

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

W.P.L.R.T 134 of 2024

Saraf Investment Pvt. Ltd.
Versus
Ajay Kumar Rathod

For the Petitioner : Mr. Bikash Goswami,
Mr. Mayank Kakrania,
Ms. Satabdi Bhattacharya.

For the Respondent : Ms. Debjani Sengupta,
Mr. Sayan Dev Kumar,
Ms. Paulomi Ghosh.

For the State : Mr. Md. T. M. Siddiqui,
Mr. S. Adak,
Ms. Debdooti Dutta.

Hearing is concluded on : 12th December, 2024

Judgment On : 19th December, 2024

Partha Sarathi Chatterjee, J.

1. Under assail in this writ petition is the judgment and/or order dated August 23, 2024, passed by the Learned Tribunal in the Original

Application (in short, OA) No. 1866 of 2014 (LRTT). By the aforesaid order, the Learned Tribunal dismissed the OA, thereby upholding the decision of the Rent Controller, which had determined the fair rent in relation to the subject premises in accordance with Section 17 (4A) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the Act of 1997).

2. Before delving into the contentious matter at hand, it would be apt to first address the material facts, as set forth in the writ petition, which are reproduced below for clarity:

- i) The petitioner, Saraf Investment Private Limited, a private limited company with its registered office located at 24, RM Mukherjee Road, 3rd Floor, Kolkata-1, was inducted as the lessee/tenant into the premises, a commercial space of 2150 Sq.fts., by the predecessor in interest of respondent No. 2. This tenancy commenced in May 1966 for a term of 20 years, with a monthly rent of Rs. 1825/-, pursuant to a deed of lease executed on May 1, 1966.
- ii) Over time, the lease term expired in 1986. Subsequently, on August 18, 1993, a new tenancy agreement was executed between the petitioner and respondent No. 2, at an increased monthly rent of Rs. 5100/-. However, on November 22, 2002, the petitioner received a letter from respondent No. 2 demanding an enhancement of the rent. This demand prompted the petitioner to file Title Suit No.

514 of 2004 (hereinafter referred to as the suit) in the City Civil Court at Kolkata, seeking a declaration that the petitioner remained a lawful tenant of respondent No. 2 with a monthly rent of Rs. 5100/-, and that the letter dated November 22, 2002, was unlawful and without basis.

- iii) The suit was disposed of by a final judgment and decree passed on July 27, 2009, declaring that the petitioner is a lawful tenant of the premises at a monthly rent of Rs. 5100/-, and that the letter dated November 22, 2002, is illegal.
- iv) Meanwhile, in January 2009, the respondent No. 2 filed an application before the Rent Controller, Kolkata, seeking the fixation of fair rent and other reliefs concerning the payment of maintenance charges and municipal taxes under Sections 17 (4A), 5 (7), and 5 (8) of the Act of 1997. Based on this application, the Rent Controller initiated a proceeding vide. Case No. 12 of 2009.
- v) Concurrently, the respondent No. 2 filed an appeal, FAT No. 541 of 2009, before this Hon'ble Court, challenging the judgment and decree passed in Title Suit No. 514 of 2004. In connection with the appeal, an application (CAN No. 9732 of 2020) was also filed seeking a stay on the operation of the judgment and decree. The application was disposed of by an order dated May 14, 2010, granting

liberty to respondent No. 2 to accept an occupation charge of Rs. 5100/- per month, without prejudice to the rights and contentions of the parties, and subject to the outcome of the appeal. An interim order was also passed restraining respondent No. 2 from disturbing the petitioner's possession of the premises, except through due legal process, and directing the parties to maintain the status quo regarding possession, nature, and character of the premises. However, the appeal and its connected applications were withdrawn on February 27, 2024.

