A SURESH KUMAR JAIN

v.

SHANTI SWARUP JAIN AND ORS.

NOVEMBER 21, 1996

B [G.N. RAY AND G.B. PATTANAIK, JJ.]

Rent Control and Eviction :

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act,
C *1972 : Section 2(2) Expln. I & proviso and S.20.*

Completion of building—Deemed date of—Statutory period of exemption—From applicability of Act—For purpose of computation of—Completion of building reported to municipality—Notice under S.143 of U.P. Municipalities Act issued to landlord and reply thereto received—Sub-
D *sequently, official of Municipality inspected building and recorded that part of building rented out was well constructed—After hearing landlord, Municipality passed house tax assessment order in respect of building—But due to litigation assessment came into effect after delay of about three years—Later on landlord instituted suit in Court of Small Causes for eviction*
E *of tenant—Held : Date of completion of tenanted premises is as recorded by official of municipality and not date of coming into effect of assessment order was deemed date of completion of building for determining if suit was filed within statutory period of 10 years for applicability of Act—Act a beneficial legislation—Hence, keeping in mind purpose of Act, broad-based interpretation of expression "otherwise recorded" used in Expln. I to S.2(2) called*
F *for—U.P. Municipalities Act, 1916, Ss. 143 and 182—Transfer of Property Act, 1882, S.106.*

Section 2(2)—Exemption under—Object and scope of such exemption explained.

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Sections 2(2) and 20—Eviction suit—Filed in Court of Small Causes and not in appropriate forum under Act on ground of inapplicability of Act—Held : Onus to prove strictly that building was constructed within statutory period of exemption, lay on landlord.

H *Section 2(2)—Completion of building—Deemed date of—Determina-*

tion of—By appreciating and interpreting municipal records and assessment proceedings—Nature of—Held : such determination involved mixed question of law and fact and not a mere finding of fact simplicitor—Hence, interference under Art. 136 with concurrent findings of fact by courts below was not improper—Constitution of India, 1950, Art. 136. A

Words and Phrases : B

"Otherwise recorded"—Meaning of—In the context of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, S.2(2), Explanation I(a).

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The appellant was inducted as a tenant on the ground floor of a building within the limits of municipality by the landlord-respondent in 1973. The Municipality gave a notice to the respondent under Section 143 of the U.P. Municipalities Act, 1916 fixing the annual valuation of the building and inviting his objections, if any. In reply to the said notice the D **respondent raised certain objections but did not state that the construction of the building was not completed. The Section Head Clerk inspected the building on 30-1-1978 and filed a report recording that the ground floor and the first floor had been rented respectively and the second floor of the building was in possession of the respondent-owner. In the said report it** E **was indicated that the shop was well constructed. The Municipality intimated the respondent of a date of hearing and after that date passed an order of assessment of house tax which was challenged by the respondent and ultimately came into effect from 1-4-1981 on the conclusion of litigation. The respondent instituted a suit for eviction of the appellant in the Small Causes Court in 1990. The suit was decreed and the finding of the** F **trial court was upheld in revision by the Additional District Judge. The High Court dismissed the writ petition filed by the appellant-tenant. Being aggrieved the appellant preferred the present appeal.**

On behalf of the appellant-tenant it was contended that the expression "otherwise recorded" used in Explanation I to Section 2(2) of the U.P. G **Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 should be given the widest possible meaning and, therefore, the exemption period (10 years) started on 30-1-1978 when the Head Clerk had recorded that the building was complete; and that the eviction suit was barred under Section 20 of the Rent Act.** H

A On behalf of the respondent-landlord it was contended that the period of exemption commenced from the date of coming into effect of the house tax assessment; that the eviction suit was filed within the period of exemption and was not barred under Section 20 of the Act; that the appellant-tenant having wrongly contended that he had been continuing in the old premises even prior to 1973 was not permitted to rely on sub-
B sequent construction of the tenanted premises; and that the concurrent finding of fact of deemed date of construction acquired finality and no interference of this Court was called for under Article 136 of the Constitution.

