HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition No.2480 OF 2016

ORDER:

The revision petitioner is the tenant of the premises covered by Mulgi bearing No.5-8-107/1 of Nampally road, Hyderabad admeasuring of 270sft. situated at Nampally of Hyderabad, belongs to the revision respondent Smt. Butool Farheen-the landlord.

2. The landlord filed R.C.No.312 of 2013 under Section 4 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, 'The Act') before the Principal Rent Controller, City Civil Court, Hyderabad for fixation of fair rent with the averments that her husband Sri M.A.Basheer is owner of Mulgi No.5-8-107/2 which her husband purchased in the year 1998 from Smt. Agiya Kaur Salooja and Arminder Kaur Salooja that her husband was running footwear business therein under the name and style of "Foot World Enterprises", that she (the revision respondent) with intent to start similar business, purchased under sale deed dated 15.04.2006 the schedule premises, which is the mulgi bearing No.5-8-107/1 to the extent of 324sq.feet. which is to the eastern side of 5-8-107/2 of her husband, and the revision petitioner stood as a tenant in the premises since the time of revision respondent's vendors and there was attornment of the tenancy vide letter with endorsement dated 15.04.2006 and intimation by notice of the revision respondent dated 2.05.2006 to the revision petitioner to pay the rents without default and also to vacate and hand over the vacant possession. After that the revision petitioner is depositing Rs.900/- p.m. to the S.B.Account of the revision respondent of S.B.I., Pattarghathi branch and the revision petitioner is doing medical equipment business therein and he also filed O.S.No.1087 of 2006 for specific performance of the alleged

oral agreement of sale between him and the vendor of the revision respondent and the suit was ended in dismissal on 27.07.2009 from contest and went unsuccessful including in A.S.No.307 of 2009 dated 08.02.2012 and the Second Appeal S.A.No.1074 of 2012 filed is pending. As the revision petitioner is the tenant for the premises since 1980; initially on payment of Rs.500/-p.m. other than electrical consumption charges and municipal taxes, that was enhanced by vendor of the revision respondent to Rs.900/- p.m. and the premises is in busy and commercial locality which is a commercial hub and it is in the area of 324 sq.feet capable of fetching at 100 per sft. And hence sought for fair rent accordingly.

3. The same was resisted in the counter of the tenant besides saying S.A.No.1074 of 2012 is pending outcome of the suit for specific performance of the oral contract for sale with vendor of the revision respondent, the sale transaction under which the revision respondent claims title is sham and she is not the owner much less to claim attornment of tenancy and he has given suitable reply on 15.04.2006 to her notice and the shop is located in the zone of metro rail project and it is required to be evicted by acquisition and it is not in a good place of the locality and it is false to say that it fetches 100 per sft. and the estimation of Rs.32,400/- fair rent is a false claim which is untenable and thereby the fair rent application is liable to be dismissed.

4. It is after trial and from the evidence on record that of P.Ws. 1 and 2, R.Ws. 1 and 2, Exs.P.1 to P.6 including sale deed, Certified copy of judgment in A.S.No.307 of 2009, market value certificate, rough sketch plan and certified copy of order under R.C.No.184 of 2013 and the property tax receipt for the premises, the Rent Controller observed in the order dated 09.12.2014, that Ex.P.1 sale deed shows the title of

the revision respondent also from Ex.P.2 appeal decree and judgment of disbelieving the oral sale set up by the revision petitioner, against the vendor of the revision respondent, the sale deed is for 324 sq.feet as described in Ex.P.1 schedule and it is situated in Nampally main road, near railway station surrounding by restaurants and shops etc., in the commercial/business locality and out of R.Ws. 1 and 2, the R.W.2 no other than the brother of R.W.1 also stated of it might be true the premises is 324 sq.feet and located in busy commercial locality; thus it could be safely concluded of the premises is a busy and commercial locality and Ex.P.3 market value certificate and Ex.P.6 property tax receipt placed reliance in fixing the fair rent, no doubt claim at Rs.100/- per sq.feet and what the Apex Court in Rattan Arya Vs. State of Tamilnadu[1] observed of judicial notice in the enormous multifold increases of rent throughout the country particularly in urban areas, the Courts are entitled to take and in Shakuntaladevi Darak Vs. Transport Corporation Ltd.,Darak[2], it was held by the High Court that what was the rent at the time of entering lease in 1965 of Rs.1700/- enhanced in 1991 after 26 years to Rs.2750/- of the commercial area in the Hyderabad city sought for enhancement in 2005 i.e.14 years later under Section 4 of the Act, to fix fair rent, the Court has to keep in mind what the Apex Court observed in Rattan Arya supra of the locality where it situate, judicial notice of steep increase in rents of urban properties in the recent times. Thereby taking into consideration of the same, held just to fix at Rs.50/- per sft. for the 324 sft. the fair rent of Rs.16,200/- per month with 10% increase over two years from the date of filing of R.C.No.312 of 2013.

