

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.3656 of 2007

ORDER:

This revision is preferred against order dated 17.01.2007 in R.C.A.No.28 of 2002 on the file of the Appellate Authority under Rent Control Act-cum-Principal Senior Civil Judge, Rajahmundry, whereunder order of Rent Controller-cum-Principal Junior Civil Judge, Rajahmundry, dated 16.09.2002 in R.C.C.No.80 of 1996, is set aside.

2. Revision petitioner herein is landlord and respondents herein are tenants of schedule premises. Landlord filed R.C.C.No.80 of 1996 under Section 4 of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereinafter referred to 'the Act') requesting the Rent Controller to fix fair rent for the schedule shop, contending that the schedule premises is situated in a busy locality and is in the heart of Rajahmundry town, which is a place where business is mostly concentrated. Landlord further contended that rental value of similar premises in the locality was more than Rs.2,500/- per month, but tenants are only paying a rent of Rs.412.50 ps. only since several years, therefore, requested the Court to fix fair rent, which shall not be less than Rs.2,500/- per month. Tenants resisted the petition and disputed the petition averments contending that landlord is always greedy to seek more rent and he is not entitled for any enhancement as the

rent of Rs.412.50 ps. is fair and just. Tenants contended that the landlord having failed to evict them filed this petition only to harass them and that there are no bonafides in the claim of landlord. Tenants also disputed the allegation that similar premises in the locality are fetching more than Rs.2,500/- per month.

3. On these allegations and counter allegations, Rent Controller examined six witnesses and marked fifteen documents on landlord's side and examined one witness and no documents are marked on behalf of tenants and on a consideration of oral and documentary evidence, Rent Controller fixed Rs.1,000/- per month as fair rent and aggrieved by the same, tenants preferred appeal before the appellate Authority and the learned Appellate Judge, on a reappraisal of the evidence, held that landlord failed to produce relevant material for fixation of reasonable and fair rent and allowed the appeal by setting aside the order of the Rent Controller. Aggrieved by which, present revision is preferred by landlord.

4. Heard arguments.

5. Advocate for revision petitioner-landlord submitted that the practice prevailing in the locality is to enhance rent by 10% every year or at least 30% for every three years, but in this case tenants are not paying same rent from the beginning and they are continuing with meager rent at Rs.412.50 ps. He submitted, according to evidence of PW.6, the prevailing rental value in the locality

is more than Rs.2,500/-, but the Rent Controller fixed only Rs.1,000/-, which is very reasonable, but the appellate Authority without any valid grounds, interfered with the findings of the trial Court. He submitted that the appellate Authority committed error in allowing the appeal and the order of the appellate Court is erroneous, unjust and unsustainable.

6. Advocate for respondents-tenants submitted that the order of the appellate Authority is right and that Rent Controller has not followed the procedure as contemplated under Section 4 of the Act, therefore, the appellate Authority was right in reversing the judgment.

7. Now the point that would arise for my consideration in this revision is:

Whether the order in R.C.A.No.28 of 2012, of the Rent Control Act-cum-Principal Senior Civil Judge, Rajahmundry, is legal, proper and correct?

POINT :

8. The main grievance of the landlord is that the building fetches more than Rs.2,500/- per month, but the tenants are paying only Rs.412.50 ps. and the same is not a fair rent. Before considering contentions and rival contentions, I feel it necessary to look into the provisions of Section 4 of the Act, which reads as follows:

Determination of fair rent:- The Controller shall, on application by the tenant or landlord of a building, fix the fair rent for such building after holding such enquiry as the

Controller thinks fit.

(2) In fixing the fair rent under this section the Controller shall have due regard-

(a) to the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances during the twelve months prior to the 5th April, 1944;

(b) to the rental value as entered in the property tax assessment book of the concerned local authority relating to the period mentioned in clause (a);

(c) to the circumstances of the case, including any amount paid by the tenant by way of premium or any other like sum in addition to rent after the 5th April, 1944.

