

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.3516 & 3570 of 2016

COMMON ORDER :

C.R.P.No.3516 of 2016:

1. The revision petitioner is the tenant, no other than the respondent to R.C.No.94 of 2012 filed by revision respondents-landlords for fixation of fair rent by invoking Sections 4 and 5 of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, 'the Act'). The application was filed for fixation of fair rent on 20.06.2012. The claim for fixation of fair rent made was saying it is prevailing at Rs.100/- per sq. feet and the premises covered by the lease is an extent of 340 sq. feet and the fair rent that can be fixed reasonably is Rs.34,000/- per month and the original monthly rent paying of Rs.1,500/- per month exclusive of water and electricity charges is utterly low and hence to fix the fair rent from the date of fair rent application.

C.R.P.No.3570 of 2016:

2. This revision is maintained by the selfsame tenant against the respondents-landlords aggrieved by the order dated 28.08.2014 in R.C.No.93 of 2012 on the file of the Principal Rent Controller-cum-XVII Junior Civil Judge, Secunderabad, filed of selfsame date of filing of fair rent, on the ground of bonafide requirement of personal occupation to enhance the business by the family members and also for the alleged willful default in payment of agreed rent at Rs.1,500/- per month.

3. Even it is important to note from the numbering given to the fair rent fixation petition as R.C.No.94 of 2012 and the eviction petition as R.C.No.93 of 2012 by the selfsame Principal Rent Controller, Secunderabad, of both filed at a time and on same date and numbering given was also simultaneously. The eviction petition in R.C.No.93 of 2012 is allowed and confirmed by the Additional Chief Judge, City Small Causes Court, Hyderabad (appellate Tribunal) in R.A.No.230 of 2014 on 01.06.2016 and the tenant who went unsuccessful thereby maintained the revision in C.R.P.No.3570 of 2016 supra.

4. So far as the fair rent fixation is concerned, the Rent Controller fixed the fair rent at Rs.5,671/- for the area 283.55 sq. feet at Rs.20/- per sq. feet with enhancement of 10% for every two years on the existing rate of rent and fair rent fixed at the rate supra is from date of filing of the fair rent application. It is important to note here that, maintainability of the eviction petition is subject to the determination of fair rent application. It is why because, once the fair rent sought to be fixed at Rs.34,000/- per month from Rs.1,500/- per month from date of fair rent petition and once it is being decided, the eviction petition could not survive, if fair rent fixed is beyond Rs.3,500/- per month in a municipal area and Rs.2,000/- in a non-municipal area from the amended Section 32 of the Act with effect from 28.04.2005.

5. Undisputedly, the fair rent application ie., R.C.No.94 of 2012 was allowed on 28.08.2014 as referred supra at Rs.5,671/- per month

from 20.06.2012 on which date the fair rent application was filed. It is practically to say numbering of the eviction petition is subject to maintainability from determination of the fair rent application. No more repetition is required in this aspect.

6. Thus, it cannot be contended that once the Court numbered the eviction petition even fair rent application pending, it got jurisdiction from the rent prevailing by then at Rs.1,500/- per month and from any subsequent determination even dates back to the date of fair rent application at Rs.3,500/- above per month, even pursuant to the bar under Section 32 of the amended Act that no way takes away or oust the jurisdiction. Such a contention has no basis practically in the factual scenario supra and for the reason, both the applications filed were at one time and same date and numbering of eviction petition is thus subject to determination of fair rent application and that fair rent is once determined by fixing at Rs.5,671/- per month dates back to the date of petition and therefrom it is as on date of eviction petition by such fixation of fair rent at above Rs.3,500/- per month, the eviction petition thereby has no locus even numbered and entertained as the Court is bound to take note of the subsequent events that dates back to the date of eviction petition filed itself in the facts supra.

7. The tenant went unsuccessful equally the landlords in R.A.Nos.225 of 2014 and 230 of 2014 respectively for the tenant impugning fixing at 20 per sq. feet as exorbitant and the landlord as utterly low.

8. Thus, by appeals order dated 01.06.2016 in dismissing the two appeals of the landlord and tenant, the fair rent fixed by the Rent Controller was upheld. In the revision, even there is no stay against the operation of the fair rent fixed by the Rent Controller dates back to the date of fair rent application supra.

