

***THE HON'BLE SRI JUSTICE M.LAXMAN**

+ CIVIL REVISION PETITION No.5014 OF 2015

% 25-01-2023

Mrs. Shafeequn Begum.

...Petitioner

vs.

\$ Mr. Laxmi Narayan Rathi and 3 others.

... Respondents

!Counsel for the Appellant: M/s. Aadesh Varma.

^Counsel for Respondents: Damodar Mundra Associates.

<Gist :

>Head Note :

? Cases referred

1. 2019 Law suit (TS) 264.
2. MANU/TL/0583/2021.
3. MANU/AP/0568/2008.
4. MANI/SC/0614/2011.
5. (1998) 1 ALD 25.
6. (2015) 2 SCC 189.
7. 1962 AIR 83, 1962 SCR (2) 553.
8. (1997) 6 SCC 241.

IN THE HIGH COURT FOR THE STATE OF TELANGANA**HYDERABAD**

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CIVIL REVISION PETITION No.5014 OF 2015

Between:

Mrs. Shafeequn Begum.

...Petitioner

Vs.

Mr. Laxmi Narayan Rathi and 3 others.

... Respondents

JUDGMENT PRONOUNCED ON: 25.01.2023

THE HON'BLE SRI JUSTICE M.LAXMAN

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

M. LAXMAN, J

THE HONOURABLE SRI JUSTICE M.LAXMAN**CIVIL REVISION PETITION No.5014 of 2015****ORDER:**

1. The present Civil Revision Petition has been directed against order dated 13.08.2015 in R.A.No.250 of 2014 on the file of Additional Chief Judge, City Small Causes Court, Hyderabad (hereinafter referred to as 'appellate Court'), therein and thereby, the order dated 17.10.2014 in R.C.No.363 of 2013 on the file of the II Additional Rent Controller, City Small Causes Court, Hyderabad (hereinafter referred to as 'rent controller'), was confirmed.

2. The rent controller in R.C.No.363 of 2013 has fixed fair rent of Rs.3,600/- per month by enhancing the rent from Rs.1,100/- per month and also awarded periodical enhancement 10% for every two years on the fair rent fixed for the scheduled premises therein. Aggrieved by the same, the tenant preferred appeal in R.A.No.250 of 2014 and the appellate Court dismissed the appeal. Aggrieved by the said dismissal, the present revision is preferred by the tenant.

3. Revision petitioner herein is the tenant and the respondents herein are landlords. During the pendency of the present revision, respondent No.1 herein expired and his legal representatives are brought on record as respondent Nos.3 and 4. For the sake of convenience, hereinafter parties are referred to as landlord and tenant.

4. The case of the landlords is that they are joint owners of shop premises bearing municipal No.20-3-420, admeasuring 100 sq. feet situated at Moosabowli, Shahgunj, Hyderabad. The said shop was let out to the tenant. The existing rent was Rs.1,100/- which is Rs.11/- per sq.foot and the said premises consists of 100 sq. feet. The said shop is commercially located and there was tremendous increase in the rental values in the locality of the shop as it is commercial area. The existing small road was widened and it has become main road and created more business avenues for commercial activities. There is a textile market in the said locality. The shop is near to petrol pump and also near to Charminar, which is historical monument. The landlords sought enhancement of rent from Rs.1,100/- to Rs.6,000/- per month and also sought for periodical enhancement of 20% for every year.

5. The case of the tenant was that from 1977 onwards there were no changes in the accommodation; no parking has been provided, no amenities, no furniture and no fittings were supplied to her by the landlords. The shop is located in Old City and there is no development in the locality. Originally, the shop was of 200 sq. feet and in the year 2004, due to road widening an extent of 120 sq. feet was affected and left over area is only 80 sq. feet. The shop building is 60 years old and tenant has been maintaining the premises from its inception. There is no addition or alteration to premises and the rent that is being paid is fair and reasonable. The present application filed for fixing fair rent is with ulterior motive to evict the tenant from the shop. Hence, prayed to dismiss the case.

6. On the basis of the above pleadings, the rent controller has framed the following issues for consideration:

“1. Whether the petitioner is entitled for fixation of fair rent in respect of petition schedule premises at Rs.6,000/- per month i.e., Rs.60/- per sft?

2. To what relief?”

7. In support of their case, the landlords got examined P.W.1 and got marked Ex.P-1 and the tenant herself got examined as R.W.1 and got marked Exs.R-1 to R-18 before the rent controller.

