

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION Nos.1100 and 1226 of 2018

COMMON ORDER :

These two Revisions arise under the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short “the Act”) between the same parties, and therefore they are being disposed of by this common order.

2. In fact both these Revisions arise out of the same R.C.No.52 of 2012 in respect of the same premises.

3. Petitioner in both the Revisions is the tenant of the premises bearing No.2-1-180 and 2-1-282 in General Bazar, Secunderabad owned by 1st respondent. Pending the RC, the 1st respondent died and the 2nd respondent was impleaded as her legal representative.

The case of the Respondents/Landladies

4. It is the contention of the respondents that 1st respondent was the owner of the RC schedule property consisting of ground and first floors situated at General Bazar, Secunderabad in a commercial hub which is in the occupation of the petitioner as a tenant on a monthly rent of Rs.500/-; that it is being used for commercial purpose and it's area is 1000 sq.ft.. It is contended that the rent of the property was last enhanced in the year 1995 and for the last 17 years prior to the filing of the R.C. in 2012, petitioner was paying rent of only Rs.500/- p.m.; there has been increase in the value of the properties for which

the Court ought to take judicial notice; and that the prevailing rent in the area is Rs.200/- per sq. ft. The respondents therefore prayed that it is just and appropriate to fix the fair rent at Rs.200/- per sq. ft. and direct the petitioner to also periodically enhance at 20% on the existing rent and grant costs. However, in the RC schedule, the area of the property is shown as 441sq. ft. in ground floor and 441 sq. ft. in the first floor, totaling 882 sq. ft. and not 1000 sq. ft. as mentioned in the R.C.petition.

The stand of the petitioner

5. Counter-affidavit was filed by petitioner opposing the fixation of fair rent at Rs.200/- per sq. ft.

6. He contended that he is a tenant on a monthly rent of Rs.500/- ; that there was a written rental agreement on 15-07-1977 fixing monthly rent of Rs.250/- in respect of ground floor and he had given as a deposit of Rs.750/- which was refundable.

7. He disputed the area of the property as 1000 sq. ft and contended that from the beginning, the R.C. schedule property is only a ground floor structure with a high roof, but subsequently the 1st respondent had made the first floor as a mezzanine floor. He contended that only ground floor is habitable and suitable for business purpose and is of area 364 sq.ft.

8. According to him, there is no permanent and fixed stair case for going to the first floor and only by using temporary wooden ladder

one can go to the first floor. He contended that there is no extended showroom over the first floor.

9. According to him, 3/4th of the roof of the first floor is located in zinc sheets and 1/4th of the floor is old RCC construction and the entire roof of first floor is at a height of 6½ to 7 feet and no ceiling fan can be fixed therein. He alleged that he is keeping it vacant and not using it for any purpose.

10. He also denied that the property is located in a commercial hub and alleged that the property is situated in a narrow lane of width 7 to 8 feet and no auto or car can come into the said lane and people can only walk in the lane. He also alleged that the R.C. schedule property is located in a bye-lane and is at a distance of 100 ft from the main market called M.G. Road.

11. He also alleged that there was cases for eviction of the petitioner in R.C.Nos.38 of 1995 and 138 of 2006 filed by 1st respondent who attempted to evict the petitioner, which were both dismissed.

12. He alleged that he offered to pay rent at Rs.700/- p.m. in 2004 itself but the 1st respondent did not accept the same.

13. He contended that the prevailing rent in the area is not Rs.200/- per sq. ft. and it is 1st respondent's own imagination and assumption.

14. He alleged that there was a global recession and due to agitations and bandhs, business organizations are suffering a lot and many landlords were voluntarily reducing the rents to prevent the tenants from quitting their properties. He also alleged that the rental values of the properties have been considerably reduced and come down and the 1st respondent is entitled to collect rent only for 364 sq. ft. for which the petitioner is paying property tax.

15. He also stated that the R.C. schedule property is an old building constructed 45 years back without any amenities like water, toilet etc. and he was willing to slightly increase the existing rent of Rs.500/- p.m. keeping in view the present economic conditions.

The order dt.29-6-2015 in RC.No.52 of 2012

16. Before the Rent Controller, the respondents examined P.Ws.1 to 4 and marked Exs.P-1 to P-8. C.W.1 was also examined. Petitioner examined R.Ws.1 and 2 and marked Exs.R-1 to R-12. Exs.X-1 to X-4 were also marked.

