

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WPLRT 170 of 2024

Kamal Singh Jain & Anr.

Vs.

Anil Kumar Poddar

With

WPLRT 47 of 2025

Anil Kumar Poddar

Vs.

Kamal Singh Jain & Anr.

For the Petitioners in
WPLRT 170 of 2024
and Respondents in
WPLRT 47 of 2025

: Mr. Saptangsu Basu, Sr. Adv.
Mr. Rohit Banerjee, Adv.
Mr. Saptarshi Bhattacharjee, Adv.

For the Respondent
Landlord in
WPLRT 170 of 2024
and Petitioner in
WPLRT 47 of 2025

: Mr. Aniruddha Chatterjee, Sr. Adv.
Mr. Ashim Kumar Roy, Adv.
Mr. Anirban Roy, Adv.
Mr. Debjit Basu, Adv.

Heard on

: April 11, 2025

Judgment on

: May 15, 2025

Md. Shabbar Rashidi, J.:-

1. The two writ petitions are in assailment of a common judgment and order dated October 7, 2022 passed by the West Bengal Land Reforms and Tenancy Tribunal in O.A. No. 3474 of 2022 and O.A. No. 3297 of 2022 (M.A. No. 496 of 2023) (LRTT) arising out of order dated August 24, 2022 passed by the learned Rent Controller in R.C. 440 of 2003.

2. According to the case made out by the parties, the suit premises is located in a prestigious building in a commercial hub of Kolkata situated at 17, Ganesh Chandra Avenue, Kolkata 700013, situated on the southern side of Sir R N Mukherjee Road. The suit premises is an office unit having a carpet area of 1700 square feet with a super built area of 2261 square feet on the fourth floor of a well-maintained prime commercial building. The aforesaid building was recently renovated and had the amenities of well-maintained floorings, lift and lobby, round the clock water supply, sanitary and plumbing installations and a supply of filtered water from the Municipal Corporation.

3. It was further the case of the parties that the suit premises was let out by the landlord, Anil Kumar Poddar, to the tenant Nos. 1 & 2 namely Kamal Singh Jain and Jatan Lal Bardia on and from August 1, 1988 in terms of an agreement to that effect dated August 1, 1988 at a

monthly rental of ₹3,060/-. The monthly rental was enhanced to ₹3,366/- with effect from August 1, 1998. Since then, the monthly rental for the suit premises was never enhanced.

4. It also transpires from the materials placed before us that the landlord approached the Rent Controller, Kolkata, by filing an application under Section 17 (4B) of the West Bengal Premises Tenancy Act, 1997 on June 30, 2003, for fixation of fair rent. The application was registered as RC 440 of 2003. Later on, the landlord filed an application under Section 39 (11) of the Act of 1997 seeking amendment of the original claim under Section 17 (4B) of the West Bengal Premises Tenancy Act, 1997 (for short, Act of 1997). By such amendment, the landlord prayed for fixation of fair rent considering the market rent in terms of Section 17 (6) of the Act of 1997.

5. According to the landlord's case, immediately after filing of the application for amendment of the claim, the tenants admitted the original claim made by the landlord for enhancement of fair rent to ₹12,240/- in terms of Section 17 (4B) of the Act of 1997. Such application for amendment, filed on behalf of the landlord, was allowed by learned Rent Controller upon contested hearing and accordingly, the landlord was granted liberty to file an application under Section 17 (6) of the Act of 1997.

6. According to the case made out by the landlord, since his application for fixation of fair rent was pending for 16 long years in violation of the provisions contained in Section 42 of the Act of 1997, the landlord preferred a revisional application being CO No. 2301 of 2019 before the High Court. By an order dated July 16, 2019 passed in CO No. 2301 of 2019, the High Court directed the learned rent controller to dispose of RC Case No. 440 of 2003 within six months. The rent controller having not disposed of RC Case No. 440 of 2003 in terms of the directions of the High Court, the landlord filed a Contempt Application being CPAN 477 of 2022. Immediately, on receipt of the notice in the Contempt proceedings, the rent controller passed the final order dated August 24, 2022 thereby disposing of the application for fixation of fair rent after 19 long years.

7. The landlord also submitted that the final order dated August 24, 2022, was passed by the rent controller ignoring his own order to the effect that the fixation of fair rent would be considered on the basis of the provisions contained under Section 17 (6) of the Act of 1997. The final order in RC. 440 of 2003 was allegedly passed on the basis of the provisions under Section 17 (4B) of the Act. By its order dated August 24, 2022, the rent controller fixed the fair rent of the suit premises at ₹8817. 60/- plus Municipal Taxes and Commercial Surcharge.

8. In such backdrop, the landlord challenged the order passed by the learned rent controller dated August 24, 2022 by filing O.A. 3474 of 2022 seeking enhancement of the fair rent fixed by the rent controller in accordance with the provisions of section 17 (6) of the Act of 1997. At the same time, the tenants also challenged the order passed by the learned rent controller by filing O.A. 3297 of 2022 seeking reduction of the quantum of fair rent fixed by the rent controller.

