Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3979 OF 2023

Adani Electricity Mumbai Limited ...Petitioner
Versus
Acme Plastic Industries
A Registered Partnership firm
(through its partner)
Mr. Ramesh Vishindas Bajaj & Ors. ...Respondents

Mr. Sharan Jagtiani Sr. Counsel a/w Shrey Fatterpekar, Siddharth Joshi, Kavisha Shah & Minal Pawar i/b Kavisha Shah for the Petitioner.

Mr. Hasan Sayed & R. A. Shaikh, for Respondent No. 1.

CORAM : MADHAV J. JAMDAR, J.
DATE : 30th MARCH, 2023

P.C.:

1. Heard Mr. Jagtiani, learned Senior counsel appearing for the Petitioner and Mr. Sayed, learned counsel appearing for the Respondent No. 1.

2. The Petitioner by the above Writ Petition filed under Article 227 of the Constitution of India has challenged the order dated 2nd March, 2023 passed by the learned Appellate Bench of Small Causes Court, Mumbai (Bandra Branch) passed below Exhibit-6 in P. Appeal No. 56 of 2022 in T. E. Suit No. 99 of 2009. By said impugned order, the learned Appellate Court while staying execution of Judgment and Decree of possession passed by the learned Trial Court in T. E. Suit No. 99 of 2009 dated 13th January, 2022 granted compensation of Rs. 35,000/- (Rupees

Thirty Five Thousand only) per month to be deposited from 13th January, 2022.

3. Mr. Jagtiani, learned Senior counsel submitted that, earlier also by order dated 13th July, 2022 the learned Appellate Bench has determined the compensation of Rs. 35,000/- per month and the same was challenged before this Court by filing Writ Petition No. 10834 of 2022. He submitted that, a learned Single Judge by order dated 21st October, 2022 set aside the said order and remanded back the matter to the learned Appellate Court for determination of the quantum of compensation. He pointed out paragraph No. 9 of the earlier order dated 13th July, 2022 and paragraph No. 15 of the present impugned order and submitted that the order is passed by giving identical reasons. Therefore, it is his submission that, the order is passed without application of mind. Apart from this aspect, he submitted that Nine Lease Deeds are produced on record showing that Rs. 1 per year is the lease amount for sub-station. He also relied on valuation report submitted by J. J. Kikani Associates dated 25th July, 2022 by which the said valuer has come to the conclusion that, the market rental/mesne profit for the sub-station applicable shall be Rs. 1 p.a. w.e.f. 13th July, 2022.

4. He more particularly pointed out three lease deeds out of nine lease deeds produced on record. The first lease deed dated

31st December, 2014 which is from pages 466 to 519, second lease deed is dated 6th July, 2020 which is from page No. 799 to 897 and third lease deed is dated 31st March, 2021 which is from page No. 1002 to 1069. He submitted that in all these lease deeds Rs. 99 is the lease amount for the lease period of 99 years. He therefore submitted that Rs. 1 p.a. is the lease rent as per the market rate. He further submitted that the learned Appellate Court has rejected both the valuation reports and therefore, in fact, there is no material before the learned Appellate Court and the amount of Rs. 35,000/- per month arrived at by the learned Appellate Court towards compensation is without considering any material.

5. He submitted that, as far as the Electric sub-station is concerned, it is free of F.S.I. and therefore, unless it can be pointed out that F.S.I. is availed in the construction, valuation cannot be fixed and therefore, he supported the said valuation of Rs. 1 p.a. towards compensation as per the valuation report of J. J. Kikani & Associates. However he fairly admitted that under the provisions of Development Control and Promotion Regulations for Greater Mumbai, 2034 (for short **"DCPR 2034"**) there is no prohibition for user of the premises which are used for electric sub-station for some other purpose. He therefore submitted that the impugned order is liable to be quashed and set aside.

6. Mr. Jagtiani, learned Senior counsel submitted that

Application for interim relief for mesne profit is filed by the Respondent No. 1 which is from page 167 to 169. He pointed out Interim Application filed for mesne profit and submitted that Interim relief to the effect that Rs. 40/- per sq. ft. for the use of the suit premises admeasuring 403 sq. ft. was sought and therefore, the amount of Rs. 35,000/- p.m. determined by the learned Appellate Court is beyond the said interim relief sought by the Respondent No. 1

7. Mr. Sayed, learned counsel appearing for the Respondent No. 1 pointed out paragraph No. 14 of the impugned order and submitted that the valuation report submitted by Respondent No. 1 is not completely rejected. He submitted that the Respondent No. 1 is conducting plastic industry in the suit property which is consisting of ground floor plus two storeyed industrial building namely M/s Acme Plastic Industries. The said building is constructed prior to 1965. He further submitted that, the suit premises is of 403 sq. ft. carpet area which is an enclosed room of 31 ft X 13 ft with two doors and a window and the same is located on the ground floor of said ground plus two storeyed industrial building.

