

*** THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

+ CIVIL REVISION PETITION NOS.2635 AND 2655 OF 2016

% Dated 30.9.2016

C.R.P.No.2635 OF 2016

Mahender Kumar Gandhi
S/o Late Gulabchand Gandhi
R/o Flat No.201, H.No.4-5-92
Kailash Enclave, Basheerbagh
Hyderabad

..... Petitioner

Vs.

\$ Bindesh Kamdar
S/o late Ramesh Kumar
3-4-1069, Opp: Kacheguda Railway Station
Hyderabad

.... Respondent

C.R.P.No.2655 OF 2016

Bindesh Kamdar
S/o late Ramesh Kumar
3-4-1069, Opp: Kacheguda Railway Station
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..... Petitioner

Vs.

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S/o Late Gulabchand Gandhi
R/o Flat No.201, H.No.4-5-92
Kailash Enclave, Basheerbagh
Hyderabad

.... Respondent

! Counsel for the petitioner : Sri Vijay Kumar Heroor

^ Counsel for the respondent : Sri C. Raghu

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> HEAD NOTE:

? Cases referred

1. AIR 2004 SUPREME COURT 3625
2. 1988 (1) ALT 565
3. 1995 Supp (3) Supreme Court Cases 668
4. 2008 (6) ALD 398

5. 2011 (4) SCC 266
6. AIR 2002 SC 3073
7. (2003) 1 SCC 123
8. 1979 (4) SCC 214
9. (2003) 3 SCC 433
10. AIR 2002 SC 2256
11. AIR 1998 SC 602
12. (1984) 2 SCC 378
13. (1989) 2 SCR 725
14. (1995) 4 SCC 546
15. (2002) 4 SCC 638
16. (1975) 1 SCC 794
17. (1983) 4 SCC 353
18. (1982) 3 SCC 140
19. AIR 1975 AP 315
20. (1973) 4 SCC 225
21. (2002) 8 SCC 361
22. (2002) 4 SCC 388
23. (2006) 1 SCC 479
24. (1979) 3 SCC 646
25. (2002) 1 M.L.J 568
26. AIR 2011 SC 3619



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NOS.2635 AND 2655 OF 2016

COMMON ORDER:

The landlord before the Rent Controller filed both the civil revision petitions , challenging the order passed by the Additional Chief Judge, City Small Causes Court, Hyderabad in R.A.No.253 of 2014 and Cross Objections vide S.R.No.212 of 2015, whereby, the Additional Chief Judge, City Small Causes Court, Hyderabad, dismissed the petition filed under Section 4 of the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short hereinafter referred to as 'A.P. Act, 1960'), and rejected the cross objections in the rent appeal.

2. For convenience of reference, the ranks given to the parties before the Rent Controller in R.C.No.494 OF 2011 will be adopted throughout the order.

3. The landlord filed petition before the Rent Controller under Section 4 of the Rent Control Act for fixation of fair rent for the petition schedule mulgi bearing No.3-4-1069 which is situated opposite to Kacheguda Railway Station, Hyderabad. It is the case that the premises was originally given on lease to the father of the tenant and after his death, the tenant continued the tenancy. the rent which the tenant along with his mother used to pay earlier was Rs.75/- per month and in the year 2004 a petition for fair rent fixation was filed vide R.C.No.372 of 2004 on the file of III

Additional Rent Controller, Hyderabad and on merits, the fair rent for the petition schedule mulgi was fixed at the rate of Rs.1,000/- per month and aggrieved by fair rent fixation order the tenant and his mother preferred an appeal vide R.A.No.208 of 2006 and the said appeal was dismissed, confirming the order passed by the Rent Controller. Since then, the tenant was paying the rent at the rate of Rs.1,000/- per month, exclusive of electricity charges and municipal charges, which is not fair, in view of the present circumstances, like increase in price, standard of living and price index.

4. It is stated that the size of the shop is 9'-8" x 24'-8" with rear side room of 19'-7"x8' and projection portion of 12'-1' x 6'-10" on the front. Thus, the total plinth area of the petition schedule premises is 44.5 sq.yards.

5. As the tenant and his mother made an attempt to change the physical features of the mulgi, the landlord filed O.S.No.3364/2008 on the file of the X Junior Civil Judge, City Civil Court, Hyderabad and obtained interim injunction in I.A.No.369 of 2008 and the suit was decreed after keen contest. It is further contended that the tenant had undertaken major repairs by fixing fall-ceiling by sizzling the walls without permission of the landlord. It is asserted that the comparable rent prevailing in the market within the vicinity of the schedule premises, at present, is very low, unjust and unfair and by considering the spurt in prices, rents prevailing within the vicinity of the suit premises and neighbouring

areas, the premises would fetch not less than Rs.10,000/- per month, if it is let out to a reasonable tenant.

6. It is further contended that tax payable for the premises to the Municipal Corporation was Rs.2,162/- which is increased to Rs.2,834/-. Therefore, the landlord requested to fix fair rent at the rate of Rs.10,000/- for the mulgi with periodical enhancement at 25% every year on the fair rent fixed by the Rent Controller.

7. The respondent-tenant filed counter affidavit, denying material allegations, *inter alia* contending that the building was constructed about 62 years ago and also contended that his father was continuing as tenant since then and subsequent to his father's death, the respondent-tenant was continuing as tenant on monthly rent of Rs.10,000/- which is fixed as fair rent in R.C.No.374 of 2004 which is exclusive of electricity consumption charges and property tax payable to the Hyderabad Municipal Corporation.

8. It is asserted that the measurements shown in the petition schedule are wrong and the correct measurements was taken by the Advocate Commissioner appointed in O.S.No.3364 of 2008 on the file of X Junior Civil Judge, City Civil Court, Hyderabad. The second Additional Rent Controller, Hyderabad, in which order in R.C.No.374/2014 was concluded holding that the premises would not fetch more than Rs.1,000/- per month and fixed fair rent.