9. It was submitted on behalf of the landlord that the learned tribunal erred in applying the wrong provision of law in arriving at the enhanced rate of fair rent. The tribunal also did not consider the valuation report submitted by a Class-I valuer and the length of the tenancy. It also failed to take into consideration the rate of rent of other premises in the vicinity having similar amenities. The rent for the suit premises has been static since 1998 when it was enhanced for the first time after ten years of the induction of the tenants in 1988. It was submitted that the learned tribunal also did not consider the guidelines laid down by the Hon'ble Supreme Court in several decisions on the subject.

10. It was also contended that learned Tribunal enhanced the rent at the rate of ₹16,054/- per month with effect from July 2003 with the provision of enhancement at the rate of 25% every 3 years. The tenants

applied for stay of the operation of the order directing enhancement of fair rent which was refused. Nevertheless, the tenants have not paid the arrears of rent as enhanced till date. It was also contended that the learned tribunal also erred in not granting interest on the arrears of fair rent ignoring the provisions contained under Section 35 of the Civil Procedure Code merely on the ground that there was no provision empowering the grant of interest in the Act of 1997.

11. The tenants, filed a separate original application challenging the order dated August 24, 2022 being OA No. 3297 of 2022. In the said O.A., the tenants prayed for modification in the order passed by the rent controller. They also sought a direction upon the landlords to accept the rent for the suit premises in terms of the tenancy agreement executed on August 1, 1988.

12. According to the tenants, in passing the order dated August 24, 2022, the learned rent controller committed error by applying the provisions of Section 17 (4)(B) of the Act of 1997. It has been submitted that the learned tribunal ought to have remanded the matter for adjudication of fair rent in terms of section 17 (6) of the Act by the rent controller.

13. The tenants made payment of ₹12,00,000/- towards the due rent for the suit premises in terms of order dated April 26, 2023 passed

by learned tribunal and order passed in WPLRTT No. 123 and 125 of 2023. According to the submissions made on behalf of the tenants, the aforesaid payments were ad hoc payments subject to the outcome of the appeal pending before the tribunal. Furthermore, the landlords also made the tenants to pay a sum of ₹15,00,000/- in August 1988 before executing the agreement of tenancy.

14. It was also contended that the determination of fair rent by learned tribunal at the rate of ₹16,054/- with effect from July 2003, enhancing the admitted rent at the rate of ₹3,366/- per month was erroneous. The rate of enhancement of rent at the rate of 25% every three year has also been claimed to be arbitrary. Such order enhancing and determining the rate of rent has got no basis and was passed in derogation of the provisions contained in Section 17 (6) of the Act. It has been submitted that the learned tribunal had erroneously come to a conclusion that there were no materials on record to invoke the provisions of Section 17 (6) of the Act of 1997.

15. It was also contended that although, valuation report was produced before the tribunal but it was not proved in accordance with the provisions of Evidence Act and in that view of the facts, such report could not be relied upon. To such proposition reliance was placed by the tenant appellant on **(2006) 10 Supreme Court Cases 631 (Subhash**

Maruti Avasare vs. State of Maharashtra). In this context, learned advocate for the tenant appellant also cited an unreported order passed in ***FMAT 125 of 2024 (Mrs. Juliet Gomes and Ors vs. Kahkashan Bano)*** on the proposition that anything obtained or produced before the court showing alleged assessment of rent in the locality of demised premises cannot be considered as a valid basis for determination of fair rent.

16. Relying upon ***(1973) 1 Supreme Court Cases 559 (Ramchandra Keshav Adke & Ors. Vs. Govind Jyoti Chavare & Ors)***, learned advocate for the tenant appellant also submitted that if the statute provides a mechanism for determination of fair rent, it should be worked out strictly on the basis of such statutory provisions and not otherwise.

17. Learned advocate for tenant appellant also contended that the provisions of a statute should be read as a whole. Isolated construction of words used in such statute should be avoided. To such proposition, learned advocate relied upon ***(2010) 5 Supreme Court Cases 196 (Pallawi Resources Limited vs. Protos Engineering Company Pvt. Ltd)***.

18. Learned advocate for the landlord/appellant relied upon ***2024 SCC OnLine Cal 7112 (Union of India vs. Hindustan Consultancy &***

Services Ltd. And Another, 2022 SCC OnLine Cal 4098 (***Hanuman Estates Ltd. Vs. National Insurance Company Ltd.***) to contend that the situation and condition of a building are the relevant factors to be considered for the purpose of determination of fair rent.

19. Relying upon (2011) 7 SCC 755 (***Mohammad Ahmad And Another vs. Atma Ram Chauhan And Others.***) and 2024 SCC OnLine SC 980 (***Bijay Kumar Manish Kumar Huf vs. Ashwin Bhanulal Desai***) it was submitted on behalf of landlord that the Hon'ble Supreme Court upheld the enhancement of rent made by the High Court taking into consideration the condition, location and situation etc. of the tenanted premises. In the said case, the Hon'ble Supreme Court also laid down certain guiding principles for enhancement of rate of rent.

