

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.5890 of 2018

ORDER :

This Civil Revision Petition is filed under Section 22 of the Telangana Buildings (Lease, Rent and Eviction) Control Act, 1960 challenging the order dt.20.08.2018 passed in Rent Appeal No.70 of 2016 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad reversing the order dt.22.12.2015 passed in R.C.No.116 of 2013 on the file of the Additional Rent Controller, City Small Causes Court, Secunderabad (for short, 'the Rent Controller').

2. The petitioner herein is the tenant of respondent.
3. The respondent herein filed the said R.C. against petitioner under Section 4 of the Act for fixation of fair rent at Rs.150/- per Sq.ft., and to direct the petitioner to pay such rent with periodical enhancement at the rate of 20% from the existing rent for the R.C. Schedule premises admeasuring an area of 437 Sq.ft, situate at General Bazar, Secunderabad, bearing Municipal No.2-1-184 (Old No.1213).
4. The respondent contended that he is the owner of the above said premises, that petitioner is a tenant therein doing business in ready-made garments in the name and style M/s. Karachi Hosiery Stores on a monthly rent of Rs.3,200/-; that petitioner was a tenant of the

previous owner and after purchase of the property by the respondent under a registered sale deed dt.28.09.2013, and after attornment of tenancy by letter 07.10.2013, the petitioner is paying rents to him; that the rent of Rs.3,200/- p.m. is meager, though the prevailing rent in the locality for the ground floor commercial mulgi is between Rs.150/- to Rs.200/- per Sq.ft.; and petitioner is also irregular in payment of rents and is not vacating the property. He contended that petitioner did not pay rents at the rate of Rs.3,200/- per month from October, 2013 to December, 2013; that the property is located in a commercial area where a variety of goods are sold; that the General Bazar area is interconnected and linked to the main market, known as Mahatma Gandhi Road, and the R.C. Schedule property is situated at a distance of about 100 feet from Mahatma Gandhi Road Market and main road; and that it is close to the Secunderabad Railway Station, Monda Market and proposed Metro Railway Station, and so the petitioner be directed to pay rent at the rate of Rs.150/- per Sq.ft.

5. The petitioner filed counter-affidavit opposing the said application stating that he had been in possession of the R.C. Schedule property for more than 40 years and petitioner's father had been a tenant of the said premises at the rate of Rs.250/- p.m.; that the quantum of rent at the time of filing of the R.C. is only Rs.1,600/- per month; that the said rent is fair and just since the rents in the General Bazar area are between Rs.300 to Rs.900 per month for similar accommodation; that the rents till October, 2013 were paid and duly

acknowledged by respondent and the allegation that the rents are Rs.3,200/- per month is false. He alleged that for the abutting mulgi, where business by name Shilpa Handlooms was being carried on, the rent was only Rs.1600/- per month; that the General Bazar is a very narrow lane where four-wheelers cannot move and the traffic is congested; that the R.C. Schedule property is old and dilapidated and the roof of the said premises is made of Madras tile and walls are made with lime and there is constant seepage of water into the premises; that there is no water or toilet facility available therein, and the rent being already paid itself is exorbitant having regard to the location and the nature of construction; that only petty businesses are being carried on in General Bazar, unlike in the Mahatma Gandhi Road and Parklane; and that Rs.1,600/- per month being paid by him to the respondent is fair and reasonable, and there is no need for enhancement.

6. Before the Rent Controller, the respondent examined PWs.1 and 2 and marked Exs.P.1 to P.4. The petitioner examined R.W.1 and marked Exs.R1 to R.14, and also got examined C.Ws.1 to 3 and marked Exs.C.1 to C.3.

7. By order dt.22.12.2015, the Rent Controller held that there was jural relationship between the parties, and the fair rent of Rs.3,000/- per month is fixed from the date of filing of the R.C. It noted that PW.1 admitted in cross-examination that there is no document or receipt or counter-foil to show that petitioner was paying rents at

Rs.3,200/- per month, and he also did not issue any notice stating that the rent is Rs.3,200/- per month and not Rs.1,600/- per month which was sent through Money Order by petitioner. It held that P.W.1 did not examine his vendor to prove his allegation that rent was paid partly in cash and partly by cheque, and that the total rent is Rs.1,600/- per month. It then considered the evidence of R.W.1 and that of C.W.Nos.1 to 3 and held that the R.C. Schedule property is located in a commercial area called General Bazar; that all shops and offices in the vicinity have great demand, and the rent being paid by the neighbouring tenant can be the fair measure of rent as fixed by the Rent Controller, but did not specifically rely upon any particular piece of evidence to come to the conclusion that the fair rent ought to be Rs.3000/- per month.

8. Challenging the same, the respondent filed R.A.No.70 of 2016 before the Additional Chief Judge, City Small Causes Court, Hyderabad.

9. The said appeal was allowed on 04.12.2017, and the fair rent was fixed at Rs.100/- per Sq.ft. with periodical enhancement at 10% once in every two years on the then existing rent.