9. Further, it is stated that the actual plinth area of the building was only 36.25 sq.yds, but it was shown as 44.50 sq.yds

and that the projection on the front side of the mulgi belongs to Municipal Corporation of Hyderabad and railways and the same was encroached by the petitioner-landlord within a short period of time. Even the rear portion also belongs to the Municipal Corporation of Hyderabad and the petitioner-landlord is claiming the same as his own property by encroaching into the same. It is stated that the mulgi has wooden doors, but erected iron shutter to avoid dumping of garbage by neighbours and the allegation that there is a drastic change in increasing the rent within the vicinity of schedule premises is false. Further, it is stated that schedule premises is near to a public toilet opposite to Kacheguda Railway Station, and on account of bad odour and unhygienic conditions, the business of the respondent-tenant is getting effected sharply and that the premises would not fetch more than Rs.1,000/- per month.

10. It is contended that the petitioner-landlord is not maintaining the building in good condition and the respondent-tenant was forced to incur huge amount towards repairs and maintenance, on account of the old age of the building it developed leakage of drain of the premises bearing No.3-4-1068 and 3-4-1056, into the petition schedule property and when the same was brought to the notice of the petitioner-landlord, he did not take any action to arrest the leakage and hence, he prayed for dismissal of the petition.

11. Based on the above pleadings, the Trial Court framed the following points for consideration:

- i) Whether there are circumstances to enhance the fair rent of the petition schedule premises?
- ii) To what relief?

12. During enquiry, petitioner got himself examined as P.W.1 and marked Exs.P-1 to P-10 and on behalf of the respondent R.W.1 was examined and no documents were marked.

13. Upon hearing argument of both the counsel and considering the oral and documentary evidence on record, the Rent Controller fixed fair rent at the rate of Rs.1,500/- per month with annual increase of 25% on the existing rent.

14. The order passed by the Rent Controller is carried in appeal before the Additional Chief Judge, City Small Causes Court, Hyderabad, in R.A.No.253 of 2014 by the respondent-tenant before the Rent Controller, whereas the petitioner-landlord filed Cross Objections in S.R.No.212 of 2015, dissatisfied with the quantum of rent fixed by the Rent Controller.

15. Upon hearing argument of both the counsel, the Appellate Court i.e. the Additional Chief Judge, City Small Causes Court, Hyderabad, vide order dated 05.11.2015 allowed R.A.No.253 of 2014 and dismissed the cross objections vide S.R.No.212 of 2015.

16. The petitioner being unsuccessful before the Appellate Court filed these two revision petitions under Section 22 of the A.P. Act, 1960, challenging the regularity, legality and propriety of the order dated 05.11.2015 in R.A.No.253 of 2014 and cross objections. The Additional Chief Judge, City Small Causes Court, Hyderabad, vide dated 05.11.2015 in R.A.No.253 of 2014 dismissed the cross-objections and allowed appeal basing on the principle laid down by the Apex Court in **Raichurmatham Prabhakar and another v. Rawatmal Dugar**¹ as fixation of fair rent between the landlord and tenant is one time during tenancy and the consecutive applications for fixation of fair rent or standard rent are not maintainable in view of Section 5 & 6 of A.P. Act 1960, which permits increase of fair rent in certain circumstances, i.e. addition or improvement to the premises (Section 5) or increase in the property tax payable to the corporation and others (Section 6).

17. The order passed by the Additional Chief Judge, City Small Causes Court, Hyderabad, dated 05.11.2015 in R.A.No.253 of 2014 and cross objections is challenged raising the following specific contentions:

- a) The premises is located in a downtown opposite to Kacheguda Railway Station which is heart of the Hyderabad City and it is in prime area. It would fetch not less than Rs.10,000/- per month on comparison of the prevailing rate of rent within the vicinity of schedule premises.

¹ AIR 2004 SUPREME COURT 3625

- b) The rent fixed in R.C.No.3782 of 2004 by the learned III Additional Rent Controller, Hyderabad at Rs.1,000/- per month, which is exclusive of electricity consumption charges. So, the fair rent as on the date of filing the petition in the year 2004 and after fixation for fair rent by the Rent Controller, there are lot of changes within the vicinity of schedule premises like rise of rental values and variation in price index etcetera. But, the Appellate Court did not consider escalation in prices and development of the area where the schedule premises is situated.
- c) The rent fixed about 7 years earlier to filing of present petition can never be a criteria for fixing fair rent as on the date of filing petition and fixation of fair rent is not a one time fixation, but the Additional Chief Judge, City Small Causes Court, Hyderabad, on erroneous interpretation of Section 4, committed an error in dismissing the petition filed under Section 4(1) of the A.P. Act, 1960, while allowing R.A.No.253 of 2014 and dismissing Cross Objections S.R.No.212 of 2015; the interpretation given by the Appellate Court is erroneous on the face of record, which is against the intention of the legislature in incorporating Section 4(1) of the Act in A.P. Act 1960, therefore, prayed to set-aside the order passed by the Additional Chief Judge, City Small Causes Court, Hyderabad dated 05.11.2015 in R.A.No.253 of 2014 and fix fair rent by allowing Cross Objections in

SR No.212 of 2015 in both the revisions which are filed separately.

18. During hearing, learned counsel for the petitioner Sri Vijay Kumar Heroor would submit that the rent fixed during the year 2004 is only fair or standard rent and it can never be a rent throughout the tenancy and the fixation of fair rent prescribed is not one time fixation. But, when there are changed circumstances like increase in rental values within the vicinity of the premises, increase in price and municipal tax (property tax) and development of surroundings, shall also be taken into consideration for fixation of fair rent and placed reliance on the judgment of this Court reported in **Pokarmal Dadhrich v. Smt. Vankayala Laskhmikanthamma and another**².