20. Learned Advocate for the appellant also cited 2019 SCC OnLine Cal 9180 (***Vandana Agarwala vs. R. C. Ghoshal***).

21. Relying on 2023 SCC OnLine Ker 11387 (***Rahul And Another vs. K. Subheesh And Another***), it was submitted that the decision of the Supreme Court rendered in the case of Mohd. Ahmad does not preclude the landlord from seeking fixation of fair rent. It was also submitted that in terms of the decision rendered in 2020 SCC OnLine Ker 10758 (***P. Padmini Balan vs. V. Chekkutty***), 2024 SCC OnLine Cal 1178 (***Debonair Vanigya Pvt. Ltd. Vs. Eshrat Jahan also known as Ishrat***

Jahan And Another) and **(2011) 8 SCC 161 (Indian Counsel for Enviro-legal Action vs. Union of India And Others)** certain factors like inflation, cost of construction including cost of labour and building materials and market value of the premises were the relevant considerations for determination of fair rent.

22. The duration of lis and relationship of the parties was considered to be a relevant factor having a bearing on the decision of issue as to the mesne profit in **2013 SCC OnLine Cal 5938 (Casyab Pvt. Ltd. Vs. Central Bank of India).**

23. Relying upon **2013 SCC OnLine Cal 22867 (Govind Prasad Kothary vs. State of West Bengal)**, learned Advocate for the landlord submits that the learned Rent Controller failed to exercise his power under Section 39 of the Act of 1997 which provides for appointment of commissioner for assessment of valuation.

24. Learned Advocate for the landlord also cited a decision rendered in **(1999) 3 SCC 161 (Ashwin Kumar K. Patel vs. Upendra J. Patel and Others)** in support of their contention that in order to minimize the delay, the Court may decide an issue itself instead of remanding the matter back. It was also contended that the Court can pass any order which had the effect of advancing the cause of justice.

25. Relying upon **(2014) 10 Supreme Court Cases 702** ***(Tejender Singh Gambhir and Another vs. Gurpreet Singh and Ors.)***

it was contended that in absence of a specific order in this regard, plaintiff cannot be obliged to put in deficit court fee enhanced on account of amendment in the reliefs claimed.

26. It was also contended that the learned tribunal erred in not awarding interest on the amount of rent lying due with the tenant in terms of the rate of rent admitted by them. To such proposition, the learned advocate for the landlord relied upon **(2011) 8 Supreme Court Cases 161** ***(Indian Council for Enviro-legal Action Vs. Union of India and Others)*** and **(2007) 3 Supreme Court Cases 545** ***(Alok Shanker Pandey vs. Union of India and Others)***.

27. As noted above, the tenants were inducted in the demised premises i.e. in the fourth floor of a commercial building situated at 17, Ganesh Chandra Avenue, Kolkata in 1988. The initial rent as per the agreement dated August 1, 1988 was fixed at ₹3,060/- per month. Such rent was enhanced after ten years of tenancy in the year 1998 and was fixed at ₹3,366/- per month. Admittedly, the rate of rent has remained static since 1998. The landlord had taken out an application under Section 17 (4) of the Act of 1997, seeking fixation of fair rent. The learned Rent Controller by his order dated August 24, 2022, fixed the fair rent of

the suit premises at ₹8817.60/- exclusive of applicable Municipal Taxes and Commercial Surcharge, taking into account that the tenancy subsisted for more than 14 years for a building constructed before 1984 and used for commercial purpose. The assessment was made in terms of the formula provided in Section 17 (4B) of the Act of 1997. The said order was passed despite an application at the behest of landlord for amendment of the application converting the original application into one under Section 17 (6) of the Act of 1997 was allowed and the landlord was granted liberty to file such application.

28. We have also noted hereinbefore that such order dated August 24, 2022, passed by the Rent Controller was challenged both, by the landlord and the tenant by filing separate Original Applications before the Land Reforms and Tenancy Tribunal, Kolkata. Landlord contended that the order was passed giving a go bye to the provisions contained in Section 17 (6) of the West Bengal Premises Tenancy Act, 1997 and was wrongly decided on the basis of the provisions and formula provided in Section 17 (4B) of the Act without considering the rent of the premises in vicinity having similar amenities. On the other hand, the tenant assailed the order of the Rent Controller broadly on a premise that the order was passed without considering the covenant contained in the agreement deed dated August 1, 1988 with regard to enhancement of rent.

29. Apparently, the suit premises at 17, Ganesh Chandra Avenue is situated in a posh commercial area. The learned tribunal took into consideration the various documents like Google Maps to determine the locality and situation of the premises. It is not denied that the tenant was inducted in the premises in 1988 and rent of the suit premises was once enhanced in 1998, after ten years of the tenancy from ₹3,060/- to ₹3,366/-. It is also not denied that the rate of rent for the demised premises has remained static since 1998. Over 26 years have elapsed since then. Considering all this, the Rent Controller, by its order dated August 24, 2022 went on to determine the fair rent for the demised premises at ₹8817.60/- excluding the applicable Municipal Taxes and Commercial Surcharge on the basis of the provisions and formula provided in Section 17 (4B).

