

(1996) 08 AHC CK 0140**Allahabad High Court****Case No:** C.M.W.P. No. 21599 of 1995

V.K. Bains

APPELLANT

Vs

VIIth Addl. District Judge and
Others

RESPONDENT

Date of Decision: Aug. 13, 1996

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 11
- Constitution of India, 1950 - Article 226
- Provincial Small Cause Courts Act, 1887 - Section 25
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 2, 20(4)

Hon'ble Judges: R.H. Zaidi, J**Bench:** Single Bench**Advocate:** Govind Saran, for the Appellant; S.C. and P.K. Sinha, for the Respondent**Final Decision:** Dismissed**Judgement**

R.H. Zaidi, J.

Heard learned Counsel for the Petitioner.

2. Present petition arises out S.C.C. suit filed by Respondent Nos. 3 to 5, landlords, against the Petitioner tenant for ejectment and recovery of rent and is directed against the order passed by Respondent No. 1 allowing the revision and remanding the case for a decision afresh to the trial Court vide its order dated 31.3.1995.

3. The suit was filed by the landlords with the allegation that the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, (U.P. Act No. 13 of 1972) for short "the Act" had no application over the shop in dispute that the Petitioner tenant also committed default in payment of rent, therefore, his tenancy was terminated in accordance with law but the Petitioner did not vacate the shop in dispute, he was, therefore, liable to ejectment from the same.

4. The suit was contested by the Defendant-Petitioner, who had denied the claim of Respondent Nos. 3 to 5-landlords, and pleaded that the provisions of the Act were fully applicable over the shop in dispute and that he has deposited the requisite amount on the first date of hearing, he was, therefore, entitled to the benefit of Sub-section (4) of Section 20 of the Act. Trial Court was pleased to hold that the provisions of the Act were applicable over the shop in dispute. The Petitioner committed default in payment of rent but since the requisite amount was deposited by him on the first date of hearing, therefore, he was entitled to the benefit of Sub-section (4) of Section 20 of the Act. Having recorded the said findings the suit was decreed only for recovery of rent and was dismissed for the relief of ejectment against the Petitioner by its Judgment and decree dated 26.3.1991.

5. Aggrieved by the judgment and decree passed by the trial Court, the landlords filed revision u/s 25 of the Provincial Small Causes Court Act before the Court below. The Court below set aside the findings recorded by the trial Court on issue No. 1 and it was held that the provisions of the Act were not applicable over the shop in dispute. The tenancy of the Petitioner having been terminated in accordance with law. He was, therefore, liable to be ejected from the shop in dispute. The revision was allowed and the suit was decreed as prayed for by the Plaintiff.

6. Learned Counsel appearing for the Petitioner vehemently submitted that the findings recorded by the Court below were based only on the decision of tills Court in *Adesh Kumar Gupta v. Kanpur Vidya Mandir Society* 1990 (1) ARC 14 which was not binding upon the Petitioner as he was not a party to it. The judgment and order passed by the Court below is, therefore, liable to be set aside.

7. In the case of *Adesh Kumar Gupta* (supra), a suit was filed by the same Plaintiffs who have filed the suit giving rise to the present petition, in respect of the same building, i.e., premises No. 7/147, Swarup Nagar, Kanpur, which is in dispute in the present case exactly with the same allegations as have been made in this case, i.e., the building in question is exempted from operation of the Act. It was alleged that the building in question vested in 3 educational institutions and the entire income of the said premises was used exclusively for the purposes of the said educational institutions. The said suit was contested by the Defendant mainly with the allegation that the provisions of the Act were fully applicable over the building in dispute as has been pleaded by the Petitioner in the present case. This Court, after taking into consideration all relevant aspects of the matter, was pleased to hold:

It was on the basis of this material coupled with the statement of P.W. 1 Raghubansh Kumar that the trial Court came to the conclusion that the building as well as the impugned shop is exempted from the operation of the Act XIII of 1972. I do not find that the said finding of the trial Court is erroneous or is not according to law. It is a finding of fact. The trial Court has rightly held that the disputed accommodation vests in the aforesaid educational institutions and the rental income of the same is exclusively utilised by the said institution. This is a finding of

fact and does not require any interference. In any case of the matter, it cannot be said that this finding is not according to law.

8. It is not disputed that the shop in dispute is a part of the building which was in question in the case of Adesh Kumar Gupta (supra), therefore, even if, the Petitioner was not a party in the said case, it is not open to him to say that the judgment in the said case was irrelevant or inadmissible in evidence. In my opinion, the judgment and decree passed by this Court in the case of Adesh Kumar Gupta (supra) operates res judicata and Explanation VI of Section 11, CPC fully applies in the present case. The findings recorded in the said case are binding upon the Petitioner even though he was not a party in the said case. It has not been pleaded by the Petitioner that the earlier litigation was not a bona fide litigation or that the shop in dispute was not part of the building which was subject-matter of dispute in the said case. The Court below was, thus, perfectly Justified In placing the reliance upon the decision In the case of Adesh Kumar Gupta and in holding that the provisions of the Act had no application over the shop in dispute as the same was exempted from its operation u/s 2 of the Act.

9. The Judgment and order passed by the Court below do not suffer from any infirmity or illegality. No case for interference under Article 226 of the Constitution of India Is made out.

10. The writ petition fails and is dismissed in limine.

11. Interim order dated 17.1.1996 is discharged.