THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petitions Nos.875 & 1305 of 2014

COMMON ORDER:

The genesis of these two revision petitions is the petition in R.C.No.97 of 2010 on the file of the Court of the learned Principal Rent Controller, Secunderabad, filed by the petitioner-landlord against the respondents-tenants under Section 4 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereinafter 'the Act of 1960') for fixation of fair rent @ Rs.150/- per square foot for the petition schedule shop no.3 admeasuring 140 Square feet in the ground floor of a building bearing no.5-5-191/C situate at Chama market, Ranigunj, Secunderabad, morefully described in the schedule annexed to the rent control case.

By orders dated 30.01.2012 the learned Principal Rent Controller partly allowed the said RCC. The operative portion of the said order reads as under:

> 'In the result, the petition is partly allowed by fixing the fair rent of the petition schedule property @Rs.50/- per Sft., from the date of this order. Further, the respondents are directed to enhance the rent @10% on the existing rate of rent for every three years. In the circumstances, each party do bear their own costs.'
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> [Reproduced verbatim]

Aggrieved thereof, the tenants and the landlord respectively filed RA.Nos.81 and 99 of 2012 before the learned appellate authority-cum-the Additional Chief Judge, City Small Causes Court, Hyderabad. By the common order impugned in these revisions, the learned appellate authority, while dismissing the appeal of the landlord, partly allowed the appeal of the tenant. The operative portion of the said common order reads as under:

> 'In the result, the cross appeal in RA.99/12 shall be dismissed and the appeal in RA.81/12 shall be partly allowed, modifying the order of the Principal Rent Controller, Secunderabad in RC.97/2010 dated 30.01.2012, fixing the fair rent of the petition schedule premises at the rate of Rs.35/- per sft from the date of the petition with further enhancement at the rate of 10% for every two years. Each party do bear their own costs.'
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> [Reproduced verbatim]

Aggrieved thereof, the landlord preferred CRP.No.875 of 2014 and the tenants preferred CRP.No.1305 of 2014.

2. I have heard the submissions of *Sri D. Madhava Rao,* learned counsel appearing for the landlord, and *Sri Wasim Ahmed Khan,* learned counsel appearing for the tenants. I have perused the material record.

3. The parties in these revisions shall hereinafter be referred to as the landlord and the tenant(s) for convenience and clarity.

4. The case of the landlord in support of his request for fixation of fair rent, in brief, is as follows:

He is the exclusive owner of the entire building in which the petition schedule shop is a part. He acquired ownership of the building by virtue of a registered sale deed dated 30.06.2007 bearing document no.1597 of 2007. Even by the date of purchase of the building by the landlord, the tenant is in occupation of the petition schedule shop being a tenant under the vendors of the landlord. The tenancy is oral tenancy and the month of tenancy is English calendar month. The tenancy of the tenant was attorned to the landlord by the vendors. There are also other tenants in other shops in the same building. The tenancies of the other tenants were also attorned to the landlord. The monthly rent payable by the tenant is Rs.1,840/- as on the date of the institution of the petition. The said rent is exclusive of electricity and maintenance charges. The area of the shop is 140 Square feet. A rough sketch with measurement is filed with the petition. The property is centrally located in Ranigunj, Secunderabad, which is well known in the entire State as an industrial and general engineering goods market. The rent being paid by the tenant is too nominal and not in conformity with the advantageous situation and convenient location of the property. The rents of the shops that are situate adjacent to the subject building in which the petition schedule shop is a part are much more than what the tenant is paying to the landlord. Thus, the rent being paid by the tenant is not in consonance with the prevailing rents in the locality. As per the basic value register of the office of the jurisdictional sub-registrar, Secunderabad, the market value of the subject building is Rs.5,19,300/- as on 17.06.2010. The value of rupee has depreciated and there is escalation of cost of living. There is also shortage of accommodation. The building in which the schedule shop is located is on the main road of Ranigunj, which is a very highly commercial area. Digital Shoppe, Al-kabeer commercial building, Ranigunj bus depot, automobile showrooms, hotels, Banks, electrical shops and other prestigious showrooms and establishments are situate in the vicinity of the subject building. The road in front of the subject building leads to MG road, RP road, Ghasmand, Pan Bazar and General bazar, which are all highly commercial localities in Secunderabad. Due to recent drastic changes in the real estate, the rates of the lands and rental values have gone up, more particularly, in the area where the schedule property is situated. Thus, the schedule shop is located centrally and is in a very busy commercial market and has conveniences and advantages in view of its prime location. Ordinarily, it would fetch a rent @Rs.150/- per square foot. In the circumstances the rent being paid by the tenant is a meagre rent when compared to rental values prevailing in the locality. Hence, the fair rent for the schedule shop may be fixed at Rs.150/- per square foot.