30. The law relating to fixation of fair rent of a tenanted premises has been laid down in Section 17 of the West Bengal Premises Tenancy Act, 1997, which reads as follows:

"17. Fixation Of fair rent.—(1) The Controller shall, on application made to him either by the landlord or by the tenant in the prescribed manner, fix the fair rent in respect of any premises in accordance with the provisions of this Act.
(2) The fair rent for a year in respect of any premises constructed and let out after the year 1984, shall be fixed [on the basis of annual payment of an amount equal to six and

three-fourth per cent per annum of the aggregate amount of the actual cost of construction and the market price of the land on the date of commencement of construction.]

Explanation.—The cost of construction of a premises shall include the cost of water supply and sanitary and electric installation and shall be determined with due regard to the rates adopted for the purpose of estimate by the Public Works Department of the State Government for the area concerned. The Controller may allow or disallow the variation of estimates upto ten per cent, having regard to the nature of the premises:

Provided that while calculating the market value of the site on which the premises was constructed, the Controller shall take into account only the portion of the site on which the premises was constructed and sixty per cent of the portion of the vacant land, if any, appurtenant to such premises, the excess portion of the vacant land being treated as amenity.

(3) Where a tenancy subsists for twenty years or more in respect of the premises constructed in or before the year 1984, the fair rent shall be determined by adding to the rent as on 1.7.1976 not more than three times, and then deducting the increase, if any, in the manner provided in Schedule II, or by accepting the existing rent if such rent is more than the increased rent determined according to that Schedule.

(4) Where a tenancy subsists for ten years or more but less than twenty years in respect of the premises constructed in or before the year 1984, the fair rent shall be determined by adding to the rent as on 1.7.1986 not more than two times, and then deducting the increase, if any, in the manner provided in Schedule III, or by accepting the existing rent if

such rent is more than the increased rent determined according to that Schedule.

(4A) Where a tenancy subsist for twenty years or more in respect of the premises constructed in or before the year 1984 and used for commercial purpose, the fair rent shall be determined by adding to the rent as on 1.7.1976 five times or by accepting the existing rent if such rent is more than the increased rent determined under this subsection.

(4B) Where a tenancy subsists for ten years or more but less than twenty years in respect of the premises constructed in or before the year 1984 and used for commercial purpose, the fair rent shall be determined by adding to the rent as on 1.7.1986 three times or by accepting the existing rent if such rent is more than the increased rent determined under this sub-section.

(5) Where at the commencement of this Act, any proceeding is pending for fixation of the fair rent of such premises under the West Bengal Premises Tenancy Act, 1956; the rent fixed under the said proceeding shall be the fair rent under this Act.

(6) Where none of the foregoing provisions of this section applies to any premises, the fair rent shall be such as would be reasonable, having regard to the situation, locality and condition of the premises and the amenities provided therein and, where there are similar or nearly similar premises in the locality, having regard also to the rent payable in respect of such premises.”

31. Fixation of fair rent by the Rent Controller by its order dated August 24, 2022 has been set aside by the learned tribunal largely on a hypothesis that the provisions of Section 17 (4B) of the Act of 1997, was wrongly applied for arriving at the fair rent. Such order was ostensibly passed ignoring the fact that the Rent Controller had himself allowed the amendment application filed on behalf of landlord to consider the fixation of fair rent in terms of the provisions of Section 17 (6) of the Act. Apparently, Section 17 (4B) of the Act of 1997 provides for fixation of fair rent taking into consideration the base rent as on July 1, 1986 which was not available in the present case. The tenancy of the tenant appellant was started in 1988. The learned tribunal also appears to have considered that the rent for the suit premises has been stagnant for over 26 years without any enhancement.

32. Upon setting aside the order dated August 24, 2022 passed by the Rent Controller, the learned tribunal went on to determine the fair rent for the suit premises in terms of Section 17 (6) of the Act of 1997. In doing so, the learned tribunal considered the report submitted by the Class I valuer brought on record by the landlord as also that submitted on behalf of the tenants. It was observed that the valuation report submitted on behalf of the landlord was based on the valuation and rate of rent of the adjoining buildings situated at 15, Ganesh Chandra

Avenue, the area under occupation of such tenancy, situation of the premises and user thereof. It also relied upon Google Maps and other materials placed before it. The learned tribunal also held that the valuation report brought on behalf of tenants were devoid of such considerations.

33. Taking into account all the relevant factors, the learned tribunal proceeded to assess the fair rent at ₹16,054/- per mensem excluding the proportionate share of monthly taxes and commercial surcharge in accordance with Kolkata Municipal Corporation Act and other property taxes, with effect from the month of tenancy commencing after the application for fixation of fair rent i.e. July 2003 taking a quotient of enhancement at the rate of 25% every three years. Learned tribunal discussed relevant factors considered by it in great details and also prepared a comprehensive chart showing the gradual enhancement in the rate of fair rent in accordance with the formula it relied upon.

