



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3221/2023

<u>PETITIONERS</u>	1. Smt. Shanta wd/o Manohar Buradkar aged about 67 years, Occ. Household r/o c/o Hill Top Lodge, opposite Patwardhan High School, Pandit Nehru Marg, Sitabuldi, Nagpur – 440 012. 2. Sau. Suchitra w/o Prafulla Dakhole aged about 45 yrs., Occ. Household r/o c/o Hill Top Lodge, Opposite Patwardhan High School, Pandit Nehru Marg, Sitabuldi, Nagpur – 440 012. 3. Pravin s/o Manohar Buradkar aged about 43 yrs., Occ. Business r/o c/o Hill Top Lodge, Opposite Patwardhan High School, Pandit Nehru Marg, Sitabuldi, Nagpur – 440 012. 4. Sau. Priti w/o Shekhar Lande aged about 37 yrs., Occ. Household r/o c/o Hill Top Lodge, Opposite Patwardhan High School, Pandit Nehru Marg, Sitabuldi, Nagpur – 440 012. 5. Nishant s/o Manohar Buradkar aged about 33 yrs., Occ. Nil, r/o c/o Hill Top Lodge, Opposite Patwardhan High School, Pandit Nehru Marg, Sitabuldi, Nagpur – 440 012. (All above are the legal representatives of deceased Manohar s/o Ramdas Buradkar, the original applicant in M.J.C. No.28/2005)
	<u>...VERSUS...</u>

<u>RESPONDENT</u>	The Nagpur Popular Book Shop through its Manager Vilas s/o Wamanrao Todkar, aged about – 70 yrs., Occ. Business c/o Hill Top Lodge, opposite Patwardhan High School, Pandit Nehru Margk, Sitabuldi, Nagpur – 440 012.
Mr. V.G.Bhamburkar, Advocate for petitioners Mr. T.D.Mandlekar, Advocate for respondent	

WITH
WRIT PETITION NO.1952/2021

<u>PETITIONER</u>	The Nagpur Popular Book Shop through its Manager Vilas s/o Wamanrao Todkar, aged about – 70 yrs., Occ. Business c/o Hill Top Lodge, opposite Patwardhan High School, Sitabuldi, Nagpur, District– Nagpur.
<u>...VERSUS...</u>	
<u>RESPONDENTS</u>	Late Manohar Ramdas Buradkar (dead) Through legal heirs :- 1. Smt. Shanta wd/o Manohar Buradkar aged about 66 years, Occ. Household 2. Sau. Suchitra w/o Prafulla Dakhole aged about 43 yrs., Occ. Household 3. Pravin s/o Manohar Buradkar aged about 42 yrs., Occ. Business 4. Sau. Priti w/o Shekhar Lande aged about 37 yrs., Occ. Household 5. Nishant s/o Manohar Buradkar aged about 32 yrs., Occ. Business.

	All R/o Hill Top Lodge, Opp. Patwardhan High School, Sitabuldi, Nagpur District – Nagpur.
Mr. T.D.Mandlekar, counsel for the petitioner. Mr. V.G.Bhamburkar, counsel for the respondents.	

CORAM : AVINASH G. GHAROTE, J.

Date of reserving the judgment : 03/11/2023

Date of pronouncing the judgment : 10/11/2023

J U D G M E N T

1. Heard. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the rival parties.

2. Both these petitions question the judgment passed by the Additional Judge Small causes court in M.J.C. No.28/2005 dated 9/2/2021 under Section 8 of the Maharashtra Rent Control Act fixing the fair rent of the premises in question at Rs.12,000/- per month [@ Rs.20/- per sq. ft. for the area of 645 sq. ft.] payable from the date of filing of the MJC and the judgment of the learned District Judge- 3 in revision No.17/2014 dismissing the revision (pg.197).

3. Writ Petition No.1952/2021 is by the tenant challenging both the judgments fixing the fair rent at Rs.12,000/-, being aggrieved by the fixation as well as quantum. Writ Petition NO.3221/2023 is by the landlord seeking enhancement of the rate at which the fair rent has been fixed.

