
(2015) 09 BOM CK 0275

In the Bombay High Court

Case No : Writ Petition Nos. 3939 of 2000 and 523 of 2001

The Training Manager, Zonal Training Centre, Punjab National Bank and Others APPELLANT

Vs

Meerabai and Others RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Citation : (2015) 09 BOM CK 0275

Hon'ble Judges : Z.A. Haq, J.

Bench : Single Bench

Advocate : A.C. Dharmadhikari, Advocate, for the Appellant; M.G. Bhangde, Advocate assisted by Tapadia, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Z.A. Haq, J.—Heard Shri A.C. Dharmadhikari, learned Advocate for the petitioners in Writ Petition No. 3939/2000 (tenant) and Shri M.G. Bhangde, learned Senior Advocate assisted by Shri Tapadia, Advocate for the respondent Nos. 1 to 4 in Writ Petition No. 3939/2000 (landlords).

2. The tenant have filed the Writ Petition No. 3939/2000 challenging the orders passed by the subordinate authorities under the provisions of the C.P. and Berar Letting of Premises and Rent Control Order, 1949 (hereinafter referred to as the "Rent Control Order, 1949"), determining the fair rent of the premises occupied by the tenant.

3. It is undisputed that the landlords are the owners of the suit premises. It is undisputed that the petitioners occupied the suit premises as tenant as per the agreement dated 09-12-1981 and then agreement dated 01-12-1982. As per the terms of the agreement, the rent payable by the tenant to the landlords was Rs. 10,000/- per month. As per the agreement dated 01-12-1982, the period of lease was from 01-12-1982 till 30-10-1983. As per Clause 11 of this agreement, the tenant were liable to pay the increased rent at the rate of Rs. 1,000/- per

month in addition to the rent of Rs. 10,000/- per month from 31.10.1983. The tenant continued to occupy the premises till they handed over the possession of the suit premises to the landlords on 25-04-2001.

4. The landlords filed application under the provisions of the Rent Control Order, 1949 on or about 09-12-1987 praying that the rent of suit premises be fixed at the rate of Rs. 12/- to Rs. 15/- per square foot per month.

The tenant opposed the claim of the landlords by filing the written statement.

The House Rent Controller, after completing the trial of the proceedings, by the order dated 10-05-1999, fixed the rent of the suit premises at Rs. 10/- per square foot per month, excluding the statutory taxes. The House Rent Controller directed the tenant to pay the rent as fixed by him from the date of the application i.e. from 09-12-1987.

The tenant being aggrieved by the order passed by the House Rent Controller, had filed appeal before the Additional Collector. The Additional Collector modified the order passed by the House Rent Controller and fixed the rent at Rs. 7/- per square foot per month.

The tenant being aggrieved by the order passed by the Additional Collector, have filed Writ Petition No. 3939/2000.

The landlords being aggrieved by the order passed by the Additional Collector reducing the rate of rent from Rs. 10/- per square foot per month to Rs. 7/- per square foot per month, have filed Writ Petition No. 523/2001. As the same order is challenged in these two writ petitions, the petitions are being disposed by the common judgment.

5. Shri A.C. Dharmadhikari, learned Advocate for the tenant has submitted that the subordinate authorities have relied on several instances placed on the record by the landlords to substantiate their claim that they are entitled for rent at Rs. 12/- to Rs. 15/- per square foot per month, however, those instances are not relevant as the premises which are referred to are not situated in the same area or in the vicinity of the suit premises. It is submitted that most of the premises which are referred to in the documents relied upon by the landlords, are commercial premises admeasuring 100 square feet, 200 square feet or 300 square feet, and the suit premises are used for training of the employees of the bank (tenant) and are not used for commercial purposes and further it is a four storied building with space of about 13450 square feet. It is submitted that the landlords are having an adjacent building constructed on part of the plot on which the suit premises are erected and the built-up area of the adjoining building is 8778.97 square feet and it is leased out to the Forest Development Corporation of Maharashtra Limited from 23-06-1988. The learned Advocate has pointed out that there was a dispute between the landlords and Forest Development Corporation of Maharashtra Limited which was settled by them and the rent of that building was fixed at Rs. 3/- per square foot per month from

10-06-1990. It is submitted that the subordinate authorities have overlooked this relevant evidence while determining the fair rent and have relied on the other instances without considering that those premises are not situated in the same area as the suit premises. It is submitted that for seeking fixation of fair rent under the provisions of the Rent Control Order, 1949, it is necessary for the landlord to plead and prove the date of construction of the premises and in the absence of it, the application of the landlords praying for fixation of rent cannot be considered. In support of this submission, the learned Advocate has relied on the judgment given by this Court in the case of Nandkumar Naidu and Others Vs. Thanwardas Janyani and Others, .