34. In arriving at the rent assessed by it, the learned Tribunal took into account the market value of the suit premises. He has relied upon the valuation reports submitted by the valuer from landlord side. The registered valuer, according to the Tribunal, considered the guidelines prescribed by the Hon'ble Supreme Court. Upon consideration of the report so submitted by the registered valuer, it transpires that the rent

paid by the State Bank of Mysore at 20, Sir R.N. Mukherjee Road (Rasoi Court), 1st Floor, Kolkata situated in a multi-storied commercial building, and the rate of rent paid by ICICI Bank situated in the same address on the ground floor has been considered by the registered valuer as the comparable references for determination of fair rent. The aforesaid tenancies started in the year 2015-16 respectively. The registered valuer took into consideration the rent as well as the area under occupation of such tenants and worked out the rent per Sq. Ft. According to the valuer, the State Bank of Mysore was paying rent at the rate of ₹75/- per Sq. Ft. whereas ICICI Bank was paying rent at the rate of ₹105/- per Sq. Ft. Both excluding the property taxes (municipal taxes and commercial surcharge), maintenance charges, water tax and electricity charges. The registered valuer also noted that the address taken for reference was at stone's throw distance from the suit premises. Taking average of the per sq. ft. rate of rent of the two buildings, the valuer assessed the rate of rent for the suit premises at ₹90/- per Sq. Ft.

35. The registered valuer, in his assessment applied another method. According to the second method, the valuation of the suit premises was taken on the basis of valuation report taken from the Directorate of Registration and Stamp Revenue. According to the e-Assessment slip, the valuation of the tenanted portion of the suit

premises was ₹3,45,48,080-/. The registered valuer made the assessment on the basis of the monthly interest that may accrue on such amount in fixed deposit at bank rates. Such assessment was made, apparently keeping in mind the latitude provided under Section 17 (6) of the West Bengal Premises Tenancy Act, 1997.

36. Applying the two methods, the registered valuer worked out the average of the rates of rent so arrived and proceeded to fix the monthly rent which came to ₹2,80,754.32/- per month. However, to our opinion valuation of the property, of which the rent is to be assessed, is not a relevant factor in the provisions of Section 17 (6) of the Act, though, it so by the pronouncement of Hon'ble Supreme Court. The provision provides that "the fair rent shall be such as would be reasonable, having regard to the situation, locality and condition of the premises and the amenities provided therein and, where there are similar or nearly similar premises in the locality, having regard also to the rent payable in respect of such premises".

37. First method applied by the registered valuer takes into account the amount of rent paid by the tenants in the adjoining buildings which is said to be at stone throw distance from the suit premises. According to such assessment, the rent of the suit premises was assessed to be ₹90/-

per sq. ft. which, for the suit premises comprising of 1700 Sq. Ft. comes to ₹1,53,000/- per month.

38. However, it is apparent that the two tenancies of State Bank of Mysore and ICICI Bank, are of recent origin created in 2014 and 2015. Moreover, these tenancies are in respect of ground floor and first floor. Admittedly, putting the tenancy of the suit premises situated on the fourth floor and on the backside of the building cannot be reasonably equated with the new tenancies on the ground floor and first floor in a nearby building. Furthermore, it is admitted position that the parties to this proceeding agreed upon a rent of ₹3,060/- in 1988 which was mutually agreed to be enhanced to ₹3,366/- in the year 1998. That apart, the suit building is an old building having been constructed sometimes in 1960 or 1961. It is also evident that the tenant himself has been paying for the amenities as well as maintenance. No amenities were being provided by the landlord. Besides, the tenant has been paying the Municipal Taxes and Commercial Surcharge for the tenanted premises.

39. On the contrary, as we have noted, the report submitted by the valuer of tenant side has not considered all the aforesaid factors provisioned under Section 17 of the Act of 1997. The only thing that was taken into consideration, in such report, was the rate of rent of some other tenants in the suit building ranging from ₹219/- to ₹5,900/- per

month and that too, without considering the details like situation and area under occupation, length of such tenancy etc. In such circumstances, the report of the valuer of the tenant side cannot be relied upon for the fixation of fair rent.

40. Taking into account the situation, locality and condition of the suit premises and the amenities provided therein and also taking into consideration the age as well as situation of the tenancy of the premises selected for reference, the amount of rent assessed at ₹1,53,000/- per month, should be reduced at least by 75%, in consideration of the aforegone factors and expenses incurred by the tenant, which comes to ₹38,250/- per month with effect from the month of tenancy commencing after the application for fixation of fair rent i.e. July 2003.

41. So far as rate of enhancement of fair rent at the rate of 25% every three years is concerned, Section 18 of the Act of 1997 provides for automatic enhancement of fair rent fixed initially, at the rate of 5% every three years. The provision also provides for variation in the rate of such enhancement by the State Government. Nothing has been placed before us that the rate of such enhancement has been varied by the State Government. The learned tribunal, apparently proceeded to fix the rate of enhancement at the rate of 25% every three year on the consideration,

that the rate of monthly rent was never fixed initially by a competent authority in accordance with the provisions of the Act of 1997.

42. Since, the landlord applied for fixation of fair rent in 2003 and the proceedings in this regard has travelled up to this Court, we are minded to fix such rent in this proceeding in terms of the provisions of the West Bengal Premises Tenancy Act, 1997. In that view of the facts, we are of the view that the rate of automatic enhancement of rent should be in consonance with the provisions of Section 18 of the Act. Accordingly, we fix the rate of automatic enhancement of fair rent on the rates fixed by us, at the stipulated 5% every three years instead of 25% every three years as directed in the impugned order.