5. While denying specifically all the averments made by the landlord in support of the claim for fair rent, the tenant(s), *inter alia,* contended in the counter as follows:

The building in which the schedule shop is situate is located in a narrow passage of 6 feet, where even an auto cannot come without difficulty. The tenant, who is putting the schedule shop to use as a go-down is bearing all the troubles. Due to global recession the business sector has suffered a severe jolt throughout the country including Hyderabad. On account of the recent ongoing agitations and bandhs, several business organisations suffered losses. Unable to pay the huge rents, some tenants vacated their properties and shifted to remote areas and are paying lesser rents. Landlords are struggling to let out their commercial properties as there is no demand for accommodation on rent. Many landlords are voluntarily reducing the rents to prevent the tenants from vacating their properties. The rent being paid is not only quite reasonable but also slightly excessive; therefore the rent is liable for suitable reduction. Since the subject building is not located on main road of Ranigunj, it cannot be compared with the buildings and shops that are located on the main road. The subject building is at a distance of 500 metres from the main road. The schedule shop is not located in a commercial locality. The real estate boom was there in the year 2006-07 but it has abruptly come to an end subsequently; now the real estate business is going through a bad phase. On account of fall in prices of landed properties and for lack of purchasers, the rental values of the properties have suitably come down. The landlord is fortunate that his tenants are paying the existing rents regularly. The landlord is bent upon seeing that the tenants vacate the property along with the other tenants who are in the occupation of the other shops in the building with a view to demolish the main building and construct a new complex. The landlord earlier requested this tenant and other tenants to vacate the respective shops in the building. Then, all the tenants asked the landlord to give an undertaking that after reconstruction he would re-allot similar accommodations to the tenants. He refused to do so. In order to build pressure on the tenants, he resorted to invoking the provision for fixation of fair rent. He came to court with unclean hands and *mala fide* intention by abusing the process of law. He is not entitled to seek fixation of fair rent at the rate of Rs.150/- per Square foot. To avoid filing of an appropriate application under section 12 of the Act, the landlord invented allegations and resorted to filing this application for fixation of fair rent to somehow see that the present tenants and other tenants are evicted from the building and to enable him to demolish the existing building and construct a new complex and thereafter let out portions of the same to others at higher rents after securing huge advances from such persons. The landlord has suppressed the fact that a deposit of Rs.80,000/- was made with the previous landlord at the time of inception of the tenancy and the said deposit was transferred to the account of the landlord by the previous landlord. The said fact is also mentioned in the letter of attornment. Hence, the petition is liable for dismissal.

6. At the time of enquiry before the learned rent controller, PWs 1 and 2 and RWs 1 and 2 were examined and exhibits P1 to P3 and R1 to R12 were marked. Exhibits X1 to X4 were also marked.

7. At the hearing, the learned counsel reiterated the cases of the respective parties. The traded allegations are restated in the submissions.

8. Now the points for consideration are:

> Whether the rent determined by the learned appellate authority at the rate of Rs.35/- per square foot for the petition schedule shop of an area of 140 Square feet is not a fair rent? And, if so, whether the said rent fixed requires upward revision or downward revision? Either the landlord or tenant(s) made out valid and sufficient grounds calling for interference with the orders of the learned appellate authority? To what relief?

9. <u>POINTS:</u>

9.1 I have gone through the pleadings and evidence and I have given earnest consideration to the facts and the submissions. The jural relationship is admitted. It is also admitted that the monthly rent was Rs.1,840/- as on the date of the filing of the rent control case. The landlord sought fixation of rent at the rate of Rs.150/- per square foot per month. The tenant(s) while resisting the said claim of the landlord *inter alia* contended that the rent being paid is not only quite reasonable but also slightly excessive and therefore the rent is liable for suitable reduction. On merits, the learned Rent Controller fixed the fair rent at the rate of Rs.50/- per square foot per month from the date of the order with further enhancement on the existing rent at the rate of 10% every three years. However, by the orders impugned in these revisions, the learned appellate authority fixed the fair rent for the schedule shop at Rs.35/- per square foot per month from the date of the institution of the rent control case with further enhancement on the exiting rent at the rate of 10% for every two years. Therefore, the aggrieved landlord and tenant(s) are both before this Court by way of these two revisions.

