

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10242 OF 2016

Mr.Jehangir Dinshaw Irani

..Petitioner
(Org. Plaintiff)

V/s.

Late Balkrishna Bhaurao Kakade
(Since Deceased through Lrs)

1A. Sindhubai Balkrishna Kakade & Ors.

..Respondents

Mr.Suresh Dueby for the Petitioner

Mr.Abhishek Pungliya for Respondent No.6.

CORAM : M. S. SONAK, J.

DATE : 06th OCTOBER 2017

P.C.

1. Heard Mr.Suresh Dueby for the petitioner and Mr.Abhishek Pungliya for respondent No.6.

2. Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3. The petitioner-landlord challenges the determination of compensation by the Appeal Court as a pre condition for grant of stay to the eviction decree made by the Trial Court. The Appellate

Court has determined the compensation at the rate of Rs.50,000/- per month, which, according to the petitioner, is totally inadequate and therefore, is not reasonable.

4. In this case, the decree is in respect of 19,500 sq.ft. on open land in Bhavani Peth, Pune. On such open plot, the respondent-tenant has constructed a Cinema Theater and the property is being put to commercial use.

5. Mr.Pungliya, the learned counsel for respondent No.6 furnishes a chart to indicate that in the case of *Anderson Wright & Co. V/s. Amar nath Roy & Others*¹ and *State of Maharashtra & Anr. vs. M/s. Super Max International Pvt. Ltd. & Ors.*² the increase of the contractual rate of interest was 69%, 149% and 237%. He submits that in the present case, the increase ordered by the Appeal Court is 277%. On this basis, Mr.Pungliya submits that the determination by the Appeal Court is infact on the higher side, or in any case, inappropriate. Mr.Pungliya, further submits that as per Ready Reckoner furnished by the petitioner, the market value for open plot is Rs.12,660/- per sq.ft. On this basis, the fair market value of the open plot would come to approximately Rs.3.20 Crores.

1 AIR 2005 SCC 2457

2 2009 (5) ALL MR 1001

Even if a maximum of 3% rental rate is to be effected The monthly compensation comes to Rs.57,318/- per month.

6. Mr.Dueby submits that in this case, the respondent-tenant has put up a Cinema Theater and several portions of the Cinema Theater have been sublet to the other persons. He submits that the property is for commercial use and property is located in Bhavani Peth area of Pune and therefore, determination of compensation at the rate of Rs.50,000/- is too meager.

7. Upon consideration of the rival contentions, I am satisfied that the reasonable compensation in the present case, should have been at least Rs.1 lakh per month. The submission of Mr.Pungliya based upon the percentage increase in the case of *Anderson Wright & Co. (Supra)* and *Super Max International Pvt. Ltd. & Ors. (Supra)* is completely misplaced. Reasonable compensation is not to be determined on such basis. Rather, regard is to be had to the location of the property, area of the property, the purpose for which the property is being used the, payment capacity of the tenant and such other factors which have been explained in *Atma Ram Properties (Suprea)* as well as *M/s. Super Max International Pvt. Ltd. & Ors. (Supra)*. The ratio of the decisions is

binding on this Court not the factual controversy or the factual determination. The submission of the Mr.Pungliya, ignores the ratio but seeks to focus upon specific facts. That is not the correct manner of construing precedents.

8. The reasoning on the basis of the Ready Reckoner, also, cannot apply full force in the facts and circumstances of the present case. Admittedly, the suit plot, admeasures 19500 sq.ft. area and is located in Bhavani Peth, Pune. Mr.Pungliya submits that the plot is located in the residential Zone. If this be it is pertinent to make a mention that the respondent is using this plot for commercial purpose. This is explained by Mr.Pungliya on the basis that the user was from the year 1936, when, there was no zoning of lands depending upon the use. Even accepting this position, it is to be noted that since, the respondents have the privilege of using such a huge plot of land located in residential areas for commercial purposes, the circumstances, will only add value to the plot.

9. Upon cumulative consideration of all such circumstances, it is only appropriate that the respondent pays compensation at the rate of Rs.1 lakh and not merely Rs.50,000/- per month.

10. The impugned order is modified. The compensation amount of Rs.50,000/- is substituted with Rs.1 lakhs. There is no necessity of modifying any other terms and conditions in the impugned order.

11. Rule is made absolute the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)