

A

STATE OF U.P. AND ORS.

v.

VII ADDITIONAL DISTRICT JUDGE AND ORS.

SEPTEMBER 16, 1992

B

[KULDIP SINGH AND G.N. RAY, JJ.]

*U.P. Urban Buildings (Regulations of Letting, Rent and Eviction) Act, 1972: Sections 3(i) and 21(8)—Proviso.*

C

*Rent—Enhancement of—Assessment of market value of Building for determination of rent—Held building includes the structure including the land underneath it—Value of land should be added to the value of structure while determining the value of building.*

D

The landlord of a building, which was let out to the Sales Tax Department of the Government of Uttar Pradesh, filed an application for enhancement of rent. The Rent Control and Eviction Officer enhanced the rent which was determined by assessing the market value of the building including the value of super-structure as well as the value of land underneath it. The determination made by the Rent Control Officer was affirmed by the Appellate Authority and also by the High Court. In appeal to this Court it was contended for the appellant that the expression 'building' under Section 3(i) of the U.P. Urban Buildings (Regulations of Letting, Rent and Eviction) Act, 1972 includes only the super-structure and not the land underneath it. For the respondent-landlord it was contended that the land under the super-structure also comes within the expression 'building' itself.

E

F

Dismissing the appeal, this Court,

G

**HELD:** 1. The definition of 'building' under Sections 3(i) clearly shows that the building means the roofed structure including the land underneath the said structure. In the definition there is no express exclusion of the value of the land on which the building stands. In the absence of such express exclusion, the land being intrinsically inseparable from the building standing thereon, the value of the land and the value of the structure or building should be taken into consideration. [603 H, 604 A-C]

H

Inclusive part of the definition only relates to the land appurtenant to such building and not to the land underneath the roof structure. The land on which the building stands together with the building or structure constitute one composite unit. The value of two similar buildings or structure standing on similar parcel of land may differ substantially on account of locational advantage of the site in question. The difference of valuation of land because of such locational advantage creeps into the unultimate valuation of the building or structure making one building more valuable than the other although from the structural point of view, both the buildings are identical. Therefore, the determination of valuation of the building by taking into consideration the value of the land in addition to the value of the structure, does not appear to be illegal and improper.

[604 A-D]

*Dr. Kishore Chand Kapoor and Ors. v. Dharam Pal Kapoor and Ors., A.I.R. 1987 S.C. 66 and State of Kerala v. P.P. Hassan Koya, A.I.R. 1968 S.C. 1201, referred to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No.1082 of 1992.

From the Judgment and Order dated 7.2.1991 of the Allahabad High Court in Civil Misc. Writ Petition No.906 of 1990.

Ms. Kamini Jaiswal for A.K. Goel for the Appellants.

R.K. Jain, Manoj Goyal, Ashish Kumar Verma, P.K. Jain and Ms. Abha R. Sharma for the Respondents.

The Judgment of the Court was delivered by

G.N. RAJ, J. The question for our consideration in this appeal is whether the expression "Building" in Section 3(i) of the U.P. Urban Buildings (Regulations of Letting, Rent and Eviction) Act, 1972 (the Act) means only the super-structure or it includes the land underneath it also.

It is not necessary to go into the history of litigation between the parties, suffice it to say that the building in dispute was let out to the Sales Tax Department of the Government of Uttar Pradesh by one Devender Singh. His application under proviso to Section 21(8) of the Act for enhancement of rent was allowed by the Rent Control and Eviction Officer

A and he enhanced the rent to the building from Rs.300 to Rs.5,622.87 per month. The appeal filed by the State of Uttar Pradesh before the Additional District and Sessions Judge, Saharanpur was dismissed. The State of Uttar Pradesh challenged the order of the courts below before the High Court by way of a writ petition under Article 226 of the Constitution of India which was dismissed by the High Court by its Order dated February 7, 1991. This appeal by way of special leave is against the Judgment of the High Court.

