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SHRI SURENDRA KUMAR JAIN

v

SHRI SHANTI SWAROOP JAIN AND ORS.

JULY 24, 1995

B

[G.N. RAY AND S.B. MAJMUDAR, JJ.]

U.P. Urban Building (Regulation of Letting Rent and Eviction) Act, 1972: Section 2(2)—Explanation 1(a)—Earliest dated of deemed construction—Determination of.

C

In this appeal the question that arose for consideration was as to which would be the earliest date of deemed construction in terms of Explanation 1(e) of Sub-section (2) of 5.2 of the U.P. Urban Building (Regulation of Letting Rent and Eviction) Act, 1972.

D

Disposing of the appeal, this Court

E

HELD : 1. In terms of Explanation 1(a) S.2(2) of the U.P. Urban Building (Regulation of Letting Rent and Eviction) Act, 1972, the construction is 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 if such reporting or recording happens to be on the earliest point of time vis-a-vis various dates referred to therein. Since that date is the earliest of the dates as referred to in the Explanation 1(a), the date of giving notice for assessment becomes relevant for the purpose of considering deemed date of construction. It does not appear that such consideration has been made by the High Court in deciding the case. The High Court has proceeded on the footing only on the basis of the assessment effected in 1981. [305-F, H, 306-A-B]

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Om Prakash Gupta Etc. Etc. v. DIG Vijendrapal Gupta Etc. Etc., [1982] 2 SCC 61, distinguished.

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2. The impugned decision of the High Court is set aside and remitted back to the High Court for disposal on merits in the light of the present discussion, preferably within a period of four months. The High Court will decide as to which is the earliest date of deemed construction in terms of Explanation 1(a) sub-section (2) of Section 2 of the said Act for the

purpose of deciding the dispute involved in the case. Until the matter is disposed of by the High Court, there will be stay of eviction from the disputed premises. [306-D-E] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6546 of 1995.

From the Judgment and Order dated 23.1.95 of the Allahabad High Court in C.M.W.P. No. 1558 of 1995. B

Dr. A.M Singhvi and Rakesh K. Sharma for the Appellants.

Kapil Sibbal, K.B. Rohtagi, Ms. Aparna Rohtagi, Praveen Jain and P.K. Jain, for the Respondents. C

The following Order of the Court was delivered :

Leave granted. D

Respondent No. 1 has already entered appearance. Notice of the appeal need not be served on respondent Nos. 2 and 3 who are formal parties and such notice on them is dispensed with.

Heard learned counsel for the parties. It appears to us that for the purpose of deciding the date of construction it is necessary to refer to Explanation 1 (a) of Section 2(2) of the U.P. Urban Building (Regulation of Letting Rent and Eviction) Act 1972. In the Explanation to the said Section it has been indicated that the construction of a building shall be deemed to have been completed on the date on which completion thereof is reported to or otherwise recorded by 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 merely for the purpose of supervising the construction or granting the building under constitution) for the first time. E F G

It, therefore, appears that in terms of Explanation 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 the local authority having jurisdiction if such reporting or recording happens to be on the H

- A earliest point of time vis-a-vis various dates referred to hereinbefore. It is contended that in the instant case, the Municipal Authority having given notice for assessment on 15.11.77, 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 the Explanation 1(a), that date becomes relevant for the purpose of considering deemed date of construction. It does not appear that such consideration has been made by the High Court in deciding the case. The High Court has proceeded on the footing only on the basis of the assessment effected in 1981. The learned counsel for the respondent has relied on a decision of this Court in *Om Prakash Gupta Etc. Etc. v. DIG Vijenerpal Gupta Etc. Etc.*, [1982] 2 SCC 61. But it appears to us that in that case, was no question of Municipal Authority having taken note of construction on an earlier date for the purpose of giving notice for assessment. Hence, that decision is not applicable for the purpose of deciding the issue raised in the case. We, therefore, set aside the impugned decision of the High Court and remit the case back to the High Court for disposal on merits in the light of above discussion preferably within a period of four months from the date of receipt of the order of this Court. The High Court will decide as to which is the earliest date of deemed construction in terms of date Explanation 1 (a) of sub-section 2 of section 2 of the said Act for the purpose of deciding the dispute involved in the case, Until the matter is disposed of by the High Court, there will be stay of eviction from the disputed premises.

The appeal is accordingly disposed of without any order as to costs.

G.N.

Appeal disposed of.