



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8448 OF 2024

1. Sunil Ramchandra Chaudhary
Age: 64 years, Occupation: Business,
 2. Anil Ramchandra Chaudhary
Age: 57 years, Occupation: Business,
Petitioner Nos. 1 and 2
R/o: 24, Budgular Plot,
80 feet road, Dhule 424001
 3. Sou. Sadhana Dattatraya Wavhal,
Age: 60 years, Occupation: Self-employed,
R/o: 14/601, Flower Valley Complex,
Eastern Express Highway,
Thane (W)-400 601
- ... PETITIONER**

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Tribal Development Department,
Mantralaya, Mumbai – 32
 2. The Commissioner,
Tribal Development,
Adivasi Vikas Bhavan, Nashik
 3. The Project Officer,
Integrated Tribal Development Project,
Dhule
- ... RESPONDENTS**

....
Mr. V. D. Hon, Senior Advocate i/b Mr. A. V. Hon, Advocate for the
Petitioners
Mr. R.S. Wani, AGP for the Respondent – State
....

**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

**RESERVED ON : 12.08.2024
PRONOUNCED ON : 22.08.2024**

JUDGMENT (Per – Y. G. Khobragade, J.) :-

1. Rule. Rule made returnable forthwith and heard finally
by the consent of the parties.

2. By the present Petition under Article 226 of the
Constitution of India, the Petitioners have put forth prayer clauses
(B), (C), (D), (E) and (F) as under:-

*“[B] Issue a writ of certiorari or writ in the like nature and
quash and set aside the impugned communication dated
2.07.2024 issued by the Project Officer, Integrated Tribal
Development Project, Dhule.*

*[C] Issue a writ of certiorari or writ in the like nature and
quash and set aside the impugned communication dated
31.05.2024 issued by the Principal Secretary, Tribal
Development Department, Mantralaya.*

[D] Issue a writ of certiorari or writ in the like nature and quash and set aside the impugned order dated 4.08.2023 passed by the Commissioner, Tribal Development Department, Nashik.

[E] Issue a writ of mandamus or writ in the like nature directing the respondents to fix rent of Chaudhari Property, Plot No.24, Badgujar Plot, 80 feet road, Near Dr. Subhash Bhamre, Dhule 424004 ("The Property") as per the rent certificate issued on 12.04.2023 issued by Executive Engineer, Public Works Department, Dhule.

[F] Issue a writ of mandamus or writ in the like nature directing the respondents to release the arrears of rent of Chaudhari Property, Plot No.24, Badgujar Plot, 80 feet road, Near Dr. Subhash Bhamre, Dhule 424004 ("The Property") from 1.09.2018 as per the rent certificate issued on 12.04.2023 issued by Executive Engineer, Public Works Department, Dhule."

3. Heard learned Senior Advocate Shri Hon, on behalf of the Petitioners and Mr. Wani, learned AGP on behalf of Respondents, at length.

4. Mr. Hon, the learned Senior Advocate canvassed that, on 2nd November, 2018, the Petitioners are entered into an rent agreement with the Respondents for letting the property bearing Plot No.24, Badgujar Plot, 80 feet road, Near Dr. Subhash Bhamre, Dhule. As per said agreement it was agreed about determination of rent of premises by the Public Works Department (P.W.D.). On 12.04.2023,

the Executive Engineer, P.W.D. has issued a rent certificate deriving the rent @ Rs.45/- per square feet. However, the Respondents have overlooked the rent certificate and granted rent certificate as per the old rate on 25.05.2019. So also, the Respondents turned down the request of the Petitioners for revision of the rent certificate issued on 12.04.2023, 04.08.2023 and 31.05.2024.

5. It is further canvassed that on 23.04.1984, the State Government issued a circular and thereby framed guidelines for fixation of rent certificate in respect of private properties. As per said circular, the Respondents are required to consider the prevailing market rate for determination of the rent. On 16.02.1987, again Government of Maharashtra through P.W.D. issued another circular thereby issued guidelines for issuance of rent certificate while taking the private properties on rent by the department of the State Government. The learned Senior Advocate appearing for Petitioner further submits that the Respondent Authority required to consider prevailing market rate of rent as applicable for the local area as per the circular dated 15.02.2005 while taking the private property on rent/lease. As per said resolution, unless and until rent is fixed, the

Government Authorities cannot take possession of the private property. Further, on 18.10.2017, the State Government issued a circular and framed guidelines for granting online rent certificate while renting private properties. Therefore, the Respondent Authorities are required to consider the prevailing market rates for determination of rent as per said circular, which has been issued in continuation of previous circular dated 23.04.1984.