Section 3(i) and the proviso to Section 21(8) of the Act are reproduced hereunder:-

C Sec. 3(i) "building" means a residential or non-residential roofed structure and includes-

(i) any land (including any garden), garages and out houses, appurtenant to such building;

D (ii) any furniture supplied by the landlord for use in such building;

(iii) any fittings and fixtures affixed to such building for the more beneficial enjoyment thereof.

E Sec.21(8) .....  
provided that in the case of such a building the District Magistrate may, on the application of the landlord, enhance the monthly rent payable therefore to a sum equivalent to one-twelfth of ten per cent of the market value of the building under tenancy, and the rent so enhanced shall be payable from the commencement of the month of tenancy following the date of the application. Provided further that a similar application for further enhancement may be made after the expiration of five years from the date of the last of enhancement.

G The Rent Control and Eviction Officer and the Appellate Authority under the Act determined the value of the super-structure and also of the land separately and thereafter adding both the values, the monthly rent payable by the appellant was determined. The High Court upheld the H reasoning and findings of the courts below.

Learned counsel for the appellant has contended that the plain meaning of the expression "building" under Section 3(i) of the Act shows that it only meant the super-structure constructed on the land and does not include the land underneath the building. According to him the inclusive definition of "building" is indicative of the fact that the expression "building" does not include the land underneath it.

Mr. R.K. Jain, learned counsel appearing for the respondent-landlord has contended that the definition of "Building" under Section 3(i) of the Act on the face of it is clear and according to him and inclusive part of the definition is only pertaining to the land appurtenant to the building and not the land underneath the building. He plausibly contended that the land under the super-structure apparently comes within the expression "building" itself. Even otherwise there can be no justification for excluding the land underneath the building while construing the definition under Section 3(i) of the Act as there cannot be any super-structure without the land underneath it. Mr. Jain has, therefore, contended that within the definition of the building comprising roofed structure, the land on which the building stands automatically comes in and no valuation of such roofed structure can be completed without reference to the value of the land on which the roofed structure stands. Mr. Jain has relied on the Judgment of this Court in *Dr. Kishore Chand Kapoor and Ors. v. Dharam Pal Kapoor and Ors.*, AIR 1987 SC 66. In *Kapoor's* case valuation of a building in the proceedings under Partition Act came for consideration before this Court. This Court upheld the value of the building which was determined by including the value of the land underneath the super-structure. In the said case this Court relied on an earlier Judgment in *State of Kerala v. P.P. Hassan Koya*, AIR 1968 SC 1201 wherein while determining compensation under the Land Acquisition Act it was held that the value of the land and the break-up value of the building cannot be determined separately. It was further held that land and the building constitute one unit and the value of the entire unit has to be determined with all its advantages and potentialities.

After giving our anxious consideration to the facts and circumstances of the case, it appears to us that in the definition of building under Section 3(i) of the Act, there is no express exclusion of the value of the land on which the building stands. In the absence of such express exclusion, the land being intrinsically inseparable from the building standing thereon, the

- A** value of the land and the value of the structure or building should be taken into consideration and in our view the land on which the building stands together with the building or structure constitute one composite unit. It may be indicated that the value of two similar buildings or structure standing on similar parcel of land may differ substantially on account of locational advantage of the site in question. The difference of valuation of land because of such locational advantage creeps into the ultimate valuation of the building or structure making one building more valuable than the other although from the structural point of view, both the buildings are identical. In the aforesaid circumstances, the determination of valuation of the building by taking into consideration the value of the land in addition to the value of the structure , does not appear to be illegal and improper.
- B** In any case, the definition of "building" under the Act clearly shows that the building thereunder means roof structure including the land underneath the said structure. Inclusive part of the definition only relate to the land appurtenant to such building and not to the land underneath the roof structure.
- C**
- D**

We, therefore, find no reason to interfere with such determination made by the Rent Control and Eviction Officer since affirmed by the Appellate Authority and also by the High Court of Allahabad. The appeal, therefore, fails and is dismissed without any order as to costs.

T.N.A.

Appeal dismissed.