property as of July, 1991 and that cannot form basis for fixation of rent w.e.f. August, 1976, he submits.

7. Sri Atul Dayal, learned Counsel for the contesting respondent supports the impugned order and submits that Sub-section (7) of Section 29A provides that Section 29A of the Act shall have overriding effect. In this view of the matter, anything to the contrary contained in any contract or instrument or in any other law for the time being in force will be subject to the provisions of Section 29A of the Act. In other words, it will have effect over the contract of lease also.

8. Main thrust of the argument of the learned Counsel for the petitioner is that Section 29A is not applicable to unexpired leases of land. Before proceeding further, it is desirable to notice Section 29A of the Act which is reproduced below:

29A. Protection against eviction to certain classes of tenants of land on which building exists.--(1) For the purposes of this section, the expressions "tenant" and

"landlord" shall have the meanings respectively assigned to them in Clauses (a) and (j) of Section 3 with the substitution of the word "land" for the word "buildings".

(2) This section applies only to land let out, either before or after the commencement of this section, where the tenant, with the landlord's consent has erected any permanent structure and incurred expenses in execution thereof.

(3) Subject to the provisions hereinafter contained in this section, the provisions of Section 20 shall apply in relation to any land referred to in Sub-section (2) as they apply in relation to any building.

(4) The tenant of any land to which this section applies shall be liable to pay to the landlord such rent as may be mutually agreed upon between the parties, and in the absence of agreement, the rent determined in accordance with Sub-section (5).

(5) The District Magistrate shall on the application of the landlord or the tenant determine the annual rent payable in respect of such land at the rate of ten per cent per annum of the prevailing market value of the land, and such rent shall be payable, except as provided in Sub-section (6) from the date of expiration of the term for which the land was let or from the commencement of this section, whichever is later.

(6)(a) In any suit or appeal or other proceeding pending immediately before the date of commencement of this section, no decree for eviction of a tenant from any land to which this section applies, shall be passed or executed except on one or more of the grounds mentioned in Sub-section (2) of Section 20, provided the tenant, within a period of three months from the commencement of this section by an application to the Court, unconditionally offers to pay to the landlord, the enhanced rent of the land for the entire period in suit and onwards at the rate of ten per cent per annum of the prevailing market value of the land together with costs of the suit (including costs of any appeal or of any execution or other proceedings).

(b) In every such case, the enhanced rent shall, notwithstanding anything contained in Sub-section (5), be determined by the Court seized of the case at any stage.

(c) Upon payment against a receipt duly signed by the plaintiff or decree holder or his counsel or deposit in Court of such enhanced rent with costs as aforesaid being made by the tenant within such time as the Court may fix in this behalf, the Court shall dismiss the suit, or, as the case may be, discharge the decree for eviction, and the tenancy thereafter, shall continue annually on the basis of the rent so enhanced.

(d) If the tenant fails to pay the said amount within the time so fixed (Including any extended time, if any, that the Court may fix or for sufficient cause allow) the Court shall proceed further in the case as if the foregoing provisions of this section were not in force.

(7) The provisions of this section shall have effect, notwithstanding anything to the contrary contained in any contract or instrument or in any other law for the time being in force.

9. It may be recalled that the provisions of "the Act" are applicable basically to the urban buildings. However, Section 29A of the Act carves out an exception by providing that the provisions of "the Act" shall also be applicable to such land where the tenant, with the landlord's consent, has erected any permanent structure and incurred expenses in execution thereof.

10. The Act" came into force w.e.f. 15.7.1972 and was enacted with a view to provide, in the interest of general public, for the regulation of letting, rent and the eviction of tenants from certain classes of buildings situated in urban areas, and for matters connected therewith. The said Act, like other similar Rent Control Acts, has been enacted with a view to protect the interest of the tenants, to restrict charging of excessive rent and, their, rampant eviction at will. The Act, as It was originally enacted, did not contain Section 29A. It was inserted subsequently by way of amendment by U.P. Act No. 28 of 1976. The aims and objects of insertion of Section 29A are as follows:

5. In some districts, the landlords are trying to evict the lessees of the land who have built factories and other buildings for the purposes of industry. It is being provided that the lessees of such land would also get protection of the Act like tenants of buildings.

