

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

MAT 756 of 2021

with

IA NO.: CAN 1 of 2021

(Through Video Conference)

Reserved on : 20.07.2022

Pronounced on: 22.09.2022

Probir Kumar Roy

...Appellant

-Vs-

The State of West Bengal & Ors.

...Respondents

Present:-

Mr. Partha Chakraborty, Advocate

.... for the Appellant

Mr. Tapan Kumar Mukherjee, Sr. Advocate,

Mr. Tulshidas Ray, Advocate

..... for the State

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. By this appeal, the correctness of the order of the Learned Single Judge dated 13.07.2021 passed in W.P.A. No 24451 of 2016 (Sri Probir Kumar Roy - versus- The State of West Bengal & Ors.) has been questioned by the appellant/ writ petitioner.

2. The facts of the case are that the appellant/writ petitioner is the lawful and absolute owner of premises no. 17/3, Bose Pukur Road, Kolkata- 700042 under Police Station-Kasba in the District of South 24-Parganas. The said property was purchased by the appellant under a Deed of Conveyance dated August 8, 1991, registered in the District Sub-Registry Office at Alipore.

3. At the time the appellant purchased the property there was an old building standing thereon and on the ground floor of the said building, a primary school was running under the name of "Saraswati Vidya Bhawan" which is a government aided primary school. The school is run by the District Primary Council, Calcutta which was a tenant under the erstwhile landlord. After purchasing the property, the District Primary Council, Calcutta became a direct tenant to the appellant upon the tenancy being attorned. Thus, on March 04, 1993 the Chairperson of the District Primary Council, Calcutta entered into an agreement for tenancy with the appellant. Under sub-clause (h) of Clause 3 of the said agreement, the rate of rent was fixed at Rs. 400 per month being effective from August, 1991.

4. The appellant after the said purchase obtained a sanctioned building plan for making construction of a four storied building on the said land after demolishing the existing structure. A space of about 768 square feet of super built up area was designated for the accommodation of the said primary school. In the year 1994 when the construction of the building got concluded, the said primary school was handed over with the possession of the decided area. However, the appellant was dissatisfied with the rent that was paid by the said primary school with respect to the tenanted premises.

5. On March 7, 2016 the appellant filed a writ petition being W.P.A No. 2943 (W) of 2016 wherein the special Land Acquisition Officer, being the respondent No.3 was asked to assess the fair rent of the hired accommodation by Saraswati Vidya Bhawan. The same was completed by the respondent No.3

on September, 2016. Nonetheless, the appellant was highly dissatisfied and aggrieved with the basis of assessment of the fair rent.

6. On July 13, 2021 the appellant filled a writ petition before the Learned Single Judge with his grievances. However, on account of not being able to establish any material stating or mentioning that the authority proceeded on an erroneous basis to accept the effective floor space to fix the quantum of rent, the Learned Single Judge dismissed the petition. Thus, being aggrieved by the impugned order the present appeal has been preferred.

7. Submissions of the Learned Counsel for the appellant is that:

- I. The District Primary Council, Calcutta has made no change in the payment of rent since a long time and has been making payment of rent at an old rate, i.e., Rs. 400 per month. Moreover, there has been no assessment from the Land Acquisition Collector for the purpose of making payments of rent as per the market rate as mentioned in clause 3(h) of the agreement of tenancy dated March 4, 1993.
- II. On making an estimated fair rent by the appellant of the tenanted portion by the said primary school through a valuer on November 25, 2002 and after considering all aspects of the said tenancy, it was concluded that the present rent amounts at Rs. 5,400 per month.
- III. The Municipal rates and tax rates increases at a high rate every six years. Moreover, after the induction of the said school in the new building the Municipal rate and tax for the portion of the land has been increased on 3-4 occasions as a result of which the appellant has to bear all the expense of the said property since the rented amount would not suffice. Furthermore, the main basis of assessing fair rent of the said primary school is when parallels are drawn with the rate of rent of

other rented properties in the same area, a bank namely United Bank of India situated on the same road *i.e.*, Bose Pukur Road has a higher rate of rent compared to the said primary school.

8. The Learned Single Judge upon having carefully considered the contentions and the arguments of the counsels for respective parties held that- “The documents produced by the petitioner to establish fair rent were taken into consideration. The petitioner produced a document of a Bank paying rent at the rate of Rs. 4.50 per sq. ft. The authority went on to consider other properties which are located at a distance from the property concerned and arrived at a rate of Rs. 7.08 per sq ft. There is nothing on record to establish that the rent fixed at Rs. 7.08 is perverse. The writ petitioner does not contain any document to establish that the rate of rent was higher than what was fixed by the impugned order. So far as the area of immovable property is concerned, the authority proceeds on the basis of effective floor space in the impugned order. The authorities found 618 sq. ft to be available for rent. Again, there is nothing material on record to establish that the effective floor space was larger than what was noted in the impugned order. The petitioner relied upon the agreement between the parties which states that 768 sq. ft. of super built up area was given on rent. There is a difference between a super built up area and the effective floor area. So again there is no material to establish that the authority proceeded on an erroneous basis to accept the effective floor space basis to fix the quantum of rent.”

9. Having heard the learned counsels for the parties and on perusal of records, this Court is of the view that no material was produced before this Court nor any irregularities were shown by the appellant regarding the finding of the Learned Single Judge to establish that the authority proceeded on an erroneous basis to decide the rent at a rate of 7.08 per sq. ft.

10. It is also worth noting that this being an intra-court appeal, once the view taken by the Learned Single Judge is found to be possible and proper view, then no case for interference is made out.

11. For the foregoing reasons, the appeal is found to be devoid of any merit which is accordingly dismissed. All pending applications are also accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata

22.09.2022

PA(BS)