6. The learned Senior Advocate appearing for the Petitioners further canvassed that on 11.07.2017, the Petitioners submitted a proposal to the Respondent No.3 Project Officer for letting their property as per the prevailing market rates, initially for the period of three years and possession of the writ property handed over to Respondent No.3 on 01.09.2018. It is canvass that, while letting the writ property on rent, the rent of Rs.1,59,352/- per month was fixed for the period of three years i.e. @ Rs.28/- per square feet for 529.9 square meter, vide communication dated 08.07.2019. The Petitioners lodge their protest towards the rent fixed by the Executive Engineer, P.W.(Tribal) Department, Dhule. However, on 01.08.2019, the Circle Revenue Officer, Integrated Tribal Development Project, issued a

communication to the Collector, Dhule and prayed for fixation of the rent of writ property as per the prevailing market rates because the rent fixed by the Executive Engineer, P.W. (Tribal) Department, not acceptable to the Petitioners.

7. The learned Senior Advocate further canvassed that the Divisional Officer issued a communication to the Additional Tahsildar, Dhule and recommended for fixation of rent of the writ property @ Rs.55/- per square feet, so also, the Petitioners pointed out that various banks are paying rent @ Rs.85 – 100/- per square feet and as such, the Petitioners are agreed for the rent of the writ property @ Rs.55/- per square feet and the prevailing market rate of rent, not acceptable to the Petitioners. However, on 07.06.2023, Respondent No.3, Project Officer, issued a communication to Respondent No.2, Commissioner, Tribal Development and made a request for revision of rent of writ property @ Rs.45/- per square feet without considering the guidelines framed by the State Government in Government Resolution dated 23.04.1984 and circular dated 18.10.2017. Therefore, prayed for quashing of the impugned communications dated 04.08.2023, 31.05.2024 and 02.07.2024 and prayed for Writ of

Mandamus, directing the Respondents to fix the rent of writ property as per the rent certificate issued on 12.04.2023 by the Executive Engineer, P.W.D. Dhule. The Petitioners further prayed for release/recovery of arrears of rent of writ property as per the rent certificate issued on 12.04.2023.

8. Per contra, the Respondents raised the preliminary objections about maintainability of the Petition on the ground that the claim of the Petitioners is based on rent/lease agreement dated 2nd November, 2018 executed between the Petitioners and Respondent No.3. The Petitioners have challenged the communication dated 04.08.2023, issued by Respondent No.2, the communication dated 31.05.2024 issued by Respondent No.1 and 02.05.2024, issued by Respondent No.3. Therefore, the relationship between the Petitioners and the Respondents is of Landlord and Tenant or Lessor and Lessee. As per said rent agreement and rent certificate, the monthly rent of tenanted properties fixed to the tune of Rs.1,09,220/-. Accordingly, the Desk Officer of the State Government communicated the same to Respondent No.2 vide impugned communication dated 31.05.2024. Thereafter, immediately Respondent No.3 had informed the present

Petitioners to raise invoice and collect the rent amount. However, instead of raising the said invoice, the Petitioners are disputing about fixation of standard rent. Therefore, there is a dispute about quantum of standard of rent, hence, the Petition under Article 226 of the Constitution of India is not maintainable and prayed for dismissal of the same.

9. After considering strenuous submissions, it prima-facie appears that there exists a dispute between Landlord- Tenant/ Lessor-Lessee i.e. Petitioners and the Respondents, arising out of rent agreement executed on 02.11.2018. Needless to say that to ascertain the quantum of standard of rent both parties are required to lead evidence and disputed question of fact of standard rate of rent cannot be fixed by this Court by invoking the jurisdiction under Article 226 of the Constitution of India. The relationship between the Petitioners and the Respondents being a Landlord and Tenant is governed by the provisions of the Maharashtra Rent Control Act, 1999. Not only this but the relationship between the Petitioners and the Respondents being a Lessor and Lessee is governed under the Transfer of Property Act.