11. The aforesaid quotation from the statement of objects and reasons discloses the mind of the Legislature for enacting Section 29A. Eviction of a lessee of a land is possible only after determination of the lease. The statement of objects and reasons for insertion of Section 29A is indicative of Legislature's intent that Section 29A was enacted with a view to provide protection to such lessees of the land who have built factories and other buildings for the purposes of industry and the landlords are trying to evict such lessees.

12. Eviction of a lessee presupposes determination of lease either by the act of a party or according to the procedure known to law. This is indicative of the fact that Section 29A was inserted to protect such tenants whose leases have come to an end.

13. One of the cardinal principles of interpretation is that all the provisions of the Statutes should be interpreted harmoniously. On examination of various sub-sections of Section 29A where Section 29A applies, the tenant shall be liable to pay to the landlord such rent as may be mutually agreed upon between the parties. It means that where mutually agreed rent is there between the parties, the tenant of any land to which Section 29A applies, shall pay the rent accordingly. The phrase "such rent as may be mutually agreed upon between the parties" came up for consideration before a Full Bench of this Court in *Trilok Chand v. Rent Control and Eviction Officer S.D.M. Naku, District Saharanpur and Anr.* 1987 (1) ARC 290 : 1987 (1)

AWC 524 (FB). It was held as follows:

11. The question of consideration is whether the landlord in such a case is precluded from exercising his right under Sub-section (5) of Section 29A. If Sub-section (4) takes within its fold the agreement entered into even before coming into force of Section 29A, then the landlord in the present case has no sustainable case. If on the other hand, Sub-section (4) covers only the agreement entered into subsequent to Section 29A was brought in force, then the landlord must succeed in this case.

12. We gave our anxious consideration to the rival contentions urged for the parties. We find ourselves unable to agree with the submission of Mr. Rishi Ram. The reason is this; Sub-section (4) applies to the land to which Section 29A applies. It provides that the tenant shall be liable to pay to the landlord such rent as may be agreed upon between the parties. In the absence of such agreed rent, the Sub-section further provides that the tenant is liable to pay the rent determined in accordance with Sub-section (5). These terms are clear enough and indicate that the agreement envisaged thereunder is not the agreement, existed prior to coming into force of Section 29A. It refers to subsequent agreement only. The words "such rent as may be mutually agreed upon between the parties" refer the future agreement and not the past agreement. Sub-section (4) again emphasis "such rent". Such rent, in the context, means the rent to be mutually agreed upon by the parties. Sub-section (4) further states that in the absence of agreement, the rent has to be determined in accordance with Sub-section (5).

14. The Full Bench, while considering Sub-section (5), has observed as follows:

...It is clear from these provisions that the terms of the original lease have been kept undisturbed and the rights of parties thereunder are kept unimpaired. The landlord could get the annual rent of the land enhanced and determined under Sub-section (5), but it could take effect from the date of expiration of the term of the original lease or from the commencement of Section 29A of the Act whichever is later.

15. It has been further observed in para 14 that Sub-sections (4) and (5) shall prevail and not the antecedent agreement if any. The said observation of the Full Bench should be understood in the background facts of the case. Facts were that the lease had already expired in the year 1958. In that fact situation the aforesaid objections were made. It has taken care to observe that Sub-section (5) has made a provision "that the terms of the original lease have been kept undisturbed and the rights of parties thereunder are kept unimpaired." in the case of an unexpired lease, the mutually agreed rent is always there and this supports the view which is proposed in the judgment that in such cases an application under Sub-section (5) shall not be maintainable.

16. The above view is further fortified by Sub-section (6) thereof which talks of pendency of any suit or appeal or other proceedings immediately before the commencement of Section 29A. It provides protection to such tenant "from eviction"

of a tenant from any land. The stage of eviction of a lessee or a tenant will arrive only on determination of lease. Sub-section (6) also fortifies the petitioner's contention that Section 29A will not apply to the existing leases.

17. Sub-section (5) of Section 29A provides a forum of District Magistrate for determination of annual rent payable in respect of such land. Subsection (7) of Section 29A gives an overriding effect to the provisions of Section 29A, as is clear from the words "notwithstanding anything to the contrary". The submission of the learned Counsel for the lessor is that in view of the provisions of Sub-section (7) of Section 29A, any contract or instrument or any other law for the time being in force is subject to the provisions of Section 29A. In other words, if there is anything contrary in any contract or instrument or in any other law to Section 29A, the provisions of Section 29A will prevail over such contract, instrument or law.