19. Learned counsel also contended that, when the fair rent was fixed in the year 2004, the same shall not be continued as the Rent Controller did not fix periodical increase of rent on the fair rent fixed. In such a case, the Court cannot restrict the fair rent fixed by the Court for the entire period of tenancy. In the absence of such periodical increase on the fair rent, the petitioner is entitled to file a petition for fixation of fair rent. It is also contended that fixation of fair rent based on the criteria prescribed under Subsection 2 to 4 of Section 4 was held to have become illusory and the same was struck down in **K. Sahadev v. Suresh Bir**³. In such circumstances, the Court can fix fair rent taking into

² 1988 (1) ALT 565

³ 1995 Supp (3) Supreme Court Cases 668

consideration of the changed circumstances, including rise in rental values, within the vicinity of the premises, hike in price, price index and demand for premises including the subsequent development after fixing fair rent and the Rent Controller is expected to fix just and reasonable rent based on the relevant circumstances referred above and to support his contention, he placed reliance on **Jupudi Parthasarathy v. Kondapalli Rajeswari and others**⁴.

20. Learned counsel for the revision petitioner drawn attention of this Court to Section 16 of the A.P. Act, 1960 which enabled the Rent Controller to reject any application filed under sub-section (2), or sub-section (3) of Section 10 or under Section 12 which raises between the same parties or between parties under whom they or any of them claim, substantially the same issues as have been finally decided, or as purport to have been finally decided in a former proceeding under this Act or under any law corresponding thereto in force at the relevant time prior to the commencement of this Act. Section 16 does not include reopening of order passed under Section 4(1) of A.P. Act, 1960 and in the absence of any interdict on entertaining consecutive petitions under Section 4(1), the court by interpreting Section 4 narrowly, cannot deny the benefit of Section 4(1) of A.P. Act, 1960, but the Appellate Court on narrow statutory interpretation to Section 4(1) declined to fix fair rent at the rate of Rs.1,500/- per month with periodical increase and it is erroneous on the face of record.

⁴ 2008 (6) ALD 398

21. Learned counsel for the respondent Sri C. Raghu while supporting the order passed, based on the principle laid down in **Raichurmatham Prabhakar's** case, contended that once Rent Controller fixed fair or standard rent, the same cannot be reopened in a subsequent application filed either by landlord or tenant and the claim in the second application is barred by *res judicata* under Section 11 of C.P.C. Further, learned counsel relied on the judgment of Apex Court in **B. Premanand and others v. Mohan Koikal and others**⁵ to contend that when the rule is plain and clear, the literal rule of interpretation will apply to it, though equity may be in favour of the respondents because they were in favour of the petitioner and when there is a conflict between equity and law, it is a law which must prevail. Therefore, viewed from any angle, the Court has to give literal interpretation to the statutory provision, though equity is in favour of the petition and accordingly the Additional Chief Judge, City Small Causes Court, Hyderabad applied literal interpretation to Section 4(1) of the A.P. Act, 1960 and denied relief rightly. Therefore, it is contended that the order of the Additional Chief Judge, City Small Causes Court, Hyderabad, does not suffer from any illegality or irregularity, warranting interference by this Court while exercising power of revision under Section 22 of A.P. Act, 1960.

22. Considering rival contentions and perusing the order passed in R.C.No.494 of 2011 by the IV Additional Rent Controller at

⁵ 2011 (4) SCC 266

Hyderabad and the order passed by the Additional Chief Judge, City Small Causes Court, Hyderabad in R.A.No.253 of 2014 and Cross Objections in S.R.No. 212 of 2015 the points that arise for consideration is as follows:

“Whether fixation of fair rent or standard rent is one time fixation during subsistence of tenancy between the landlord and tenant, in view of the interpretation to Section 4(1) by the Additional Chief Judge, City Small Causes Court, Hyderabad. If not, whether the landlord and the tenant can revive a request for fixation of fair rent successively by filing independent applications?”

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23. The Section 4(1) of in A.P.Act 1960 is the relevant provision for fixation of rent. Section 4(1) permits the Rent Controller to fix fair rent for a building after holding such enquiry as the Controller thinks fit. The considerations for fixing fair rent are contemplated under sub-sections 2 to 4, but the Division Bench of this Court struck down sub-sections 2 to 4 as unconstitutional. Therefore, the relevant provisions contained in sub-sections 2 to 4 need not be taken into consideration for fixation of fair rent by the Rent Controller.

24. What is fair rent is not defined anywhere in A.P. Act, 1960, but fair rent means fair or reasonable rent fixed by Rent Controller or any officer, taking into consideration of the locality, type of

construction, use of which the building is put to and prevailing rental values within the vicinity of the locality.

25. Turning to the present dispute, the Appellate Court dismissed the petition on the ground that fixation of fair rent is one time, between the landlord and tenant who is in occupation of the premises. But, the contention of the learned counsel for the appellant before this Court is that there is no bar under Section 4 of A.P. Act 1960 to fix fair rent more than one time between the same landlord and tenant.

26. It is also contended that once the tenant entered into tenancy and continued in occupation for decades together, there will be lot of changed circumstances including development of area where the building is situated and increase of demand for building or mulgis, increase in price increase and rental values, increase in property tax. In such a case, the Courts cannot debar the landlord to approach the Court for fixation of fair rent taking into consideration of relevant parameters for fixation of such fair rent. If, fixation is for one time, then landlord would be deprived enjoying the fruits of the tenancy and he will be put to irreparable loss. Therefore, in the absence of any reason in entertaining any petition for fixation of fair rent under Section 10, the Courts by its interpretation cannot impose such restriction by interpreting the statute narrowly and therefore, there is absolutely no bar on fixation of fair rent under Section 4(1) of A.P. Act 1960.

27. Learned counsel drawn attention of this Court to Section 16 of the A.P. Act, 1960 which attached finality to certain decisions of the Rent Controller. When, an application under subsections 2 or 3 of Section 10 or under Section 12 was filed and decided by the Rent Controller between the same parties or the parties under whom they are in or they claim substantially, the same issue has been decided finally by the Rent Controller in a former proceedings under this Act which is in force at the relevant time prior to commencement of the Act, such application shall be rejected by the Rent Controller. Therefore, finality is attached to the orders passed under Section 10(2), (3) and Section 12 and not for any orders passed under any other provisions of A.P Act 1960. In the absence of attaching finality to orders passed under Section 4 of A.P. Act, 1960 as per Section 16, the Court is competent to reopen the decision of the Rent Controller either in the absence of any express or implied bar against reopening of such orders.

