

OM PRAKASH GUPTA ETC.

v.

DIG VIJENDRAPAL GUPTA ETC.

March 5, 1982

[A.D. KOSHAL, V. BALAKRISHNA ERADI AND
R.B. MISRA, JJ.]

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972. S.2 (2) and Explan. I and s. 39.

Applicability of the Act—Act not to apply to building for a period of ten years from 'date of completion of construction'.

Date of completion of construction—What is—'Date of first assessment' if assessed—'Date of occupation' when no record of completion of construction or of assessment.

Interpretation of Statutes—Intention of legislature—To be ascertained primarily from words used by legislative—Question of interpretation arises when language ambiguous.

The U.P. Urban Buildings (Regulation of Letting, Rent and (Eviction) Act, 1972 provided by sub-section (2) of section 2 that except as provided in the Act, the Act was not to apply to a building during a period of 10 years from the date on which its construction was completed. Explanation I to the sub-section provided that the building shall be deemed to have been completed on the date on which completion thereof is reported or otherwise recorded by the local authorities having jurisdiction, and in 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 date, and in the absence of any such report, record or assessment, the date on which it is actually occupied for the first time.

The appellant-tenant was in occupation of a shop from the 16th June, 1967 and prior to his occupation the shop was in occupation of another tenant for about a month and a half. The first assessment of the shop took place on 1st of April, 1968. The respondent-landlord filed a suit for the eviction of the tenant on the ground that the Act did not apply to the shop and the tenant was liable to eviction.

The Trial Judge finding that the construction of the shop was completed in the year 1967 and that 10 years having not elapsed since then, held that the provisions of the Act did not apply and decreed the suit. The appellant's

A petition under section 25 of the Provincial Small Causes Courts Act was dismissed. In his revision petition to the High Court under section 115 of the Civil Procedure Code the appellant contended that the date of occupation should be taken to be the date of completion of the construction of the shop and not the date of first assessment. The High Court overruled the contention and held that the construction of the shop would be deemed to have been completed on 1st of April, 1968 the date of the first assessment and ten years not having elapsed, the Act would not be applicable to the building and dismissed the revision petition.

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C In the appeal to this Court it was contended on behalf of the appellant : (1) that by virtue of sub-section (2) of section 2, the Act would be applicable to the shop in question and that the exemption created by the sub-section did not embrace buildings constructed prior to the commencement of the Act and (2) that the building should be deemed to have been constructed on the date of occupation on 16th June, 1967 and not on the date of the first assessment, and that the appellant was entitled to the benefit of section 39 of the Act.

Dismissing the appeal,

D HELD : 1(i) The suit was rightly decreed by the Courts below. The Act had no application and the appellant could not be given the benefit of section 39. [498 G-H]

E (ii) Primarily, the language employed is the determining factor of the intention of the legislature. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. The question of interpretation arises only when the language is ambiguous and, therefore capable of two interpretations. [497 F]

(iii) The language of sub-section (2) of section 2 of the Act is explicit and unambiguous and is not capable of two interpretations. [497 G]

F In the absence of any ambiguity there is no question of taking any external aid for the interpretation of the sub-section. The sub-section contemplates that the Act shall not apply to a building during a period of 10 years from the date on which its construction is completed. It nowhere says that the building should have been constructed after the enforcement of the Act and to interpret it in such a way would be to add words to the sub-section, which is not permissible. [497 D-F]

G 2 (i) Explanation I 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 instant case it will be the date of the first assessment which will be deemed to be the date of completion of the construction. The building had not therefore become more than ten years' old on the date when the revision came to be decided by the High Court and consequently there was no question of giving the benefit of section 39 of the Act to the appellant. [498 D-F]

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(ii) In order to attract section 39 the suit must be pending on the date of the commencement of the Act which was 15th of July, 1972. [498 F]

In the instant case the suit was filed on 23rd of March 1974 long after the commencement of the Act. [498 F]

(iii) In view of sub-section (2) of section 2, the Act is not applicable to a building which has not a standing of ten years. If the Act itself was not applicable, it would be absurd to say that section 39 thereof would be applicable. [498 G]

Rattan Lal Shinghal v. Smt. Murti Devi (1980) 4 S.C.C. 258 and *Ram Saroop Rai v. Lilavati* (1980) 3 S.C.C. 452, over-ruled.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1314 of 1978.

Appeal by special leave from the judgment and order dated the 23rd March, 1978 of the Allahabad High Court in Civil Revision No. 1906 for 1976.