(3) In fixing the fair rent of residential buildings, the Controller may allow-

(i) if the rate of rent or rental value referred to in sub-section (2) does not exceed twenty-five rupees per mensem, an increase not exceeding $12\frac{1}{2}$ per cent, on such rate or rental value;

(ii) if the rate of rent or rental value exceeds twenty-five rupees per mensem, but does not exceed fifty rupees per mensem, an increase not exceeding $18\frac{3}{4}$ on such rate or rental value;

(iii) if the rate of rent or rental value exceeds fifty rupees per mensem, an increase not exceeding $37\frac{1}{2}$ per cent, on such rate or rental value:

Provided that in the case of a residential building which has been constructed after the 5th April, 1944, the percentage of increase shall not exceed $33\frac{1}{2}$, $56\frac{1}{4}$ and 75 respectively,

(4) In fixing the fair rent of a non-residential building the Controller may allow-

(i) if the rate of rent or rental value referred to in sub-section (2) does not exceed fifty rupees per mensem, an increase not exceeding 56 $\frac{1}{4}$ per cent, on such rate or rental value;

(ii) if the rate of rent or rental value exceeds fifty rupees per mensem, an increase not exceeding 75 percent, on such rate or rental value;

Provided that in the case of a non-residential building which has been constructed after 5th April, 1944, the percentage of increase shall not exceed 75 and 150 respectively.

(5) In the case a building for which the fair rent has been fixed before the commencement of this Act, the Controller shall, on the application of the landlord, allow such increase in the fair rent as in the opinion of the Controller, the landlord is entitled to under this section:

9. From a reading of the above provision, it is clear that the Rent Controller has to follow certain aspects for fixing fair rent under this Section. From a perusal of record, Rent Controller has not followed these guidelines given under sub-sections (2) and (4) of Section 4 of the Act for determining fair rent. Even according to the claim of the landlord, prevailing practice is to enhance 10% for every year or 30% for every three years. Rent Control petition is filed in the year 1996 and it was disposed of in the year

2002. Even if the practice pleaded by landlord is accepted, if 30% is calculated on Rs.412.50 even by the date of disposal of R.C.C., the rent may not be more than 800/-, but the Rent Controller fixed Rs.1,000/-. No reasons are given by the Rent Controller as to how this Rs.1,000/- was arrived at and as seen from the order, it is only a unilateral figure adopted by the learned Rent Controller. Further, as seen from the evidence, the landlord clearly stated in the cross-examination that this rent was enhanced from Rs.350/- to Rs.412.50 ps. by adopting 10% enhancement as per lease agreement. Admittedly that lease agreement is not produced and no reasons are assigned for not producing such lease agreement. Unless that lease agreement is seen, it is not known when this Rs.350/- was enhanced to Rs.412.50/- ps. Further, as seen from the cross-examination of PW.1, petition schedule shop is in sub-lane and not on the main road. The landlord as PW.1 admitted in his cross-examination that a shop room given to Kankanala Rosayya, which is abutting main road and said Rosayya is paying Rs.550/- per month as rent. PW.1 was cross-examined in January, 2002, so from his cross-examination, it is clear that by January, 2002, a shop room in main road was fetching only Rs.550/- per month and in such case how his claim for a sum of Rs.2,500/- is justifiable and the same has to be explained by the landlord himself. Further, according to provision to sub-

rule (4) of Section 4 of the Rent Control Act, there is a ceiling for enhancing the rent. When such is the evidence and legal position, Rent Controller unilaterally fixed Rs.1,000/- as fair rent, that too without following the procedure contemplated under Section 4 of the Act. Considering this, the appellate Authority has set aside the order of the Rent Controller and allowed the appeal. I do not find any wrong appreciation of evidence or wrong exercise of jurisdiction by the appellate authority and on the other hand the learned Principal Senior Civil Judge-appellate Authority rightly allowed the appeal as the findings of the Rent Controller in fixing fair rent at Rs.1,000/- without any basis and contrary to the own admissions of landlord himself. For these reasons, I am of the view that there are absolutely no grounds to interfere with the findings of the appellate Authority and the order of the appellate authority is on correct lines and in accordance with law and it does not warrant any interference by this Court by exercising the revisional powers.

10. Accordingly, revision is dismissed. No costs.

11. Miscellaneous Petitions, if any, shall stand dismissed.

S. RAVI KUMAR, J

20th February 2015.

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