28. Per contra, learned counsel for the respondent Sri C. Raghu supported the order under challenge while contending that when the Court has to strike balance between equities and the law, the Court has to lean towards the literal interpretation to provision based real intention of the legislature in incorporating any provision in the enactment and cannot lean towards equity while interpreting legal provision and that, in view of the Apex Court Judgment in **B. Premanand's** case (referred supra), fixation is only a one time fixation between the same landlord and tenant and the

same cannot be re-agitated except under the circumstances contemplated under Sections 5, 6 & 7 of the A.P. Act, 1960.

29. The Rent Control Act is a beneficial legislation, beneficial to both the landlord and tenant. The object of Rent Control Legislation is undoubtedly to protect the weaker sections of tenants from unreasonable and unfair demands of landlords. It does not mean that the Act is intended to benefit the tenants only, but it is enacted to regulate the incidents of tenancy and *inter se* rights and obligations of the landlord and tenant. Thus, the object in enacting the Rent Control Legislation is to regulate the incidents of tenancy and deciding the disputes relating to the *inter se* rights of the tenant and landlord in appropriate forum. The purpose of Control of Rent and Eviction Acts is generally to protect the tenants from unjust evictions and in case of doubt these Acts are to be so interpreted as to lean in favour of tenants. For example, if in a case of joint tenancy only a part of the tenancy premises enjoys the protection of the Act, the Court will not order eviction of the tenant from that part which does not enjoy the protection of the Act by splitting up one integrated contract of tenancy unless that power is conferred by the Act, as held by the Apex Court in **Nilesh Nand Kumar Shah v. Sikander Aziz Patel**⁶. But the benefit conferred on the tenants under these Acts can generally be enjoyed on strict compliance of the statutory provisions contained in them vide **E. Palanisamy v. Palinisamy**⁷. Further a law enacted

⁶ AIR 2002 SC 3073

⁷ (2003) 1 SCC 123

essentially to benefit a class of persons considered to be oppressed e.g. tenants may be comprehensive in the sense that to some extent it benefits also those not within the class e.g. landlords. The Control of Rent and Eviction Acts which drastically limit the grounds on which a tenant can be evicted are essentially to benefit the tenants but they also to some extent benefit the landlords in the sense that they are so comprehensive that a landlord can file a suit for eviction on the grounds mentioned in the Acts even though the tenancy has not terminated in accordance with the provisions of the Transfer of Property Act, vide **V. Dhanpal Chettiar v. Yesoda Ammal⁸ and Balwant Singh v. Anand Kumar Sharma⁹**. Recently, the Apex Court in **Joginder Pal v. Naval Kishore Bahal¹⁰** laid down certain guidelines as to how to interpret the Rent Control Legislations and held that the Courts have to adopt a **reasonable and balanced** approach while interpreting Rent Control Legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the Court should not hesitate in leaning in favour of the landlords.

30. Indeed, it has been held by the Supreme Court in **Malpe Vishwanath Acharya v. State of Maharashtra¹¹** that in enacting a Control and Eviction Act, the legislature has to take into account

⁸ 1979 (4) SCC 214

⁹ (2003) 3 SCC 433

¹⁰ AIR 2002 SC 2256

¹¹ AIR 1998 SC 602

that its provisions are not so unjust to the landlords that they offend Article 14 of the Constitution in which event they will become unconstitutional. It was held that, it is also possible that such a law which is not unreasonable at the time when it is enacted may become unreasonable with the passing of time. Thus, the principles for interpretation of Rent Control Legislation or Statutes is to protect two classes of persons i.e. tenant and landlord and to regulate their rights under Tenancy Act. In **V.S. Rahi v. Rani Chambeli**¹² and **Modern Hostel, Gudur v. Radhakrishnaiah**¹³ the Supreme Court held that, another principle which may be here mentioned is that when contracts and transactions are prohibited by statutes for the sake of protecting one class of persons from another class of persons, the one from their situation and condition being liable to be oppressed and imposed upon by the other, there the parties are not in *pari delicto* and a person belonging to the oppressed class can apply for redress even if he was a party to a contract or transaction prohibited by the statute. Thus, it is a trite law that in matters of welfare legislation, especially involving labour, the terms of contracts and the provisions of law should be liberally construed in favour of the weak. Thus, the welfare legislation has to be considered mostly in favour of the weaker among the two parties to the contract and not in favour of the stronger to the contract. But, here, the principles laid down by the Apex Court in various judgments are varying from one to the other. Rule of interpretation

¹² (1984) 2 SCC 378¹³ (1989) 2 SCR 725

in **Joginder Pal**'s case (referred supra) can be adopted to interpret any process in Rent Law.

31. The question that arose in the facts of the above judgment was that, once fair rent was fixed by the concerned Rent Controller under the Act, between the same landlord and tenant and later, a petition filed under Section 12 of A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960, i.e. for recovery of possession by landlord for repairs, alterations or additions or for reconstruction and accordingly, necessary repairs and additions were effected and later, delivered possession of the property in occupation to the tenant who was dispossessed in pursuance of the order passed under Section 12 and landlady filed a petition for fixation of fair rent, based on the alterations, repairs to the building in question. The contention raised by the tenant before the Court was that, once the Rent Controller fixed fair rent or standard rent, it cannot be reopened and re-fixed on an application filed by the landlady and it is a one time fixation between the same landlord and tenant.

32. If the principle laid down by the Apex Court is applied to the present facts, the Rent Controller cannot fix fair rent for the same premises for which the Rent Controller already fixed fair or standard rent in the earlier application. The judgment of the Apex Court is under A.P. Act, 1960 and the same is binding on this Court.

33. The main endeavour of the learned counsel for the appellant is that the question arose in the judgment was of increase of fair

rent under Section 5 of A.P. Act, 1960, due to making additions, alterations, repairs, but fair rent did not come up for consideration. Therefore, the principle laid down in the judgment of the Apex Court is regarding increase of rent between the same landlord and tenant and it is not a binding precedent on the Courts. Therefore, such principle cannot be applied to interpret Section 4 in such narrow construction.