It is submitted that the application filed by the landlords praying for fixation of fair rent be dismissed. In the alternative, it is submitted that the impugned orders be set aside and the matter be remitted to the House Rent Controller for deciding the application filed by the landlords afresh. It is also submitted that if at all the fair rent of the suit premises is to be fixed, it can be at the rate of Rs. 3/- per square foot per month as fixed by the landlords with the Forest Development Corporation of Maharashtra Limited for the adjoining building.

6. Shri M.G. Bhangde, learned Senior Advocate has submitted that the landlords have placed sufficient material on the record to substantiate their claim of fair rent. It is submitted that the tenant have filed the report of M/s. Vinod Ganvir and Associates in which it is stated that the suit premises were constructed in 1977. It is submitted that the date of construction of the suit premises is brought on the record by the tenant and now it is not open for it to contend that the application filed by the landlords for fixation of fair rent has to be dismissed as the date of construction of the suit premises is not stated in the application. It is submitted that the judgment given in the case of Nandkumar s/o B.H. Naidu and others has been given relying on the judgment given by this Court in the case of Shantilal Sohanlal Shah Vs. The Secretary, Krishi Utpanna Bazar Samiti, . It is pointed out that in the case of Shantilal Sohanlal Shah the date of construction of the premises was not on the record and in those facts the Court concluded that the application filed by the landlord praying for fixation of fair rent was liable to be rejected.

The learned Senior Advocate has pointed out from the cross-examination of Shri Vinod Ramdas Ganvir that according to him, there would be an increase in the rent by 12% per year. It is submitted that even if the rent paid by Forest Development Corporation of Maharashtra Limited to the landlords for the adjoining building, at the rate of Rs. 2.75 paise per square foot per month from July 1988 is considered to be the fair rent and if the calculations of Shri Vinod Ramdas Ganvir about 12% increase in the rent per year is considered, the fair rent would come to Rs. 7/- per square foot per month as determined by the Resident Deputy Collector. The learned Senior Advocate has relied on the order passed in Revenue Case No. 22/A-71-(1) of 1989-90, Baburao vs. Bank of Maharashtra, Bharat Nagar Branch, Amravati Road, Nagpur on 01-03-1993, in

which the rent has been fixed at Rs. 6/- per square foot per month excluding the statutory taxes from 01-05-1990 (Exhibit A-21) and has submitted that these premises are on the same road as the suit premises are, at a distance of about 1/2 km. from the suit premises and are used by the Bank of Maharashtra. It is submitted that this factor is also relevant and considering the rent as fixed by the competent authority at Rs. 6/- per square foot per month, the order passed by the House Rent Controller fixing the fair rent at Rs. 10/- per square foot per month was justified.

Relying on the judgment given in the case of Ashok Kumar and Others Vs. Sita Ram, , it is submitted that the findings of fact recorded by the authorities should not be interfered with specially when the findings are recorded on proper appreciation of the material placed on the record and when it cannot be said that the impugned orders suffer from any illegality or perversity. It is prayed that the order passed by the Additional Collector be set aside and the order passed by the House Rent Controller fixing the fair rent at the rate of Rs. 10/- per square foot per month be restored.

7. The submission made on behalf of the tenant that the application filed by the landlords praying for fixation of fair rent has to be rejected as the details of the construction of the suit premises are not stated in the application, cannot be accepted in the facts of the present case. In the case of Nandkumar s/o B.H. Naidu and others, on which the learned Advocate for the tenant has relied, the date of construction of the building was not on the record at all. Similarly, in the case of Shantilal Sohanlal Shah also the date of construction of the building was not on the record. In this background, this Court concluded that the application filed by the landlords praying for fixation of fair rent is liable to be rejected. In the present case, the date of construction of the building has been brought on the record in the report of M/s. Vinod Ganvir and Associates in which it is stated that the suit premises are constructed in 1977. Moreover, the tenant have not raised any dispute about the age of the suit premises and the condition of the suit premises as reflected in the report of M/s. Vinod Ganvir and Associates. The tenant had not raised any such objection before the subordinate authorities. Hence, the objection raised on behalf of the tenant in this regard is overruled.