8. Ultimately, the rent controller found that the landlords are entitled for enhancement of rent and fixed fair rent of Rs.3,600/- per month and also held that they are also entitled for future periodical enhancement at 10% on fixed fair rent for every two years. Aggrieved by the same, the tenant filed rent control appeal before the appellate Court and the said appeal was dismissed confirming the findings of the rent controller. Therefore, the present revision is preferred at the instance of the tenant.

9. Heard the learned counsel for both parties.

10. The points emerging for determination in the present revision are as follows:

- “1. Whether the landlords are entitled for fair rent as fixed by the rent controller?
2. Whether the rent controller has jurisdiction to order periodical enhancement?
3. To what relief?”

Point Nos.1 and 2:-

11. The contention of the learned counsel for the tenant is that the rent controller has fixed fair rent without there being any evidence from the landlords to show that fair rent claimed is prevailing rate. It is also

submitted that admittedly, there is no addition and improvement to the shop premises and the same is located in the Old City and has no business prospects. The rent which is paid is fair rent and there is no need for enhancement. It is also his submission that the rent controller and the appellate Court has committed error in granting periodical enhancement contrary to Section 5 of Rent Control Act, 1960 (hereinafter referred to as 'the Act')

12. According to the learned counsel for tenant, the rent controller has no jurisdiction to give periodical enhancement as held by this court in the case of **Mohd Osman v. D. Shakuntala Baidied**¹. It is also submitted that when there is no evidence warranting the grant of periodical enhancement, the rent controller should not have granted enhancement for every two years, which is arbitrary. To support such contention, he also relied upon the judgment of this Court in **Om Prakash Malatkar v. Kishan Bai Porwal**².

13. On the contrary, the learned counsel for the landlords has contended that the property is located in a commercial locality and there are large scale activities of textile businesses nearby and the property is very near to

¹ 2019 Law Suit (TS) 264

² MANU/TL/0583/2021

tourist place i.e., Charminar. The property is located on the main road leading from Moosabowli to Charminar, which is a commercial center. On account of increase in the width of the road, the commercial activity of the location has tremendously increased. Apart from that, the place is very near to Chudibazar, near to Charminar, which is heavy business center. Therefore, the rent controller has considered all such evidence rightly in enhancing and fixing the fair rent at Rs.3,600/- per month. Such findings have been concurrently taken by both the Courts below and there is no reason for interference.

14. Learned counsel for landlords also submitted that the power to fix fair rent includes power to grant reasonable periodical enhancement and this view has been taken by this Court in the case of **Jupudi Parthasarthy v. Kondapalli Rajewswari and ors.**³. It is also her further contention that the view adopted by this Court in the said case, was approved by another single judge of this Court in the case of **Omprakash Malatkar** (2nd cited supra). Further, this Court in the said case has set aside the periodical enhancement, which was granted by the rent controller, on the ground that there was no evidence available for the rent controller to enhance the fair

³ MANU/AP/0568/2008

rent periodically and not on the ground that the rent controller has no power to grant periodical enhancement of rent.

15. It is also her submission that the judgment of this Court in **Mohd Osman** case (1st cited supra) is *per incuriam* and not binding on this Court for the reason that the said judgment was rendered ignoring the judgment of this Court in case of **Jupudi Parthasarthy** case (3rd cited supra). This Court having considered both decisions has taken the view that the rent controller has power to deal with granting of periodical enhancement of fair rent.

16. She also relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Mohammed Ahmad and ors. v. Atma Ram Chauhan and ors.**⁴, wherein the Hon'ble Supreme Court has given certain guidelines for granting of periodical enhancement to avoid landlord and tenant litigation and such guidelines are binding precedent on this Court. Therefore, grant of 10 % enhancement of fair rent for every two years does not suffer from any infirmity, so as to interfere by this Court in the present revision.

⁴MANU/SC/0614/2011

17. In order to adjudicate the above contention, it is apt to refer Section 4 to 6 of the Act, which read as under:

“Section 4:- Determination of fair rent:

(1) The Controller shall, on application by the tenant or landlord of a building fix the fair rent for such building after holding such inquiry as the Controller thinks fit.