34. Under Article 141 of the Constitution of India, the ratio laid down by the Apex Court is binding on the Subordinate Courts, including the High Courts. The judgment may contain both *ratio decidendi* and *obiter dicta*. Generally, even an *obiter dictum* is expected to be obeyed and followed by the Subordinate Courts including High Court as held in **Sarwan Singh Lamba v. Union of India**¹⁴ and sometimes well considered *obiter dicta* of the Supreme Court is taken as precedent, but every passing expression of a judge cannot be treated as an authority. Under Article 141 the status of *obiter dicta* is that *Obiter dicta* is more or less presumably unnecessary to the decision. It may be an expression of a viewpoint or sentiment which has no binding effect. The statements which are not part of *ratio decidendi* constitute *obiter dicta* and are not authoritative. Although under the traditional doctrine of precedent, an *obiter dicta* has no binding force, it may nevertheless be held entitled to have great weight. The law which will be binding under Article 141 would, therefore, extend to all observations of point raised and decided by the Court in a given case, vide **Director of**

¹⁴ (1995) 4 SCC 546

Settlements, A.P. v. M.R. Apparao¹⁵. However, with the gradual erosion of the distinction between *ratio* and *obiter* the practice has gained ground for treating even the *obiter dicta* of the Supreme Court binding on the High Court. The Supreme Court in **Municipal Committee v. Hazara Singh**¹⁶ itself has underscored the necessity on the part of the courts in the lower tier to follow its *obiter dicta* and observed as follows:

“Even obiter dictum of the Supreme Court should be accepted as binding. But statements on matters other than law have no binding force. Since on facts no two cases are similar, Supreme Court’s decisions which are essentially on questions of fact cannot be relied upon as precedents for decision of other cases.”

35. The Supreme Court while holding that *obiter* had only persuasive value observed in **Sreenivasa General Traders v. State of A.P.**¹⁷ that ‘Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law but governed or qualified by the particular facts of the case in which such expressions are to be found. In **Lt. Col. Prithi Pal Singh Bedi v. Union of India**¹⁸, observations were made on questions not specifically arising for decision, but discussed are entitled to respect by succeeding Bench of the Supreme Court, though observations are *obiter*. The Andhra Pradesh High Court in

¹⁵ (2002) 4 SCC 638

¹⁶ (1975) 1 SCC 794

¹⁷ (1983) 4 SCC 353

¹⁸ (1982) 3 SCC 140

Maddukuri Venkatarao v. State of A.P.¹⁹ has moved to the other end of the spectrum by saying that a decision of the Supreme Court cannot be disregarded on the ground that no *ratio decidendi* is discernible. The Court was referring to the judgment of the Apex Court in **His Holiness Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr.**²⁰, which even for the most experienced of the judges trained in the intricate task of interpreting *ratio decidendi* would prove to be an intractable riddle. Thus, the overall view of the Court or the Courts is that *obiter* has to be respected by the Subordinate Courts.

36. Discussing about the law declared under Article 141 and *ratio decidendi* of a case, scope of Article 141 in its application to judicial precedents, the Supreme Court in **S. Shanmugavel Nadar v. State of T.N.**²¹ held that a decision which is not express and is not founded on reasons, nor which proceeds on consideration of the issues, cannot be deemed to be a law declared to have a binding effect under Article 141. Article 141 gives a constitutional status to the theory of precedents in respect of law declared by the Supreme Court. A five-Judge Bench led by S.P. Bharucha, C.J in **Rupa Ashok Hurra v. Ashok Hurra**²² stated that ‘a precedent is the law of the land for itself, and for all Courts, Tribunals and authorities in India’. Be that as it may, the law laid down by the Supreme Court is now binding on the lower courts under a

¹⁹ AIR 1975 AP 315

²⁰ (1973) 4 SCC 225

²¹ (2002) 8 SCC 361

²² (2002) 4 SCC 388

constitutional provision. Does the constitutional mandate warrant anything more than the loyalty which lower courts owe to decisions of higher courts within the structure of precedents? The operation of the doctrine of precedent can be consistent with the traditional legal theory only on the distinct understanding that it is the *ratio decidendi* of the judgment which will be normally considered as binding. While jurisprudential opinion discloses a divergence of thought as to the scope, meaning and extent of the *ratio decidendi* and the potential use to which it might be put in subsequent cases, it is familiar to distinguish *ratio* from the *obiter* in order to emphasise that it is the former that is binding in the sense that the law declared must be always identified as expressing the *ratio decidendi*. However, on the level of actual judicial practice, the distinction between the ratio and obiter has been deliberately undermined in a surfeit of judicial pronouncements of the Supreme Court and the High Courts, which have consistently held the view that the expression “law declared under Article 141” includes the *obiter dicta* of the Supreme Court judgments. However, if judgment is rendered merely having regard to the fact situation obtaining therein, the same will not be a declaration of law within the meaning of Article 141, as held by the Supreme Court in **U.P. State Brassware Corpn. Ltd v. Uda Narain Pandey**²³. Focussing our attention on the orthodox legal position it is beyond doubt that the *ratio decidendi* as such is binding under the doctrine of precedent and is undoubtedly the law

²³ (2006) 1 SCC 479

declared under Article 141. Even when there is no *ratio decidendi* available in a case, there are High Court judgments which hold such judgments to be binding upon the Courts. An authority has to be understood in the context of facts based on which observations therein are made. The ratio of a decision is generally *secundum subjectam materiam*, as held in **Rajendra Prasad v. State of U.P.**²⁴

37. The Apex Court in **Raichurmatham Prabhakar's** case (referred supra) considered both Sections 4, 5 & 12 and expressed its view that Section 4, 5 & 6 are parts of one scheme. What first clause of sub-section (1) of Section 5 provides is that the fair rent of building having been fixed under Section 4 the same cannot be re-fixed once again. It is the rule of one-time fixation of fair rent. This rule does not apply to any case of addition, improvement or alteration having been carried out as stated in the later clause. It is an exception to "**one-time fixation of fair rent**" rule. In spite of fair rent of building having been fixed already, the fair rent can be fixed again as per formula laid down in the proviso on an addition, improvement or alteration having been carried out. Such cases are excepted from the prohibition of "**no further increase**". Thus, the Apex Court clarified that fixation of fair rent under Section 4 is only one time fixation between the same tenant and landlord and it cannot be re-fixed subsequently except on two grounds under Sections 5 & 6. Thus, Sections 5 & 6 are in nature of exceptions to Section 4. Even otherwise, Sections 5 & 6 deals with increase of