8. He submitted that the learned Trial Court has decreed the suit bearing T.E. Suit No. 99 of 2009 by Judgment and Decree dated 13th January, 2022. As far as the Judgment of **Atma Ram**

Properties (P) Ltd. Vs. Federal Motors (P) Ltd.[1] of the Supreme Court is concerned, what is required to be kept in mind by the learned Appellate Court while staying the decree of eviction that if the vacant possession of the suit premises is received by the landlord and if the premises are let out, then, how much rent the landlord will be able to get. He submitted that, the valuation report submitted by the Petitioner is completely rejected by the learned Appellate Court whereas, the valuation report of the Respondent No. 1 is concerned, the learned appellate Court has only said that there are certain lacunae in the said report. Therefore, he supported the impugned order.

9. As far as contentions regarding interim prayers in Interim Application for the mesne profit, application is concerned, Mr. Sayed submitted that as the suit is of the year 2009 the prayers in the Interim Application are made on the basis of valuation of the year 2009. However, he submitted that as per law laid down by **Atma Ram Properties (P) Ltd. (Supra)**, the relevant date for fixing compensation is the date of decree and therefore impugned order passed by the learned Appellate Court is proper. There is substance in said contention of the Respondent No. 1. On page No. 167 of the Writ Petition compilation i.e. in paragraph No. 3 of the Application for Interim relief, it is stated by the Respondent No. 1

1. (2005) 1 Supreme Court Cases 705.

that, neighboring premises are fetching Rs. 80/- per sq. ft. After the matter was remanded to the learned Appellate Court pursuant to order dated 21st October, 2022 passed by a learned Single Judge, the Respondent No. 1 produced valuation report dated 3rd December, 2022 of B. S. Talpade and Associates stating that, market rent is evaluated at Rs. 54,100/- p.m. of the suit premises. Therefore, there is no substance in the contention raised by the Petitioner that, Respondent No. 1 has only prayed for rent of Rs. 40/- per, sq. ft. per month.

10. The learned Appellate Court while rejecting the valuation report submitted by the Petitioner wherein the interim compensation is valued at Rs. 1 p.a. observed that, the area of the suit premises is 403 sq. ft. carpet area. In the City like Mumbai every sq. ft land has a value and therefore valuation report specifying the market rent of Rs. 1 p.a. is not at all acceptable and the same is totally unjust, unfair and not acceptable. No illegality and perversity can be found in the said observation and the said approach of the learned Appellate Court. In fact, the learned Single Judge while remanding back the matter to the learned Appellate court has recorded statement of Mr. Sharan Jagtiani, the learned senior counsel appearing for the Petitioner that, the Petitioner is willing to pay monthly compensation of Rs. 3,000/- per month and therefore, the valuation report specifying the

market rent at Rs. 1 p.a. cannot be accepted and rightly rejected by the learned Appellate Court.

11. As far as valuation report produced by the Respondent No. 1 is concerned, fair rent of the suit premises was determined at Rs. 54,100/- per month. The valuation report of B. S. Talpade & Associates submitted on behalf of Respondent No. 1 takes into consideration, Ready Reckoner rate of 2022 and 2023 for industrial user for one sq. mtr. as Rs. 1,89,920 i.e. 17644 per sq. ft. The said Ready Reckoner rates are for sale of the property. On the basis of said figures, valuation report of B. S. Talpade & Associates mentions that, monthly rent is either Rs. 46,628/- or 54,144/- per month. The details giving particulars of calculation by said valuer for arriving at said rent is set out in tabular form hereinbelow :

Scenarios:	**Scenario 1: 10- year G-Sec par Yield (FBIL)**	**Scenario 2: Market Cap (G-Sec +Risk Premium)**	**Units**
Industrial Rate for BUA	17,644	17,644	INR per sq. ft.
Cap Rate	7.32%	8.50%	%
Implied Rent on Built-Up Area	107.63	124.98	INR psqft pm
Loading Factor for BUA to Carpet Area	7.50%	7.50%	%
Implied Rent on Carpet Area	115.70	134.35	INR psqft pm

Implied Monthly Rent	46,628	54,144	INR pm
Monthly Rent (Rounded)	46,600	54,100	INR pm

12. Mr. Sayed pointed out paragraph No. 14 of the Order of learned Appellate Court. He submitted that the contention raised by the Petitioner that, said valuation report submitted by the Respondent No. 1 is not accepted entirely, is not correct. It is observed that there are some lacunae and loopholes in the valuation report. One of the lacuna mentioned is that, valuer has relied on Unified Development Control and Promotion regulations for Maharashtra State-2020 and as the suit premises is situated at Mumbai, applicable Development Rules are DCPR 2034. In fact Mr. Jagtiani, learned Senior counsel has pointed out page no. 1152 of Writ Petition compilation i.e. page No.10 of the said valuation report produced by Respondent No. 1, wherein reference is to DCPR 2034 which is applicable to Mumbai city. Therefore, it is apparent that in said valuation report various factors are taken into consideration including UNDCPR 2020 which is applicable to the rest of Maharashtra as well as DCPR, 2034 which is applicable to Mumbai. In any case, valuation of 46,600/- or 54,100/- will be one of the guiding factor which can be taken into consideration while arriving at fair market rent in terms of Judgment of the Supreme Court in **Atma Ram Properties**

(P) Ltd. (Supra).