18. Sri M.K. Gupta, advocate, on the other hand, submits that the words "notwithstanding" used in Sub-section (7) of Section 29A should be interpreted, keeping in view that Rent Control Act has been enacted, as is clear from the "Aims and Objects" of the Act, for the benefit of tenants or the lessees. The submission is that the provisions of Rent Control Act should be interpreted in such a manner so that it may not frustrate its aims and objects or counter productive and the position of a lessee may become worst, had the Rent Control Act not been enacted. In other words, an advantage, privilege or right which is available to a existing lessee/tenant under a law of Transfer of Property Act, such advantage or privilege shall remain available to such lessee/tenant. While interpreting any provision of the Rent Control Act, an interpretation which puts a lessee to a disadvantage and prejudices his right or privilege already available to him, the same should be interpreted in such a manner so that those rights or privileges may remain intact.

19. The Apex Court in [Laxmidas Bapudas Darbar and Another Vs. Smt. Rudravva and Others](#), has examined as to what meaning should be assigned to a non-obstante clause appearing in a Rent Control Statute. It was a case under a cognate Act, namely, Karnataka Rent Control Act (hereinafter referred to as "that Act"). The controversy involved therein was the scope and effect of Section 21 of that "Act" on fixed term contractual lease. Section 21 of that "Act" also contains a nonobstante clause which has been reproduced in para 16 of the report. The Apex Court proceeded to decide the controversy taking Into consideration what for the Rent Control Acts have primarily been made, if not wholly, to protect the interest of the tenants from charging of excessive rent and their rampant eviction on Will. The non obstante clause contained u/s 21 of the that Act will override any condition in any contract which may provide a ground for eviction other than those enumerated in Section 21 of that Act. The lease was for 90 years and it had not expired as yet. The lessor sought the eviction of the lessee/tenant on the ground of his bona fide need and he contended that in view of statutory provision which has an overriding effect, the fact that lease is unexpired, will not fetter his right to seek eviction under "that

Act". Repelling the said argument, and interpreting the non-obstante clause u/s 21 of "that Act", it was held:

...The whole contract or other conditions not related to eviction or grounds of eviction shall not be affected. So far as a fixed term lease is concerned, it shall be affected only to the extent that even after expiry of period of the lease, the possession cannot be obtained by the lessor unless one or more of the grounds contained in Section 21 of the Act are available for eviction of the tenant....

20. The aforesaid judgment of the Apex Court clearly lays down that a non-obstante clause in a Rent Control Legislation will override those conditions in a contract which may provide a ground for eviction other than those statutorily provided for. An additional ground thus in a contract for eviction shall be rendered ineffective. The said judgment gives a fair idea that a contract entered into between the parties will not be wiped off as a whole and it shall remain binding and operative on the parties and the contract of lease shall be subject to the condition that a lessee shall be liable for eviction only in accordance with the Rent Control Legislation and not otherwise.

21. The learned Counsel for the respondent-lessor also placed reliance on Section 38 of the Act which provides that the provisions of the Act shall have an effect notwithstanding anything inconsistent therewith contained in the Transfer of Property Act or in the Code of Civil Procedure. In this connection, reliance was placed on *Miss Asha Lata E. Robin v. Radha Swami Satsangi Sabha* 1982 (2) ARC 528. In my view, the non-obstante clause provided u/s 38 of the Act should meet the same treatment and be read accordingly as pointed out by the Apex Court in the case of *Laxmidas Bapudas Darbar* (supra).

22. Even otherwise also, on a plain reading of Sub-section (5) of Section 29A, the intention of the Legislature is clear that fixation of rent u/s 29A shall be applicable from the date of expiration of term for which the land was let out or from the commencement of Section 29A of the Act whichever is later. Section 29A of the Act was introduced w.e.f. 5.7.1976. The phrase "whichever is later" also supports the petitioner's contention.