- vi) Meanwhile, the Rent Controller disposed of Case No. 12 of 2009, fixing the fair rent at Rs. 10,950/- per month, payable from the month following the issuance of the notice, i.e., January 2003. Additionally, the petitioner was directed to maintain a charge at the rate of 10% of the fair rent, along with the municipal tax, with the stipulation that the fixed fair rent would automatically increase by 5% every three years.
- vii) Aggrieved by that order, the petitioner filed the OA. However, the learned Tribunal rejected the petitioner's contention and ultimately dismissed the OA, concluding that the Rent Controller had correctly determined the fair rent in accordance with the provisions of Section 17 (4A) of the Act. Consequently, the petitioner has instituted the

present Writ Petition, challenging the order of the learned Tribunal.

3. Mr. Goswami, learned advocate appearing in support of the writ petition, meticulously referred to the facts and events related to the tenancy, outlining them date-wise and year-wise in great detail. He invited our attention to the judgment and decree passed in the suit and the order of withdrawal of the appeal, and argued that the decree of the learned City Civil Court, which attained finality following the withdrawal of the appeal, declared the petitioner to be a lawful tenant of the premises and that the letter dated November 22, 2002, is illegal. He contended that since the letter dated November 22, 2002, formed the basis for the proceeding before the Rent Controller, and it has been declared illegal, the Rent case initiated based on that letter is also flawed.
4. Apart from that, he argued that the Rent Controller had erred in determining the fair rent by invoking the provisions of Section 17(4A) of the Act of 1997. He elaborated on this point by contending that a fresh tenancy was created in 1993, and the rent case was instituted in 2009. Therefore, since the tenancy had not existed for 20 years prior to the initiation of the rent case, Section 17(4A) of the Act could not be applied in the present case. Furthermore, he argued that Sections 17(4A) and 17(4B) were introduced into Section 17 of the Act through an amendment effective from July 10, 2001. Consequently, the period from July 10, 2001, to 2009 would only amount to eight years, and thus the conditions of Section 17(4B) were also not fulfilled in this case. In light of this, the Rent Controller misdirected itself in fixing the fair rent under Section 17(4A) of

the Act. He argued that these issues were raised before the learned Tribunal, but it glossed over them and failed to return any finding on the same, which warrants interference with the order impugned in the Writ Petition.

5. In response, Miss Sengupta, learned advocate representing respondent No. 2, referring to the provisions of Section 44 of the Act, argued that, in view of this provision, no Civil Court can fix the fair rent, and that the fixation of fair rent falls within the domain of the Rent Controller. She submitted that the judgment and decree cannot preclude the application of Section 17 of the Act. She asserted that nothing in the judgment and decree has been decided in such a manner that it could operate as *res judicata*, thereby restraining the Rent Controller from proceeding with the case.
6. Inviting our attention to a certain portion of the judgment passed in Title Suit No. 514 of 2004, she argued that the learned City Court itself held that the Rent Controller has the power to enhance the fair rent by invoking the provisions of Section 17 of the Act.
7. Needless to say, under the provisions of Section 45 of the Act, only the suits and other proceedings pending before the commencement of the Act of 1997 were saved. However, any dispute arising in relation to the incidents of tenancy after the promulgation of the Act of 1997 shall be governed by the provisions of the Act of 1997. Therefore, it follows that in the present case, the issue pertaining to the determination of fair rent shall be governed by the relevant provisions of the Act of 1997.
8. Undoubtedly, in the present case, the tenant concerned sought the intervention of the City Civil Court at Calcutta by instituting a suit, *vide*

T.S. No. 514 of 2004. As observed earlier, the suit was decreed by declaring that the petitioner is a lawful tenant under respondent No. 2 at a monthly rental of Rs. 5100/- and that the letter demanding an increased rent notice is illegal.