9. Once such is the case, from the fair rent fixed dates back to the fair rent application in the Tribunal that is confirmed in the appeal, practically in the revision even from the scope of revision laid down by the constitution Bench of the Apex Court in **Hindustan Petroleum Corporation Limited v. Dilbahadar Singh**¹ is not a first appeal for re-appreciation of all facts second time, but for to the limited extent of going into the relevant facts within the scope of the revision contemplated in determination of legality, regularity or propriety of the order impugned in the revision.

10. From this, nothing could be demonstrated by the tenant in the revision against the fair rent confirmation order of the appellate Tribunal from the fair rent fixed by the Rent Controller to sit against by even re-appreciation of relevant facts within the limited scope and as also laid down by the Apex Court in this regard on the criteria for fair rent determination by taking judicial notice of the increase in rental values and scope of appellate and revisional courts in interference with fair rent arrived by the Rent Controller vide

¹ (2014) 9 SCC 78

decisions **Rathan Arya vs. State of Tamilnadu**² and **Mohammad Ahmad vs. Atmaram Chauhan**³. Thus, C.R.P.No.3516 of 2016 is liable to be dismissed confirming the fair rent at Rs.5,671/- per month fixed by the Rent Controller with effect from the date of filing of the fair rent application on 20.06.2012.

11. From the above, coming to the very maintainability of the eviction petition and at the cost of repetition of what is detailed in this regard supra, even eviction order passed by the Rent Controller and confirmed by the appellate Tribunal and impugning the same by the tenant in the revision in C.R.P.No.3570 of 2016 against the concurrent findings, needless to repeat the scope of the revision laid down by the Apex Court in Dilbahar Singh's case supra, though a concurrent finding devoid of merit not sustainable in law, it is prone to revision, because the scope of revision contemplated by Section 22 of the Act speaks legality, regularity or propriety of the order itself that can be considered with reference to the relevant facts.

12. In this regard, the Apex Court Two-Judge Bench in Mohammad Ahmad supra, in relation to U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, observed that the applications for fair rent by the landlord arises when the tenant is not agreeing to consider the request to fix fair rent. However, there are guidelines required to be fixed as norms for such type of litigation to minimize landlord-tenant litigation at all levels and it referred seven guidelines.

² AIR 1986 SC 1444

³ 2011 (7) SCC 755

Guideline No.5 speaks out of it that *'if the present and prevalent market rent assessed and fixed between the parties is paid by the tenant, then the landlord shall not be entitled to bring any action for his eviction against such a tenant at least for a period of five years and the tenant shall enjoy immunity from being evicted from the premises'*.

13. No doubt, in the counter of eviction petition itself the tenant has taken the plea of maintainability because of the fair rent application filed claiming rent beyond the ceiling that takes away the jurisdiction of the Rent Controller in saying only civil Court got jurisdiction. This aspect was not dealt either by the Rent Controller or by the lower Appellate Tribunal in a right perspective. It is needless to say, once fair rent application is filed that too seeking from the date of petition and eviction petition filed simultaneously on same date, without determination of fair rent, the question of determining the eviction petition when does not arise and where fair rent arrived and fixed beyond the ceiling conferring jurisdiction of the Rent Controller, as once it is increased that too from dates back to the petition as sought, it takes away by the very request of the landlord since allowed fixing fair rent at above Rs.3,500/- per month in Municipal area and at above Rs.2,000/- per month in non-municipal area, the jurisdiction of the Rent Controller to determine any lis for eviction. Same is happened in this case, though the Rent Controller and Appellate Tribunal determined the applications and when did not consider this aspect by

concurrent findings devoid of merits, same for not legal prone to revision jurisdiction to set aside said findings.

14. Further, the Division Bench of this Court in **Bulchand and Company v. Khamrunnisa Begum**⁴, thereon the facts, the original rent was Rs.1,300/- per month, sought for fixation of fair rent and the Rent Controller determined at Rs.4,000/- per month, that was confirmed in the appeal by the Rent Appellate Tribunal and during pendency of the proceedings once fair rent is determined under Section 4 of the Act, exceeding the ceiling stipulated for bringing premises under the purview of the Act, the application of the Act ceases and the provisions of the Act cannot be invoked and cannot be applied. It was in fact on the application to determine jurisdiction from the determination of fair rent application and eviction petition, thereby defence would lie also for want of notice under Section 106 of the Transfer of Property Act, 1882, besides only civil suit lies and the same was answered saying once fair rent is determined exceeding the one stipulated of the ceiling to bring the premises under provisions of the Act ceases to apply as in that case it is Rs.4,000/- per month, beyond the ceiling limit.