43. So far as the covenant contained at Para 19 of the agreement dated August 1, 1988 with regard to rate of enhancement of the fair rent is concerned, we are not oblivious of the fact that the original tenancy was started in 1988. Fair rent for the suit premises was once enhanced in the year 1998 and since then the rate of rent has been static. A covenant in the agreement cannot override the provisions of law. Such covenant cannot be considered to limit the rights of the landlord, or even the tenant, in accordance with established law, to approach the appropriate authority for fixation of fair rent.

44. Moreover, a period of more than 26 years has elapsed since the last fixation of fair rent. Market scenario has changed a lot. Business of the tenant as evident from materials on record has also undergone changes. The effect of inflation during these 26 years cannot be denied which is a relevant factor necessitating fixation of fair rent. Factors like inflation, cost of construction including cost of labour and building materials and market value of the premises were the relevant considerations for determination of fair rent by the learned tribunal. The impugned order passed by learned tribunal appears to have taken these factors into consideration in determining the fair rent, though, the same has been disputed by the tenant on the ground that the same has not been done in strict compliance of the procedure established by law.

45. In ***Ramchandra Keshav Adke*** (supra), the Hon'ble Supreme Court held that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. In the case at hand, however, nothing appears to have been done by the learned tribunal which is beyond the purview of the powers conferred on it in terms of Section 17 (6) of the Act of 1997 which gives the power that fair rent shall be such as would be reasonable, having regard to the situation, locality and condition of the premises and the amenities provided therein

and, where there are similar or nearly similar premises in the locality, having regard also to the rent payable in respect of such premises.

46. *Mrs. Juliet Gomes* (supra) was rendered in the context where one of the parties sought to rely upon assessment of rent in the concerned locality on the basis of certain website information and that too without disclosing the IP address of such website. However, no such information has been relied upon. The only thing that has been sought to be produced from a website is Google Maps showing the location of the suit premises. Therefore, the ratio of such case cannot be applied in the present case.

47. In *Mohd. Ahmad* (supra), Hon'ble Supreme Court laid down certain guidelines with a view to minimize litigations between landlords and tenants *in following terms:*

“21. According to our considered view majority of these cases are filed because the landlords do not get reasonable rent akin to market rent, then on one ground or the other litigation is initiated. So before saying omega, we deem it our duty and obligation to fix some guidelines and norms for such type of litigation, so as to minimise landlord-tenant litigation at all levels. These are as follows:

(i) The tenant must enhance the rent according to the terms of the agreement or at least by ten per cent, after every three years and enhanced rent should then be

made payable to the landlord. If the rent is too low (in comparison to market rent), having been fixed almost 20 to 25 years back then the present market rate should be worked out either on the basis of valuation report or reliable estimates of building rentals in the surrounding areas, let out on rent recently.

(ii) Apart from the rental, property tax, water tax, maintenance charges, electricity charges for the actual consumption of the tenanted premises and for common area shall be payable by the tenant only so that the landlord gets the actual rent out of which nothing would be deductible. In case there is enhancement in property tax, water tax or maintenance charges, electricity charges then the same shall also be borne by the tenant only.

(iii) The usual maintenance of the premises, except major repairs would be carried out by the tenant only and the same would not be reimbursable by the landlord.

(iv) But if any major repairs are required to be carried out then in that case only after obtaining permission from the landlord in writing, the same shall be carried out and modalities with regard to adjustment of the amount spent thereon, would have to be worked out between the parties.

(v) If the present and prevalent market rent assessed and fixed between the parties is paid by the tenant then the landlord shall not be entitled to bring any action for his eviction against such a tenant at least for a period of

5 years. Thus for a period of 5 years the tenant shall enjoy immunity from being evicted from the premises.

(vi) The parties shall be at liberty to get the rental fixed by the official valuer or by any other agency, having expertise in the matter.

(vii) The rent so fixed should be just, proper and adequate, keeping in mind the location, type of construction, accessibility to the main road, parking space facilities available therein, etc. Care ought to be taken that it does not end up being a bonanza for the landlord.”

48. The Hon’ble Supreme Court, in the said decision, also noted to the effect that if the rent is too low (in comparison to market rent), having been fixed almost 20 to 25 years back then the present market rate should be worked out either on the basis of valuation report or reliable estimates of building rentals in the surrounding areas, let out on rent recently. Similar principles were laid down by the Hon’ble Supreme Court in ***Bijay Kumar Manish Kumar Huf*** (supra).

49. ***Niyas Ahmad Khan*** (supra) was rendered in the milieu that the High Court proceeded to grant the relief of enhancement of rent in a proceeding where the order of appropriate authority and appellate authority refusing an order of eviction was assailed. The Hon’ble Supreme Court noted that enhancement of rent was granted in absence

of any evidence either oral or documentary and the assessment of rent was found to be without any basis. It was specifically noted by the Supreme Court that the learned Judge did not consider the relevant circumstances like the market value of the building on the date of letting, prevailing rentals in the locality as on the date of letting, the size or situation or amenities, age of the construction, latest assessment or other circumstances in arriving at a decision of enhancement of rent. Therefore, in view of the ratio laid down in such case the aforesaid circumstances like market value of the building on the date of letting, prevailing rentals in the locality as on the date of letting, the size or situation or amenities, age of the construction etc. can be considered as relevant factors for the purpose of determination of fair rent.