9. As noted earlier, Mr. Goswami attempted to impress upon us that the letter and/or notice dated November 22, 2022, formed the basis for the Rent Case before the Rent Controller. Since the notice had been declared illegal, he argued that the entire Rent case is flawed.
10. A notice under Section 20 of the Act serves to inform the tenant of the landlord's intention to increase the rent. However, it is not a mere formality. If the tenant, despite receiving the notice, neither responds nor pays the rent at the increased rate, the enhanced rent becomes recoverable from the month or period of tenancy next after the expiry of thirty days from the date on which the notice is given. If the tenant agrees to the rent increase upon receiving the notice, the matter ends. If not, the landlord has to approach the Rent Controller under Section 17 for fair rent determination.
11. Under Section 17(1) of the West Bengal Premises Tenancy Act, 1997, both the landlord and tenant have the right to directly approach the Rent Controller for the fixation of fair rent. This can be done in accordance with the procedure outlined in Rule 8 of the West Bengal Premises Tenancy Rules, 1999. Importantly, the Act does not mandate the issuance of a notice under Section 20 as a prerequisite for either party to approach the Rent Controller for fair rent determination. Therefore, the notice dated November 22, 2002 should not be regarded as the foundation for initiating a rent case.

12. It is crucial to emphasize that no part of a judgment should be interpreted in isolation, as this may lead to a distorted understanding and/or misinterpretation of the judgment. Settled proposition is that a landlord cannot arbitrarily set the rent according to personal discretion. However, in this particular case, the landlord has fixed the rent and demanded payment thereof by issuing a notice and since such action of the landlord was not in compliance with the legal provision, the notice was declared illegal.

13. We have no hesitation in accepting the proposition that Section 44 of the Act of 1997 has completely removed the jurisdiction of the Civil Court in matters related to the fixation of fair rent for any premises governed by the Act. Additionally, the Civil Court no longer has the authority to grant injunctions concerning any action taken or to be taken by the Rent Controller. As a result, the Civil Court lacked jurisdiction to make any decision regarding the determination of fair rent, a matter that falls exclusively within the domain of the Rent Controller. The Civil Court itself also acknowledged this proposition in the judgment passed in the suit.

14. In the present case, the Rent Controller, in its order, observed that the tenant was inducted into the premises in 1966 for a period of 20 years, and that this contractual tenancy expired in 1986. Thereafter, a new contractual tenancy was created in 1993. Taking note of these facts, the Rent Controller invoked the provisions of Section 17(4A) of the Act of 1997 and determined the fair rent accordingly.

15. It is admitted that after 1986, the tenant held over as a statutory tenant and subsequently entered into a new contractual tenancy.

Therefore, from 1986 to 1993, the tenant held the premises as a statutory tenant. Needless to observe that a statutory tenant enjoys all the rights and is saddled with all the obligations of a contractual tenant until he is evicted in due course of law.

16. Mr. Goswami attempted to impress upon us that the terminus a quo for the period of 'twenty' years would be the date when the amended provisions of Section 17(4A) of the Act came into effect.
17. Notably, in both Sections 17(3) and 17(4A) of the Act of 1997, the phrase 'tenancy subsists for twenty years or more' is used, and similarly, in Sections 17(4) and 17(4B) of the Act, the phrase 'tenancy subsists for ten years or more' appears as one of the three conditions. It is also admitted that the amended provisions of Sections 17(4A) and 17(4B) were introduced in Section 17 of the Act through an amendment effective from 10.07.2001. The provisions of Sections 17(3), 17(4), 17(4A), and 17(4B) also include another condition—'in respect of premises constructed in or before 1984'.
18. As observed earlier, Section 45 of the Act only saves only the pending proceedings, and the Act applies to tenancies created before its enactment. Furthermore, the phrase 'in respect of premises constructed in or before 1984' suggests that the legislature intended to consider past events also. Therefore, the scheme of the Act clearly indicates that the terminus a quo for computing 'twenty' or 'ten' years would be the date of creation of the tenancy, even if it was created before 10.07.2001.
19. After assessing the evidence presented by the parties, the Rent Controller determined the fair rent by invoking the provisions of Section 17(4A) of the Act, treating the rent payable as on 1.1.1976 as the base price.

The learned Tribunal, after reviewing the materials on record, arrived at a specific finding on the factual aspects and upheld the Rent Controller's order. We find no patent error, let alone any jurisdictional error, in the decision-making process that would warrant interference with these orders.

20. Therefore, as a result, the writ petition fails and as such, the same is dismissed, however, without any order as to the costs.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)