13. Mr. Jagtiani, learned Senior counsel of the Petitioner has relied on three Lease Deeds to which reference is made hereinabove. The relevant details of these three Lease Deeds are set out in tabular form hereinbelow :

Sr. No.	Date	Area	Locality	Market Value of the Property as determined by the Stamp Duty Authorities	Rent
1.	31.12.2014	Area admeasuring 5.18 x 11.89 = 61.59 sq. mts.	Plot No. A4, CTS. No. 694, Village Oshiwara, Andheri West	Rs. 1,31,09,500/-	Re. 1 /-
2.	06.07.2020	Sub – station Plot size 26 sq. mts.	Survey No. 1461 & 1462/ 78 correspondig CTS. No. 158 & 201 at Village Amboli, Veera Desai Road, No. 1, Andheri West, Mumbai 400 058	Rs. 25,76,500/-	Re. 1/-
3.	31.03.2021	Sub – station room as part of building 7.5 x	CTS. No. 122B, Survey No. 14A/ 1A/ 1A/ 1, Hissa No. 5, Village, Chembur,	Rs. 45,84,500/-	Re. 1/-

		3.59 = 26.92 sq. mts.	Mumbai 400 071		

14. Perusal of these Lease Deeds, clearly show that, although Rs. 1 p.a. is the lease rent, the market valuation is much more higher as set out hereinabove. Therefore, while arriving at market rent in terms of law laid down by Supreme Court in **Atma Ram Properties (P) Ltd. (Supra)** the said lease rent of Rs. 1 p.a. cannot be taken into consideration. It is significant to note that Mr. Jagtiani, learned Senior counsel fairly admitted that there is no prohibition for using the suit premises for any other purpose than electric sub-station. While arriving at the compensation the Court has to do some guess work and accordingly the learned Appellate Court after taking into consideration entire material on record including the valuation report produced by the Respondent No. 1 has come to the conclusion that, Rs. 35,000/- to Rs. 40,000/- per month will be the reasonable market rent which can be received by the landlord if the suit premises is let out and therefore fixed Rs. 35,000/- per month as compensation to be paid during the pendancy of the appeal. No illegality and perversity can be found with the said approach.

15. It is the contention raised by learned Senior counsel of the Petitioner that paragraph No. 9 of the earlier order dated 13th

July, 2022 of the learned First Appellate Court and paragraph No. 15 of the present impugned order dated 2nd March 2023 is same is required to be rejected. The said paragraph No. 15 cannot be read in isolation. The reasons given by the learned Appellate Court are to be seen from paragraph No. 9 to paragraph No. 16. Therefore this is not a case wherein interference is required under writ jurisdiction of this Court under Article 227 of the Constitution of India.

16. Mr. Jagtiani, learned Senior counsel also raised one more contention that, the F.S.I. is not required to be counted if the premises is utilized for electric sub-station. However it is to be noted that the same is only for the purpose of calculation of F.S.I. and it cannot be said that the premises cannot be used for any other purpose than electric sub-station. In fact, Mr. Jagtiani has relied on the Development Control Regulation for Greater Mumbai, 1991 and DCPR 2034 for raising said contention. However it appears that the present building is constructed much more earlier and nothing is pointed out that at the relevant time the construction is free of F.S.I. In any case Mr. Jagtiani has fairly admitted that, there is no prohibition for user of the said premises for other industrial user and therefore, there is no substance in the said contention.

17. The supreme Court in the case of **Surya Dev Rai Vs. Ram**

Chander Rai and Others have clearly held that the jurisdiction of this court under Article 227 is to be utilized in the case where the Court or authority has exceeded his jurisdiction and totally illegal order is passed. On the touchstone of said parameters, this is not a case where the interference is required under writ jurisdiction of this Court under Article 227 of the Constitution of India and therefore the Writ Petition is dismissed.

18. Mr. Jagtiani at this state seeks stay of this order and seeks some time to comply with order dated 2nd march, 2023 passed by the learned Appellate Court. Time to comply with said order dated 2nd March, 2023 of the learned Appellate Court of Small Causes Court is extended by a period of four weeks.

19. For the above reasons, Writ Petition is dismissed however, with no order as to costs.

(MADHAV J. JAMDAR, J.)