9.2 The standards for determining the fair rent that were originally fixed under the statutory provisions i.e., under sub-sections (2) to (4) of Section 4 of the Act of 1960 were held to be illusory on account of passage of time and, therefore, the said provisions were struck down by this Court in the decision in Suresh Gir v. K. Sahadev[1]. Subsequently, the legislature has not made any amendments to the provisions of the Act of 1960 and, therefore, no statutory criterion are now available for fixation of fair rent after striking down of sub-sections (2) to (4) of Section 4 of the Act of 1960. It is now not disputed before this Court that for the determination of the fair rent, due regard must be had to the aspects like – the locality, the age, condition and nature of the building, the quality of accommodation, amenities like electricity and water connection, if any, etcetera, fair market value, property tax payable on the property, the nature of its use (commercial or residential), availability of similar accommodations in the locality, demand in the locality for similar accommodations on rents, prevailing rents for buildings/shops similarly situated in the same locality etcetera besides the other factors, which may be peculiar to the case.

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[1] 1998(1) ALD 25

9.3 Coming first to the area or locality in which the schedule premises is situate, it is an undisputed, admitted and established fact that the petition schedule shop is one of the several shops in the building located at Ranigunj. It is also admitted that the petition schedule shop faces a lane connecting Ranigunj road. This fact is also evident from the boundaries of the schedule property; the Eastern boundary is shown as '11 feet passage' in the schedule. However, the case of the tenant(s) is that the schedule shop is being used not for conducting regular business but as a go-down. The landlord re-iterated his case in his affidavit filed in lieu of examination in chief and further maintained his stand in cross examination. However, he admitted that he did not file any documents to show that the petition schedule shop would fetch monthly rent @ Rs.150/- per square foot and that rents are being paid at that rate for similar shops in the vicinity. However, he admitted that the passage leading to the petition schedule premises is only of 6 feet width and that the petition schedule premises is not facing the main road and that the main road is at a distance of 5 feet from the petition schedule premises. Since the property is being put to use as a go-down, there are no other amenities except electricity service connection, is not in dispute. The undisputed fact that the rent is exclusive of electricity charges indicates that there is electricity connection to the schedule shop. He also admitted that he requested the tenants in the shops to vacate the respective shops in the building to enable him to construct a new building and re-let the same. He did not produce any documentary evidence to show the details of the rents being received by the landlords of the neighbouring commercial properties. PW2 is a tenant in one shop in Ganji complex since 15.12.2010. He deposed that the area of his shop is 140 Square feet. He filed rent receipts, exhibits X1 to X4 dated 07.01.2011, 15.02.2011, 15.03.2011 and 20.04.2011. In his cross examination he stated that he did not produce his trade licence, sales tax registration certificate and rent deed, if any, between him and his landlord. Similarly, RW1, reiterated his defence in his affidavit filed in lieu of examination in chief. In his cross examination, he stated that he is doing hardware business and that in the same vicinity of his shop other business premises/shops wherein hardware businesses are being done are located. He admitted that PW2 is in occupation of shop no.8 since 5 to 6 months and that it belongs to one lady and that the rent receipts produced by him belong to his shop. According to RW1, the petition schedule shop is at a distance of 1.2 KMs away from RP road and ½ kilometer away from MG road and its area is 140 Square feet and that he did not make any enquiries about the prevailing rents in the area. However, he admitted that if he vacates the schedule shop and the same is leased out to a third party, the landlord will get more rent. It is not in dispute that Ranigunj is a known place for industrial and general engineering goods market. RW2, who is running business in the name of STS enterprises at Ranigunj having taken his premises on lease on a monthly rent of Rs.3,000/- in the year 1999, deposed that he is presently paying Rs.3,630/- per month for a shop of a plinth area of 220 Square feet and that he had paid Rs.50,000/- as refundable deposit to his landlord. He exhibited R1 to R5, copies of rent receipts, exhibits R6 to R11, photographs, and exhibit R12, renewal certificate of registration for his business. According to the suggestion given to him, he is one of the respondents in RC.No.90 of 2010; however, he refused to speak about the details of the subject matter of that RC by stating that his partners are looking after the said matter. It was further elicited from him that he has not made enquiries about the details of the rent prevailing in that area.

9.4 Thus, I have carefully gone through the evidence. None of the witnesses spoke about the prevailing rents in the locality and further stated that they did not make any enquiries about the prevailing rents in the locality. PW2, was a tenant, whose tenancy commenced on 15.12.2010 in respect of a shop of 140 Square feet area; the documents, Exhibits X1 to X4 exhibited by him show that he is paying a monthly rent of Rs.7,000/- to his landlady. RW1 also admitted that PW2 is in occupation of a shop no.8, belonging to one Sadhana, since five or six months and that exhibits X1 to X4 pertain to his said shop. Therefore, the evidence of PW2 can be taken into consideration subject to some reservation as he had already vacated his shop and closed his business as per the evidence borne out by record.

