



2026:AHC:104319

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 2312 of 2026

Mohammad Zaki Khan

.....Petitioner(s)

Versus

Gopal Krishna Gangal

.....Respondent(s)

Counsel for Petitioner(s) : Rajeshwari Prasad
Counsel for Respondent(s) : Ashish Agrawal, Shekhar Gangal

Court No. - 35

A.F.R.

HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Heard Sri Rajeshwari Prasad, learned counsel for the petitioner and Sri Ashish Agrawal, learned counsel appearing for the respondent.

The present petition has been filed seeking to assail the order dated 17.02.2025 passed by the Judge, Small Causes Court, Aligarh, in S.C.C. Suit No. 27 of 2012 (*Shri Gopal Krishna Gangal vs. Mohammad Zaki Khan*), whereby the suit instituted by the respondent-landlord for ejection and arrears of rent against the tenant came to be decreed. Challenge has also been laid to the subsequent order dated 03.10.2025 passed by the District Judge, Aligarh in S.C.C. Revision No. 42 of 2025 (*Mohammad Zaki Khan vs. Shri Gopal Krishna Gangal*), affirming the judgment of the trial court.

The dispute arises out of S.C.C. Suit No. 27 of 2012 instituted by the respondent-landlord against the petitioner-tenant in respect of a shop situated at Battomal Market, Palval Road, Qasba Khair, District Aligarh. The petitioner claimed tenancy since the year 1987 at a monthly rent of Rs.400/-. Alleging default in payment of rent and termination of tenancy by notice dated 10.05.2012, the respondent instituted the suit for ejection and arrears of rent. The suit came to be decreed by the trial court and the revision preferred thereagainst has also been dismissed, giving rise to the present petition.

The sole ground urged in challenge to the orders passed by the Small Causes

Court and the revisional court pertains to the applicability of U.P. Act No. 13 of 1972. It is contended that in view of Explanation I(a) to the second proviso to sub-section (2) of Section 2 of the Act, the construction of a building is deemed to have been completed on the date on which 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; where the said dates are different, the earliest of such 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 purposes of supervising the construction or guarding the building under construction) for the first time.

It is sought to be urged that in the present case none of the aforesaid dates were available and, according to the tenant, the building was constructed in the year 1991; hence, the Act would be applicable.

Learned counsel appearing for the respondent, however, has pointed out that as per the tenant's own stand before the trial court, he had been inducted as tenant in the year 1987 and, upon construction of the new shop in the year 1988, he was put in possession thereof. It is, therefore, submitted that the assertion regarding construction in the year 1991 is wholly baseless and cannot be accepted.

Learned counsel for the petitioner has not been able to substantiate the plea that the building had been constructed prior to 26th April, 1985, i.e. the cut-off date specified in the second proviso to sub-section (2) of Section 2, on the basis whereof alone the provisions of U.P. Act No. 13 of 1972 could be claimed to be applicable.

It is well settled that where a tenant seeks protection under the provisions of U.P. Act No. 13 of 1972, the burden lies upon the party asserting applicability of the Act to establish the foundational facts attracting such protection, including the date of completion of construction where exemption under Section 2(2) is in issue. In the absence of cogent documentary or reliable oral evidence regarding completion, assessment, first occupation, or any other circumstance contemplated under Explanation I to the second proviso to Section 2(2), the benefit of the statute cannot be

claimed merely on bald assertions.

It is equally well settled that the question regarding applicability of U.P. Act No. 13 of 1972, where dependent upon the date of completion of construction, has to be determined strictly in accordance with the deeming provisions contained in Explanation I to the second proviso to Section 2(2) of the Act. The Supreme Court in *Om Prakash Gupta vs. Dig Vijendra Pal Gupta (1982) 2 SCC 61* has held that where the building is subject to municipal assessment, the date on which the first assessment comes into effect would be relevant, and only in the absence of such report, record or assessment, the date of first actual occupation can be taken into consideration.

In the present case, except a bald plea regarding construction in the year 1991, no reliable material has been brought on record to establish completion, first assessment or first occupation in the manner contemplated under the statute.

In view of the aforesaid, the findings concurrently recorded by the two courts below that U.P. Act No. 13 of 1972 is not applicable to the premises in question do not warrant interference.

No other ground has been urged in support of the challenge which may persuade this Court to exercise jurisdiction under Article 227 of the Constitution of India.

At this stage, learned counsel for the petitioners prays for indulgence by way of grant of nine months' time to vacate the premises in question. Learned counsel appearing for the respondent, on instructions, states that he has no objection to the prayer so made.

Accordingly, while dismissing the petition, this Court grants nine months' time to the petitioners to vacate and hand over peaceful possession of the premises in question to the respondent-landlord on or before **09.02.2027**, subject to the following conditions:

(i) The petitioner-tenant shall file an undertaking before the Judge, Small Causes Court, Aligarh, stating that peaceful possession of the premises in question shall be handed over to the respondent-landlord on or before

09.02.2027;

(ii) The said undertaking shall be filed within a period of two weeks from today;

(iii) The petitioners shall also file an undertaking that the entire arrears, after adjusting the amount already deposited, shall be deposited within four weeks from today;

(iv) The petitioners shall further deposit monthly use and occupation charges at the rate of **Rs. 4,000/- per month** for future months commencing from June, 2026, by the 7th day of each succeeding month, as agreed between learned counsel for the parties.

It is made clear that in the event of default in compliance with any of the aforesaid conditions, the protection granted by this Court shall stand vacated automatically, and it shall be open to the respondent-landlord to seek enforcement of the decree passed in the S.C.C. Suit in accordance with law.

Subject to the aforesaid directions, the petition stands **dismissed**.

(Dr. Yogendra Kumar Srivastava,J.)

May 6, 2026
Arun K. Singh