17. By order dt.29-06-2015, the Court below fixed the fair rent at Rs.100/- per Sq.ft. The Rent Controller noted that petitioner is the tenant of the 1st respondent in respect of the R.C. schedule property which is being used for commercial purpose.

18. It also noted that an Advocate-Commissioner was appointed to measure the R.C. schedule property in I.A.No.328 of 2014 and he filed his report pointing out that the area of the ground floor is not 364

Sq.ft as is alleged by the petitioner, but it is 446.88 Sq.ft. It also noted that mezzanine floor measures 349.77 ft. but it is not useful for the petitioner to conduct his business.

19. It then concluded on the basis of the evidence of R.W.1 that the R.C. schedule property is located in a purely commercial locality and there is lot of floating of public come to purchase near the vicinity of the R.C. schedule property.

20. It also relied on the evidence of C.W.1 that General Bazar area is a purely commercial area and R.W.1's shop is exactly opposite to C.W.1's shop, and then concluded that the R.C. schedule property is only 9 to 10 shops away from the M.G. Road and it is located in a highly commercial area called General Bazar in Secunderabad.

21. It noted the evidence of petitioner/ R.W.1 that he owns a commercial property in Hyderabad at Door No.2-4-454, Ramgopalpet, Secunderabad; that M.G. Road divides Ramgopalpet and General Bazar; and he has let out the said shop at Ramogopalpet for a readymade cloth shop on a monthly rent of Rs.42,000/-; that area of the aid shop is 60 Sq. yds with ground, first and second floors and Ex.P-5 is the lease deed of the shop belonging to R.W.1.

22. It then considered the evidence of P.Ws.1 to 3 and the fact that P.W.3 is getting rent of Rs.63,000/- p.m. for an extent of 1000 Sq.ft. It also referred to Ex.P-2 market value certificate of the R.C. schedule property giving the market value as Rs.6,32,100/- located in 49 Sq.

yds. It also held that the locality of the shop of petitioner as per Ex.P-5 is not as good as General Bazar locality, which is more commercial; that C.W.1 is paying Rs.166/- per Sq.ft to his shop located opposite to the shop in the occupation of the petitioner since 2014; and for the entire 447 Sq.ft. area of the Rc schedule property, the rent ought to be Rs.100/- per Sq.ft.

The order dt.05-01-2018 in R.A.No.145 of 2015 and R.A.No.150 of 2015

23. Assailing the same, the respondents filed R.A.No.150 of 2015 and the petitioner filed R.A.No.145 of 2015 before the Appellate authority i.e. the Additional Chief Judge, City Small Causes Court, Hyderabad.

24. Two separate orders were passed on the same day on 05-01-2018 by the appellate authority dismissing R.A.No.145 of 2018 filed by petitioner and partly allowing R.A.No.150 of 2015 by confirming the fair rent at Rs.100/- per Sq.ft for the ground floor area of 447 Sq.ft. But fixing Rs.10/- per Sq.ft in the mezzanine floor portion of 350 Sq.ft from the date of filing of the R.C. petition with a provision of periodical enhancement at 10% for every 2 years on the existing rent from the date of filing of the RC.

25. The appellate authority observed that there is no dispute about the jural relationship between the parties and that the petitioner was in the occupation of the R.C. schedule property since 1977, which consists of shop with upper floor under a written lease agreement and

the latest and renewed lease agreement is dt.11-03-2011; that the property is situated at General Bazar, Secunderabad which is a highly commercial hub; that the last enhancement of rent occurred in 1990 the rent was Rs.500/- p.m. as on the date of filing of the RC; and the petitioner was running textile business in the R.C. schedule property.

26. It held that the R.C. schedule property was 35 years old building, that it had a floor with height of 7 to 8 ft above the ground floor and it was being used as godown for storing the business stock and goods and it was having minimum required amenities such as water, washroom facility apart from frontage road of 15 to 15½ ft. It held that once the petitioner is in possession of the property, it is not material whether he uses the mezzanine floor or not and nothing prevented the petitioner from using it also and the Rent Controller was not correct in stating that there was no utility for the mezzanine floor.

