

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.2018 of 2016

ORDER:

This Civil Revision Petition is filed by the tenants under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, 'the Act'), challenging the order dated 18.1.2016 passed in R.A.No.209 of 2013 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad, wherein and whereby the order dated 03.7.2013 passed in R.C.No.131 of 2009 on the file of the Principal Rent Controller, Hyderabad, partly allowing the petition filed by the landlords, fixing the fair rent at Rs.3,000/- per month from the date of the petition and enhancing the rent thereon at 10% for every two years, was confirmed.

2. The revision petitioners are tenants and the respondents are landlords. For the sake of convenience, they are hereinafter referred to as the petitioners or tenants and respondents or landlords respectively.

3. The facts leading to filing of the present revision petition are briefly as follows: The landlords filed R.C.No.131 of 2009 under Section 4(1) of the Act for fixation of fair rent at Rs.5,000/- per month for the petition schedule property i.e., Premises bearing Municipal Nos.525, 608 and 609, Sadar Bazar, Bollaram, Secunderabad. At the time of filing the petition, the rent was Rs.850/- per month. The tenants filed counter *inter alia* contending that the petition is not maintainable either on facts or

in law. During the course of trial, on behalf of the landlords, fourth respondent was examined as P.W.1 and Exs.P.1 to P.14 were marked. To demolish the stand of the landlords, second petitioner was examined as R.W.1 and Exs.R.1 to R.122 were marked. Basing on the material available on record, the Rent Controller partly allowed the petition fixing the fair rent at Rs.3,000/- per month. Aggrieved by the same, the tenants preferred the appeal. The learned appellate authority, after reappraising the oral and documentary evidence available on record, arrived at a conclusion that the landlords are entitled for rent at Rs.3,000/- per month and consequently dismissed the appeal. Hence, the tenants preferred the present revision petition.

4. The learned counsel for the petitioners-tenants strenuously submitted that the Authorities below without oral and documentary evidence fixed fair rent at Rs.3,000/- basing on assumptions and presumptions. He further submitted that the Authorities below have not taken into consideration that the petition schedule property is almost in dilapidated condition. He further submitted that the findings recorded by the Authorities below are perverse; therefore, it is a fit case to allow the revision petition in view of Section 22 of the Act. ***Per contra***, learned counsel for the respondents-landlords submitted that even in the absence of the evidence, the Authorities can take judicial notice of prevailing rent in the vicinity and fix the fair rent. He further submitted that this Court cannot lightly interfere with the concurrent findings of facts recorded by the Authorities below.

5. In view of the rival contentions, the points that arise for consideration in this revision petition are:

(1) *Whether the findings recorded by the Authorities below are perverse?* and

(2) *Whether there is any illegality, irregularity or impropriety in the orders passed by the authorities below?*

6. Both the points are intertwined with each other; hence, this Court is inclined to address both the points simultaneously in order to avoid recapitulation of facts and evidence.

7. The following admitted facts can be culled out from the pleadings of both the parties. Originally, one Thavur Ali Khan was the owner of the petition schedule property. The grandfather of the respondents-landlords purchased the said property from Thavur Ali Khan under Ex.R.2-registered sale deed dated 07.9.1945. Thavur Ali Khan let out the petition schedule property to the father of the petitioners-tenants for residential as well as commercial purposes. The father of the petitioners-tenants has been residing in one portion and in another portion they are running a hotel since 1946. The rent of the petition schedule property in the year 1946 was Rs.45/- per month. The rent has been enhanced from time to time. The father of the respondents executed settlement deed dated 10.5.2007 in favour of the respondents in respect of the petition schedule property. Ex.P.1 is the certified copy of the gift settlement deed dated 10.5.2007. After death of petitioners' father in the year 2008, the petitioners have been continuing as tenants. By the time of filing of the petition i.e., R.C.No.131 of 2009 by the

respondents-landlords for fixation of rent, the admitted rent was Rs.850/- per month. The petitioners filed R.C. No.52 of 2007 and R.C.No.178 of 2008 under Section 8 of the Act seeking permission to deposit the rent for different periods. The respondents filed R.C.No.87 of 2009 for eviction of the petitioners-tenants from the petition schedule property. The respondents filed R.C. No.131 of 2009 under Section 8 of the Act for fixation of fair rent at the rate of Rs.5,000/- per month. The Rent Controller clubbed R.C. Nos.87 and 131 of 2009 and by impugned order dismissed R.C.No.87 of 2009 and partly allowed R.C.No.131 of 2009 fixing fair rent at Rs.3,000/- per month. Against the order dated 03.7.2013 in R.C.No.131 of 2009, the petitioners-tenants preferred R.A.No.209 of 2013 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad, which was dismissed by the impugned order dated 18.1.2016.