23. Three situations can be visualized--(i) where a lease has expired before the commencement of Section 29A of the Act, (ii) where a lease has expired after commencement of Section 29A of the Act, and (iii) where a lease has not yet expired and Section 29A of the Act has come into operation. Situations (i) and (ii) are covered within the ambit and scope of Section 29A of the Act. But in my opinion, Section 29A of the Act is not attracted in situation (iii), as is the present case, on a plain and simple reading of Sub-section (5) of Section 29A of the Act. Otherwise, a lessee, for whose benefit Section 29A of the Act has been enacted, would be placed in a worst position to pay the enhanced rent proportionate to the prevailing market value of the land on the date of commencement of Section 29A of the Act and not at the agreed rate.

24. In [Lalji Tandon and Others Vs. City Magistrate and Others](#), this Court in a different context has held that liability to pay enhanced rent accrues on the date on which original agreement expires. The relevant extract is reproduced below:

...that liability to pay enhanced rent accrues on the date on which original agreement expires. Naturally, the extent of liability will also have to be determined as per market value on the said date....

25. The question involved herein was from which date enhanced rent shall be payable u/s 29A of the Act, i.e., whether from the date of expiration of agreement or lease or from the commencement of Section 29A of the Act. In this connection, as noted above, it was held that liability to pay enhanced rent accrues on the date on which original agreement expires. The aforesaid observation, though made in a different context, but in my view, is helpful to resolve the controversy on hand.

26. The learned Counsel for the contesting respondent placed reliance upon [Imdad Ali Vs. Keshav Chand and Others](#), wherein it was held by the Apex Court, with reference to the provisions of Madhya Pradesh Accommodation Control Act, that Rent Act is a beneficial Legislation not only for the tenants but for the landlords as well. It was held that such Legislation is to be interpreted harmoniously. The dictum laid down therein has hardly any application to the present case and is distinguishable on facts. The observations made therein should be understood in the background that benefits conferred on tenants through relevant statute can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters. In the case on hand, the lessee is not claiming benefit under any provision of the Act. The case of the lessee is that his rights and liabilities are still governed by the term of a registered lease deed dated 17.4.1916. The landlord, on the other hand, is seeking to invoke the provisions of Section 29A of the Act for enhancement of rent.

27. Reliance was also placed upon [A.P. State Financial Corporation Vs. Official Liquidator](#), wherein it has been held that non-obstante clause in a subsequent general Act, would prevail over a conflicting provision in a prior special Act. I find hardly its applicability to the present controversy.

28. In view of the above discussion, it is difficult to agree with the view taken by the Rent Control and Eviction Officer that Section 29A of the Act will be attracted to such leases also, the terms of which have not yet expired. In other words, fixed term leases will not fall within the purview of Section 29A of the Act till the currency of the lease. It follows that the right and liability of the parties shall continue to be governed by the lease deed till it expires. The argument of the lessor that in the present days rent of 12 Anna per month is illusory and virtually no rent is attractive but is wholly irrelevant in view of the express contract entered into between the parties. It may not be out of place to mention here that in the year 1916, when the lease deed was executed, the parties entered into the terms and conditions with

their wide open eyes and mutually thought that the agreed rent is the most appropriate rent.

29. Even otherwise, the Rent Control Legislation provides a protection to a tenant from eviction. It is open to such tenants to avail or not to avail the benefit conferred by the Rent Control Legislation. It does not give right to a landlord to enforce any provision of Rent Control Legislation when a tenant is not invoking its benefit. The right of a landlord and tenant, under General Law, are governed by Transfer of Property Act. A lease can be determined as per the provisions of Transfer of Property Act. Where a protection has been given to a tenant under Rent Control Legislation, a corresponding obligation has been provided for such tenants. It cannot possibly be said that a tenant is obliged to discharge his obligation created by Rent Control Legislation when he is not invoking any benefit therein.

30. In view of the above discussion, the writ petition is on terra firma and the order of the Rent Control & Eviction Officer is indefensible and suffers from manifest error of law as it is based upon misconstruction and mis-interpretation of Section 29A of the Act. The said order cannot be sustained.

Writ Petition No. 19928 of 1995:

31. No separate argument was advanced in this Writ Petition No. 19928 of 2005 and the learned Counsel for the parties jointly agreed that the decision given in Writ Petition No. 19926 of 1995 will hold good in this writ petition also.

32. Viewed from any angle, the impugned order cannot be sustained.

Both the writ petitions succeed and are allowed.

However, in the circumstances of the case, no order as to costs.