

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1141 OF 1998

1. Pramod Shankar Gaurkar
Age major, Occ. Service
R/o N-6, Cidco, Aurangabad.
2. Sitabai Ramrao Shiradhonkar
Age major, Occ. Service
R/o N-6, Cidco, Aurangabad.
3. Dhondiram Bhimrao Phoke
Age major, Occ. Service
R/o N-6, Cidco, Aurangabad.
4. Deelipkumar Kishanrao Kumthekar
5. Sharad Narottam Patil
6. Smt. Nirmala B. Khare
7. Shamsundar Vasanttrao Tunge
8. Sudam Kalappa Gokhale,
9. Pundlik Vithal Nagadkar
10. Pratibha Vasant Yeole
11. Bhaskar Ramrao Thorve
12. Prashant Laxmikant Vitekar
13. Suryabhan Vithal Wagh
14. Rajendra Sudhakar Kulkarni
15. Dattatraya Ramrao Deshpande
16. Sharadkumar Namdeo Pathare
17. Marotirao Madhavrao Sadavarte

18. Narendra Kishanrao Ashtikar

19. C.A. Khule

20. Minal Ashok Patil

21. K.M. Mulajkar

22. Ashok Narayan Dhage

23. R.K.Tamboli

24. A.G.Pathak

25. S.C.Ladda

26. N.M.Deshmukh

27. N.D.Jadhav

28. G.L.Gosavi

29. S.K.Gokhale

30. Hitendra Yeole

31. S.L.Pawar

33. K.A.Pakelu

34. Pradeep Khanale

35. S.B.Khandare

36. Ankush A. Auti

37. N.G.Shinde

38. B.R.Vasamatkar

All petitioner Nos.1 to 38
all major, Residents of
N-6, Cidco, Sainagar,
Aurangabad.

..Petitioners

Versus

1. The State of Maharashtra
2. The Chief Officer,
Aurangabad Housing and
Area Development Board,
Gruha Nirman Bhavan,
CBS Road, Aurangabad.
3. The Estate Manager,
Aurangabad Housing and
Area Development Board,
Gruha Nirman Bhavan,
CBS Road, Aurangabad.
4. The Chief Rent Recovery Officer,
Aurangabad Housing and
Area Development Board,
Gruha Nirman Bhavan,
CBS Road, Aurangabad.
5. Aurangabad Housing and
Area Development Board,
Gruha Nirman Bhavan,
CBS Road, Aurangabad.

..Respondents

WITH
WRIT PETITION NO.1237 OF 1998

1. Sow. Surekha Pandit Kulkarni
Age major, Occ. Service
R/o Plot No. 1039, Sainagar,
N-6, Cidco, Aurangabad.
2. Vasant Asaram Jadhav
Age major, Occ. Business,
R/o Plot No. 1146, Sainagar,
N-6, Cidco, Aurangabad.
3. Jagannathrao Narayanrao Vispute
Age major, Occ. Service

R/o Plot No. 1079, Sainagar,
N-6, Cidco, Aurangabad.

4. R.D.Choudhary,
Age major, Occ. Service
R/o Plot No. 1096, Sainagar,
N-6, Cidco, Aurangabad.

5. Sambhu Shankarrao Khandagale
Age major, Occ. Service
R/o Plot No. 1962, Sainagar,
N-6, Cidco, Aurangabad.

6. Subhash Chaitram Pardeshi
Age major, Occ. Service
R/o Plot No. 1029, Sainagar,
N-6, Cidco, Aurangabad.

7. Prabhakar Narayanrao Patil
Age major, Occ. Service
R/o Plot No. 1163, Sainagar,
N-6, Cidco, Aurangabad.

8. Subhash Shankar Pujari
Age major, Occ. Business,
R/o Plot No. 1047, Sainagar,
N-6, Cidco, Aurangabad.

9. Madhukar Ambadas Shimpi
Age major, Occ. Service
R/o Plot No. 1068, Sainagar,
N-6, Cidco, Aurangabad.

10. Satish Vasantrao Kulkarni
Age major, Occ. Service
R/o Plot No. 1049, Sainagar,
N-6, Cidco, Aurangabad.

11. Vasant Laxman Pawar
Age major, Occ. Service
R/o Plot No. 1061, Sainagar,
N-6, Cidco, Aurangabad.

12. Shri M.N.Munge,
Age major, Occ. Service
R/o Plot No. 1059, Sainagar,
N-6, Cidco, Aurangabad.

13. Ganpat Vyankatrao Jadhav
Age major, Occ. Service
R/o Plot No. 1135, Sainagar,
N-6, Cidco, Aurangabad.

14. Kunwarpalsingh Patel
Age major, Occ. Service
R/o Plot No. 1134, Sainagar,
N-6, Cidco, Aurangabad.

15. Sheshrao B. Mohite
Age major, Occ. Service
R/o Plot No. 1169, Sainagar,
N-6, Cidco, Aurangabad.

..Petitioners

Versus

1. The State of Maharashtra

2. The Chief Officer,
Aurangabad Housing and
Area Development Board,
Gruha Nirman Bhavan,
CBS Road, Aurangabad.

3. The Estate Manager,
Aurangabad Housing and
Area Development Board,
Gruha Nirman Bhavan,
CBS Road, Aurangabad.

4. The Chief Rent Recovery Officer,
Aurangabad Housing and
Area Development Board,
Gruha Nirman Bhavan,
CBS Road, Aurangabad.

5. Aurangabad Housing and
Area Development Board,

Gruha Nirman Bhavan,
CBS Road, Aurangabad.