WITH

CIVIL APPEAL No. 2436 OF 1981

Appeal by special leave from the judgment and order dated the 20th August, 1981 of the Allahabad High Court in Civil Writ Petition No. 6909 of 1979.

AND

CIVIL APPEAL No. 1710 OF 1981

From the judgment and Decree dated the 13th March, 1981 of the Allahabad High Court in Writ Petition No. 6167 of 1979.

AND

SPECIAL LEAVE PETITION (CIVIL) NO. 3573 OF 1979

A From the judgment and order dated the 3rd January, 1979 of the Allahabad High Court in Civil Revision No. 3714 of 1978.

B *G.L. Sanghi, Mrs. A. Verma and D.N. Mishra* for the Appellant in CA. No. 1314 of 1978.

J.P. Goyal, S. Markandeya and C.K. Ratnaparkhi for the Respondent in CA. 1314 of 1978.

A.K. Srivastava for the Appellant in CA. 1710/80.

C *R.B. Mehrotra* for Respondent in CA. 1710/80.

Pramod Swarup and Mrs. S. Markandeya for the appellant in CA. 2436 of 1980.

D *S.N. Kacker and K.K. Gupta* for the Respondent in CA. 2436 of 1980.

P.R. Mridul, Praveen Jain and K.B. Rohatgi for the Petitioner in SLP (Civil) No. 3573 of 1979

R.H. Dhebar for the Respondent.

E The Judgment of the Court was delivered by

F **MISRA J.** The first two appeals by special leave and the third by certificate and the special leave petition raise a common question of law and, therefore, we propose to dispose of them by a common judgment.

The pattern of facts in all these cases is similar. We, therefore set out the facts of Civil Appeal No. 1314 of 1978 to bring out the point for consideration in these matters.

G The appellant Om Prakash Gupta is a tenant of a shop on a monthly rent of Rs. 150/-. The respondent-landlord filed a suit for the eviction of the tenant on the ground that the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Act 13 of 1972 and hereinafter referred to as 'the Act') did not apply to the shop and the tenant was liable to eviction. The Judge, Small Causes Court, Mainpuri decreed the suit on the finding *inter alia* that the construction of the shop in suit was completed in the year 1967 and

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that ten years having not elapsed since then, the provisions of the Act did not apply to the case. The defendant went up in revision under section 25 of the Provincial Small Causes Courts Act against the judgment and decree of the trial Court but the same was substantially dismissed. The defendant thereupon filed a revision under section 115 of the Civil Procedure Code in the High Court which came up for hearing before a learned Single Judge who remitted the following issue to the trial court :

“On what date was the construction of the building in dispute completed within the meaning of section 2 (2) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, and deemed to have been completed as contemplated by Explanation I (a) thereto.”

The Judge Small Causes Court by his order dated 26th of November 1977 returned the following finding :

“The construction of the disputed shop will be deemed to have been completed on the date of the first assessment i.e., 1.4.68 within the meaning of section 2 (2) of the U.P. Urban Buildings Act, 1972.”

The finding returned by the trial court was sought to be challenged on behalf of the tenant on the ground that the date of occupation should be taken to be the date of completion of the construction of the shop and not the date of the first assessment. In *Tilak Raj v. Sardar Devendra Singh*,⁽¹⁾ a learned Single Judge of the same High Court had the occasion to consider section 2 (2) of the Act. He held :

“It is apparent from this provision that for purposes of this Act, a building is to be deemed to be constructed, if it is subject to assessment, on the date with effect from which the first assessment is made. It is immaterial whether the building was constructed actually prior to that date or it had come into occupation prior to that date. The law recognised for the purposes of this Act, the date of assessment as the date of the completion of the building. There is thus no error in the judgment of the court below.”

(1) 1976 (2) ALR 721.

A The learned Single Judge before whom the revision in the instant case came up for hearing doubted the correctness of the above decision. He, therefore, referred the case to a Division Bench.

B There is no dispute that the first assessment of the shop took place on 1st of April, 1968. It is also not in dispute that the shop in question was occupied by the defendant on 16th of June, 1967, and prior to his occupation the shop was in occupation of another tenant for about a month and a half. The appellant sought the benefit of section 39 of the Act on the ground that if the date of occupation was taken to be the date of the completion of the construction of the shop, then ten years having elapsed during the pendency of the revision before the High Court, the Act would be applicable. The Division Bench, however, over-ruled the contention of the appellant and held that the construction of the shop in question would be deemed to have been completed on 1st of April 1968 and, therefore, the Act would not be applicable to the building till the date of the decision of the revision on March 23, 1968. The defendant undaunted by the failure came to this Court to challenge the judgment of the High Court.

