

(2008) 09 BOM CK 0139
In the Bombay High Court
Case No : Writ Petition No. 287 of 2001

Nandkumar Naidu and Others	Vs	APPELLANT
Thanwardas Janyani and Others		RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

Citation : (2008) 6 MhLj 434

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : A.S. Jaiswal, for the Appellant; N. Lalwani, holding for D.P. Lalwani, for the Respondent

Judgement

A.P. Lavande, J.—Heard Mr. Jaiswal, learned Counsel for the petitioners. Mr. N. Lalwani, Adv. holding for Adv. D.P. Lalwani, for the respondent Nos. 1 and 2 states that he is unable to argue the matter since all the case papers have been taken from Mr. D.P. Lalwani and as such he has no instructions to make any submissions.

2. By this petition, the petitioners challenge the order dated 21-11-2000 passed by Additional Collector, Nagpur in R.C. Appeal No. 77/A-71(l)/99-2000 by which the appeal filed by the petitioners under Clause 21 of C.P. and Berar Letting of Houses and Rent Control Order, 1949 ("the order" for short) and the order dated 11-12-1998 passed by the Rent Controller, Nagpur in Rev. Case No. 194/A-71(1)/91-92 by which fair rent in respect of the suit premises was fixed @ Rs. 3/- per sq. ft.

3. The petitioners are tenants of the respondents 1 to 4. The suit premises were let out to the petitioners in the year 1971 at the monthly rent of Rs. 175/-per month. Respondents 1 to 4 filed application dated 29-6-1998 seeking fixation of fair rent in respect of the suit premises at Rs. seven to eight per sq. ft. excluding corporation taxes. The petitioners were served with notice but they did not put in their appearances in the case. By order dated 11-12-1998 the Rent Controller

fixed the fair rent @ Rs. 3/- per sq. ft. excluding corporation taxes. Against the said order, the petitioners filed appeal to the Additional Collector, which was also dismissed by the impugned order dated 21-11-2000. Aggrieved by both the orders, the petitioners/tenants have invoked writ jurisdiction of this Court.

4. Although several grounds have been urged in support of the petition, Mr. Jaiswal, learned Counsel for the petitioners, at the outset submitted that the application filed by respondents 1 to 4 for fixation of the fair rent was liable to be dismissed on the ground that in the application filed for fixation of fair rent the respondents 1 to 4 had not mentioned the age of construction of the suit premises which was of utmost importance. He further submitted that in the absence of such basic pleadings, the application for fixation of fair rent was liable to be dismissed. In support of this submission, Mr. Jaiswal placed reliance upon the judgment delivered by learned Single Judge of this Court in *Shantilal Kunvarji and Co. Vs. State of Maharashtra*, . Mr. Jaiswal submitted that since the ground goes to the root of the matter, the petitioners are entitled to raise this ground for the first time in the writ petition. He invited my attention to the ground (F) taken in this regard in the petition.

As stated above, no effective appearance has been put up on behalf of respondents 1 to 4.

5. I have considered the submissions advanced by learned Counsel for the petitioners and perused the record and the judgment relied upon. In *Shantilal Shah's case (supra)* learned Single Judge of this Court dismissed the petition filed by the petitioner/landlord challenging the order passed by the authorities under Rent Control Order dismissing the application. Learned Single Judge has held that in an application for fixation of fair rent filed by the landlord he is bound to plead the age of construction of the house since in terms of Clauses 4, 5, 6 and 7 of the Rent Control Order the determination of fair rent depends upon the age of construction of the house. After considering the effect of Clauses 4, 5, 6 and 7 of the Rent Control Order, the learned Single Judge has held that in the absence of pleadings with regard to the age of construction of the house, the application for fixation of fair rent was liable to be dismissed. Perusal of the application filed by respondents 1 to 4 discloses that the age of construction of the suit house has not been mentioned. Therefore, the ratio in *Shantilal Shah's case (supra)* is squarely applicable in the present case. No doubt, since the matter proceeded ex parte, the petitioners have neither taken this point before the Rent Controller nor before the Appellate Authority. However, since the point goes to the root of the matter that is, to the maintainability of the application for fixation of the fair rent, in my considered opinion, the petitioners are entitled to urge this ground for the first time in the writ petition. Since respondents 1 and 4 have not pleaded regarding the age of the construction of the suit house, the application filed by respondents 1 to 4 was not maintainable. Consequently, the impugned orders passed by the Rent Controller as well as Additional Collector, Nagpur are liable to be quashed and set aside.

6. For the reasons aforesaid, the impugned order dated 11-12-1998 passed by the Rent Controller and the order dated 21-11-2000 passed by the Additional Collector are quashed and set aside. Needless to mention that the respondents are at liberty to file fresh application for fixation of fair rent in respect of the suit house, if they so desire and if such an application is filed, the Competent Authority shall decide the same in accordance with law.

7. Rule is made absolute in the aforesaid terms.