50. *P. Padmini Balan* (supra) was rendered in a revisional jurisdiction which followed the principles laid down by the Hon'ble Supreme Court in ***Mohd. Ahmad*** (supra) in respect of fixation of fair rent considering the rent of a nearby shop.

51. *Debonair Vanigya Pvt. Ltd.* (supra) was delivered in the context determination of occupational charge of a building in an eviction proceeding where the status of the occupier was yet to be determined by the learned trial court. Moreover, owing to difference of opinion between

the Hon'ble judges, said case was referred to another Bench. As such, the ratio laid down in such case may not be applied in the instant case.

52. In **Casyab Pvt. Ltd** (supra), in an action for eviction, the duration of lease and relationship of the parties were considered to be relevant factor which would have a bearing in deciding the issue of mesne profit.

53. In **Govind Prasad Kothary** (supra), a Coordinate Bench of this Court held that,

“28. On plain reading of section 17 of the said Act, we are of the view that duty is cast upon the Rent Controller to assess fair rent whenever such an application is filed and since neither party could produce any material to substantiate their respective contentions, the Rent Controller was well within his power in appointing a Commissioner for assessment of fair rent.”

54. It has been asserted on behalf of the tenant that since the report of valuer was not proved in accordance with the provisions of Evidence Act, it could not have been relied upon. The decision in **Subhash Murti Avasare** (supra) was rendered in a criminal appeal where the Hon'ble Supreme Court noted that by mere filing of a document, its contents are not proved. A certificate issued by an expert should be brought on record by examining him. Although, the report of the valuer has not been relied

upon by the learned tribunal in the fixation of fair rent, nevertheless, on the point of admissibility of valuer's report, it would be pertinent to refer to Para 29 of the judgment rendered in **Govind Prasad Kothary** (supra) which runs as follows:

“29. Since the Civil Procedure Code in its entirety is not applicable in such a proceeding for fixation for fair rent under section 17 of the said Act, the procedure governing Civil Suit and/or proceeding before the Civil Court as provided in the Civil Procedure Code cannot be applied in a proceeding of present nature before the Rent Controller. As such the requirement of proof of the petitioner's claim by evidence, as argued by Mr Chatterjee cannot be accepted by us, particularly when the rules framed under the said Act does not provide for such a proceeding to be decided by trial on evidence.”

55. Ashwin Kumar K. Patel (supra) was rendered in relation to an application for injunction. In the said case, the Hon'ble Supreme Court refrained itself from remanding the proceeding to High Court proceeded to decide the issue on a consideration that further remand would lead to delay.

56. The ratio laid down in **Tejender Singh Gambhir** (supra) relates to payment of deficit court fee does not apply in the facts and circumstances of the present case.

57. The learned tribunal while passing the impugned order restrained itself from awarding any interest on the amount due with the tenants on account of arrears of rent on the ground that there was no provision in the Act of 1997 authorizing award of interest. In ***Indian Counsel for Enviro-legal Action*** (supra), the Hon'ble Supreme Court considered the prolonged litigation on the part of an erring litigant as undue enrichment and laid down that,

“200. We have carefully considered the facts and circumstances of this case. We have also considered the law declared by this Court and by other countries in a number of cases. We are clearly of the opinion that the applicant industry concerned must deposit the amount as directed by this Court vide order dated 4-11-1997 [Indian Council for Enviro-Legal Action v. Union of India, (2011) 12 SCC 752] with compound interest. The applicant industry has deliberately not complied with the orders of this Court since 4-11-1997 [Indian Council for Enviro-Legal Action v. Union of India, (2011) 12 SCC 752] . Thousands of villagers have been adversely affected because no effective remedial steps have been taken so far. The applicant industry has succeeded in their design in not complying with the Court's order by keeping the litigation alive.”

58. ***Alok Shanker Pandey*** (supra), was rendered in the context of delay in allotment of a flat and making over its possession to the proposed purchaser. In the facts of the case, the Hon'ble Supreme Court

awarded interest on the amount lying with the vendor for purchase of flat. However, in the case at hand, both parties have been litigating over fixation of fair rent of the suit premises. The tenant agreed to pay rent at a certain rate before the learned tribunal but at the same time we are not oblivious that such rate of rent was also challenged by the landlord as well.

59. *Vandana Agarwala* (supra) was rendered in a case where amendment in the petition for fixation of fair rent was refused by the learned Rent Controller. The ratio of such case is in no way attracted in the facts and circumstance of the present case. In the instant case, such amendment was allowed by the Rent Controller converting the application under Section 17 (4) of the Act of 1997 into one under Section 17 (6) of the Act.