C Allowing the appeal, this Court

HELD : 1.1. The premises Tenancy Act is a beneficial legislation intended to protect the tenant from being evicted by the landlord at his will or on flimsy ground. The pleasure doctrine implicit in the Transfer of Property Act entitles the landlord to evict his tenant by determining the
D tenancy by appropriate notice. For such eviction the landlord does not owe any explanation to the tenant. The action for eviction is basically actuated by the desire to evict the tenant. The U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 like other Rent Acts also envisages protection of tenant governed by the Rent Act from being evicted from the
E tenanted premises except on specified grounds for such eviction and on conditions for such eviction being fully complied with. [43-D-E]

1.2. For mitigating the hardship likely to be meted out to a landlord who has made new construction by incurring substantial expenses, the landlord, in case of tenancy in a newly constructed building has been
F favoured with exemption of the rigours of the Tenancy Act in the matter of evicting a tenant inducted in such newly constructed premises. But such exemption is not unfettered but controlled by the provisions of Section 2(2) of the said Rent Act read with Explanation I and proviso to such Explanation I. The outer limit of the period of exemption in respect of newly
G constructed building is ten years. Such outer limit of the period of exemption has been introduced for balancing the equities between the landlord and tenant. In order to ensure that such exemption in favour of the landlord is not extended indefinitely, the legislature has provided a mechanism for determining the date with reference to which the building
H in question will be deemed to have been constructed by indicating four

distinct alternatives. [43-F-H; 44-A-B] A

2.1. In the instant case, both the dates, namely, the date on which the completion of the building is reported to the local authority and the date on which the completion of the building is otherwise recorded by the local authority having jurisdiction, are available. On 30-1-1978, the building constructed by the respondent-landlord was inspected by the Section Head Clerk of the Municipality, who recorded that the building in question was well constructed. Consequent to this report, the Municipality issued a letter intimating the respondent-landlord of the date of hearing of the object to the assessment of house tax. Therefore, the appellant-tenant has rightly contended that the import of the expression "otherwise recorded" used in Explanation I to Section 2(2) of the Rent Act should be construed in a broad based manner having wide amplitude, keeping in mind the beneficial purpose of U.P. Rent Act for protecting the interest of tenants covered by the said Rent Act. Such recording of the date of completion of the tenanted premises in question fully satisfies the recording of deemed date of construction under Section 2(2) of the U.P. Rent Act and it is not necessary to investigate whether for the purpose of assessment of rates and taxes of a building, inspection of the building had been done strictly in accordance with the Municipalities Act. [44-E-H; 45-A-C] B C D

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2.2. The contention of the respondent landlord that the tenant appellant having wrongly contended that he had been continuing in the old premises even prior to 1973, is not permitted to rely on the subsequent construction of the tenanted premises, cannot be accepted for the simple reason that the landlord having instituted the eviction suit in the Small Causes Court, instead of filing such eviction suit before the appropriate forum under the Rent Act, on the plea that the building in which the tenant was inducted in 1973 was a newly constructed building for which he was entitled to exemption under Section 2(2) of the Rent Act, was under an obligation to strictly prove that such building, in fact, had been constructed within ten years from the date of the institution of the suit. [45-C-E] F

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2.3. The other contentions raised by the respondent landlord about the finality of the concurrent finding of fact of deemed date of construction and impropriety of interference in exercise of discretionary remedy under Article 136 of the Constitution cannot be accepted being devoid of any substance. In the facts of the case, such determination of deemed date of H

construction by appreciating and interpreting municipal records and assessment proceedings was not determination of a fact simplicitor but such determination involved a determination of mixed question of law and fact. It is the case of the landlord that after evicting erstwhile tenant, the appellant tenant was inducted for the first time in 1973. The very fact that the appellant was inducted as tenant in respect of the said shop room clearly indicates that such unit of tenancy had been constructed as a unit fit for occupation at least in 1973 when the appellant was inducted as a tenant in such shop room. The report of the Head Clerk of the Municipality is also to the effect that the shop room is well constructed. The eviction suit was instituted only in 1990. It will be travesty of justice if such suit is decreed in favour of the landlord by allowing the untenable plea that the premises in question was constructed within a period of ten years from the date of the institution of the suit. [45-F-H; 46-A-C]

Sheonandan **v.** *State of Bihar*, **[1987] 1 SCC 288;** *Dipak Banerjee* **v.** *Lilabati Chakrabarty*, **[1987] 4 SCC 188;** *Samundari Devi* **v.** *Nand Kishore*, **(1987) ALJ 255;** *Tilak Raj* **v.** *Debendra Singh*, **(1975) All LR 721,** *Hirday Ram* **v.** *R.S. Kochar*, **(1977) ARC 323;** *State of Bombay* **v.** *Pandurang Vinayak*, **AIR (1953) SC 244;** *G.C. Mahajan* **v.** *State of Maharashtra*, **AIR (1977) SC 915;** *S. Sundaram Pillai* **v.** *V.R. Patturianan*, **AIR (1985) SC 1982;** *Mrinalini B. Shah* **v.** *Bapalal Mohanlal*, **AIR (1980) SC 954 and** *K.S. Nangji Company* **v.** *Jata Shankar*, **AIR (1961) SC 1474, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2131 of 1996.

