(2013) 12 CAL CK 0025

In the Calcutta High Court

Case No : W.P.L.R.T No. 273 of 2013 and W.P.L.R.T No. 274 of 2013 and W.P.L.R.T No. 275 of 2013 and W.P.L.R.T No. 276 of 2013 and W.P.L.R.T No. 278 of 2013 and W.P.L.R.T No. 279 of 2013 and W.P.L.R.T No. 280 of 2013

Govind Prasad Kothary APPELLANT

Vs

State of West Bengal RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2014) 2 CHN 237

Hon'ble Judges : Jyotirmay Bhattacharya, J;Arindam Sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jyotirmay Bhattacharya, J.—Since an identical question is raised in all these seven writ petitions, this Court feels that all these seven writ petitions should be heard analogously. Accordingly, all these seven writ petitions are heard analogously and these writ petitions are disposed of by a common order passed hereunder.

Re: W.P.L.R.T 273 of 2013

Govind Prasad Kothary

versus

The State of West Bengal & Ors.

The petitioner is a monthly tenant under the private respondents in respect of a flat measuring carpet area of 1050 sq. ft. more or less on the southern side of the 3rd floor of premises No. 9, Jeliapara First Bye Lane, Salkia, Howrah. Admittedly the petitioner was inducted in the said flat as a tenant thereof in the year 1988 at a monthly rental of Rs. 701/- excluding electric charges. Subsequently the rent was enhanced to Rs. 848/- per month.

2. After the West Bengal Premises Tenancy Act, 1997 came into operation, the private respondents (Landlords) submitted an application u/s 17 of the said Act before the Rent Controller seeking assessment of fair rent of the said flat.

3. Though the private respondents (landlords) claimed in their application that the value of the land over which the building was erected in the year 1988 was Rs. 400/- per sq. ft, and the actual cost of construct on was Rs. 225/- per sq. ft. in the year 1988, but in course of trial of the said proceeding, no material could be produced by them to substantiate their contention before the Rent Controller.

4. The petitioner herein contested the said proceeding by filing objection denying the aforesaid contention of the private respondents, but he also could not produce any material either to disprove the contention of the Private respondents regarding the costs of construction of the flat in question or to prove his contention regarding the cost of construction of the flat in question in the year 1988.

5. Since neither party could produce any material before the Rent Controller to bring on record as to the actual cost of construction of the building in the year 1988 and/or the valuation of the land which the said building was constructed, in the year 1988, the Rent Controller ultimately appointed a Commissioner for assessment of the actual value of the land and/or cost of construction of the flat in question as of the year 1988.

6. The Commissioner submitted his report stating therein that since the flat in question is situated in a multistoried building, value of land and structure need not be considered separately for assessment of valuation of the flat in question. He opined that the valuation of the flat in a multistoried building can be calculated in the same manner as it is done in case of an ownership flat. He assessed Rs. 300/- per sq. ft. as the cost of construction of the said flat including the land value as of the year 1988 and calculated the valuation of the said flat at Rs. 3,62,400/- by applying section 17(2) of the said Act to yield the petitioner''s rent of Rs. 24,462/- per annum. Thus, he calculated the monthly rent of the said premises at Rs. 2038/- per month and in addition to the monthly rent, a sum of Rs. 507A was held to be payable towards the monthly Municipal tax of the said flat. Thus, the fair rent, according to him, will be Rs. 2,545/- per month.

7. The petitioner herein submitted an objection challenging the correctness of such report. It is contended by the petitioner that the Commissioner''s assessment is absolutely imaginary and illegal as a faulty procedure was adopted by him in assessing the market price of the land and cost of construction of the said flat as of the year 1988.

8. Since such an objection was raised by the petitioner, the Rent Controller by his order dated 7th December, 2010 directed the petitioner to submit the relevant documents pertaining to value of the land on which the building was constructed and/or the Public Works Department''s Schedule of letting value of the identical flats in the said locality corresponding to the year of 1988.

9. Though the petitioner by his letter dated 13th September, 2011 requested the Assistant Engineer, Public Works Department, Howrah Sub-Division to supply the above-mentioned documents, but those documents were claimed to be not supplied to the petitioner and as a result he failed to submit these documents before the Rent Controller.

10. Under such circumstances, the Rent Controller accepted the said report of the Commissioner lie held that assessment of cost of construction of the flat in question which was made by the Commissioner @ Rs. 300/- per sq. ft., and determination of fair rent of the said flat @ Rs. 2038/- per month, by the Commissioner, was reasonable. Proportionate Municipal Tax of Rs. 507/-, which was held by the Commissioner to payable by the tenant in addition to the monthly rent, was also held to be reasonable by the Rent Controller. In addition thereto, the Rent Controller held that maintenance charge @10% of the monthly rent, i.e., Rs. 203/- is payable by the tenant as per section 5 of the said Act. Thus the Rent Controller held that a sum of Rs. 2748/- is payable by the tenant on account of the fair rent of the said flat with effect from June, 2008.

11. The petitioner herein did not accept the said order of the Rent Controller. He challenged the said order of the Rent Controller by filing an application being O.A. (P) No. 3531 of 2011 (LRTT) before the West Bengal Land Reforms and Tenancy Tribunal which was disposed of on 17th September, 2013 by affirming the order of the Rent Controller.