10. In case of *City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Ors*, (2009 1 SCC 168, the Hon'ble Supreme Court of India has held that High Court while exercising its jurisdiction under Article 226, is duty bound to consider whether;

- (a) adjudication of Writ Petition involves any complex and disputed question of facts and whether they can be satisfactorily resolved;
- (b) the petition reveals all material facts;
- (c) the Petitioner has any alternative or effective remedy for the resolution of the dispute;
- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) Ex facie barred by any laws of the limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors.

11. In case in hand it is not in dispute that on 02.11.2018, an agreement of rent/lease has been executed between the Petitioners and Respondent No.3. As per said agreement the petitioners are agreed to let out the writ property to the Respondent no. 3 for the period of 36 months with effect from 01.09.2018 to 31.08.2021. As per terms and conditions of the rent agreement, the Executive

Engineer, P.W.D., was authorised to determine the rate of rent as per current market rate and the petitioners are agreed for the same. The writ property is a private property, which is not exempted within the meaning of Section 3 of the Maharashtra Rent Control Act, 1999. Needless to say that, as per terms and conditions of the rent agreement, the relations between the Petitioners and the Respondents are “Landlords and Tenants” as well as “Lessors and Lessees” under Section 105 of the Transfer of Property Act, 1882.

12. Section 7(14) and (15) of the Maharashtra Rent Control Act, 1999, read as under:-

*“ 7(14) **“standard rent”** in relation to any premises means, -*
(a) where the standard rent is fixed by the Court or, as the case may be, the Controller under the Bombay Rent Restriction Act, 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944 or the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, or the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 issued under the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946, or the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954, such rent plus an increase of 5 per cent, in the rent so fixed; or
(b) where the standard rent or fair rent is not so fixed, then subject to the provisions of sections 6 and 8, -
(i) the rent at which the premises were let on the 1st day of October 1987; or
(ii) where the premises were not let on the 1st day of October

1987 or the rent at which they were last let before that day, plus increase of 5 per cent, in the rent of the premises let before the 1st day of October 1987, or

(c) in any of the cases specified in section 8, the rent fixed by the Court;

(15) “tenant” means any person by whom or on whose account rent is payable for any premises and includes,

(a) such person, -

(i) who is a tenant, or

(ii) who is a deemed tenant, or

(iii) who is a sub-tenant as permitted under a contract or by the permission or consent of the landlord, or

(iv) who has derived title under a tenant, or

(v) to whom interest in premises has been assigned or transferred as permitted, by virtue of, or under the provisions of, any of the repealed Acts;

(b) a person who is deemed to be a tenant under section 25;

(c) a person to whom interest in premises has been assigned or transferred as permitted under section 26;

(d) in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant’s family, who -

(i) where they are let for residence, is residing, or

(ii) where they are let for education, business, trade or storage, is using the premises for any such purpose, with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement by, the court.

Explanation – The provisions of this clause for transmission of tenancy shall not be restricted to the death of the original tenant, but shall apply even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant.”

13. Since, the Petitioners have prayed for fixation of standard rent as per current market rate in pursuance of the Government Resolution dated 18.10.2017 issued in continuation of circular dated 23.04.1984 and as such, the Respondents/Government Authorities are not agreed for the said rate of rent as well as the rent certificate dated 12.04.2023 issued by the Executive Engineer, P.W.D., Dhule.

14. In the case in hand it involves disputed and complex questions of facts in respect of fixation of standard rent which is of purely civil nature, hence, it would not be appropriate to adjudicate the same while exercising the jurisdiction under Article 226 of the Constitution as per the law laid down in the case of **City and Industrial Development Corporation (supra)**.

15. Therefore, **the present Writ Petition is dismissed.** However, the Petitioners are at liberty to avail of an appropriate proceedings before the appropriate forum for redressal of their grievance, if so desired. Accordingly, Rule is discharged.

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]