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**(1999) 10 MP CK 0058**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 3038 of 1999**

Kalpana Salunke

APPELLANT

Vs

Jabalpur Development Authority and others

RESPONDENT

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**Date of Decision :** 26-10-1999

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Contract Act, 1872 — Section 15, 16, 23

**Citation :** (1999) 2 MPJR 572 : (2000) 1 MPLJ 565

**Hon'ble Judges :** S.P. Khare, J

**Bench :** Single Bench

**Advocate :** C.L. Kotecha, for the Appellant; Naman Nagrath, for the Respondent

**Final Decision :** Allowed

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## Judgement

S.P. Khare, J.

This is a petition under Article 226 of the Constitution of India challenging the order dated 19-3-1999 (Annexure P-13) of the respondent No. 1 by which license fee has been enhanced to Rs. 1642/- per month and the petitioner has been asked to pay Rs. 69,982=00 as arrears.

The petitioner was allotted shop No. 3 at Adhartal in Scheme No. 3 having an area of 290 Sq. ft. on license fee of Rs. 225/- per month as per agreement dated 2-8-1987 (Annexure P-2) with effect from 25-7-1987. The period of this agreement was two years. There was a renewal clause. The respondent No. 1 reserved a right as per Clause 6 of the agreement to increase the license fee "not exceeding 50%" at the time of renewal. This was subject matter of interpretation in M.P. No. 2534/93 when the petitioner and the licensees of other shops challenged the increase. It was held by order dated 24-4-1997 (Annexure P-4) that the respondent No. 1 could increase the license fee as per Clause 6 of the agreement.

The petitioner's case is that she is now paying a license fee of Rs. 660/- per

month and by the impugned order it has been increased to Rs. 1642/- per month. It is highly unjust, excessive and unreasonable. One time increase has been upheld in the writ petition mentioned above but it cannot be increased every time after the expiry of a period of two years. It has been pleaded that the rent charged by private owners for such shops in that area does not exceed Rs. 500/- per month. There has been a fresh agreement between the parties on 10-8-1998 (Annexure R-7) in which the license fee was mentioned at Rs. 660/- per month. That has been scored and substituted by the figure of Rs. 1642/- per month. The period of lease in this agreement is shown from 25-7-1989 to 24-7-2001. That is again subject to renewal at the expiry of three years on enhanced license fee of 20 percent.

The case of the respondents is that the increase in the license fee has been upheld by this Court in the writ petition mentioned above and that decision operates as *res judicata*. The demand made by the respondents by various notices is in conformity with this decision. On failure to pay the arrears and enhanced license fee the shop has been locked and its possession has been taken over with the help of the police force. That has been restored to the petitioner because of the interim order of this Court.

The point for determination is whether the respondent No. 1 is entitled to increase the license fee to the extent it has done. The arguments of the learned counsel for both the sides were heard.

It is necessary first of all to look at the earlier order of this Court dated 24-4-1997 in M.P. No. 2534 of 1993. A perusal of this order shows that it was agreed by both the parties that the license fee was Rs. 225/- per month from 25-7-1987 to 24-7-1989 and it was subject to increase "not exceeding 50%" at the expiry of the term of license of two years on 24-7-1989. That was precisely upheld by this Court. It was not held that the respondent No. 1 would be entitled to increase the license fee upto 50% at the end of each block of two years. It was held: "the petitioners cannot claim that they should be allowed to continue the premises on the license fee fixed at the time of their induction as licensee". Therefore, the contention of the respondents that Clause 6 of the agreement dated 2-8-1987 (Annexure P-2) or the order of this Court gave a license to them to increase the fee to the extent of 50% on the expiry of each period of two years is not acceptable. In terms of the order of this Court based on Clause 6 of the agreement there could be one time increase to the extent of 50% of the agreed amount of Rs. 225/- i.e.  $\text{Rs. } 225 + \text{Rs. } 112.50 = \text{Rs. } 337.50$  paise.

It is an admitted fact now that the petitioner is already paying Rs. 660/- per month as license fee from 25-7-1989. That is much more than Rs. 337.50 paise per month. In the return filed by the respondents it has not been shown how the figure of Rs. 1642/- per month has been arrived at. It has been argued on behalf of the respondents that the figure of Rs. 1642/- substituted by the original figure of Rs. 660/- in the new agreement dated 10-8-1998 (Annexure R-7) has been initialled by the petitioner and it is binding upon her. The petitioner has denied

that she accepted the increase to the tune of Rs. 1642/- per month. This petition was partly heard on 28-9-1999. The respondents were directed to disclose the basis of the figure of Rs. 1642/- per month. The respondents then filed a chart with an application showing how the amount of Rs. 1642/- has been arrived at. Item No. 3 of this chart shows that an increase of 20% has been effected at the end of each block of two years. It became Rs. 792/-, Rs. 950/-, Rs. 1140/-, Rs. 1368/- and Rs. 1642/- at the end of each successive period of two years. It does not appear that these details were ever supplied by the respondents to the petitioner before 28-9-1999.