27. It also referred to the admissions in the evidence of R.W.1 about the location of the R.C. schedule property in General Bazar, Secunderabad, that the last enhancement of rent was in 1990, and the admission about Ex.R-10 photograph which shows the mezzanine floor in the R.C. schedule property. It also referred to the admission of R.W.1 about letting out his own commercial property for Rs.42,000/- p.m at Ramgopalpet having an area of 60 sq. yds consisting of ground, first and second floors. It relied upon the evidence of P.W.2, who was the employee of the Cosmos Bank, who stated that the said Bank was paying Rs.97/- per Sq.ft in the ground

and upper floor. It rejected the evidence of R.W.2, admittedly a relative of the petitioner, who claimed to be paying only Rs.3880/- p.m. for the last several years and opined that because R.W.2's landlord is a Society of Muslim community called Cutchi Memon Jamad of A.P. and also because he happened to be a relative of the petitioner, his evidence cannot be taken into consideration. It adverted to the evidence of C.W.1, whose shop is opposite to the shop of petitioner, and stated that because he was paying rent @ Rs.160/- per Sq.ft, the rent @ Rs.100 per sq.ft fixed for the ground floor ought to be confirmed and it is appropriate to fix Rs.10/- per Sq.ft to the upper floor of area 350 Sq.ft.

28. For the same reasons, it also dismissed R.A.No.145 of 2015.

The CRP No.s 1100 and 1226 of 2018

29. Challenging the order dt.05-01-2018 in R.A.No.145 of 2015 dismissing his appeal, petitioner filed C.R.P.No.1100 of 2018; and challenging the order dt.05-01-2018 in R.A.No.150 of 2015 partly allowing the appeal of respondents, petitioner filed C.R.P.No.1226 of 2018.

30. Learned counsel for petitioner contended that the findings of the both Courts below are contrary to the record and perverse and they have ignored the material evidence adduced by the petitioner in support of his pleadings that the rent fixed by the Rent Controller and the lower appellate authority is not proper.

31. According to him, Section 4(2) of the Act continues to be valid though it was struck down in **Mohd. Ataur Rahman Khan (died) By L.Rs. Vs. Mohd. Kamaludin Ahmed**¹, in view of the decision of this Court in **Suresh Gir Vs. K.Sahadev**² and therefore the rent prevailing in 1944 ought to be the basis for fixation of fair rent, and this factor has been ignored by both the Courts.

32. Learned counsel for respondents, however, supported the orders passed by the Court below and observed that Section 4(2) of the Act had been struck down in **Mohd. Ataur Rahman Khan** (1 supra); that the decision in **Suresh Gir** (2 supra) was reversed in **Suresh Gir Vs. K.Sahadev**³ by a Division Bench of this Court.

33. In **Suresh Gir** (3 supra), the Division Bench of this Court held that though in **Mohd. Ataur Rahman Khan** (1 supra), the A.P. High Court declared Section 4 of the Act as invalid, the target of attack was only to sub-Sections (2) to (4) of Section 4 of the Act and not sub-Section (1) of Section 4 of the Act. It also held that the judgment of the Supreme Court in **Sant Lal Bharti Vs. State of Punjab**⁴ did not revive sub-Sections (2) to (4) of Section 4 of the Act as was held in **Suresh Gir** (2 supra). The Division Bench upheld the judgment in **Mohd. Ataur Rahman Khan** (1 supra) and declared that sub-Sections (2) to (4) of Section 4 of the Act are unconstitutional and affirmed the judgment in **Mohd. Ataur Rahman Khan** (1 supra).

¹ 1987(1) ALT 216

² 1994 AIR (AP) 283

³ 1998(1) ALD 25 (DB)

⁴ AIR 1988 SC 485

34. Consequently, the judgment in **Suresh Gir** (2 supra) which declared the law laid down in **Mohd. Ataur Rahman Khan** (1 supra) as being overruled in view of the judgment of the Supreme Court in **Sant Lal Bharti** (4 supra), cannot be of any assistance to the petitioner as it was specifically over ruled by the Division Bench in **Suresh Gir** (3 supra).

35. Section 4(1) of the Act states that the Rent Controller, shall, on application by the tenant or landlord of a building fix the fair rent for such building after holding such inquiry as the Controller thinks fit.

36. In **K.Rojarani Vs. Lalitha Macherla**⁵, a learned Single Judge of this Court, after considering the judgments of the Apex Court and other High Courts, held that fair rent is to be fixed after conducting necessary inquiry taking into consideration the location of the building, its age, amenities provided to the tenants, type of construction and the purpose for which it is put to use.

The location of the property

37. While the petitioner contended that the R.C. schedule property is not located in a commercial hub, the respondents alleged that it was so located and there was a huge floating population which comes to the General Bazar where it is located for shopping for variety of goods. But in the cross-examination, petitioner admitted that the R.C. schedule property is located in a purely commercial locality and there

⁵ 2019(1) ALD 356

is a lot of floating of public who comes to purchase near its vicinity. P.Ws.1 to 3 also stated that the R.C. schedule property is located in General Bazar, Secunderabad, which is a commercial hub and therefore I hold that the R.C. schedule property is located in a commercial hub, General Bazar, Secunderabad.