²⁴ (1979) 3 SCC 646

fair rent and not dealing with fixation of fair rent. Such interpretation is given by the Apex Court, though there is no direct interdict of fixation of fair rent in Section 4 but Section 5(1) directly created bar on fixation of fair rent again. Once again for the reason that Section 4 permits filing of an application for fixation of fair rent though by landlord or tenant of the premises. In such case, if the landlord or tenant goes on filing petitions one after the other, successively, there will not be any end for such fixation. For instance, during one year, the landlord files the petition for fixation of the fair rent and on the next year, the tenant may file another application for fixation making certain allegations of changed circumstances like decrease of rent in the market, decrease of value of the property and other relevant considerations prescribed for fixation of fair rent. Therefore, it would become an unending process of fixation of fair rent or standard rent for any tenant and premises to avoid such applications one after the other successively statute created an interdict to fix fair rent again and again either on application by landlord or tenant, the Apex Court interpreted Section 4 striking balance between rights of landlord and tenant and interpreted in such narrow sense and it is only in view of public policy and necessity to avoid multiplicity of litigation.

38. Learned counsel Sri Vijay Kumar Heroor drawn the attention of this Court to Section 16 which created an interdict on the power of the Rent Controller to reopen certain decisions of Rent Controller passed under Section 12 to entertain an application under Section 4 of the A.P. Act, 1960, the Court can entertain

application one after the other for fixation of fair rent. If, such contention is accepted, there will not be any end to such fixation of fair rent, as there is every possibility of unscrupulous landlords or tenants to file petitions one after the other to cause inconvenience to one or the other. Therefore, such construction is not acceptable to the present facts of the case.

39. The main contention of the landlord is based on the principle laid down by this court in the earlier judgment in **Pokarmal Dadhrich's** case (referred supra), this Court while dealing with Section 4(1) of A.P. Act, 1960 held that fixation of fair rent for the premises, for different tenant under Madras Rent Control Order of 1956 is not applicable to lease taken after A.P. Act, 1960. The theory that fair rent once fixed is good for all times to come as a *judgment in rem* for the same premises has been long exploded in England as well as in India. The petitioner cannot claim refund or adjustment for all the 11 years from 1963 to 1974 without filing a fair rent petition under the A.P. Act of 1960, inasmuch as the previous fixation of 1946 is between the landlady a different tenant.

40. The principle laid down in the above judgment is not quarrelled and it is distinguishable on facts. Fair rent was fixed for the premises between the landlady and a different tenant prior to commencement of A.P. Act, 1960 i.e. in the year 1946. But, after commencement of the Act, the new tenant entered into an agreement of lease with the landlady and filed a petition after 11

years from the date of commencement of tenancy for revision of rent paid in excess by the Rent Controller from 1946. In those circumstances, this Court held that fixation of fair rent is not good for all times is not acceptable. It is specifically held in the judgment that the rent previously fixed in 1946 was between the landlord and different tenant and with different guidelines. Therefore, fixation of fair rent between landlady and a new tenant after commencement of A.P. Act, 1960 cannot be said to be illegal as the earlier dispute was under different guidelines and different tenant, but the landlord is one and the same. In those circumstances, this Court concluded that the rent once fixed is not good for all the time. Even if that principle is applied to the present facts of the case, the landlord is not entitled to claim any benefit, since the fair rent was fixed by the Rent Controller and confirmed by the Appellate Court in the earlier proceedings in R.A.No.253 of 2014 between the same landlord and tenant. As per the principle laid down in the judgment, the fair rent fixed under different guidelines between the same landlady and a different tenant is not good for all times. In those circumstances, the petitioner cannot be permitted to take advantage of the principle laid down in the above judgment.

41. An identical case came up before Madras High Court in **Kethmul v. Husaini Begum**²⁵ and on elaborate consideration of various judgments of Supreme Court, Madras High Court more particularly relied on **Malpe Vishwanath Acharya's** case (referred

²⁵ (2002) 1 M.L.J.568

supra) and interpreted the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, (XVIII of 1960) held as follows:

“22. The Tamil Nadu Act only bars a second application when the fair rent is fixed or refixed. It cannot be denied that the value of rupee has fallen down and with inflation the value of real estate has gone up and not all tenants are poor nor all landlords affluent. There may be cases where the rental income is the only source of income for the landlord whereas the tenant may be a successful businessmen occupying various rental accommodations. The rival interest of the landlord and the tenant must be balanced.

If the reason for enacting Section 5 of the Act for any other legal provision for the matter continues to be current then the Section shall remain unchanged but if the reason has disappeared either wholly or to some extent or if the reason change. Therefore, the fact that Section 5 has been in force for so long cannot decide its validity. What will decide this issue is the reason for this provision. The appellate authority ought not to have entertained the second petition for fixing of fair rent when the Act does not permit the same.”

42. The principle laid down in the above judgment, though not a binding precedent and it has great persuasive value, as the provisions of Madras Act and A.P. Act are in *pari materia* in all respects. Therefore, the judgment is having its great persuasive value. Moreover, the judgment of **Raichurmatham Prabhakar's** case is directly under A.P. Act. Therefore, applying the principle laid down by the Apex Court in **Raichurmatham Prabhakar's** case and persuaded by the judgment of Madras High Court and **Kethmul's** case, this Court can unhesitatingly conclude that the second petition for fixation of fair rent is not maintainable, since fair rent was fixed by the Rent Controller under the provisions of A.P. Act, 1960 between the same landlord and tenant in R.C.No.494 of 2011 and confirmed in R.A.No.253 of 2004. Therefore, the contention of the landlord without any legal bars

and against purport of the law declared by the Apex Court and Madras High Court.