4. It is not in dispute that the suit premises is a shop No.2-Southern side shop, on the ground floor of the building situated on Nehru Marg opposite Patwardhan High School at Sitabuldi Nagpur bearing house no.291 [old] 386 [new] within the limits of the Nagpur Municipal Corporation, Nagpur. The ownership of the shop premises by the landlord is not disputed, nor is it disputed that the tenant is running his business therein under the name and style of "Nagpur Popular Book Shop". It is also not disputed that the tenancy is since 15/9/1986.

5. There appears to be a dispute regarding the area of the shop. The landlord in his application under section 8 claims that it is admeasuring 645 sq. ft., (i.e. 33 x 15 ft. = 495 sq. ft. on the ground floor and 15 x 10 ft. = 150 sq. ft on the mezzanine floor), as against which the tenant claims the area in his possession to be 450 sq. ft. The monthly rent of the shop no.2 is

Rs.900/- per month inclusive of corporation taxes and exclusive of electricity consumption charges. The tenancy is governed by the English calendar month and commences on 1st of each month.

6. The application was initially initiated by Manohar Ramdas Buradkar, upon whose demise on 27/12/2012 his legal representatives were brought on record.

7. On behalf of the landlord two witnesses have been examined (1) Praveen s/o Manohar Buradkar (pg.116) at Exh.21, as the power of attorney of the original applicant – Manohar Buradkar, who has deposed that there were two shops on the ground floor of house no.386 on the front side of the building and one of them, the southern shop was being occupied by the tenant from where he was doing the business of sale of books under the agreement dated 15/9/1968. The other shop on the ground floor (northern side) was in possession of the uncle of AW-1 - Rajendra. He further deposed that the area in possession of the tenant including that of the mezzanine floor was 645 sq. ft. and the rent being very meagre, the premises being situated in the commercial locality, being used for commercial purposes a rate of Rs.60/- per sq. ft. as fair rent was reasonable. His cross-examination,

indicates, that there is no cross-examination regarding the area, except for a suggestion in para 17 to which he answers that there is a possibility that suit shop block comparatively may be of less area than the shop block of Rajendra Buradkar. He, however, admits that he has not produced any document on record to show that the tenant was in possession of 33 x 15 ft. on the ground floor and 15 x 10 ft. on the mezzanine floor nor has produced the sanction map of the building on record. What is material to note that in his examination-in-chief below Exh.21 AW-1 has only produced the certified copy of the power of attorney executed in his favour by his father at Exh.22 and no other document. He also admits in para 21 that he has not produced on record any document to show that the prevailing rate of rent in that area was Rs.60/- per sq. ft. and that this was not the rate which was mentioned in the application, as the application was filed in the year 2005. He also admits not to have placed on record any document to show that municipal taxes had increased.

8. The other witness examined was Nishant s/o Manohar Buradkar at Exh.31/C who deposed that his father Manohar had executed an agreement of tenancy in favour of one Manoj Dewaji Ambule in respect of a small room admeasuring

4.5 x 6.5 ft. in the premises of the building named as Hill Top Lodge, New House No.386 for which the rent was Rs.2300/- per month. In his examination-in-chief he had produced a certified copy of the plaint in RCS No.298/2011 at Exh.40 filed by the said Manoj Ambule against Manohar in which the above position was indicated. His evidence does not say anything else. Thus, on behalf of the applicants the entire evidence comprises that of the two sons of the original applicant and the plaint in RCS No.298/2011 (Manoj Dewaji Ambule Vs. Manohar) a suit for declaration and permanent injunction for restraining the landlord from disturbing his possession at Exh.40.

9. On behalf of the tenant he examined himself at Exh.47, a perusal of which, would indicate, that he agrees that what is let out to him is an area admeasuring 33 x 15 ft. on the northern side of the building which included the mezzanine floor admeasuring 30 x 10 ft. including one toilet and bathroom. It is his contention that initially four additional rooms were tenanted to him on the first floor which were vacated and the shop premises was also shifted on the southern side because of which he lost frontage and thereby business. He further states that the area does

not command the rent which is being claimed of Rs.12,000/- per month and the initial rent which was Rs.375/- per month in 1976 was from time to time increased to the present rent of Rs.900/- per month.

10. In his further examination-in-chief the tenant has only exhibited two documents one at Exh.48 the judgment in RCS No.602/2004, initiated by Manohar against him for the need of his son Praveen and the deposition therein at Exh.49. He states in the cross-examination that the area in his occupation may be 450 sq.ft. He however, admits, that there is a tenant Manoj Fulwala in front of the suit shop, which is a Tin-Tapari.