From the Judgment and Order dated 21.12.95 of the Allahabad High Court in C.M.W.P. No. 1558 of 1995.

Dr. A.M. Singhvi Ciccu Mukhopadhyaya, Rakesh K. Sharma for the Appellant.

S.S. Jain in-person Respondent No. 1.

The Judgment of the Court was delivered by

G.N. RAY, J. This appeal is directed against judgment dated December 21, 1995 passed by the Allahabad High Court in Civil Misc. Writ Petition No. 1558 of 1995. It may be stated here that against the earlier

judgment of the High Court passed in the said Civil Misc. Writ Petition, this Court was moved by filing S.L.P. (C) No. 4280 of 1995. Such Special Leave Petition was disposed of by this Court and by order dated July 24, 1995, the Writ Petition was remanded to the High Court for fresh adjudication in the light of observations made in the judgment of this Court.

The appellant was inducted as a tenant on the ground floor of a building numbered as 29 Mainganj Ward No.4, Block No.2, Kapra Market, Etah, within the limits of Etah Municipality at a monthly rental of Rs. 75 with effect from March, 1973 by the owner landlord respondent Sri Shanti Swarup Jain.

For the purpose of appreciating rival contentions of the parties in this appeal, the following facts which are on record appear to be relevant.

(a) The Executive Officer, Municipal Committee, Etah, gave notice dated November 15, 1977 to the owner landlord respondent Sri Shanti Swarup Jain under Section 143 of U.P. Municipalities Act, 1916 that in respect of house Nos. 29, 29A and 29B of Mohalla Maniganj of Block No. 2, Ward No. 4 of the said Etah Municipality, the annual valuation had been fixed at Rs. 1,800 and the House Tax for the said premises had been assessed at Rs.90. It was indicated in the said notice that if the landlord had any objection, such objection would be filed during the working hours on December 20, 1977 or earlier. It may be indicated that originally the House No 29 before reconstruction was a single storied building. After reconstruction the building comprises ground, first and second floor and such reconstructed building has been numbered as House Nos. 29, 29A and 29B. The receipt of said notice of the Municipality under Section 143 was acknowledged by the owner respondent on November 25, 1977.

(b) In reply to the said notice of assessment, the owner respondent filed his objections that the assessment of House Tax was high and that only one shop was let out on a monthly rental of Rs. 75 and the remaining portion of the building was lying unused. In the said objections the owner landlord did not state that the construction of the said House Nos. 29, 29A and 29B was not completed.

(c) On January 30, 1978, the building constructed by the respondent was inspected by the Section Head Clerk of the Municipality and a report was filed by the said Head Clerk recording that the ground floor and the

A first floor had been rented respectively at Rs. 75 and Rs. 60 per month and the second floor of the building was in possession of the respondent owner. In the said report it was indicated that the shop was well constructed.

(d) The Municipality issued a letter dated January 30, 1978 to the respondent which was received by him on January 31, 1978, intimating the B date for hearing the objection to the assessment of house tax, was fixed on February 1, 1978 at 11.00 A.M. An order of assessment in respect of the said house Nos. 29, 29A and 29B was passed on February 2, 1978. Such assessment was, however, challenged by the respondent and the assessment of house tax ultimately came into effect from April 1, 1981 on the con- C clusion of pending litigation on account of challenge of the order of assessment of House Tax.

On December 19, 1990, the plaintiff respondent No. 1 Sri Shanti Swarup Jain, instituted a suit for eviction of the appellant from the suit premises in which he was inducted at a monthly rental of Rs. 75 in the D Court of Munsif Small Causes being Suit No. 18 of 1990. The defendant tenant who is the appellant herein raised an objection as to the maintainability of the said Eviction Suit No. 18 of 1990 before the learned Munsif Small Causes. It was contended *inter alia* by the tenant appellant that under the provisions of U.P. Urban Building (Regulation of Letting, E Rent and Eviction) Act, 1972, the jurisdiction to entertain the said suit by the learned Munsif, Small Causes, was barred under Section 20 of the said Rent Act. Section 2 of the said Rent Act provides for exemption from the operation of the Act under certain conditions but such conditions were not fulfilled in the instant case. The deemed date of construction of the building is provided in Explanation I of Sub-Section (2) of Section 2 of the F Rent Act. It will be appropriate to refer to the Explanation I of Sub-Section (2) of Section 2 of the said Rent Act.