60. In ***Rahul*** (supra) it was laid down by the Kerala High Court in a revisional jurisdiction that,

“9.1. Clause (i) in paragraph 21 of the decision in Mohammad Ahmad [(2011) 7 SCC 755] will not preclude the landlord from seeking fixation of fair rent, invoking Section 5(1) of the Act, at a rate more than the specified rate at which periodical enhancement is stipulated in the agreement between the landlord and the tenant since the Legislature has consciously permitted the landlord to approach the Rent Control Court to

get the fair rent determined, notwithstanding the stipulation regarding periodical enhancement in the lease agreement.”

61. In ***L. Bhupati Rai and Co.*** (supra) it was observed that the rent of a business premises situated on the second floor could not be used as a reasonable guide for ascertaining the rent payable for rooms on the first floor. In such conspectus, the Court was of the view that no materials were produced by the landlord to determine the rent. However, as noted, in the instant case, the learned tribunal proceeded to fix the rate of rent, largely on the basis of preceding rate of rent and then adding the quotient at regular intervals. Materials with regard to rent of similar premises in the locality were apparently not considered by the learned tribunal as a guiding factor for such determination.

62. The case of ***Pallawi Resources Limited*** (supra) has been referred to contend that the provisions of a law should be read as a whole. Isolated application of portion of a provision of law is not permitted. The Hon’ble Supreme Court noted that,

“17. A cardinal principle of statutory interpretation is that a provision in a statute must be read as a whole and not in isolation ignoring the other provisions of that statute. While dealing with a statutory instrument, one cannot be allowed to pick and choose. It will be grossly unjust if the court allows a person to single out and avail the benefit of a provision from a chain of provisions which is favourable to him. Reference

may be made to a Constitution Bench decision of this Court in *Prakash Kumar v. State of Gujarat* [(2005) 2 SCC 409 : 2005 SCC (Cri) 518] . The Court in para 30 of that judgment observed as follows: (SCC p. 427)

“30. By now it is a well-settled principle of law that no part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is also trite that the statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved.”

18. We wish to also refer to a latest judgment of this Court reported as *SAIL v. SUTNI Sangam* [(2009) 16 SCC 1 : (2009) 10 Scale 416], wherein this Court, very succinctly reiterated the aforesaid position in para 67 as follows: (SCC p. 28)

“67. The learned counsel, however, invited our attention to take recourse to the purposive interpretation doctrine in preference to the literal interpretation. It is a well-settled principle of law that a statute must be read as a whole and then chapter by chapter, section by section, and then word by word. For the said purpose, the scheme of the Act must be noticed. If the principle of interpretation of statutes resorted to by the court leads to a fair reading of the provision, the same would fulfil the conditions of applying the principles of purposive construction.”

19. From these authorities, it is amply clear that a provision in a statute ought not to be read in isolation. On the contrary, a statute must be read as an integral whole keeping in view the other provisions which may be relevant to the provision in question in order to correctly arrive at the legislative intent behind the provision in question. Applying this principle to the case at hand which involves an interpretation of Section 17(4-A), it will not be appropriate for us to read sub-section (4-A) of Section 17 ignoring the other relevant provisions.”

63. However, in the instant case, our attention is not drawn to any instance of violation of such rule of interpretation. Provisions of Section 17 (4) or Section 17 (4B) of the Act, was held to be not applicable in the facts of the case. It was specifically observed that the case fell within the purview of Section 17 (6) of the Act of 1997. It is evident that existence of certain preconditions is necessary for application of different sub-Sections of Section 17 of the Act. The different sub-sections of Section 17 of the Act are attracted alternatively and not conjointly subject to fulfillment of such conditions. For the aforesaid reasons, we are of the opinion that no occasion of isolated application of the provisions of law has arisen in the case.

64. In the instant case, by the impugned order, learned tribunal considered the circumstances and proceeded to determine the fair rent of the suit premises. In doing so, the learned tribunal took into consideration several factors like, length of tenancy, rent of other similar

buildings in the vicinity, situation of the suit premises etc. in addition thereto, the learned tribunal largely relied upon the subsisting rate of rent of the suit premises and proceeded to fix the fair rent applying the rate of enhancement from the date of application. A detailed chart showing gradual increase in rent forms part of the impugned order.

65. In the light of discussions made above and in consideration of the ratio laid down in various pronouncements discussed hereinbefore as well as the materials placed before us we are of the opinion that monthly rent of the suit premises should be fixed at ₹38,250/- per month with effect from the month of tenancy commencing after the application for fixation of fair rent i.e. July 2003 excluding the property taxes (municipal taxes and commercial surcharge), maintenance charges, water tax and electricity charges and the rate of automatic enhancement should be at the rate of 5% every three years, in accordance with the provisions of Section 18 of the Act of 1997. The order passed by the learned tribunal is accordingly modified to the extent indicated above. We find no merit in the writ petition filed on behalf of the tenant being WPLRT No. 170 of 2024.

66. Consequently, the instant writ petitions being WPLRT 170 of 2024 and WPLRT 47 of 2025 are disposed of however without any order

as to costs. With the disposal of main matter, connected applications, if any, shall also stand disposed of.

67. Urgent Photostat certified copy of this judgment and order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

[MD. SHABBAR RASHIDI, J.]

68. I agree.

[DEBANGSU BASAK, J.]