11. It is based upon the above position that the learned Small Causes Court by his judgment dated 05/04/2014, by relying upon the guidelines by the Hon'ble Apex Court regarding the fair rent in *Mohd. Ahmad Vs. Atma Ram Chauhan* reported in **2011 AIR SCW 1** rendered a finding that the area in occupation of the tenant was 640 sq. ft. and considering the locality in which the premises was situated held that the rent of Rs.20/- per sq. ft., would be the fair market rent and accordingly fixed the same from the date of the application.

12. Two revisions were filed against the judgment dated 5/4/2014 in MJC No.28/2005. Civil Revision No.17/2024 was filed by the tenant and Civil Revision No.21/2014 was filed by the landlord. The learned Revisional Court by two judgments both dated 9/2/2021 dismissed both the revisions holding that the rent fixed by the Small Causes Court of Rs.12,000/- per month was correct.

13. Mr. Mandlekar, learned counsel for the tenant submits that there is no material on record for the Courts below to have arrived at a finding regarding the area as well as the fair rent of the shop premises, considering the nature of evidence brought on record by the landlord. No agreement of leave and licence, tenancy has been placed on record in respect of any premises in the vicinity of the suit premises to demonstrate what is the rate of rent prevailing in the locality. No document from the office of the Sub-Registrar of documents, also has been brought on record to indicate what was the ready reckoner rate prevailing in the locality, so as to make available to the Courts below, some basis for determining what would be the fair rent, considering which he submits that the rate of Rs.20/- per square feet awarded by the Courts below, was fanciful and without any basis at all. The

learned counsel contends that without the requisite material to determine the rate of rent prevailing in the locality as indicated above any figure arrived at would not stand the test of evidence which is required, in law, to arrive at any figure as to the fair rent. The plaint in RCS. No.298 of 2011 filed by Manoj Ambule, cannot form the basis of any determination, as that does not depict the correct position. He thus contends that both the judgments are required to be quashed and set aside and the application u/s 8 is required to be dismissed.

14. Mr. Bhambhurkar, learned Counsel for the landlord, while supporting the impugned judgments, contends that the rate awarded needs enhancement, as the shop premises is situated in the heart of the city which is a commercial district, with all facilities and amenities at a stones throw distance. The Metro Station is at a walking distance of 100 meters; the Sitabuldi Market is at a distance of 300 meters; there are hotels; hospitals; commercial shops, within a radius of 200 meters and considering the tenancy was of the year 1968 and the rent was Rs.900 per month, the same needed to be enhanced, in view of the passage of time. The last revision of rent was done in some decades ago at Rs.900/- per month. Time, rising pricing index, cost of living and

various other factors, according to him have contributed for the need to claim fixing the fair market rent. The plaint in RCS No.298 of 2011 according to him, was enough to form a basis for enhancement of the rent. The principles as enunciated in ***Mohd. Ahmad*** (supra) also indicate the need to enhance the rent to a fair rent which have been taken into consideration by the Courts below in determining the fair rent, which needs enhancement, to what has been claimed by the landlord to Rs.60/- per square feet. He therefore submits that the fair rent fixed by the Courts below in fact needs enhancement, to the extent as claimed by the landlord.

15. I, have gone through the material on record in both the petitions; the application, reply, evidence and judgments. It cannot be disputed that the fair rent of a premises has to be fixed on the basis of the prevailing rent in the locality for similar premises. The prevailing rent can be demonstrated by agreements of lease, leave and licence or any other mode of letting premises, by producing on record certified copies of such documents or their Index-II entries in the office of the Sub-Registrar, where they may have been registered. The fair rent can also be demonstrated by rent receipts, admission of tenants in legal proceedings, and any

other document(s) which can be said to have a material bearing on this factor. At times, in absence of such documents, even the annual letting value taken into consideration by the Municipal Corporation for determining the Municipal Taxes, could also form the basis of such determination. The ready reckoner prepared by the Collector of Stamps under the provisions of the Maharashtra Stamp Act, could also give an indication of the market rate of sales in the locality and thus permitting the Court to have an idea of the value of the properties as prevailing in the locality, thereby giving a pointer for the purposes of determining the fair rent. In the instant case, however, what is available is only the plaint in RCS No.298 of 2011 a perusal of which indicates that for an area admeasuring 4.5 x 6.5 feet = 29.25 sq. feet the rent paid by the plaintiff therein was Rs.2300. In my considered opinion, the same being part of the judicial record of the Court, can be taken into consideration for determining the fair rent. Since evidence has come on record from both the sides that there were only two shop blocks on the ground floor of the building, out of which the Southern side shop is occupied by the tenant and what was in occupation of Manoj Ambule, the plaintiff in RCS No.298 of 2011, only a tin tapari, in front of the shop of the tenant, the position