Explanation I - (For the purposes of this Section) -

G (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 H 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 : A

Provided that there may be different dates of completion of construction in respect of different parts of a building which are either designed as separate units or are occupied separately by the landlord and one or more tenants or by different tenants : B

Dr. A.M. Singhvi, the learned Senior Counsel appearing for the appellant, has submitted that there is no scope to dispute that if the building in question in respect of which the said eviction suit was instituted in the court of the learned Munsif, Small Causes, had not been completed within ten years from the date of institution of the said suit, the same was not maintainable being barred under Section 20 of the said Rent Act. C

Dr. Singhvi has submitted that the Explanation I of Sub-Section (2) of Section 2 of the said Rent Act clearly indicates that the legislature has with the intention of balancing the equities between the landlord and the tenants, exempted the landlord from the protection granted to the tenants against eviction under the said Rent Act for a limited period of ten years from the date of completion of newly constructed building. In order to safeguard the interest of the tenants for which the rent legislation was primarily enacted, and in order to ensure that the protection in favour of the landlord is not extended indefinitely, the legislation has provided a mechanism for determining the date on which the building in question will be deemed to have been constructed by providing four distinct alternatives and also providing that in the event the said dates are different, the earliest of the date would be the deemed date of construction. D E F

Dr. Singhvi has further submitted that the ratio or principle behind the said provision to take the earliest of the deemed dates of construction, was obviously to give protection due to the tenant once the building is established to be ten years old on the earliest point of time amongst the various dates of deemed construction. Dr. Singhvi has also submitted that it is significant to note that the proviso to Explanation I of Sub- Section (2) of Section 2 of the Rent Act specifically states that there may be different dates of completion of construction in respect of different parts of a building which are designed as separate units or occupied separately by the landlord or one or more tenants or by different tenants. G H

A Dr. Singhvi has contended that various dates as indicated in Explanation I for computing the period of completion of the premises in question for the purpose of finding whether completion was within ten years or not, are as follows :

B (a) The date on which completion thereof is reported to the local authority having jurisdiction;

(b) The date on which the completion thereof is otherwise recorded by the local authority having jurisdiction;

C (c) the date on which the assessment to property tax comes into effect;

According to Dr. Singhvi, landlord, according to the case pleaded by him in the plaint of the eviction suit, has pleaded and accepted that the D construction of the ground floor and indeed the entire building i.e. ground, first and second floors were completed in March, 1973 when the appellant was inducted as a tenant at a monthly rental of Rs. 75. Although the landlord did not specifically make a report to the local authorities having jurisdiction about the completion of the building, the local authorities have E clearly recorded vide the said inspection report of January 30, 1978, that the building bearing No. 29, 29A and 29B is well constructed. Dr. Singhvi has submitted that the expression "otherwise recorded" used in Explanation I to Section 2(2) of the Rent Act must necessarily be given the widest possible meaning as the words have no restriction in the Explanation and, F therefore, a recording by the local authorities that the building is complete or constructed as found on inspection for the purpose of assessment of house tax would satisfy the requirements under the Explanation I. Hence, it would not be open to the respondent to contend that the date on which first assessment to property tax came into effect would be the governing date for computing the period of ten years.

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Dr. Singhvi has also submitted that the objections of the respondent landlord to the notice of assessment of House Tax clearly indicated that there had been admission of the landlord that the building though constructed was let out to a tenant and other portions were laying vacant or H unused on the date of said objection i.e. on December 16, 1977.

Dr. Singhvi has also submitted that in the suit for eviction, the landlord respondent has sought for possession of the ground floor of the said building from the tenant appellant. The ground floor has admittedly been treated as a separate and distinct part of the building and such distinct and separate part was in the occupation and exclusive possession of the tenant appellant ever since March, 1973.

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It has been contended by Dr. Singhvi that in view of the fact that construction of ground floor was completed in 1977 and the appellant was indicated as a tenant in such constructed unit ever since March, 1973 under the proviso to Explanation I which specifically provides that different parts of the building may have different dates of construction, the eviction suit must be held as clearly barred under Section 20 of the Rent Act because the said constructed unit comprising tenancy of the appellant had been built in 1973.