9.5 In the peculiar facts and circumstances of the present case, keeping in view the evidence that is available on record, fair rent has to be fixed having due regard to the aspects like –the locality, the age and nature of the building, the quality of accommodation, availability of electricity connection, fair market value, prevailing rents in the same locality for buildings/shops similarly situated etcetera besides the other factors. The fact of the matter is that the tenant(s) is/are continuing in the occupation of the petition schedule shop since prior to the purchase of the property by the landlord in the year 2007, and according to the defence version the schedule shop is being used as a go-down. However, RW1, in his cross examination, stated that he is doing hardware business and that in the same vicinity of his shop other business premises/shops wherein hardware businesses are being done are located. So there is evidence sufficient to hold that the tenant(s) is/are enjoying the advantage of carrying on the business in a locality where businesses similar to their business are being run and that the schedule shop is being put to a profitable or beneficial use by the tenant(s). Having been continuing as a tenant(s) in the same shop since a few decades the tenant(s) might have gained good-will and must have been having regular and standard customers. Further, a perusal of exhibit P3, copy of sale deed (with annexures) of the landlord in respect of the entire building in which the petition schedule shop is one of the shops in the ground floor, discloses that the annual rental value is mentioned as Rs.1.00 lakh for the built up area in the cellar, ground floor, first floor and second floor of a total area of 5970 Square feet. Even RW1, tenant, admitted that if he vacates, his shop would fetch more rent if leased out to third parties by the landlord. Thus there is ample evidence for considering the request of the landlord for upward revision of existing rent of the schedule shop. The tenant(s) must be having sales tax assessment record if not income tax assessment record. No business account books or copies of sales tax returns or bill books are produced to support the defence. The tenant(s) did not examine any fellow businessman to support the defence that there is decrease or fall in business transactions in the locality. Since how long the tenant(s) is/are paying the same rent is not borne out by the evidence available on record. However, the tenant(s) did not raise a contention that the rent was enhanced just prior to the filing of the rent case by the landlord. The advance amount/deposit made by the tenant(s) at the inception of the tenancy, even if it is presently available with the landlord, it will have no critical bearing on the aspect of the determination of the fair rent. However, the said aspect is also taken note by the Courts below while taking into consideration the entire evidence brought on record.

9.6 The court below has taken into consideration the manifold increase in rents throughout the country particularly in regard to commercial establishments in urban areas. In Ratan Arya v. State of Tamilnadu and another[2], the Supreme Court held that the courts while fixing the rental values can take judicial notice of enormous and manifold increase of rents throughout the country, particularly, in urban areas. Further, after taking into consideration, the locality, the situation of the schedule shop, the access it has, the size and quality of accommodation, the market value as mentioned in the sale deed and in the register of the Sub-Registrar, the rental value also as mentioned in Annexure 1A of the said sale deed, the manifold increase in the

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[2] AIR 1986 SC 1444

rental values in urban areas and other factors and on comprehensive and overall consideration of the evidence brought on record, the Court below fixed the fair rent per month @ Rs.35/- per square foot for the petition schedule shop from the date of the institution of the petition. The petition was instituted in the month of June, 2010. The fair rent thus fixed works out to Rs.4,900/- per month (Rs.35/- per square foot x 140 square feet). Though the fair rent has been fixed by the Court below on value per square foot basis, on an over all view of the matter, the said fair rent as fixed can be considered as just and fair, judged from any perspective or stand point and hence, deserves to be confirmed. Further, the Court below subjected the said fair rent to enhancement @ 10% per month every two years obviating the necessity of future litigation in the nature of successive petitions for fixation of fair rent after expiry of every two years or three years or so.

9.7 This Court while exercising revisional powers/jurisdiction under the rent control law shall confine itself to the aspects of legality, regularity and propriety of the order impugned before it. Having carefully examined the pleadings and the evidence, adverted supra, this Court does not find any illegality or irregularity or impropriety either in appreciation of the facts or the evidence by the Court below and hence, finds no reason calling for interference.

10. Viewed thus, this Court finds that there is no merit in the contentions of the tenant(s) or the landlord and that the CRPs are liable to be dismissed being devoid of merit. Points are answered accordingly.

11. In the result, both the Civil Revision Petitions are dismissed without costs confirming the orders of the learned appellate authority. The tenant(s) is/are granted two months time, from the date of receipt of a copy this order, to pay all the arrears, if any, up to date.

Pending miscellaneous petitions, if any, in these civil revision petitions shall also stand closed in view of this final common order.

M. SEETHARAMA MURTI, J

28th November, 2016
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