8. Before advertng to the findings of the Authorities below, it is apposite to refer to the following decisions:

Hindustan Petroleum Corporation Limited vs. Dilbahar Singh¹

wherein the Hon'ble apex Court held at Para No.45 as under:

45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High

¹ 2014 (9) SCALE 657

Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

Ambadas Khanduji Shinde v Ashok Sadashiv Mamurkar²,

wherein the Hon'ble apex Court held at paragraph No.14 as follows:

14. Apart from the factual aspect, order lacks merit on the ground of jurisdiction. The High Court cannot interfere with the concurrent factual findings while exercising jurisdiction under Section 115 of the Civil Procedure Code. It is settled law that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of the Civil Procedure Code, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. In the facts on hand, the courts below have passed reasoned orders well within the jurisdiction conferred upon them. We arrive at the conclusion that the High Court committed error in interfering with the judgment and decree of the trial Court.

As per the principle enunciated in the cases cited supra, if there is any illegality, irregularity or impropriety in the impugned orders, this court can set aside the same by exercising jurisdiction under Section 22 of the Act.

9. Let me consider the facts of the case on hand in the light of the above legal principle.

10. As seen from the testimony of P.W.1 and R.W.1, the petition schedule property is situated in Sadar Bazar, Bollaram, Secunderabad. Their testimony further reveals that the building is considerably old one. The petitioners-tenants have been running a

² (2017) 14 SCC 132

hotel in the name of Bharat Cafe in one portion and residing in another portion. Thus, the petition schedule property has been using by the petitioners-tenants for commercial and residential purposes. The testimony of R.W.1 clearly reveals that they obtained two electricity connections viz., one in the name of R.W.1 and another in the name of his father. The testimony of R.W.1 further reveals that two water connections stand in the name of his father. Though the petitioners-tenants have taken a specific plea that the petition schedule property is in dilapidated condition, R.W.1 in the chief examination stated that the petition schedule property is fit for residential and commercial purposes. Basing on the testimony of R.W.1, the Court can safely arrive at a conclusion that the petition schedule property, though old one, is fit for residential and commercial purposes. As seen from the testimony of P.W.1, number of shopping complexes, hotels, schools, banks, cinema theatres and residential houses have come up in and around the petition schedule property. The petition schedule property is situated in a semi-commercial area, which is 3 KMs away from National Highway. Basing on the oral and documentary evidence, the Authorities below arrived at a conclusion that the petition schedule property is situated in a semi-commercial area. This Court is fully endorsing the finding recorded by the Authorities below.

11. The learned counsel for the petitioners-tenants strenuously submitted that the respondents-landlords did not choose to examine any person residing near the petition schedule property to

prove that the petition schedule property will fetch a rent of Rs.5,000/- per month as on the date of filing of the petition; therefore, the petition is liable to be dismissed. For one reason or the other, both the parties did not adduce oral or documentary evidence with regard to prevailing market rent in the area where the petition schedule property is situated. The Authorities below have taken judicial notice of the prevailing market rent and fixed fair rent at Rs.3,000/- per month.

12. The learned counsel for the respondents-landlords has drawn the attention of this Court to **Ratan Arya v State of Tamilnadu**³, wherein the Hon'ble apex Court held as follows:

"4. ... the courts are entitled to take judicial notice of enormous manifold increase of rents throughout the country, particularly, in urban areas while fixing the rental values. ."

The same principle was followed by this Court in **Bhupendra v B.Rama Krishna**⁴.

13. In view of the principle enunciated in the cases 3rd and 4th cited supra, the Court can take judicial notice of the existing market rent for fixation of fair rent. In the year 1946, the rent of the petition schedule property was Rs.45/- per month. Both the parties have not adduced any evidence from which year the rent was enhanced to Rs.850/- per month. There is an abundant growth in Hyderabad and Secunderabad Cities for the last twenty years. As observed earlier, the tenants have been using the premises from 1946 onwards for commercial as well as residential purposes. No person will continue in rented premises if it is not

³ (1986) 6 SCC 385 = AIR 1986 SC 1444

⁴ CRP Nos.3551 and 5359 of 2015, dated 17.9.2016

suitable to him or the rent is on the higher side. The value of the rupee has come down drastically from 1946 to 2014. In such circumstances, fixing of fair rent at Rs.3,000/- per month is quite reasonable.

14. Basing on the oral and documentary evidence available on record, the Rent Controller has fixed the rent at Rs.3,000/- per month with an enhancement of 10% for every two years. The appellate authority, without being influenced by the findings recorded by the Rent Controller, has arrived at a conclusion that the petition schedule property will fetch rent of Rs.3,000/- per month. The fixation of rent is purely a question of fact. The appellate authority is the final authority so far as the finding of fact is concerned. The findings recorded by the Authorities below are based on evidence much less legally admissible evidence. Simply because this Court can arrive at a different conclusion that itself is not a valid ground to upset the concurrent findings of fact recorded by the Authorities below, while exercising the revisional jurisdiction.

15. Having regard to the facts and circumstances of the case and also the principle enunciated in the case 1st and 2nd cited supra, I am unable to accept the contention of learned counsel for the petitioners-tenants that the findings recorded by the Authorities below are perverse and are liable to be set aside. There is no illegality, irregularity or impropriety in the orders passed by the Authorities below to warrant interference while exercising the revisional jurisdiction under Section 22 of the Act.

16. In the result, the civil revision petition is dismissed. Miscellaneous petitions, if any pending in this Civil Revision Petition, shall stand closed.

T. SUNIL CHOWDARY, J.

29.06.2018

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