(2) In fixing the fair rent under this Section, the Controller shall have due regard-

(a) to the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances during the twelve months prior to the 5th April 1944;

(b) to the rental value as entered in the property tax assessment book of the concerned local authority relating to the period mentioned in clause (a);

(c) to the circumstances of the case, including any amount paid by the tenant by way of premium or any other like sum in addition to rent after the 5th April 1944;

(3) In fixing the fair rent of residential buildings, the Controller may allow-

(i) if the rate of rent or rental value referred to in sub-section (2) does not exceed twenty-five rupees per mensem, an increase not exceeding $12\frac{1}{2}$ per cent on such rate or rental value;

(ii) if the rate of rent or rental value exceeds twenty-five rupees per mensem, but does not exceed fifty rupees per mensem, an increase not exceeding $18\frac{3}{4}$ per cent, on such rate or rental value;

(iii) if the rate of rent or rental value exceeds fifty rupees per mensem, an increase not exceeding $37\frac{1}{2}$ per cent on such rate or rental value:

Provided that in the case of a residential building which has been constructed after 5th April 1944, the percentage of increase shall not exceed $37\frac{1}{2}$, $56\frac{1}{4}$ and 75 respectively.

(4) In fixing the fair rent of non-residential building, the Controller may allow-

(i) if the rate of rent or rental value referred to in sub-section (2) does not exceed fifty rupees per mensem, an increase not exceeding $56\frac{1}{4}$ per cent, on such rate or rental value;

(ii) if the rate of rent or rental value exceeds fifty rupees per mensem, an increase not exceeding 75 per cent, on such rate or rental value:

Provided that in the case of a non-residential building which has been constructed after 5th April 1944, the percentage of increase shall not exceed 75 and 150 respectively.

(5) In the case of a building for which the fair rent has been fixed before the commencement of this Act, the Controller shall, on the application of the landlord, allow such increase in the fair rent as in the opinion of the Controller, the landlord is entitled to under this section.

“Section 5:- Increase in fair rent in what cases admissible:

(1) When the fair rent of a building has been fixed under this Act, no further increase in such fair rent shall be permissible except in cases where some addition, improvement or alteration has been carried out at the landlord's expense and if the building is then in the occupation of a tenant, at his request:

Provided that the increase shall be calculated at a rate per annum not exceeding six per cent of the cost of such addition, improvement or alteration carried out and the fair rent as increased under this sub-section shall not exceed the fair rent payable under

this Act for a similar building in the same locality, with such addition, improvement or alteration:

Provided further that any dispute between the landlord and the tenant in regard to any increase claimed under this sub-section, shall be decided by the Controller.

(2) Where, after the fair rent of a building has been fixed under this Act, there is a decrease or diminution in the accommodation or amenities provided, the tenant may claim a reduction in the fair rent as so fixed:

Provided that any dispute between the landlord and the tenant in regard to any reduction so claimed shall be decided by the Controller.

Section 6:- Determination of fair rent:

(1) Where the amount of taxes and cesses payable by the landlord in respect of any building to a local authority is enhanced after the fixation of the fair rent under section 4, the landlord shall be entitled to claim half of such excess from the tenant in addition to the rent payable for the building under this Act:

Provided that such excess shall not be recoverable in so far as it has resulted from an increase of rent in respect of the building.

(2) Any dispute between the landlord and the tenant in regard to any increase claimed under sub-section (1) shall be decided by the Controller.”

18. This Court in **Suresh Gir v. K. Sahadev**⁵ has struck down Section 4(2) to 4(4) of the Act. Such provisions were struck down primarily on the ground that the criteria prescribed under Section 4(2) to 4(4) for working

⁵ (1998) 1 ALD 25

out the fixation of fair rent are illusory due to efflux of time. Till date, no further amendment has been brought to such provisions. Section 4(1) empowers the rent controller to fix fair rent by holding appropriate enquiry. Since the criteria is struck down, the fixation of rent must be based on the criteria of just and reasonable, as held by this court in the case of **Suresh Gir** (5th cited supra). When power has been granted to fix fair rent, such a power also includes power to grant periodical increase of rent as held by this Court in **Jupudi Parthasarathy** case (3rd cited supra).

19. A reading of Section 5 of the Act shows that once a fair rent has been fixed under the Act, no further increase in such fair rent is permissible except in case of addition, improvement or alteration, which is done at the expense of landlord and when such additions have been done at the request of tenant, such increase is also restricted to not more than 6% of costs of addition, improvement and alteration. However, a right has been given to the tenant to ask for reduction on account of decrease or diminution in the accommodation or amenities. Section 6 also empowers in certain circumstances to increase the fixation of fair rent under Section 4 (1) based on the increase in tax and cess payable by the landlord in respect of building and such factor is restricted to $\frac{1}{2}$ of the tax amount.

20. This Court in the case of **Mohd Osman** (1st cited supra) at Para 60 had held as follows:

“[60] However, the provision for periodical enhancement of rent at 10 % for every two years on the existing rent from the date of filing of the R.C. granted by the appellate authority is not proper since any enhancement can be directed under Section 5 of the Act only if there is any addition, improvement or alteration carried out at the instance of the respondents at the request of the petitioner. Therefore, the said direction is set aside.”