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Dr. Singhvi has submitted that the proviso to Explanation I clearly reveals the intention of the legislature to limit the benefit of exemption of provisions of Rent Act upto a period of ten years from the construction of the building or any separate unit of the building but after the expiry of such period of ten years, the tenant is entitled to full protection under the beneficial legislation, namely, the said Rent Act. As in the facts of the case, the appellant tenant has been able to clearly demonstrate with reference to records which are not disputed that House No. 29 since let out to him ever since March, 1973, stood constructed at the time of inception of tenancy and the tenant has all along been in exclusive possession of this separate unit from the date of inception of tenancy, it cannot but be held that the tenanted premises being the separate unit of the building having been constructed long before the period of ten years prior to the date of the institution of the Eviction Suit, the said suit was hopelessly barred under Section 20 of the Rent Act and the decree passed on such suit by wrongfully assuming jurisdiction by the learned Munsif, Small Causes Court is a nullity.

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Dr. Singhvi has disputed the contention of the landlord respondent that the recording of completion of construction in the process of assessment to house tax cannot be taken as the date of computation in view of the provisions of Section 182 of U.P. Municipalities Act, 1976 by conferring that such contention is devoid of any substance. Dr. Singhvi has submitted

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A that the said Section provides for inspection of the work of the building requiring sanction. Hence, in the case of a building which does not require sanction, being the subject matter of the eviction suit, there would be no occasion to have a date of completion recorded in the municipal records. But the only date available would be either a date of occupation or the B date of first assessment coming into force. Dr. Singhvi has submitted that any construction of various dates mentioned in Explanation I to Section 2(2) of the Rent Act in a restricted manner will make the various criteria specified therein redundant.

Dr. Singhvi has, therefore, submitted that the High Court has failed C to appreciate the true import of Explanation I read with proviso under Section 2(2) of the Rent Act and on a total misconception of the facts and circumstances of the case and the materials on record has come to an erroneous finding that eviction suit instituted in the Court of the learned Munsif, Small Causes, was maintainable and the decree for eviction passed D in such suit was legal and valid. Dr. Singhvi has submitted that since the eviction suit, in the facts of the case, was not maintainable in law, the decree for eviction passed in such suit is a nullity and is of no consequence. This appeal should, therefore, be allowed by setting aside the decree for eviction and dismissing the said suit for eviction with cost.

E Shri Shanti Swarup Jain, the respondent herein, has appeared in person and has made submissions in support of his case. The respondent has not disputed that eviction suit was instituted by him against the tenant appellant who was inducted by him as a tenant in 1973 in the tenanted premises comprising a portion of the building which was reconstructed by F him after demolishing the old structure. Sri Jain has submitted that the reconstructed shop in respect of which the appellant is a tenant was assessed to tax for the first time in 1981 and the assessment of the said newly constructed building was made effective from April 1, 1981. The eviction suit was instituted on December 19, 1990. Accordingly, the Rent Act (U.P. Act No. 3 of 1972) was not applicable in respect of the tenanted G premises because 10 years' period as contemplated under Explanation I to Section 2(2) had not expired at the time of institution of the suit. Sri Jain has submitted that on a clear finding upon consideration of oral and documentary evidence that April 1, 1981 being the date of first effective assessment of house tax, was the date of completion of the building, the H maintainability of the eviction suit was found in favour of the landlord.

Sri Jain has submitted that the appellant tenant's main contention in the said suit was that no new construction was made and the tenanted premises being in the same condition as it was in 1970, the said premises could not be held to be a newly constructed building. The tenant appellant also raised the same plea in the revision petition filed before the District Judge, Etah, assailing the decree for eviction passed by the learned Munsif of Small Causes. The said Revision Case No. 41 of 1982 was disposed of by the learned Additional District Judge upholding the finding of the learned Munsif. Sri Jain has further submitted that before the trial court he filed documentary evidence showing that one Ashrafi Lal Jain was the tenant under him at a monthly rental of Rs. 14 and the said Ashrafi Lal having died on March 9, 1971, his heirs were arrayed as defendants. The landlord Sri Jain got possession of the tenanted premises on August 20, 1972 by executing the decree for eviction. The appellant had no connection in the tenancy in respect of the shop in which Ashrafi Lal was a tenant. But the appellant tenant made false assertion of tenancy in respect of the said tenancy of Ashrafi Lal. Sri Jain has contended that as the appellant tenant had resorted to false assertions and has not come with clean hand, he is liable to be punished under the Contempt of Courts Act. Sri Jain has submitted that such false assertion as to his tenancy right in respect of shop in which Ashrafi Lal was tenant was made with an oblique purpose to rely on the earlier assessment of house tax in 1970.

