

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 7703 OF 2018

PETITIONERS/ :-
LANDLORD
Original Applicants
before the Rent
Controller

1. Shri Chandrakant S/o Lala Motilal Jaiswal
aged about 57 years, Occ.: Business,
2. Shri Rajendra S/o Lala Motilal Jaiswal,
aged about 55 years, Occ.: Business,
3. M/s. R.M.Traders, a registered
Partnership Firm, Through its Partner
Rajendra S/o Lala Motilal Jaiswal,
4. Smt. Shakuntalabai Wd/o Lala Motilal
Jaiswal, aged about 84 years, Occ.:
Business,
5. Smt. Meena W/o Chandrakant Jaiswal,
aged about 51 years, Occ.: Business,

All R/o. Prashant Nagar, Wardha Road,
Nagpur.

...VERSUS...

RESPONDENTS/ :-
TENANTS
Original Non-
Applicants before the
Rent Controller

1. M/s. Devshakti Dal Mill, a registered
partnership firm, Bagadganj, Small
Factory Area, Bhandara Road, Nagpur,
through its partners.
2. Smt. Ichrajabai W/o. Dhanraj Oswal
(Expired).
3. Suresh S/o Dhanraj Oswal, Aged about
64 years, Occ.: Business,

4. Smt. Asha W/o Kantilal Oswal, Aged about 54 years, Occ.: Business,

All R/o. C/o. M/s. Devshakti Dal Mill,
59, Bagadganj, Small Factory Area,
Bhandara Road, Nagpur.

Mr. S.P. Dharmadhikari, Sr. Counsel a/b
Mr.D.G. Paunikar, counsel for the petitioners/landlord.
Mr.M.G.Bhangade, Sr.Counsel a/b
Mr.Dhruv Sharma, counsel for the respondents/tenant.

AND

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...VERSUS...

RESPONDENTS/ :- 1. M/s. Devshakti Dal Mill, a registered
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Original Non- Factory Area, Bhandara Road, Nagpur,
Applicants before the through its partners.
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CORAM : MANISH PITALE, J.

CLOSED ON : 14.07.2022.

PRONOUNCED ON : 25.08.2022.

J U D G M E N T

Heard.

2. Rule. Rule made returnable forthwith. The writ
petition is heard finally with the consent of the learned counsel for
the rival parties.

3. The petitioners in these two petitions are landlords while the respondents are tenants and the dispute between the parties is about fair rent to which the petitioners are entitled, in the facts and circumstances of the present case. The petitioners had initiated proceedings before the Rent Controller under Clauses 4 and 5 of the C.P. and Berar Letting of Houses and Rent Control Order, 1949 (hereinafter referred to as “Rent Control Order”) seeking fixation of fair rent at the rate Rs.8/- per sq.ft. for the tenanted premises. The Rent Controller had partly allowed the said application. As the landlords as well as the tenants were aggrieved by the said order, they filed appeals before the Appellate Authority, wherein the landlords sought an order for the application being allowed in its entirety, while the tenants sought quashing and setting aside of the order of the Rent Controller. By common impugned order dated 21/05/2018, the Appellate Authority rejected the appeal of the landlords and allowed the appeal of the tenants, as a consequence of which the landlords stood deprived of even the partial relief granted by the Rent Controller. The landlords have consequently filed these two writ

petitions challenging the common order passed by the Appellate Authority.

4. The tenanted premises are located at Bagadganj, Small Factory Area, Bhandara Road, Nagpur. It was the case of the landlords that from the date of creation of the tenancy, the rent was increased only once in the year 1975 and that thereafter, there had been no increase in rent. In this backdrop, on 10/09/1996, the landlords filed the aforesaid application under Clauses 4 and 5 of the Rent Control Order, seeking fixation of fair rent at the rate of Rs.8/- per sq.ft. from the date of the application excluding corporation taxes. The said application was opposed by the tenants. The parties placed on record pleadings as well as oral and documentary evidence and thereupon, by order dated 28/08/2015, the Rent Controller partly allowed the application filed by the landlord, directing that the fair rent of the suit premises stood fixed at Rs.4000/- per month from 11/09/1996 with a rider of 10% increase every three years, excluding corporation taxes.

5. As noted above, aggrieved by the said order of the Rent Controller, both the landlords as well as the tenants filed appeals before the Appellate Authority i.e. the Additional Collector, Nagpur. By common order dated 21/05/2018, the Appellate Authority dismissed the appeal of the landlords and allowed the appeal of the tenants. As a consequence, the application for fixation of fair rent filed by the landlords stood dismissed. In other words, the landlords were deprived of even partial relief granted by the Rent Controller.

6. Aggrieved by the said common order passed by the Appellate Authority, the landlords filed Writ Petition No.7703 of 2018 and Writ Petition No. 7704 of 2018, to challenge dismissal of their appeal and the appeal of the tenants being allowed.