In case such increase had been effected by a private owner of the shops everyone would have frowned upon him and it would have been struck down being in contravention of the statutory provision in section 5 of the M.P. Accommodation Control Act, 1961 which provides that no tenant shall, notwithstanding any agreement to the contrary, be liable to pay any amount in excess of the standard rent. The law affords protection to a tenant against charge of excessive rent. It permits payment of reasonable rent. The respondent No. 1 Jabalpur Development Authority is a statutory body established under the provisions of M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973. It has no profit making motive. Its slogan is to provide housing accommodation-residential and non-residential both at "no profit and no loss basis". Its goal is to ensure socio-economic justice as ordained by the Constitution. Its approach has to be more reasonable. It should not be arbitrary. Its action must be informed by reason. It is not supposed to act as a private landlord. It is possessed of the legal expertise to brand the transaction as "license" instead of lease and to charge "license fee" instead of "rent". It has to be examined both from contractual and Constitutional point of view whether such increase is just and fair.

Contractual:--

There should be no coercion or undue influence in a contract as provided in sections 15 and 16 of the Contract Act. The transaction should not be unconscionable. There is a presumption of undue influence where there is inequality of bargaining power and economic duress and the transaction is unconscionable. The rationale behind this rule is that the apparent consent of the party aggrieved is induced by pressure exercised upon him by the other party which the law does not regard as legitimate. The victim of the economic duress has no other choice but to sign on the dotted lines.

In *Atlas Express Limited vs. Kafco*, (1989) 1 All ER 641 it has been observed that where a party to a contract was forced by the other party to renegotiate the terms of the contract to his disadvantage and had no alternative but to accept the new terms offered, his apparent consent to the new terms was vitiated by economic duress. No person can insist on a settlement procured by intimidation.

There should be no exploitation of the needy. Undue influence or duress has become a technique of judicial intervention in unfair bargains. Economic coercion

forces a person to enter into or vary a contract against his will. Any term in the contract which is so unfair or unreasonable as to shock the conscience of the Court would be opposed to public policy and, therefore, void u/s 23 of the Contract Act. It would be an imposition upon a needy person. The Court must consider its reasonableness and liberate the party who is the victim of such imposition. In *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, , it has been held by the Supreme Court that an unconscionable term in a contract of employment is void u/s 23 of the Contract Act and violative of Article 14 of the Constitution. That covers an unconscionable contract by the State which is in "superior bargaining position". The Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or clause in a contract, entered into between parties who are not equal in bargaining power. This view has been approved by the Constitution Bench of the Supreme Court in *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, .

Constitutional:--

Respondent No. 1 Jabalpur Development Authority being a statutory authority is covered by the definition of "State" given in Article 12 of the Constitution of India. Therefore, it is necessary that it should satisfy the Court that its demand of increase of license fee at the rate of 20% on the expiry of each period of two years is just and reasonable. No material has been produced nor any details have been given in the return to justify such a demand. The only plea of the respondent is that the petitioner has signed on the contract and therefore it is binding upon her. There is no clear stipulation in the contract also that such increase would be effected once in two years. The increase on the face of it is so excessive that it has to be regarded as unreasonable.

In *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, , it has been held by the Supreme Court that the action of the State in contractual field also must be fair and reasonable. The requirement of Article 14 of the Constitution should extend even in the sphere of contractual matters for regulating the conduct of the State activity. Applicability of Article 14 to all executive actions of the State being settled, the State cannot cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more. It is not as if the requirements of Article 14 and contractual obligations are alien concepts, which cannot co-exist. Therefore, total exclusion of Article 14 non-arbitrariness which is basic to rule of law - from State actions in contractual field is not justified. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals. (emphasis supplied). Bringing the State activity in contractual matters also

within the purview of judicial review is inevitable.

Again in *Union of India and others Vs. Hindustan Development Corpn. and others*, , it has been emphasised that the test of reasonableness, which pervades the Constitutional scheme finds its positive manifestation and expression in the "lofty ideals of social and economic justice" which inspires and animates the Directive principles, and Article 14 strikes at arbitrariness in State action.

In *Smt. Nisha Singhal Vs. M.P. Housing Board, Bhopal and Others*, a Division Bench of this Court relying upon several decisions of the Supreme Court has held that the Housing Board does not have any arbitrary right to enhance the price without showing justification for the same. The Authority owes a duty to explain and to satisfy the Court, the reasons for high escalation. An arbitrary action of an authority falling under Article 12 although in a contractual field is open to judicial review.

In view of the legal position discussed above both from contractual and constitutional point of view it was necessary for the respondent No. 1 to justify its claim that it is entitled to increase the license fee every two years at the rate of twenty percent. That has not been done. It cannot rely simply on the condition No. 6 in the Agreement which permitted increase not exceeding 50 percent after the expiry of the initial agreement of two years. It could not be done at the end of each period of two years. That is excessive, unjust and unreasonable. An instrumentality of the State or a statutory body cannot be permitted to be more unreasonable than a private individual. As already stated a private individual cannot be permitted to effect such increase in the rent. The Development Authority formed with the object of providing housing accommodation at economical cost in pursuance of its goal of socioeconomic justice cannot be permitted to charge more than a private owner otherwise instead of rendering a helping hand to the poor and needy, its role would be characterised as feudal and capitalistic as that of a private individual adopting such attitude.

There can, however, be a reasonable increase at an interval of two years. It should be 10% instead of 20 percent on the amount of Rs. 660/- at the end of each block of two years. The respondent No. 1, therefore, should be directed to recalculate the increase in license fee from 25-7-1989 to 24-7-1999.

The petition is allowed. The impugned order is quashed. The respondent No. 1 is directed to recalculate the increase of license fee at the rate of ten percent instead of twenty percent on the amount of Rs. 660/- for each block of two years from 25-7-1989 to 24-7-1999 and recover the same from the petitioner. The future increase would also be on the same formula.