Dimensions of the property

38. Learned counsel for petitioner placed reliance on the cross-examination of P.W.1, grand son of the 1st respondent, wherein P.W.1 stated that he did not file any document to show that the R.C. schedule property is 1000 sq.ft. and that he did not know the height of the ground floor.

39. But admittedly an Advocate-Commissioner was appointed in I.A.No.325 of 2014 on 28-01-2015 and in his report, he held that the area of the ground floor is 446.88 sq.ft. and the area of the upper floor is 349.77 sq. ft. These dimensions are not disputed by the petitioner by filing objections to the said report of the Advocate-Commissioner.

40. Therefore I hold that the area of the ground floor is 447 sq. ft. and that of the upper floor/mezzanine floor is 350 sq. ft.

Whether the area of the upper floor can be taken into account for fixation of fair rent

41. According to the Advocate-Commissioner, the ground floor has a frontage of 15.2 ft., the flooring is of tiles, the roof is R.C.C. and the ceiling is made of wood. He stated that there are lights and fans affixed in the ceiling. He stated that there is a ladder leading from the

ground floor to the upper floor and there is no fan or ventilation or windows to the upper floor. According to him, the opening leading to the upper floor measures 3.99 ft., 1.9 ft. in length and 2.1 ft. in width. P.W.1 stated that the floor above the ground floor is 7 to 8 ft. and denied that petitioner was not using the floor above the ground floor for any purpose.

42. But petitioner as R.W.1 stated that the floor above the ground floor was of height 6½ to 7 ft and claimed that he was not using it. The trial Court took this statement at face value and believed it but the appellate Court took the view that once a tenant is in exclusive possession of the premises, it hardly matters as to how much time he is putting it to use and the nature thereof by relying on the decision of this Court in **G.S.Ashok Vs. Dhirajlal Maganlal Shah**⁶. In the said case, the High Court observed :

“11....Once a tenant is in exclusive possession of the premises, it hardly matters as to for how much time, he is putting them to use and the nature thereof. It matters least for the owner of the premises, as to whether the tenant is residing in the premises, or as to how many persons are living thereof, or whether it is kept under lock for most of the time. The rent represents the charges for usage of the premises. It is for the tenant to put them to optimum use.”

43. I endorse this view of the lower appellate Court.

44. Also before the Rent Controller, the petitioner himself contended that in the upper floor he is keeping carton boxes.

⁶ 2014(5) ALD 763

Photograph Ex.R-10(A) shows that he is using the upper floor for keeping carton boxes and using it as store room.

45. Therefore I hold that once the said space of 350 sft in the upper floor is available, it is upto the petitioner, who is in exclusive possession thereof, to use it and he cannot plead that it has no rental value because he is using it for storage of the goods. Therefore the area of the upper floor also has to be taken into account for fixation of fair rent.

AMENITIES IN THE R.C. SCHEDULE PREMISES

46. P.W.1 stated that the R.C. schedule property is more than 35 years old and 5 years prior to giving evidence i.e. in 2008, when he visited it, it had amenities of water and toilet and at present he did not know whether those facilities are in existence or not. He denied the suggestion that from inception of tenancy, no facilities except electricity was provided. He also denied that the R.C. schedule property is in a dilapidated condition.

47. Though petitioner stated that there are no amenities like water, toilet etc., no work memo was given to the Advocate-Commissioner by him to note amenities such as water supply and toilet by the petitioner. The petitioner should have asked for the noting of amenities by the Advocate-Commissioner when he is disputing the amenities claimed to have been provided by the respondents.

48. The Rent Controller did not go into the question as to what facilities/amenities were being made available to the petitioner in the R.C. schedule premises, but the appellate authority accepted the evidence of P.W.1 about existence of water and wash room facilities and also existence of frontage road of 15 to 15½ ft in front of the R.C. schedule premises.

49. In the absence of the petitioner requesting the Advocate-Commissioner to note the amenities such as water and wash room facilities to the R.C. schedule premises, I affirm the finding of the appellate Authority about existence of these amenities in the R.C. schedule premises.

Whether the fixation of fair rent by the appellate authority is proper?