7. Mr. S.P. Dharmadhikari, learned senior counsel appearing for the petitioner-landlord in both the petitions submitted that the pleadings as well as the oral and documentary evidence placed on record on behalf of the landlords would show that the application filed for fixation of fair rent ought to have

been allowed in terms of the prayer made therein. Attention of this Court was specifically invited to the evidence of the expert witness, who stated in detail the basis on which he had determined the extent to which the rent deserved to be enhanced for fixation of fair rent. It was submitted that the examination-in-chief as well as the cross-examination of the said expert witness would show that sufficient material was indeed placed on record before the Rent Controller for supporting the prayer for fixation of fair rent made on behalf of the landlords. By inviting attention to the order passed by the Rent Controller, it was submitted that although the landlords believed that the application for fixation of fair rent ought to have been allowed in its entirety, there was no reason for the Appellate Authority to have interfered with the order of the Rent Controller. It was submitted that when the material available on record demonstrated that the expert had based his calculations on ready reckoner, the Appellate Authority could not have interfered with the order of the Rent Controller in a casual manner. The approach adopted by the Appellate Authority was criticized on the ground that there was hardly any

discussion on the relevant material, while appreciating the findings of the Rent Controller.

8. The learned senior counsel appearing for the landlords relied upon Division Bench judgment of this Court in the case of **The Board of Trustees of the Port of Bombay v. Jayantilal Dharamsey etc.**, reported in **AIR 2001 Bom. 26**, to contend that fixation of fair rent could certainly be done on the basis of material indicating fair market value of the property in question. It was submitted that when cogent material was indeed placed on record by the landlords, there was no reason for the Rent Controller not to have allowed the application in its entirety and that there was certainly no reason for the Appellate Authority to have interfered with at least the partial relief granted by the Rent Controller.

9. On the other hand, Mr. M.G. Bhangde, learned senior counsel appearing for the respondents-tenants, submitted that the pleadings in the application moved on behalf of the landlords for fixation of fair rent were wholly deficient and defective to justify

grant of prayer made in the said application. By referring to clauses 4 to 10 of the Rent Control Order, it was submitted that the pleadings were insufficient to justify the prayer made in the said application. As regards the emphasis placed on behalf of the landlords on the evidence of the expert witness, as also ready reckoner, it was submitted that as per settled law, such ready reckoner or circle rate could not be the basis for seeking enhancement of rent because such material could not be said to be a valid basis for determining the true market value of the concerned property.

10. The learned senior counsel placed reliance on judgments of the Hon'ble Supreme Court in the case of **Special Land Acquisition Officer and another v. Sidappa Omanna Tumari and others**, reported in 1995 Supp (2) SCC 168, **Lal Chand v. Union of India and another**, reported in (2009) 15 SCC 769 and **Sughar Singh v. Hari Singh (Dead) Through LRs and others**, reported in 2021 (12) SCALE 638, as also judgment of Division Bench of this Court in the case of **Kamalkant Natwarlal Shah v.**

Jagdishchandra Natwarlal Shah and others, reported in **2014 (1) Mh.L.J. 152**.

11. Heard learned senior counsel for the rival parties and perused the material on record. A perusal of the relevant clauses of the Rent Control Order shows that an application for fixation of fair rent can be moved by the landlord and factors for determining such fair rent are indicated in the said clauses of the Rent Control Order. Much emphasis was placed on behalf of the tenants on the contents of the application moved by the landlords, to emphasize that if the pleadings were to be construed, the basis for seeking fixation of fair rent appeared to be increase in taxes over the years. By placing emphasis on clause 10 of the Rent Control Order, it was claimed that the landlords could seek increase in rent by an amount equal to the amount by which the tax had increased. It was submitted that no details were forthcoming in the application as regards the said aspect of the matter and further that the rate of Rs.8/- per sq.ft. was simply stated in the application, without supporting pleadings or material.

12. This Court has perused the pleadings in the application of landlords, as well as the reply filed on behalf of the tenants. The oral evidence led by the parties was also perused. It is found that an expert, i.e. an Architect was examined on behalf of the landlords in support of the prayer made in the application. The said expert witness stated that while determining the fair rent for the property in question, he had taken into consideration the area of the premises and relied upon the ready reckoner prepared by the State Authorities. In the cross-examination, the expert witness stated that he had also taken into consideration the expected price that the property in question would fetch, indicating that the prevalent market value or prevailing market selling rate of the land was the basis. The said witness also responded to the question as to the manner in which the prevailing rate of Rs.8/- per sq.ft. was calculated.

13. Much emphasis was placed by the learned senior counsel appearing for the tenants on the aforementioned judgments of the Hon'ble Supreme Court and this Court to contend that ready reckoner could never be a sound basis for

determining the market value of the property in question and hence, fixation of fair rent on that basis would not be justified. But, a perusal of the said judgments indicates that the judgment in the case of **Special Land Acquisition Officer v. Sidappa Omanna Tumari** (supra) and **Lal Chand v. Union of India** (supra) arose from land acquisition proceedings. In the said cases, the Court was concerned with payment of just and fair compensation to the claimants and in that context the basis for determination of market value was examined.

