IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3248 OF 2019

Shikshan Prasarak Mandal ...Petitioner
vs.
Purshottam Annaji and Others ...Respondents

WITH
WRIT PETITION NO.4594 OF 2019

Purushottam Annaji Naik and Others ...Petitioners
vs.
Shikshan Prasarak Mandal ...Respondent

Mr. Birendra Saraf a/w. Mr. Rohan Sawant, Ms. Chitra R. and Ms. Raksha Thakakr I/b. Parinam Law Associates, for the Petitioner in W.P.No. 3248 of 2019 and for the Respondents in WP.No.4294 of 2019.
Mr. Girish Godbole a/w. Mr. Siddhartha Ronghe, for the Petitioners in WP.No. 4594 of 2019 and for the Respondents in WP.No.3248 of 2019.

CORAM : M. S. SONAK, J.

DATE : APRIL 09, 2019

ORAL JUDGMENT

. Heard learned counsel for the parties.

2. In both these Writ Petitions the challenge is to the condition imposed by the Appeal Court for deposit of Rs. 1,15,000/- per month in order to stay the decree of eviction in R.A.E. Suit No. 167/291 of 2004 for the eviction of Shikshan Prasarak Mandal (SPM). The Petitioner- SPM in Writ Petition No.

3248 of 2019 contends that the compensation so determined is excessive and the same should not have exceeded Rs. 83,776/- per month based upon the valuation report and other material produced on record by SPM before the Appeal Court.

3. On the other hand, Purushottam Annaji Naik and others (landlords) the Petitioners in Writ Petition No. 4594 of 2019 contend that the compensation determined is grossly inadequate and the same should have been Rs. 1,40,418/- per month as per the valuation report and the material produced on record. In a sense, therefore, both the Writ Petitions are cross Petitions against the condition in the impugned order dated 7th February, 2019 made by the Appeal Court. Therefore, it is only appropriate that both these Petitions are taken up and disposed of by a common judgment and order.

4. Hence, rule in both the Petitions. Rule is made returnable forthwith with consent of and at the request of learned counsel for the parties.

5. The suit premises in the present case comprises entire second floor and one flat on the third floor in the building known as Ganesh Bhuvan, Plot No. 135 (W), Scheme No. 6, Sion-Matunga Estate, Sion, Mumbai- 22 admeasuring in all 2421 sq. fts. (suit

premises). SPM uses the suit premises for educational purpose and the landlords have secured a decree of eviction on the ground of *bonafide* requirement. The landlord have pleaded that they indulge in charitable purpose and the suit premises were required for providing space to needy patients to avail treatment in the hospitals at Mumbai.

6. SPM produced a valuation report, before the Appeal Court proposing compensation @ Rs. 83,776/- per month. In contrast, the landlord produced valuation proposing compensation of Rs. 1,40,418/- per month. The Appeal Court by the impugned order has determined compensation @ Rs. 1,15,000/- per month. Hence, the Petitions by the tenant SPM and landlords.

7. Mr. Birendra Saraf, learned counsel for the Petitioner-SPM points out that the valuation report furnished on behalf of SPM, has taken into consideration at least five instances of comparable premises in the locality. He submits that the valuation report, after taking into consideration the age of the building, nature of construction and amenities provided as quite correctly determined the compensation @ Rs. 83,776/- per month. He submits that the Appeal Court erred in not accepting this valuation. He submits that since the SPM is an educational

institution not engaged in commerce, even this aspect was required to be taken into consideration by the Appeal Court. For all these reasons, he submits that compensation be determined @ Rs. 83,776/- p.m.

8. On the other hand, Mr. Girish Godbole, learned counsel for the landlords submit that the valuation report submitted by their valuer determining compensation @ Rs. 1,40,418/- per month represents the correct market value in respect of the suit premises. Mr. Godbole, emphasizes upon two particular instances i.e. Flat No. 3A and Flat No. 6A in Laxmi Bhuvan, Plot No. 109, Jain Society Road No. 24, Sion (w), Mumbai 22. He points out that these are instances of flats virtually on the same road as where the suit premises are located. Further he point out that these flats have been taken on leave and license basis by the Wellingkar Institute of Management which is an institute established by SPM itself at licence fee of Rs. 70,000/- and Rs. 73,500/- per month or thereabouts. He points out that these instances are the most comparable instances and on the basis of these instances, compensation was required to be determined even conservatively @ Rs. 1,40,418/- per month.

9. The rival contentions now fall for determination.

10. On perusal of the valuation report submitted on behalf of SPM, it is clear that the valuation report has not given sufficient emphasis upon the location of the suit premises i.e. suit premises are on the main road in Sion (w). The valuation report has also failed to taken into consideration the instances which concerned SPM itself i.e. 3A and Flat No. 6A in Laxmi Bhuvan, Plot No. 109, Jain Society Road No. 24, Sion (w), Mumbai 22 taken on lease by the Wellingkar Institute of Management. The valuation report submitted by SPM has emphasizes rather excessively on the age of building which is relevant consideration but to be taken into consideration along with host of other relevant considerations as well. Accordingly, on the basis of the valuation report submitted by SPM, it is not possible to agree with Dr. Saraf that the compensation should have been @ Rs. 83,776/- per month.

11. The consideration that SPM is allegedly not involved in commerce may be some what relevant consideration. However, it is not even the case of SPM that the compensation which they have been directed to deposit was excessive that SPM is not in a position to deposit the same before the Appeal Court and therefore there is some possibility of the SPM suffering eviction even before Appeal against eviction decree is decided. Besides, as pointed out by Mr.

Godbole, the landlords are also involved in undertaking charitable activities i.e. providing premises to needy patients to give for treatment in Mumbai hospitals.

12. The valuation report submitted on behalf of the landlords, no doubt emphasis upon the instances in Laxmi Bhuvan premises . There instances no doubt be said to be comparable in the sense that they relate to nearby premises on the same road. However, in the present case as noted earlier, the suit premises admeasuring in all 2421 sq.ft and in contrast flat No. 3A admeasuring 750 sq. fts and flat No. 6A admeasuring 450 sq. ft. Small apartments have the potential of fetching little higher rates because there are likely to be greater takers in respect of such premises.

13. Besides, the necessary credence will have to be given to the aspects like age of the suit premises, amenities offered as compared to the age of Laxmi Bhuvan and the amenities available in Flat No. 3A and 6A. Therefore, even if the rates as reflected in respect of flat Nos. 3A and 6A at Laxmi Bhuvan are taken as basis, proper deduction will have to be made for determining the compensation in respect of the suit premises. If such deduction are made then, the compensation can safely be determined at Rs.

1,15,000/- per month which is precisely the figure determined by the Appeal Court.

14. The reasoning of the Appeal Court, though not identical to the aforesaid reasoning, also cannot be said to be unreasonable or perverse so as to warrant interference in exercise of extraordinary jurisdiction under Article 227 of the Constitution. The Appeal Court has taken into consideration the relevant material on record and assessed the compensation @ Rs. 1,15,000/- per month. Since there is no error of jurisdiction or any unreasonable exercise or discretion, there is no case made out to interfere with the impugned order.

15. For the aforesaid reasons, both the Petitions are liable to be dismissed and hereby dismissed.

16. There shall be no order as to costs.

(M. S. SONAK, J.)