50. According to the petitioner, he is doing business in textiles and the rent at the inception of the tenancy was Rs.250/- p.m. in 1997 and in 2012, at the time of filing of the R.C. No.52 of 2012 was only Rs.500/- p.m.

51. P.W.1 stated that the R.C. schedule property would fetch Rs.200/- per sq. ft. per month as rent.

52. P.W.2, who is the Manager of Cosmos Bank on M.G. Road, produced Ex.X-1, statement of rent paid by the said Bank to its landlord which showed that for upper ground floor of 900 sq. ft., the rent is Rs.97/- per sq. ft p.m. He also stated that the road in front of

the Bank is 100 ft wide. He denied the suggestion that he is a friend of P.W.1.

53. P.W.3 is the owner of commercial premises which is on the ground floor on M.G. Road of area 1000 sq. ft. and exhibited Ex.X-2 registered lease deed dt.17-11-2004 and is receiving Rs.1,08,245/- p.m. Thus the rent per Sq. ft. is Rs.108/-.

54. Petitioner in his evidence stated that he was willing to slightly increase the rent. In his cross-examination, he stated that he did not enquire with his neighbours about the quantum of rent they are paying for their respective shops. He admitted that the last enhancement of rent was in 1990. He again stated that he did enquire about the rents in the vicinity of the R.C. schedule property and came to know that for some shops it is Rs.2500/-, Rs.1600/-, Rs.1400/- p.m. He filed some rent receipts Exs.R-3 to R-8 but admitted that he did not know the extent of the shops covered by the said receipts. He admitted that he owns a shop at Ramgopalpet which is on the other side of M.G. Road for which he is getting rent of Rs.42,000/- p.m. under Ex.P-5 registered lease deed dt.02-12-2011 and his shop is in 60 sq. yds and has ground, 1st and 2nd floors of area 1990 sq. ft.

55. R.W.2 is related to the petitioner and claimed that he was paying for his readymade garment business at General Bazar rent of Rs.3880/- p.m. for the last 12 years. This evidence cannot be considered for no landlord will charge such a low rental for 12 years

and his testimony is obviously biased towards the petitioner because of his relationship with him.

56. C.W.1 is the tenant of a shop of area 450 sq. ft. opposite to the R.C. schedule premises in General Bazar doing business in readymade garments. Ex.X-4 registered lease deed dt.11-09-2014 of the said shop shows that monthly rent is Rs.75,000/- and that he was paying rent at Rs.166/- per sq. ft. p.m. He also stated that the shop in the occupation of the petitioner is bigger than his shop.

57. It is not in dispute that the General Bazar, Secunderabad is close to Mahatma Gandhi Road, the main road commercial market area in Secunderabad. General Bazar itself is a commercial hub. Petitioner himself stated in his cross-examination that his shop is 9 to 10 shops away from M.G. Road and that he owned a shop at Ramgopalpet for which he is getting monthly rent of Rs.42,000/-.

58. When petitioner himself is drawing Rs.42,000/- p.m. for 1990 sq. ft. from 02-12-2011 at Ramgopalpet, which is not such a commercial hub like the General Bazar, he cannot just offer a slight increase above Rs.500/- p.m. as rent for the R.C. schedule property, which was fixed in 1990.

59. Having regard to the location of the R.C. schedule premises in a commercial area very close to the Mahatma Gandhi Road, Secunderabad and keeping in mind the evidence of P.Ws.1 to 3 and C.W.1, and having regard to the frontage of 15 ft and facilities such as

water and washroom, I do not think that for the ground floor area of 447 sq. ft., fair rent at Rs.100/- per sq. ft. and Rs.10/- per sq. ft. for 350 sq. ft. of upper floor, fixed by the appellate authority are too high. In my opinion, the appellate authority had correctly appreciated the evidence and fixed the fair rent as above and the same does not warrant any interference by this Court under Section 22 of the Act.

60. However, the provision for periodical enhancement of rent at 10% for every two years on the **existing** rent from the date of filing of the R.C. granted by the appellate authority is not proper since any enhancement can be directed under Section 5 of the Act only if there is any addition, improvement or alteration carried out at the instance of the respondents at the request of the petitioner. Therefore the said direction is set aside.

61. Accordingly, C.R.P.No.1226 of 2018 is partly allowed; and the direction of the appellate authority granting to the respondents periodical enhancement of rent at 10% for every two years on the existing rent from the date of filing of the R.C. is set aside; and C.R.P.No.1100 of 2018 is dismissed. No costs.

62. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 03-06-2019

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