

â] IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5866 OF 2007
(Arising out of S.L.P.(C) No.8766/2007)

Banaras Hindu University ...Appellant

Versus

Suman Bai Nirmale ...Respondent

ORDER

Leave granted.

Banaras Hindu University (University, for short) established under Banaras Hindu University Act No.16/1915 has the status of Central Residential and Teaching University. The University has been recognised as an institution of national importance. The entire expenditure of the University is met by the Central Government through University Grants Commission (UGC).

The University is the owner of the Suit premises bearing No.K-43/3, Baroda House, Gai Ghat, Varanasi. The respondent herein is a tenant in respect of the second floor of the above building on monthly rent of Rs.19/-. On 22nd July, 1977, the University sent a notice under Section 106 of T.P. Act by registered post terminating the tenancy of the respondent who was called upon to vacate the Suit premises. She was also called upon to pay arrears of rent. She replied to the notice.

1

She neither vacated the premises nor initially paid the arrears of rent. The University thereafter was constrained to file Suit No.728/1978 in the Court of Small Causes, Varanasi for eviction of respondent from the Suit premises as also for recovery of a sum of Rs.453.56. The respondent-tenant contested the Suit. She claimed that she was in possession since 1942 and has regularly been paying rent. She claimed to have deposited the rent under Section 20(4) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (1972 Act, for short).

On 19th July, 1983, the Suit for ejection was dismissed by

the trial court. This was on the ground that the University had not served the notice under Section 106 of the T.P. Act and, on that ground alone, the Suit came to be dismissed though the Suit was decreed for arrears of rent. However, the court held that since the University stood established by Government of India and since it was owned and controlled by the Government, it came within the definition of 'Public Sector Corporation' and, therefore, the suit building stood exempted from the provisions of the 1972 Act.

Aggrieved by the afore-stated decision of the trial court, the University carried the matter in revision filed under Section 25 of Small Causes Court Act, being Civil Revision No.211/1983. The said Revision Petition was allowed by Additional District Judge, Varanasi, vide judgment dated 17th February, 1988. The lower Revisional Court held that notice was served on the respondent on 26th July, 1977. It

2

was further held that there was a specific averment in the plaint regarding service of notice which averment was not denied and, therefore, in any event, there existed a presumption of service of notice on the respondent at correct address.

Aggrieved by the decision of the lower Revisional Court, respondent herein preferred writ petition being Civil Misc. Writ Petition No.9235/1988 in the Allahabad High Court. By impugned judgment dated 9th March, 2006, the High Court allowed the same and came to the conclusion that as far as the finding of non-applicability of 1972 Act is concerned, the finding of the trial court was erroneous. According to the High Court, the University being a Central University could not claim to be included in the definition of 'recognised educational institution' at the relevant time, namely, the period when the Suit was filed and decided by the trial court. The High Court finally came to the conclusion that the said 1972 Act was applicable to the building in dispute, that the tenant had deposited entire arrears of rent as on the date of hearing and, consequently, the judgment and order passed by the lower Revisional Court stood set aside. Hence, this Civil Appeal by the University.

The short question which arises for determination in this Civil Appeal concerns interpretation of Section 2(b) of 1972 Act.

To answer the said issue, we need to quote certain provision of the Act.

"2. Exemptions from Operation of Act.--(1) Nothing in this Act shall apply to the following namely,-

3

(a) any building of which the Government or local authority or a public section corporation or a Cantonment Board is the landlord; or

(b) any building belonging to or vested in a recognised education institution, or

xxx xxx xxx"

"3. Definitions.-- In this Act, unless the context otherwise requires--

(q) "recognised educational institution" means any institution recognised under the Intermediate Education Act, 1921 or the Uttar Pradesh Basic Education Act, 1972 or recognised or affiliated under the Uttar Pradesh State Universities Act, 1973. [unamended]

(q)) "recognised educational institution" means any University established by law in India, or institution recognised under the Intermediate Education Act, 1921 or the Uttar Pradesh Basic Education Act, 1972 or recognised or affiliated under the Uttar Pradesh State Universities Act, 1973. [as amended by Act No.17 of 1985]"

At the outset it may be stated that the Suit was instituted prior to the amending Act No.17/1985. One of the questions which arises for determination in this case is whether a subsequent event of change in law by amending Act No.17/1985 could be taken into account by the court. This question arises in the present case because on the date when the Suit was filed in the trial court and on the date when it came to be decreed, the said amending Act No.17/1985 was not on the statute book. However, we need not labour on this point any further in view of the judgment of this Court in the case of Om Prakash Gupta Vs. Ranbir B. Goyal, (2002) 2 SCC 256, vide para 12 quoted herein-below:

4

"12. Such subsequent event may be one purely of law or founded on facts. In the former case, the court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of facts not beyond

pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order 6 Rule 17 CPC. Such subsequent event, the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties. In Trojan & Co. v. RM N.N. Nagappa Chettiar (AIR 1953 SC 235) this Court has held that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found; without the amendment of the pleadings the Court would not be entitled to modify or alter the relief. In Sri Mahant Govind Rao v. Sita Ram Kesho, (1898) 25 IA 195 (PC), Their Lordships observed that, as a rule, relief not founded on the pleadings should not be granted."

In our view, question of applicability of 1972 Act and, particularly, applicability of amending Act No.17/1985 in the Civil Suit filed by the University is a pure question of law. Therefore, following the above judgment of this Court, it is open to the University to raise necessary contention with regard to exemption of the said 1972 Act to the suit building.

Be that as it may, the important question of law which still remains to be answered is whether the amending Act No.17/1985 by which the words 'University established by law in India' have been inserted in the definition of "recognised educational institution" under Section 3(q), as quoted herein-above, is applicable to the present case or not. Unfortunately, the question as to whether this amending Act is

5

declaratory in nature, the question as to whether it operates retrospectively or prospectively was never raised by the University before the High Court. The fate of this litigation hangs on the interpretation of Section 3(q) which states as of today that "recognised educational institution" means any university established by law in India. Prior to the date of this amendment, Banaras University was not recognised by the State Government as educational institution but the complexion of the matter changes with the insertion of Act No.17/1985. Therefore, in our view, this question needs to be answered.

Accordingly, we remit the matter to the High Court for deciding the afore-stated question in accordance with law. At this stage, we make it clear that on the status of the law as it stood prior to 1985, there is no infirmity in the impugned judgment. The only