Sri Jain has contended that the finding of fact in the said eviction suit became final with the disposal of the said Revision Case No. 41 of 1982 and the concurrent finding of fact could not be challenged before the High Court in view of provisions of Section 100 Civil Procedure Code. After unsuccessful attempt to assail the decree for eviction before the High Court, a special leave petition was moved by the appellant tenant by suppressing relevant facts. Such Special Leave Petition (Civil) No. 4280 of 1995 was disposed of by this Court and the matter was remitted back to the High Court for deciding the date of completion of the building in question in accordance with Section 2(2) of the said Rent Act.

Sri Jain has submitted that the contention of the appellant made in ground No. V of the Special Leave Petition concerning this appeal that the court below had no jurisdiction to hold that the first assessment was made on April 1, 1981 in the absence of any document to that effect, is without any basis and incorrect on the face of assessment order dated April 1, 1981.

A Sri Jain has contended that Explanation I to Sub Section (2) of Section 2 of the Rent Act speaks about four specific dates, namely, (1) reporting of construction (2) or otherwise recorded by the local authority having jurisdiction (3) in the case of building subject to assessment, the date on which the first assessment comes into effect and where dates are different, the earliest of the three dates is to be taken as the date of completion and (4) in the absence of any such report, record or assessment, the date on which it is actually occupied.

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Sri Jain has further contended that the date of report or any specific date of recording has not been proved by any evidence on record by the C tenant appellant. In the aforesaid facts, the date of assessment made effective on April 1, 1981, is the only earliest date as referred to in Explanation I. Hence, acceptance of such date by the trial court is legal and justified. Sri Jain has also contended that the landlord in this case has discharged his burden of proving the date of completion of construction of the tenanted building with reference to first date of assessment made D effective on April 1, 1981. If the tenant appellant intends to dispute such date of completion, it was for the tenant to establish any other date of completion as specified in Explanation I but the tenant has failed to prove any other date of construction.

E Sri Jain has submitted that the tenant appellant cannot be permitted to allege any date of construction of the building in question in view of specific case pleaded and argued by the tenant that the tenanted premises was not constructed but the tenant had continued as tenant in the old construction. Sri Jain has submitted that jurisdiction under Article 136 of the Constitution being equitable and discretionary, the appellant does not F deserve any exercise of such discretionary jurisdiction in his favour in this appeal as the appellant has resorted to falsehood and has not come with clean hands.

Sri Jain has submitted that no new plea which had not been taken in G the courts below can be taken before this Court for the first time. This appeal is liable to be dismissed on the ground of suppression of material evidence. The evidence assessed by the courts below should not be reappreciated or reassessed by this Court. Sri Jain has also contended that inspection report dated November 15, 1987 cannot be taken to be an H inspection report contemplated under Section 182 of the Municipalities

Act. The tenant appellant did not plead in the written statement that any inspection was made by the municipal authorities under Section 182 of the Municipal Act. No evidence has been led to establish that such inspection was made by the municipal authorities. It has been clearly held by the trial court that no date of actual construction has been proved in this case.

Sri Jain has also contended that in the order of remand passed by this Court, the finding of the court below that in the facts and circumstances of the case, April 1, 1981 had to be taken as the date on which fresh assessment of the building was made, had not been disturbed. In the aforesaid facts, no interference is called for in this appeal and the same should be dismissed with costs.

In the additional written submissions filed by the respondent, it has been contended that the khoka of the shop was completed in 1973 but the rest of construction was done in piecemeals in view of certain calamities in the family of the respondent. If the entire construction had been completed in 1973, the Nagar Palika would not have issued notice for assessment in 1977-78. It has been further contended that this Court will not embark on a enquiry into the facts and evidences of the case and will not allow this Court to be converted as the court of fact. For such contention, the appellant has placed reliance on the decision in *Sheonandan* v. *State of Bihar*, [1987] 1 SCC 288.

Sri Jain has contended that if the essential ingredients necessary for finding of fact have not been found by the courts below, then this Court should examine whether any injustice or wrong has been done and the burden to show that the concurrent decision of two or more Courts or Tribunals is manifestly unjust, is on the appellant. Once such burden is charged, it is not only be right but also a duty of this Court to remedy injustice. For this contention, Sri Jain has referred to the decision of this Court in *Dipak Banerjee* v. *Lilabati Chakrabarty*, [1987] 4 SCC 188. Sri Jain has also contended that this Court has laid down that although Article 136 is couched in the widest phraseology, the jurisdiction of this Court is limited only by its discretion. It has been held by this Court that this Court has jurisdiction and power to exercise all the powers of an appellate court but exercise of such power has to be regulated by the practice of this Court and the practice of the Privy Council and followed by Federal Court and

A also by this Court is not to interfere on questions of fact except in exceptional cases which shock the conscience of the Court or the findings were made in disregard to the forms of the legal process or findings are made in violation of principles of natural justice or the decision has occasioned grave and substantial injustice.