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E Mr. G.L. Sanghi, senior counsel, appearing for the appellant strongly contended that on a correct interpretation of sub-section (2) of section 2, the Act would be applicable to the shop in question. It would be appropriate at this stage to extract sub-section (2) of section 2 of the Act insofar as it is material for the purposes of the case :

F “Except as provided in sub-section (5) of section 12, sub-section (1-A) 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 :

G Explanation I. For the purposes of this sub-section:

H (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 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, 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 :..... ”

The precise contention on behalf of the appellant is that the exemption created by this sub-section does not embrace buildings constructed prior to the enforcement of the Act. In support of his contention, Mr. Sanghi, relied upon *Rattan Lal Shinghal v. Smt. Murti Devi*.⁽¹⁾ The same contention was raised by him in that case also and a Division Bench of this Court accepted the contention and held that Act 13 of 1972 was prospective and applied only to buildings brought into being *de novo* after the Act came into force. In that case there is no discussion except this bald observation. This Court in a subsequent case *Ram Saroop Rai v. Lilavati*⁽²⁾ held to the contrary. It is on this account that the present appeals were referred to a larger Bench. There is no ambiguity in the language of sub-section (2) of section 2 and in the absence of any ambiguity there is no question of taking any external aid for the interpretation of the sub-section. In plain words the sub-section contemplates that the Act shall not apply to a building during a period of ten years from the date on which its construction is completed. It nowhere says that the building should have been constructed after the enforcement of the Act and to interpret it in the way the learned counsel for the appellant seeks to interpret it, we would be adding words to the sub-section, which is not permissible. Primarily the language employed is the determining factor of the intention of the legislature. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. The question of interpretation arises only when the language is ambiguous and, therefore, capable of two interpretations. In the present case the language of sub-section (2) of section 2 of the Act is explicit and unambiguous and it is not capable of two interpretations.

(1) [1980] 4 S.C.C. 258.

(2) [1980] 3 S.C.C. 452.

A As a second limb to the first argument, it is contended that the building will be deemed to have been constructed on the date of occupation on 16th of June, 1967 and not on the date of the first assessment, and that if this be so, the appellant would be entitled to the benefit of section 39 of the Act on the date when the revision came to be decided by the High Court on 23rd of March, 1978. In order to appreciate this argument it will be expedient to refer to **B** Explanation I to sub-section (2) of section 2 which has already been extracted. Explanation I provides that the building shall be deemed to have been completed on the date on which completion thereof is reported to or otherwise recorded by the local authorities having **C** jurisdiction, and in 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, and in the absence of any such report, record or assessment, the date on which it is actually occupied for the first time. A perusal of **D** Explanation I 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 **E** than ten years' old on the date when the revision came to be decided by the High Court, and therefore there was no question of giving the benefit of section 39 of the Act to the appellant.

F Further, in order to attract section 39 the suit must be pending on the date of commencement of the Act which is 15th of July, 1972 but the suit giving rise to the present appeal was filed on 23rd of March, 1974 long after the commencement of the Act. There is yet another reason why section 39 will have no application to the present case. In view of sub-section (2) of section 2 of the Act the Act is not applicable to a building which has not a standing of ten years and if the Act itself was not applicable, it would be absurd to say that section 39 thereof would be applicable. Considered from **G** any angle the Act has no application to the present case and the appellant could not be given the benefit of section 39. The suit has, therefore, been rightly decreed by the courts below.

H We find no force in either of the contentions raised by Mr. Sanghi. The counsel for the appellants in the other appeals and

the petitioner in the special leave petition, adopted the arguments of Mr. Sanghi. A

For the foregoing discussion the appeals and the special leave petition are dismissed. There shall, however, be no order as to costs.

We, however, direct that the order of eviction in each case shall not be executed before 30th of June, 1982 on condition that each of the appellants in the appeals and the petitioner in the special leave petition files an undertaking in this Court within four weeks from today to the following effect : B

1. that he will hand over vacant and peaceful possession of the suit premises to the landlord-respondent on or before 30th of June, 1982; C
2. that he will pay to the respondent arrears of rent, if any, within a month from today;
3. that he will pay to the respondent future compensation for use and occupation of the suit premises for each calendar month by the 10th of the succeeding month; and D
4. that he will not induct any other person in the suit premises as a sub-tenant or licensee or in any other capacity whatsoever. E

We further direct that in default of compliance with any one or more of the conditions of the undertaking or if the undertaking is not filed within the stipulated time, the decree of eviction shall become executable forthwith. F

N.V.K.

Appeal dismissed.