14. In the case of **Special Land Acquisition Officer v. Sidappa Omanna Tumari** (supra), it was emphasized that valuation report prepared by an expert could be of assistance in determining the market value if the factual data or material is produced before the Court and it is proved to be reliable like any other evidence. The determination of the expert in the present case was on the basis of ready reckoner issued by the State Authorities itself. In the cross-examination of the expert witness in the present case, no questions were put on behalf of the respondents-tenants indicating either that the opinion of the

expert was based on no material or that the ready reckoner was itself suspect. The nature of cross-examination of the expert witness in the present case would show that it was limited to asking questions as regards the manner in which the expert had rendered his opinion/findings. It appears that the cross-examination on behalf of the tenants was more on the line as to what was the basis for the expert giving his opinion on the prevailing market selling rate of land and no real attempt was made to doubt the genuineness of the material, including the ready reckoner.

15. A Division Bench of this Court, in the case of **Lokhandwala Infrastructure Pvt. Ltd. Vs. Municipal Corporation of Greater Mumbai 2008 SCCOnline Bom 717**, has taken judicial notice of the fact that rates stated in the ready reckoner provide the minimum price to be considered for stamp duty. It is for this reason that when Courts consider the fair and just compensation to be paid to claimants in cases concerning land acquisition, only the ready reckoner is seldom taken as the basis for determination of true market value. The Court is more concerned about the

actual market value, which is found to be higher than such ready reckoner rates. It is in this context that Courts have made observations about the reliability of the ready reckoner as the true basis for determination of the market value of the property in question. The observations made by the Hon'ble Supreme Court in the case of **Lal Chand v. Union of India** (supra) have to be considered in that light. The ready reckoner assists the Authorities of the State including Registration Authorities to examine whether transactions concerning properties are showing unreasonably low rates, thereby indicating that there is possibility of undervaluation, only to avoid liability to pay appropriate stamp duty. It is in this context, that while considering the cases regarding just and fair compensation payable to claimants in the context of land acquisition, that the Hon'ble Supreme Court in the aforesaid judgments has made the said observations.

16. It is in this context, that the observations made by the Division Bench of this Court in the case of **Kamalkant Natwarlal Shah v. Jagdishchandra Natwarlal Shah** (supra) are also to be appreciated. It has been observed that the ready reckoner cannot

be recorded as the accurate market value of the property. But, if there is any doubt regarding the same raised by the tenant or if a dispute is raised, only then the further question about genuineness of the material would become relevant. Such is not the case in the present matter. Therefore, reliance placed on behalf of the landlords on the judgment of the Division Bench of this Court in the case of **The Board of Trustees of the Port of Bombay v. Jayantilal Dharamsey etc.** (supra) is justified.

17. Even otherwise, a Division Bench of this Court in the case of **Megh Reality and Developers Pvt. Ltd. Vs. Learned Joint Registrar 2022 SCCOnline Bom 1539**, has held that although ready reckoner cannot be the sole basis for determining the market value, but it could be an indicator of the approximate value of the land. To that extent, the tenants in the present case are not justified in claiming that there were serious deficiencies in pleadings and evidence to seek any enhancement in the rent.

18. This Court finds that on the basis of the pleadings and the evidence available on record, the Rent Controller had reached

a reasonable finding, while partially granting relief to the landlords. But, a perusal of the common impugned order shows that the Appellate Authority recorded its findings in paragraph 8. While rendering findings against the landlords and in favour of the tenants, the Appellate Authority held that no documentary evidence was produced by the landlords to substantiate their claim for fixation of fair rent and that the Rent Controller was not justified in granting even partial relief to the landlords. There was no analysis of the pleadings or the evidence and the material on record, while reversing the findings rendered by the Rent Controller. It was simply observed that the burden was on the landlords to prove as to how much rent were similar premises fetching when the application for fixation of fair rent was moved. But, the pleadings and evidence placed on record on behalf of the landlords was not even referred to, while passing the impugned common order.

19. This Court is of the opinion that no case was made out by the tenants for interference with the order passed by the Rent Controller, which granted partial relief to the landlords and

the appeal filed by the tenants was erroneously allowed. On the basis of the material available on record, there was no basis for interfering with the partial relief granted to the landlords and hence, the impugned common order deserves interference to that extent.

20. In view of the above, the impugned common order is set aside to the extent that it allowed the appeal filed by the respondents-tenants bearing Appeal No.8/A-71(1)/2015-16. The said appeal filed by the tenants is dismissed and the order of dismissal of the appeal filed by the landlords bearing Appeal No.4/A-71(1)/2015-16 is not interfered with. Accordingly, the order passed by the Rent Controller granting partial relief to the landlords is restored.

21. Rule is made absolute in the above terms. No costs.

JUDGE