..Respondents

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Advocate for Petitioners : Smt. G.R.Jagtap h/f Shri C.K.Shinde
AGP for Respondent 1 : Shri V.S.Badakh
Advocate for Respondent 2, 4 & 5 : Smt. V.M.Bhagwant
h/f Smt. Sanghmitra Wadmare
Advocate for Respondents 2 to 5 - in WP 1237/1998 :
Shri U.S.Mote

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 15, 2018

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ORAL JUDGMENT:-

1. In both these petitions, the petitioners are aggrieved by the act of the respondents in passing an order directing recovery of the lease rent from the petitioners by the demand notices dated 23.12.1997.

2. This Court, while considering these two identical petitions had granted ad-interim relief in terms of prayer clause (D) on 12.3.1998 and 18.3.1998. Prayer clause (D) reads as under:-

"(D) Pending hearing and final disposal of the petition, the operation and effect of the impugned notices of

attachment dated 9.2.1998 issued by the respondent No.4 may kindly be stayed. "

3. By an order dated 18.6.1998, these two petitions were admitted with the direction to the petitioners to pay the lease rent at the rate of Rs.912/- per annum until further orders. By order dated 23.6.2008, this Court directed that these matters be listed for final hearing in due course and continued the order dated 18.6.1998 concluding that there would be no interim relief to the petitioners.

4. After considering the strenuous submissions of the learned Advocates in the light of the above, I find that the following issues need to be addressed to:-

(A) Whether the respondent - Aurangabad Housing and Area Development Board, which agreed with the petitioners on 16.9.1989 to apply lease rent at the rate of Rs.60/- tentatively, could lateron unilaterally decide the final annual lease rent on 23.12.1997, by virtue of issuing a demand notice?

(B) Whether the unilateral formalization of the annual lease rent could have been made applicable retrospectively?

5. There is no dispute that the lease agreement was signed between the petitioners in the first petition on 16.9.1989 and in the second petition on 5.9.1988 respectively. Based on the said lease agreements an amount of Rs.60/- per annum as lease rent was tentatively agreed between the parties. There is no dispute on this count as well. It is equally undisputed that by virtue of the said agreement, a lease rent amount of Rs.60/- per annum was levied on the petitioners until 23.12.1997, which would be a period of about 8 to 9 years between these petitioners.

6. Learned counsel for the respondent / establishment has strenuously canvassed that as the word "tentatively" has been specifically incorporated in the lease agreement , it would mean that the said amount would be recoverable as lease rent amount per annum till the establishment decides to formalize the lease rent amount.

7. There is no debate that the plot of land handed over to the lessee is for the period of 30 years. The paragraph, which is marked as "X" for identification in the lease agreement in the two petitions, indicates that the petitioner lessee had agreed to

take a developed plot on the said land on lease for the period of 30 years and for the said purpose, on payment of premium as the yearly lease rent as specified in the above portion on the terms and conditions contained in the said lease agreement. It cannot be ignored that the wording in the said lease agreement at several places indicate that Rs.60/- per annum would be the lease rent. It is only in the paragraph above the paragraph marked "X" that the words "tentatively per annum" have been used. The entire lease agreement, thereafter, mentions that Rs.60/- would be the annual lease agreement.

8. The word "tentatively" (tentative) has been defined as "*not certain or fixed; provisional*" in Concise Oxford English Dictionary, Eleventh Edition 2004 (Third impression 2005).

9. A period of about 8 to 9 years have passed by when the impugned bills have been raised. Normally, a challenge to such a bill of lease rent agreement cannot be raised in a Writ Petition to be considered by this Court in its supervisory or revisional jurisdiction, as has been held by this Court in its order dated 14.2.2018 in a group of 106 Writ Petitions, bearing No. 1802 of 2018 (Kapil Variyani Vs. The Municipal

Corporation of the City of Jalgaon) and others, a bill cannot be an order passed by an authority discharging judicial or quasi-judicial functions. However, in these two cases, once these petitions have been admitted, the issue of maintainability cannot be reopened and these two matters are being taken up for final hearing after 20 years.

10. As such, whether the bills impugned could amount to a lease agreement between the litigating sides is the question. If the respondent / establishment was to fix the annual lease rent unilaterally, there would not have been a lease agreement between the parties. By virtue of the lease agreement and by using the words "tentatively per annum", presupposes that if the tentative annual rent is to be formalized into a regular annual rent for a particular period, the respondent / establishment was expected to intimate the petitioner about its desire to formalize the lease rent amount. Until the lease rent already signed is not replaced by the further agreement between the parties on the same lines on which the original lease rent agreement was signed, it cannot be concluded that the respondent / establishment could spring a surprise by mentioning a figure which is almost 15 times larger than the amount of lease rent

agreed upon, in a bill without signing an agreement.

11. Considering the above, I hold that in the above backdrop, the tentative amount of lease rent mentioned in the lease agreement could not have been replaced on the strength of a bill issued by the respondent / establishment and that too after 8-9 years from the date of signing the lease agreement.

12. It however, needs to be noted that this Court had initially granted ad-interim relief until a returnable date. Thereafter, by order dated 18.6.1998, the interim relief was vacated and the petitioners were directed to pay the lease rent at the rate of Rs.912/- per annum from the year 1998. Learned counsel for the respondent / establishment informs that even today the lease rent annual amount is Rs.912/-.

13. I, therefore, conclude that whenever in any such identical cases, the respondent / establishment desires to formalize a fresh lease rent in place of the lease rent tentatively agreed upon, it shall first intimate the concerned lessee about its decision and thereafter, start raising bills for the period. These conclusions shall apply prospectively and shall not apply

to pending cases.

14. In this backdrop, both these petitions are disposed off without causing an interference in the impugned order considering the subsequent events that have occurred in the last 14 years, after this Court had passed an order on 18.6.1998.

15. Rule is, therefore, discharged.

(RAVINDRA V. GHUGE, J.)

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