B Sri Jain has submitted that the High Court had considered the implication of the deeming clause in Section 2(2) of the Rent Act as indicated in the decision of the High Court in *Samundari Devi* v. *Nand Kishore*, (1987) ALJ 255 and it was observed in the said decision that the date of deemed construction must be known with definiteness in order to C achieve this, the legislature engrafted a legal fiction in the said Explanation I., Sri Jain has also submitted that the High Court has also placed reliance on another decision of the same High Court in *Tilak Raj* v. *Debandra Singh*, (1975) All LR 721 wherein it was observed that a building is deemed to be constructed if it is subjected to assessment on the date with effect from D which the first assessment is made. Reliance has also been made in the decision in *Hriday Ram* v. *H.S. Kochar*, (1977) ARC 323 wherein it has been held that when a law has interposed to lay down a fiction, it is not open to fall back on the reality of the factual aspect of the matter because if the factual aspects of the matter were to be considered then the course will be in the teeth of deeming provision.

E Sri Jain has submitted that the very essence of legal fiction is assumed existence of something that does not actually exist and that even though may be different from actual state of affair, yet the law does not take notice of the actual fact unless it is followed by the fulfilment of one of the F conditions mentioned in Explanation I. Sri Jain has further submitted that the provision in question is a legislative device for assuming something which in reality it was not and that the mere fact that the deeming provision is expressed to be an explanation will not alter its basic character and will also not limited it to a mere explanation of substantive provision. In support of such submission, reliance has been placed in the decisions of G this Court in the *State of Bombay* v. *Pandurang Vinayak*, AIR (1953) SC 244; *G.C. Mahajan* v. *State of Maharashtra*, AIR (1977) SC 915; *S. Sundaram Pillai* v. *V. R. Patturianan*, AIR (1985) SC 1982; *Mrinalini B. Shah* v. *Bapalal Mohanlal*, AIR (1980) SC 954. Sri Jain has also submitted that the special leave petition filed against the decision in *Samundari Debi* H (supra) has been dismissed.

Sri Jain has also submitted that for proving a negative fact, the plaintiff is not required to do anything more than substantiating his allegation *prima facie*. The onus to repudiate then shifts to the defendant to prove positively the assertion made by the defendant. In this case, it was for the defendant to prove the date of completion of building but such proof has not been given by the defendant. The essential distinction between burden of proof as a matter of law and pleading as a matter of fact requiring evidence to be led has been indicated by this Court in *K.S. Nangji Company* v. *Jata Shanker*, AIR (1961) SC 1474. Sri Jain has submitted that in the facts of the case, no interference is called for against the well considered judgment of the High Court both on the question of fact and on question of law involved in the case. The appeal, therefore, should be dismissed with cost.

After giving our careful consideration to the facts and circumstances of the case and the submissions for the respective party, it appears to us that the premises tenancy act is a beneficial legislation intended to protect the tenant from being evicted by the landlord at his will or on flimsy ground. The pleasure doctrine implicit in the Transfer of Property Act entitles the landlord to evict his tenant by determining the tenancy by appropriate notice. For such eviction, the landlord does not owe any explanation to the tenant. The action for eviction is basically actuated by the desire to evict the tenant. The U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 like other Rent Acts also envisages protection of tenant governed by the Rent Act from being evicted from the tenanted premises except on specified grounds for such eviction and on conditions for such eviction being fully complied with.

There is no dispute that the defendant appellant is a monthly tenant covered by the provisions of the said Rent Act. It is apparent that for mitigating the hardship likely to be meted out to a landlord who has made new construction by incurring substantial expenses, the landlord, in case of tenancy in a newly constructed building has been favoured with exemption of the rigours of the Tenancy Act in the matter of evicting a tenant inducted in such newly constructed premises. But such exemption is not unfettered but controlled by the provisions of Section 2(2) of the said Rent Act read with Explanation I and proviso to such Explanation I. The outer limit of the period of exemption in respect of newly constructed building is ten years. Such outer limit of the period of exemption has been introduced for

A balancing the equities between the landlord and tenant. In order to ensure that such exemption in favour of the landlord is not extended indefinitely, the legislature has provided a mechanism for determining the date with reference to which the building in question will be deemed to have been constructed by indicating four distinct alternatives. As such four dates are likely to be different, Legislature, in its anxiety to ensure that the period B of exemption is not unjustly extended beyond the period intended, has indicated that such period of exemption is to be recokned from the date which is on the earliest point of time amongst four different deemed dates as provided for in Explanation I to sub-section (2) of Section (2) of the U.P. Rent Act. The four different dates for the purpose of compensation C as to whether a newly constructed building is ten years old or not are as follow :

(i) the date on which completion of the building is reported to the local authority

D (ii) the date on which the completion of the building is otherwise recorded by the local authority having jurisdiction

(iii) the date on which the assessment of property tax is first made.