43. Learned counsel for the landlord contended that the Courts can order periodical increase of rent while fixing fair rent and such periodical enhancement was upheld by this Court in **Jupudi Parthasarathy's** case, this Court while dealing with fixation of fair rent with periodical enhancement was challenged, concluded that in view of the changed circumstances, like increase of rental values, etcetera would render Section 4 illusory on account of passage of time and therefore supported fixation of fair rent with periodical enhancement. This Court in paragraph 5 of the said judgment noticed the other provisions contained in the Act i.e. Sections 5 & 6 and concluded that the legislative intention should not have been such that to make the party repeatedly approach the Court for fixation of rent. Further under the scheme of Sections 4 to 6 of the Act, as referred to above, the criteria under sub-sections (2) to (4) of Section 4 of the Act is not workable, as those provisions do not exist after the judgment in **Suresh Gir's** case (referred supra). Similarly sub-section (5) of Section 4 of the Act could not be applicable as fair rent was not fixed in this case prior to commencement of the Act. In addition to the above provisions, Section 5 of the Act imposes a prohibition on further increase of rent when the fair rent is fixed under the Act and any increase or decrease in the fair rent fixed is allowable only if additions, improvements or alterations are made or there is a decrease or diminution in the accommodations or amenities respectively, as

the case may be. On the analysis of these provisions, it would be noticed that once a fair rent is fixed, it cannot be revised except if the case falls under Section 5 of the Act where additions, improvements or alterations are carried by the landlord as mentioned above. If an application for fixation of rent is made, (in this case it was made in 1992), the landlord puts only his estimation of fair rent on the date of application. It is impossible to visualize or claim or fix fair rent which will be realistic and appropriate at the actual time of adjudication reaching its finality. Further Section 6 of the Act provides the landlord a right to claim increase in the fair rent only if taxes and cesses payable by the landlord is enhanced after fixation of rent. If such contingency does not arise, in no case the landlord would be entitled for enhancement of rent from what was fixed from the date of application. In this view of the matter, this Court is of the opinion that to offset the time gap between the date of application and date of adjudication, the Rent Controller would certainly have jurisdiction to order the periodical increase in fair rent as has been done in this case. Therefore, the judgment relied on by the learned counsel for the landlord is not in support of the petitioner. But, in the present facts, in the earlier proceedings both the Rent Controller and the Appellate Court fixed fair rent, without periodical increase or enhancement. Therefore, the principle laid down in the above judgment is of no assistance to the landlord to claim relief in the revision petitions.

44. Learned counsel for the landlord Sri Vijay Kumar Heroor contended that the landlord is solely living on the income from building and on account of escalation of prices and change in the price index, it is difficult for him to live with the meagre amount of rent that he is receiving from the tenant and therefore, rent is required to be enhanced fixing fair rent. Undoubtedly, there is a substantial increase in rental values within the city of Hyderabad and that apart, the premises is situated in downtown i.e., opposite to Kacheguda Railway Station. But, admittedly, the petition was not filed for increase or enhancement of rent that has already been fixed either on account of additions or alterations to the building or on account of increase of taxes payable by the landlord of the building to claim benefit under Section 5 or 6 of the Act. Even when this Court took an objection and pointed out that there is an increase in payment of taxes to the municipal corporation, while accepting entitlement under Section 6 of the Act, the same was stoutly opposed for increase of fair rent which is already fixed invoking Section 6 of the Act, he consistently submitting that he has claimed fixation for fair rent under Section 4 only, but not claiming enhancement under Section 6. As the clause is only for fixation of fair rent under Section 4, the claim of the petitioner cannot be entertained in view of the law declared by the Apex Court and bar under Section 5(1) of the A.P Act, 1960. Undoubtedly, the only source of living of the landlord may be the rent received from the premises but when statute and the law declared by the Apex Court created an interdict in passing an order

under Section 4, once fair rent was fixed by the Rent Controller, between the same landlord and tenant, though the equity is in favour of the landlord, it is difficult for me to accept such contention. Since, this Court has to give literal interpretation though equity is in favour of the landlord, in view of the principle laid down by the Apex Court in **B. Premanand's** case (referred supra). Therefore, based on sympathies or equities, the law interpreted by the Apex Court and Madras High Court cannot be given different interpretation to benefit the landlord. In such circumstances, the Court has no other alternative except to hold that this petition is not maintainable under Section 4, following the principle laid down by the Apex Court in A.P. Act, 1960 and persuaded by the judgment of the Madras High Court in **Kethmul's** case (referred supra) and even the principle laid down by this Court in **Jupudi Parthasarathy's** case (referred supra).

45. One of the major contentions of the learned counsel for the landlord Sri Vijay Kumar Heroor is that no plea of bar to entertain second application was raised by the tenant in his counter before the Trial Court and not even raised such plea during hearing. In such case, the Appellate Court is not expected to pass such perverse order which debarred the landlord to file a second application for fixation of fair rent after fixing fair rent between him and the same tenant. Undoubtedly, there is no specific plea in the counter filed before the Rent Controller in the petition filed under Section 4 and not even urged before the Rent Controller to dismiss the application on the specific ground which is urged before the

Appellate Court. However, the Appellate Court adverted to various provisions of A.P. Act, 1960 and noticed the law laid down by the Apex Court and decided the case as per law. When there is a direct bar from entertaining a second application for fixation of fair rent, mere failure to raise such plea before the Rent Controller would not disable the Appellate Court to advert to correct legal position laid down by the Apex Court and decide the matter. The Courts are expected to decide the matter in accordance with settled law and when a particular law laid down by the Apex Court is within the knowledge of the Presiding Officer of the Court, he is entitled to decide the same after affording an opportunity to the counsel on record to explain the principle. But, it is not known whether the Appellate Court afforded any opportunity or not. However, before this Court, extensive argument was advanced on this aspect only on the maintainability of second application under Section 4, for fixation of fair rent between the same landlord and tenant, when fair rent was fixed in the earlier application. Therefore, in such circumstances, when Sections 5 & 6 are in the nature to exception to Sections 4, which are under the same scheme for fixation of fair rent, increase and more particularly when Section 7 prohibits demand of rent more than the fair rent or standard rent fixed by the Rent Controller. Hence, this contention of the learned counsel for the landlord is not sufficient to overturn the judgment of the Appellate Court.