10. This was questioned in Civil Revision Petition No.285 of 2018 before this Court.

11. There was also I.A.No.141 of 2017 in R.A.No.70 of 2016 filed by the respondent invoking Order 41 Rule 27 C.P.C. wherein the

respondent sought to mark Exs.P.5 and P.6, i.e., Lease and License Deeds dt.16.01.2016 and 20.04.2015 respectively, along with certified copy of order dt.29.06.2015 in R.C.No.52 of 2012. The said I.A. was also allowed by the Appellate Authority on 04.12.2017.

12. This was questioned in Civil Revision Petition No.326 of 2018.

13. By common order dt.01.03.2018, both the Revisions were allowed and the orders passed on 04.12.2016 in R.A.No.70 of 2016 and I.A.No.141 of 2017 in R.A.No.70 of 2016 were set aside, and both the said R.A. and the I.A. were remanded to the lower Appellate Court to pass reasoned orders.

14. After remand, the lower Appellate Court allowed I.A.No.141 of 2017 and also R.A.No.70 of 2016 determining the fair rent at Rs.100/- per month per Sq.ft.

15. Challenging the order dt.20.08.2018 in R.A.No.70 of 2016, the present Civil Revision Petition is filed by petitioner.

16. In the order R.A.No.70 of 2016, the lower Appellate Court referred to the order dt.29.06.2015 passed in R.C.No.52 of 2012 (Ex.P.5) as also Ex.P.6-Registered Lease Agreement and the adjoining shop rents and arrived at a monthly rent of Rs.100/- per Sq.ft.

17. It is important to note that order dt.29.06.2015 was passed in R.C.No.52 of 2012 fixing the fair rent of a shop opposite to the R.C. Schedule property at Rs.100 per Sq.ft.; but it was admitted at the Bar

that the judgment in R.C.No.52 of 2012 (though confirmed by order dt.05.01.2018 in R.A.No.145 of 2015), was subject matter of Civil Revision Petition No.1100 of 2018 which is pending on the file of this Court, and had not attained finality yet.

18. The counsel for petitioner contended that the Appellate Court could not have relied upon the decision in R.C.No.52 of 2012 (Ex.P.5), when the said order had not attained finality.

19. The counsel for respondent however contended that there is no stay of the fair rent fixed in R.C.No.52 of 2012 in the Civil Revision Petition No.1100 of 2015, and so, the said fair rent fixed in that R.C. would apply also to the subject R.C. Schedule property.

20. Ex.P.6-Lease Deed, relied upon by the respondent is a registered lease deed dt.16.01.2016 under which a Lease came into effect on 15.10.2015 for an extent of 2429 Sq.ft. at Rs.1,20,000/- per month in relation to a premises bearing No.3-4-419 which is situated in the same lane as the R.C. Schedule property. The said premises is located after four of five shops from the R.C. Schedule property. Under this Deed, the monthly rent is Rs.49.40 per Sq.ft.

21. Since the R.C.No.116 of 2013 had admittedly been filed on 31.12.2013, if Ex.P.6 is taken into consideration, as it is lease deed for premises located in the same lane as the RC Schedule property, the rent of the R.C. Schedule property must be less than Rs.49.40 per Sq.ft., and cannot be Rs.100/- per Sq.ft. as was fixed by the Appellate

Authority under the Act in RA.No.70 of 2016. This is because the lease under Ex.P.6 commenced only on 15.10.2015, i.e., one year nine months after the R.C. was filed.

22. Also in view of Ex.P.6, the fair rent of Rs.100/- per Sq.ft. fixed under Ex.P.5 cannot be taken as correctly representing the fair rent of the R.C. Schedule property, because the order dt.29.06.2015 in R.C.No.52 of 2012 (Ex.P.5) has not attained finality, and Civil Revision Petition No.1100 of 2018 is pending in this Court challenging the same.

23. If the rent being paid under Ex.P.6 of Rs.49.40 per Sq.ft. is taken as the benchmark and it is reduced by 10% for one year and by a further 5% for the preceding nine month' period, the fair rent for the R.C. Schedule premises would be Rs.42 per Sq.ft.

24. Thus the finding in R.A.No.70 of 2016 that the fair rent for the RC Schedule property is Rs.100/- per sq.ft cannot be sustained.

25. So the order dt.20.08.2018 passed in Rent Appeal No.70 of 2016 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad is allowed in part, and the fair rent fixed thereunder is reduced from Rs.100/- per Sq.ft. to Rs.42/- per Sq.ft.

26. The further direction of the Appellate Authority that there would be periodical enhancement at the rate of 5% every year on the rent fixed by it is also set aside, since any such enhancement can only be under Section 5 of the Act, and the Appellate Authority had no

jurisdiction to grant such enhancement without there being any addition or alteration of the RC schedule property by the landlord.

27. Accordingly, the Civil Revision Petition is partly allowed as above. No order as to costs.

28. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23.04.2019

Ndr/*