8. The landlords have placed on the record several instances to justify their claim for fair rent. The House Rent Controller has relied on the documents filed by the landlords showing the rent of different premises. After scanning the relevant part of the order passed by the House Rent Controller, I find that the premises occupied by Udaykumar Vyas, Javed Asini, Chirojwal Chaterjee and Gopidas Govardhandas Bagadi are admeasuring 100 square feet or 200 square feet or 300 square feet. According to the landlords, these premises are getting the rent at the rate of Rs. 10/- per square foot per month or Rs. 7/- per square foot per month or Rs. 6.5 per square foot per month. The rent of these premises cannot be considered as relevant factor for determining the fair rent of the suit premises, as these premises are shops admeasuring 100, 200, 300 square feet.

The built-up area of suit premises is 13450 square feet and it is a four storied building used by the tenant for training of its employees. Furthermore, it is not clear that the above mentioned premises are situated in near vicinity to the suit premises. Similarly, the rent received by Shri Anilkumar Vasant Bahtava in respect of his premises at the rate of Rs. 9/- per square foot per month also cannot be considered as relevant factor. The comparability of those premises with the suit premises are not brought on the record. The rent of Rs. 6/- per square foot per month fixed in the case of Bank of Maharashtra, Bharat Nagar Branch, Amravati Road, Nagpur also cannot be said to be a relevant factor as comparability of those premises with the suit premises has not brought on the record. The other instances are also not relevant as the building or shops are situated in Itwari, Sadar, Medical Square Road, Ramdaspath, Gandhibagh, which are totally different localities situated at substantial distance from the suit premises.

9. In the cross-examination of Shri Mukund Manohar Papinwar (landlord), it has come on the record that some proceedings were filed in 1986-1987 for fixation of fair rent regarding the adjoining building occupied by the Forest Development Corporation of Maharashtra Limited. It has come in the cross-examination that there was a compromise between the landlords and the Forest Development Corporation of Maharashtra Limited and the agreement dated 24-08-1990 was executed and the rent of the adjoining building was fixed at Rs. 3/- per square foot per month excluding the statutory taxes, as fair rent.

I find that the subordinate authorities have completely overlooked the relevant evidence of Shri Mukund Manohar Papinwar regarding fair rent of the adjoining building at the rate of Rs. 3/- per square foot per month. Furthermore, I find that the impugned orders are passed considering irrelevant instances without adverting to the fact that the premises in those cases are not comparable with the suit premises either because of their area, utility and location. It is well established that the order passed by a quasi-judicial authority has to be on the basis of proper appreciation of the material on the record and if the order is based on irrelevant considerations or any relevant considerations are overlooked, then the order is unsustainable. As the impugned orders completely overlook the relevant evidence regarding the rent of the adjoining building which is owned by the same landlords and as the impugned orders are passed considering the instances which are not relevant, they are unsustainable in law.

10. Hence, the following order :

(i) The impugned orders are set aside.

(ii) The matter is remitted to the House Rent Controller, Nagpur for deciding the application filed by the landlords afresh.

(iii) The parties are not permitted to amend the pleadings or to file any document or to lead any evidence. The House Rent Controller, Nagpur shall decide the application on the basis of the material already available on the record

and after hearing the concerned parties.

(iv) The representatives of the tenant and the landlords shall appear before the House Rent Controller, Nagpur on 29-09-2015 at 11-00 a.m. and abide by the further orders/instructions in the matter.

(v) As the proceedings are going since 1987, the House Rent Controller, Nagpur is directed to dispose the application till 30-01-2016.

(vi) The learned Advocates for the respective parties submit that the tenant have deposited an amount of Rs. 1,30,14,491/- on 24-09-2004 and Rs. 29,55,400/- on 03-12-2004 as per the interim order passed by this Court, out of which the landlords have withdrawn Rs. 1,18,94,862/-. The learned Advocates submit that Rs. 39,64,722/- are kept in fixed deposit. It is directed that until the application filed by the landlords for fixation of fair rent is decided by the House Rent Controller, the amount withdrawn by the landlords shall be with the landlords and the amount which is kept in the fixed deposit will continue in the fixed deposit. The House Rent Controller, Nagpur shall pass appropriate orders regarding entitlement of the landlords or the tenant for the amount which was deposited by the tenant.

The petitions are allowed accordingly. In the circumstances, the parties to bear their own costs.