12. The legality and/or propriety of the said order of the Tribunal is under challenge in this writ petition before us.

13. Mr. Chatterjee, learned counsel appearing for the petitioner strenuously argues before us that the provision contained in section 17(2) of the said Act was not followed by the Rent Controller while assessing fair rent in respect of the flat in question. He submits that the private respondents who filed the application for fixation of fair rent were required to prove their claim by producing material evidence in support of their claim regarding the land value and/or the cost of construction of the flat in question as of the year 1988.

14. According to Mr. Chatterjee, the private respondents (landlords) having failed to do so, the Rent Controller ought to have rejected their application notwithstanding the fact that his client failed to produce the schedule of land valuation and/or cost of construction of identical flats in the locality as of the year 1988 from the Public Works Department, as according to him, the initial onus to prove the claim for fixation of fair rent which laid upon the private respondents, has not been discharged by them in course of trial of the said proceeding.

15. In this context, we have considered the provision of section 17 read with section 39 of the West Bengal Premises Tenancy Act, 1997. Section 17 of the said Act gives jurisdiction to the Rent Controller to fix lair rent of a premises on an application made to him either by the landlord or by the tenant in the

prescribed manner.

16. In the instant case, such an application was filed by the landlords/private respondents and the Rent Controller assessed the fair rent of the said flat on the application so filed by the landlords/private respondents.

17. Section 39 of the said Act provides that certain provisions of the CPC are applicable in such a proceeding for fixation of fair rent. Following provisions of the CPC are applicable in such proceeding as per section 39 of the said Act:--

39(2) ....

(a) a summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of document;

(c) issuing Commission for examination of witness;

(d) issuing Commission for local investigation;

(e) such other matters as may be prescribed."

18. By exercising power given to the Rent Controller u/s 39(2)(d) of the said Act, the Rent Controller appointed a Commissioner for assessment of valuation of the flat in question. Neither party submitted any material before the Commissioner to support their respective contentions. Under such circumstances, the Commissioner had no option but to calculate the valuation of the flat in question with reference to the cost of construction of an identical flat in a multistoried building as of the year 1988.

19. Though the petitioner herein disputed the correctness of such assessment made by the Commissioner, he failed to submit any material before the Rent Controller to show that such assessment was irrational.

20. Under such circumstances, we do not find any unreasonableness on the part of the Rent Controller to accept the said report and assess fair rent of the flat in question by relying upon such report.

21. Though the petitioner herein did not accept the order of the Rent Controller and challenged the same before the Tribunal, but even before the Tribunal, the petitioner herein could not produce any material to support his contention that the assessment of the valuation of the flat in question made by the Commissioner was irrational. Even before us, nothing has been produced by the petitioner to support such contention of the petitioner that the valuation of the flat in question was made by the Commissioner arbitrarily.

22. Under such circumstances, we are of the view that neither the Rent Controller nor the Tribunal committed any illegality in accepting the report of the Commissioner and/or assessing the fair rent of the flat in question by relying upon such report of the Commissioner.

23. Even assuming that fair rent of the said flat was not assessed by the Rent Controller by applying the mode of calculation of fair rent as prescribed in section 17 of the said Act, but still then, we are of the view that no fruitful purpose will be served by quashing the order of assessment of (air rent made by the Rent Controller, unless it is successfully proved by the tenant that fair rent of the said flat would have been much lesser than the fair rent assessed by the Rent Controller, had the fair rent been calculated by applying the provision of section 17 of the said Act.

24. Since the tenant petitioner has failed to satisfy us that had the fair rent been calculated u/s 17 of the said Act, such fair rent would have been much lesser than the rent assessed by the Rent Controller, we do not find any reason to disturb the conclusion arrived at by the Rent Controller in assessing the fair rent of the said flat in relying upon the said report of the Commissioner.

25. Before parting with, we want to put it on record that since the entire provisions of the CPC are not applicable in such a proceeding u/s 17 of the said Act, we cannot accept the submission of Mr. Chatterjee that the application for assessment of fair rent ought to have been rejected by the Rent Controller as the landlords/private respondents failed to discharge their initial onus to prove their case made out by them in their application for fixation of fair rent, by evidence.

26. 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.

27. Since the CPC in its entirety is not applicable in such a proceeding for fixation for fair rent u/s 17 of the said Act, the procedure governing Civil Suit and/or proceeding before the Civil Court as provided in the CPC 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.

28. We thus do not find any merit in this writ petition. The order of the learned Tribunal which is assailed in this writ petition is thus affirmed.

29. The writ petition thus stands rejected.

Re: W.P.L.R.T 274 of 2013

with

W.P.L.R.T 275 of 2013

with

W.P.L.R.T 276 of 2013

with

W.P.L.R.T 278 of 2013

with

W.P.L.R.T 279 of 2013

with

W.P.L.R.T 280 of 2013

30. Since identical question is raised in similar set of facts in all these six writ petitions, the fate of all these six writ petitions will be governed by the judgment delivered by us in the writ petition being WPLRT No. 273 of 2013 (Govind Prasad Kothary v. The State of West Bengal & Ors.),

31. Several similar orders of the learned Tribunal which are assailed in all these six writ petitions are thus affirmed. All these six writ petitions thus stand rejected.

Arindam Sinha, J.

I agree.