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[1] AIR 1986 SC 1444
[2] 2011 5 ALD 386

5. When same was impugned in R.A.No.59 of 2015 by the tenant as appellant, the appellate tribunal reduced the same from Rs.50/-per sft. to Rs.30/- per sft. from Rs.16,200/- to Rs.9720/- p.m. as on the date of claim petition with 10% increase for over two years on the existing rent. The observations in support of it are by relying on Rattan Arya Supra and another Division Bench judgment in Sureshgir Vs. K.Sahadev[3] of Rent Controller to arrive the finding not only from the oral and documentary evidence available on record but also considering the facts and circumstances and taking judicial notice of the fact of enormous increase in the value of rentals while fixing the fair rent since fair rent to mean reasonable rent based upon factors as to prime location of house, important amenities etc., and in Jupudi Parthasarathy Vs. Kondapalli Rajeswari[4], it was held that taking into consideration of the gap between the fair rent application from the date of petition and of increase in the rental values, periodical increase over fair rent fixed for every three years is held just and thereby coming to the above conclusion.

6. It is now impugned in the revision by the tenant from the grounds vis-à-vis the oral submissions saying the Court below did not take into consideration the rent fixed at Rs.900/- p.m. by the landlord apart from refundable deposits collected huge by the original landlord and went wrong in taking Rs.30/-per sft. for 324 sft. for the actual Mulgi is 270 sft. as per the property tax receipt and enhancement for every two years is also unjust and unreasonable and it is beyond jurisdiction to enhance or fix fair rent above Rs.3,500/-p.m. and hence to set aside the order and to fix nominal increase to the original rent of Rs.900/-.

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[3] 1997 6 ALT 436
[4] 2008 6 ALT 210

7. Whereas, it is the submission of the learned counsel for the respondent/landlord that but for no cross-objections what the lower appellate Court fixed is also low to the prevailing market rate and thereby there is nothing to reduce. Hence to dismiss the revision saying the scope of the revision is also very limited.

8. Heard and perused the material on record.

9. A reading of the provisions of the Act, particularly Sections 4 and 5 r/w 26 and 32 of the Act, no way puts any bar on power of Court/Tribunal to fix fair rent above Rs.3,500/- p.m., leave about the scope of Sections 26 and 32 of the Act well laid down by the Apex Court three Judge Bench in Noorunnisa Begum Vs. Brij Kishore Sanghi[5] as what is the fair rent is the rent reasonably that can fetch in open market for the premises, its area, condition and amenities with reference to prevailing rents for similar premises of similar locations. The evidence on record clearly establishes including from the admissions in the cross-examination particularly of R.W.2, no other than brother of the tenant/R.W.1 that the suit premises is 324 sft. and it is in the busy commercial area on the main road at Nampally near to the Nampally railway station. The Court cannot ignore from taking judicial notice of the area is a busy locality in the commercial zone with various business shops and hotels etc., and even Ex.P.6 tax receipt shows for 270 sft. when Ex.P.1 sale deed shows for 324sft. and R.W.1 also admitted the same as referred supra, it is not possible to allow the tenant in the revision to say the area is only 270sft. and not 324 sft. Now coming to the quantum of monthly rent arrived by the Rent Controller and reduced by the lower appellate Court and same impugned in the revision by tenant as excessive as on date of fair rent fixation application 2013, at

[5] (2015) 9 ALD 155(SC)

Rs.9,720/- at Rs.30/-per sq.foot concerned, the lower Courts referred the expression of the Apex Court in Rattan Arya supra mainly on duty of Court to take judicial notice of increase in rental value in urbanite properties and particularly business and commercial purposes and by considering the commercial area when arrived reasonable conclusion, there is nothing to interfere by sitting in revision as also can be seen from the expression of the Apex Court in Mohammed Ahmed Vs. Atmaram Chauran[6]

10. Now coming to the increase for every two years of 10% concerned, no doubt the Division Bench expression placed reliance of Jupudi Parthasarathy supra speaks every three years increase is just. Same is also the position from the expression in Somaraju Chinnammi Vs. Samanthu Sivaji Ganesh[7] and referring to the above and on the scope of Section 5 with rider that once fair rent is fixed but for any further development of the premises shown, any further fair rent is not maintainable and thereby it is since not impossible to visualize the prospective increase in rental value as the premises could fetch from time to time for fixing prospective enhancement in passing order fixing fair rent prospective increase can be permitted for every three years or so at a percentage to the existing fair rent fixed as held by this Court in C.R.P.No.1564 of 2011, dt. 08.08.2016. Thereby it is just to increase at 10% to sum arrived of fair rent as on date of fair rent application, for every three years. So far as the fixing of Rs.30/-per sq.foot. by the appellate tribunal in arriving rent of Rs.9,720/-, there is nothing to interfere but for to say instead of every two years 10% increase, it is just to increase 10% for every three years only. Thus, to that extent the

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[6] (2011) 7 SCC 755
[7] (2008) 6 ALT 215

revision can be allowed by modifying the order of the lower appellate Court.

11. Accordingly, and in the result, the revision is allowed partly by modifying the order of the lower appellate Court to the extent of 10% increase in fair rent for every two years is to three years.

Dr. B. SIVA SANKARA RAO, J

Date:18.11.2016
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