15. Same analogy practically applies here in answering the issue that the very eviction petition is no legs to stand, that too filed on the same date of fair rent application, since determined fixing Rs.5,671/- per month with effect from 20.06.2012 and thereby once that relates

⁴ 2013 (5) ALD 223

back to the date of the petition on own showing the eviction petition would not lie and even the expression of the Apex Court Three Judge Bench in **Noorunnisa Begum v. Brij Kishore Sanghi**⁵ in answering the appeal lis batch of cases against larger Bench expression of this Court, on reference on the scope of overriding and overlapping of the provision of Section 26 and 32 of the Act and G.O.Ms.No.636 dated 29.12.1983 issued within the power of the Government under Section 26 of the Act, how far to prevail or not the subsequent amendment to Section 32 by Act 17 of 2005 dated 27.04.2005 by clarifying the position it was sum up in para 52 as clauses (a) to (f) as follows:

- (a) Part of Section 32 is prospective and some part of it is retrospective.
- (b) The exemption granted by the State Government under Section 26 of the Act by G.O.Ms.636, dated 29th December, 1983 has overriding effect over rest of provisions of the Act.
- (c) The buildings whose **rents** are upto Rs.3,500/- in the Municipal areas and Rs.2,000/- in other areas were already covered by the Act and after amendment it continues to be covered by the Act but the tenants of buldings, rents of which is more than Rs.1,000/- and does not exceed Rs.3,500/- in the Municipal area or Rs.2,000/- in other area, even after amendment of Section 32, cannot claim protection in view of the exemption granted under Section 26 of the Act.
- (d) Section 26 and Section 32 of the Act operate in two different fields. Section 32 relates to non-applicability of the Act to a class of building(s) whereas Section 26 deals with the power of the State to exempt the building or class of buildings to which Act is applicable. In fact, there is no clash between Section 26 and Section 32, as they operate in two different

⁵ 2015(4) ALD 155 (SC)

fields and, therefore, the question of overriding of one over another does not arise.

(e) Clause (a) of G.O.Ms.636 dated 29th December, 1983 has become redundant. However, clause (b) of the G.O.Ms.636, dated 29th December, 1983 still holds good.

(f) The suit(s), appeal(s), revision application(s) or execution case(s) which are pending for determination under the General Law are not affected by amended Section 32 and will continue to be decided in accordance with General Law.

16. Here, from the above six findings of the conclusion arrived by the Apex Court supra in saying Section 26(1)(b) still in operation and is not superseded G.O.Ms.No.636 Clause (a) and in saying the amendment of 2005 incorporating Section 32 is only prospective in operation.

17. Even taken this analogy, the case on hand filed in 2012 long after the said amendment in force. Once such is the case, the eviction petition has no legs to stand, for want of inherent jurisdiction to the Rent Controller and any objection in relation to inherent lack of jurisdiction even not taken is also not a bar from the wording of Section 21 C.P.C. Once such is the case, law is fairly settled, the same can be taken even in revision against appeal or second appeal, as the case may be, as a legal plea. Thereby the very eviction order passed by the Rent Controller confirmed by the lower Appellate Tribunal is unsustainable and without jurisdiction and thus the C.R.P.No.3570 of 2016 is liable to be allowed.

18. It is one of the contentions that tenant is not paying the fair rent fixed by the Rent Controller. The payment or non-payment of fair rent fixed makes no difference, once there is enforceable right created and there is no suspension of the operation of fair rent order by any Court of law.

19. Accordingly and in the result, the C.R.P.No.3516 of 2016 is dismissed and the C.R.P.No.3570 of 2016 is allowed holding that the remedy of the landlords-revision respondents to seek eviction of the tenant is only to invoke the jurisdiction of Civil Court to decide on merits for the Rent Controller under the Act has no jurisdiction to adjudicate. No order as to costs in both the revisions.

20. Miscellaneous petitions pending in both the revisions, if any, shall stand closed.

7th November 2016.

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Dr. B. SIVA SANKARA RAO, J