that Manoj Ambule, was occupying a portion of land in front of the shop occupied by the tenant, becomes an undisputed one (see cross-examination of the tenant-para 15, Exh-47). In that light of the matter, the averments in RCS No.298 of 2011, can be taken into consideration as one of the factors for determining the fair rent of the premises as occupied by the tenant. It is however also necessary to note that though material as indicated above could have been brought on record by the landlord, to demonstrate what was the rent prevailing in the vicinity, that however has not been done, which would indicate a failure on part of the landlord to procure the relevant material necessary, in the above form for the determination of fair rent for the shop premises. However the plaint in RCS No.298 of 2011, being the sole material available, to indicate the rate of rent, the same will have to be considered with all caution. It is also necessary to note that since the plaint in RCS No.298 of 2011, was on record and was exhibited in the evidence of AW-2, as Ex.40, the tenant was aware that this was going to be used by the landlord, to base his claim for fair rent. In this circumstance, the tenant could have brought material on record to indicate, what according to him was the fair rent prevailing in the vicinity, if he wanted the Court not to place any reliance upon

Ex.40. The tenant also has miserably failed to bring any material on record, to indicate that the rate of rent in the locality, was not the one which was indicated by the averments in Ex.40, but something else. The entire case therefore is based on Ex.40 and will have to be considered in its background.

16. The Complaint in RCS.No.298 of 2011, as indicated above demonstrates the payment of rent for a tin tapari admeasuring 29.25 sq. feet, which appears to be in the front marginal space of the plot and also not a sanctioned construction to be Rs.2300 per month. Calculating the rent per square feet on its basis i.e. $2300/29.25$ gives a figure of Rs.78.63 per square feet. Even if we take the area occupied by the tenant of shop no.2, as 450 sq. feet as per his contention, then the fair rent at the above rate would be $450 \times 78.63 = \text{Rs.}35,383.5$ per month. As against this the learned Small Causes Court has fixed the fair rent @ Rs.20/- per square feet, which in my considered opinion is definitely on the lower side, considering the above calculations, based upon Ex.40. However as indicated above, the learned Small Causes Court while fixing the fair rent has chosen to err on the side of caution , considering that Ex.40, was the only evidence and has therefore fixed the fair rent @ Rs.20/- per square feet, which by all terms,

appears to be a reasonable amount, considering that the last increase of rent by the tenant was done some decades ago and the fact that Sitabuldi area in Nagpur city is the heart of the commercial district with all facilities and amenities available at walking distance. For fixing the fair rent a balance has to be achieved, considering also the fact that the tenant is an old one, no repairs, improvements have been demonstrated to have been effected to the tenanted premises by the landlord and at the same time considering that there is definitely a need for increase of rent considering the passage of time and the landlord being required to be awarded a fair return for the premises being occupied by the tenant. In my considered opinion, the judgment of the learned Small Causes Court, can be said to have achieved such a balance, considering the various factors as indicated above. I, therefore am of the opinion, that considering the factual position as extant and the fact that Ex.40, is the only material on record to indicate the rate of rent, and the failure on part of the landlord as well as the tenant to bring other relevant material on record, the rate of rent as fixed by the learned Small Causes Court can be said to be fair and proper and thus does not require any interference in writ jurisdiction, and also for the reason, that there are concurrent

findings of facts rendered by both the Courts below and nothing has been brought to my notice to indicate perversity in that view.

17. Though ***Mohd. Ahmad*** (supra) has been relied upon by the learned Counsel for the tenant, it in fact spells out the need to enhance the rent equivalent to the market rate (see paras 21 and 22 therein).

18. In the result both the petitions are hereby dismissed. Considering the circumstance there shall be no order as to costs.

19. Rule stands discharged.

(AVINASH G. GHAROTE, J.)

Wadkar