46. It is evident from the provision of A.P. Act, 1960 that the legislature did not visualise the ill-effects of such provision under

the scheme for fixation of fair rent and increase of fair rent and if it is suitably amended, then there is a possibility of landlords or tenants to claim fixation of fair, subject to contingencies and circumstances. As long as the statute remains as it is and in view of the law declared by the Apex Court, this Court cannot permit the landlords to file such successive petitions one after the other for fixation of fair rent. A similar question came up before the Apex Court in **Banatwala and Company v. L.I.C of India and another**²⁶ while deciding the question of fixation of rent under Maharashtra Rent Control Act, public premises eviction of Unauthorized Occupants Act, the Court adverted to certain provisions of Maharashtra Act which enables the authorities under the Act to fix particular rent or permitted increase in certain cases.

47. Section 8 Maharashtra Act stipulates that the Court may fix standard rent and permitted increases in certain cases, which reads as follows:

“(1) Subject to the provisions of Section 9 in any of the following cases, the court may, upon an application made to it for the purpose, or in any suit or proceedings, fix the standard rent at such amount as, having regard to the provisions of this Act and the circumstances of the case, the court deems just,-

(a) where the court is satisfied that there is no sufficient evidence to ascertain the rent at which the premises were

²⁶ AIR 2011 SC 3619

let in any one of the cases mentioned in paragraphs (i) and (ii) of Sub-clause (14) of Section 7; or

(b) whereby reasons of the premises having been let at one time as a whole or in parts and at another time, in parts or as a whole, or for any other reasons; or

(c) where any premises have been or are let rent-free or, at a nominal rent; or for some consideration in addition to rent; or

(d) where there is any dispute between the landlord and the tenant regarding the amount of standard rent.

(2) If there is any dispute between the landlord and the tenant regarding the amount of permitted increase, the court may determine such amount.

(3) If any application for fixing the standard rent or for determining the permitted increase is made by a tenant,-

(a) the court shall forthwith specify the amount of rent, or permitted increase which are to be deposited in court by the tenant, and make an order directing the tenant to deposit such amount in court or, at the option of the tenant, make an order to pay to the landlord such amount thereof as the court may specify pending the final decision of the application. A copy of the order shall be served upon the landlord;

(b) out of any amount deposited in the court under Clause (a), the court may make an order for payment of such reasonable sum to the landlord towards payment of the rent or increases due to him as it thinks fit;

(c) if the tenant fails to deposit such amount or, as the case may be, to pay such amount thereof to the landlord, his application shall be dismissed.

(4) (a) Where at any stage of a suit for recovery of rent, whether with or without a claim for possession, of the premises, the court is satisfied that the rent is excessive and standard rent should be fixed, the court may, and in any other case, if it appears to the court that it is just and proper to make such an order, the court may make an order directing the tenant to deposit in court forthwith such amount of the rent as the court considers to be reasonable due to the landlord, or at the option of the tenant, an order directing him to pay to the landlord such amount thereof as the court may specify.

(b) The court may further make an order directing the tenant to deposit in court periodically such amount as it considers proper as interim standard rent, or at the option of the tenant, an order to pay to the landlord, such amount thereof as the court may specify, during the pendency of the suit;

(c) The court may also direct that if the tenant fails to comply with any order made as aforesaid, within such time as may be allowed by it, he shall not be entitled to appear in or defend the suit except with leave of the court, which leave may be granted subject to such terms and conditions as the court may specify.

(5) No appeal shall lie from any order of the court under subsections (3) and (4).

(6) An application under this section may be made jointly by all or any of the tenants interested in respect of the premises situated in the same building.

48. The said provision is almost identical to the provisions of the A.P. Act. Even the scheme of Maharashtra Act only provided enhancement or increase of fair rent once fixed but did not afford any chance to file a second application for the same relief. In those circumstances, considering the intention of the legislature in making such provisions for increase of fair rent, under Section 5 & 6 of the A.P. Act, after fixation of fair rent under Section 4 which partakes the character of an exception to Section 4, this Court cannot permit the landlord to claim benefit under Section 4 for fixation of fair rent. Though, there is an increase in payment of tax to the municipal corporation for the premises in occupation of the tenant, the landlord did not accept enhancement of rent in proportion to the increase of the tax, invoking Section 6 of the Act. He totally disagreed and insisted this Court to direct the Rent

Controller to fix fair rent, remanding the matter. But, this Court cannot issue such direction as the landlord is precluded from filing second application against the same tenant when fair rent or standard rent was fixed in earlier petition in R.C.No.494 of 2011 confirming the order passed by the Appellate Court in R.A.No.253 of 2014.

49. In view of discussion hereinabove, I hold that the landlord or tenant are not entitled to file petition under Section 4 of A.P. Act, 1960 for fixation of fair rent, when fair rent or standard rent was fixed earlier between the same landlord and tenant under the same tenancy, since fixation of fair rent is one time measure in view of bar under Section 5(1) of A.P. Act, 1960 and in view of the law declared by the Apex Court in **Raichurmatham Prabhakar's** case (referred supra). Section 5(1) of A.P. Act, 1960 also deals with increase in fair rent is admissible when the fair rent of a building has been fixed under this Act, no further increase in such fair rent shall be permissible except in cases where some additional, improvement or alteration has been carried out at the landlord's expense and if the building is then in the occupation of a tenant, at his request. Accordingly, the point is answered.

50. The order of the Rent Controller is against the principles laid down by the Apex Court and such order cannot be sustained. Therefore, the Appellate Court rightly set-aside the order passed by the Rent Controller allowing the appeal.

51. In view of my foregoing discussion, I find absolutely no ground warranting interference with the judgment of the Appellate Court.

52. In the result, both the civil revision petitions are dismissed, but however without costs, confirming the order passed by the Chief Judge, City Civil Court in R.A.No.253 of 2014 dated 05.11.2015.

53. Consequently, miscellaneous applications pending if any, shall stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 30.09.2016

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Note: LR copy to be marked
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