E (iv) in the absence of any such report, record or assessment, the date on which the building was actually occupied.

In our view, in the facts of the case, both the dates, namely, the date on which the completion of the building is reported to the local authority and the date on which the completion of the building is otherwise recorded F by the local authority having jurisdiction, are available. On January 30, 1978, the building constructed by the respondent landlord was inspected by the Section Head Clerk of the Etah Municipality and a report was filed by the said Head Clerk recording that the ground floor and the first floor had been rented at Rs. 75 and Rs. 60 per month respectively and the second floor of the building was in possession of the respondent owner. In G the said report it was also indicated that the shop was well constructed. The Etah Municipality thereafter issued a letter on January 30, 1978 to the respondent landlord that the date of hearing the objection to the assessment of house tax was fixed at 11.00 A.M. on February 1, 1978. Such notice as a consequential action on the report of the Head Clerk only indicates H that the Municipality has also noted the factum of completion of the

building at least from the date of receipt of the said report. In our view, Dr. Singhvi has rightly contended that the import of the expression "otherwise recorded" used in Explanation I to Section 2(2) of the Rent Act should be construed in a broad based manner having wide amplitude, keeping in mind the beneficial purpose of U.P. Rent Act for protecting the interest of tenants covered by the said Rent Act. We may also indicate here that such recording of the date of completion of the tenanted premises in question fully satisfies the recording of deemed date of construction under Section 2(2) of the U.P. Rent Act and it is not necessary to investigate whether for the purpose of assessment of rates and taxes of a building, inspection of the building had been done strictly in accordance with the Municipalities Act.

The contention of the respondent landlord that the tenant appellant having wrongly contended that he had been continuing in the old premises even prior to 1973, is not permitted to rely on the subsequent construction of the tenanted premises, can not be accepted for the simple reason that the landlord having instituted the eviction suit in the Small Causes Court, instead of filing such eviction suit before the appropriate forum under the Rent Act, on the plea that the building in which the tenant was inducted in 1973 was a newly constructed building for which he was entitled to exemption under Section 2(2) of the Rent Act, was under an obligation to strictly prove that such building, in fact, had been constructed within ten years from the date of the institution of the suit.

The other contentions raised by the respondent landlord about the finality of the concurrent finding of fact of deemed date of construction and impropriety of interference in exercise of discretionary remedy under Article 136 of the Constitution cannot be accepted being devoid of any substance. The deemed date of construction as found earlier by the courts below was not approved by this court in allowing the appeal arising out of the earlier special leave petition preferred by the tenant appellant and the High Court was specifically directed to decide the deemed date of construction under Section 2(2) of the Rent Act in the light of the observation made by this Court. In the facts of the case, such determination of deemed date of construction by appreciating and interpreting municipal records and assessment proceedings was not determination of a fact simplicitor but such determination involved a determination of mixed question of law and fact. It is the case of the landlord that after evicting erstwhile tenant, the

A appellant tenant was inducted for the first time in 1973 at a monthly rental of Rs. 75. It is not in dispute that the tenant appellant is in exclusive possession of the shop room in question as a tenant under the respondent landlord. Such shop room is undoubtedly a separate unit of construction and the same is in possession of the tenant appellant. The very fact that the appellant was inducted as tenant in respect of the said shop room B clearly indicates that such unit of tenancy had been constructed as a unit fit for occupation at least in 1973 when the appellant was inducted as a tenant in such shop room. The report of the Head Clerk of the Municipality is also to the effect that the shop room is well constructed. The eviction suit was instituted only in 1990. It will be travesty of justice if C such suit is decreed in favour of the landlord by allowing the untenable plea that the premises in question was constructed within a period of ten years from the date of the institution of the suit. The appeal is, therefore, allowed and the impugned Judgment of the High Court is set aside and the eviction suit stands dismissed with costs.

D V.S.S. Appeal allowed.