A reading of the above decision would show that simply by referring to Section 5, periodical enhancement was set aside and there were no findings that once fair rent is fixed under the Act by invoking provision under Section 4(1) of the Act, the rent controller ceases jurisdiction except in the circumstances stated in Section 5 of the Act. A strict reading of Section 5 shows that it completely prohibits fixation of any fair rent, once fair rent is fixed under the Act except in the circumstances expressly stated there under. This means, if no addition, alteration or improvement is done, the landlord has no right to seek fixation of fair rent. There is a conflict between two provisions i.e., Section 4(1) and Section 5 of the Act. Section 4(1) empowers the rent controller to fix fair rent. There is no embargo on such power that once fair rent is fixed, the rent controller has no jurisdiction, whereas, the strict interpretation is given to section 5 of Act it

overrides power granted under Section 4(1). The harmonious interpretation is to be given to save both provisions. Section 5 has to be read down to save power given under Section 4(1). This controversy is no more *res integra*.

21. In the normal context, in the facts and situation, this Court would have referred the matter to full bench to adjudicate whether the rent controller has power for periodical enhancement in the context of conflicting decision from this Court.

22. The above said judgment of this Court in **Mohd Osman** case (1st cited supra) was rendered ignoring the judgment in the case of **Jupudi Parthasarthy** (3rd cited supra). The Apex Court in **M/s. Hyder Consulting (UK) Ltd v. Governor State of Orrisa**⁶ held that any judgment of coordinating bench ignoring another coordinating bench renders the subsequent judgment *per incuriam*. Further, the constitutional bench of Hon'ble Supreme Court of India in **Jaisri Sahu v. Rajdewan Dubey and others**⁷ held that when the subsequent coordinate bench find two conflicting decisions of some coordinate benches, the proper course would be to refer the matter to Full Court.

⁶ (2015) 2 SCC 189

⁷ 1962 AIR 83, 1962 SCR (2) 553

23. In the said scenario, this court would have referred the matter to Full bench, if there was no Supreme Court decision. The Hon'ble Supreme Court in the case of **Mohammad Ahmed** case (4th cited supra) has given certain guide lines to minimize the litigation between landlord and tenant.

The said guide lines are as follows:

“(i) The tenant must enhance the rent according to the terms of the agreement or at least by ten percent, 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 present and prevalent market rent assessed and fixed between the parties is paid by the tenant then 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, location, type of construction, accessibility with 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.”

24. The contention of the learned counsel for the tenant is that the above referred guidelines are not applicable to the claims under the Act and those guidelines were framed in the context of the claims under the Rent Control Act in Uttar Pradesh State. On the contrary, learned counsel for the landlords contended that those guidelines would apply to all landlord and tenant disputes and not only for claims under the Rent Control Act in the State of Uttar Pradesh.

25. The Hon'ble Supreme Court in case of **Vishaka and others v. State of Rajasthan**⁸ held that guidelines framed by the apex court is law under Article 141 of Constitution of India until legislation has been made to that

⁸ (1997) 6 SCC 241

effect. In the present case, the guidelines were not only to the litigation under the Rent Control Act for the State of Uttar Pradesh, but they are general guidelines relating to landlord and tenant disputes. Those guidelines were framed to minimize the differences between landlord and tenant and reduce the Court litigation. These guidelines are law under Article 141 of Indian Constitution. Therefore, such guidelines bind on this Court also.

26. The Supreme Court in the said guidelines has given periodical enhancement for every three years at 10%. In the present case, the rent controller has fixed 10% enhancement on the fair rent for every two years. Learned counsel for tenant contended that when no evidence is let in, how landlords are entitled for periodical enhancement. This contention has no merit. In fixing the periodical enhancement some guess work has to be made by taking judicial notice of increase in the value of real estate and periodical increase in the living standard. It also depends upon the increase in commercial activity. Normally, in the commercial activity, there would be increase in demand for premises unlike in residential premises.

27. In the present case, there is increase in the width of road and the shop is near tourist place and there is heavy business. These are justifiable

grounds which exist for periodical enhancement of 10% of fair rent for every three years instead of two years as awarded by the rent controller. To that extent the impugned order requires to be modified.

28. The other contention of the learned counsel for tenant is that the fair rent fixed is unreasonable. According to him, no evidence is placed before this Court for taking into account the premises is located in commercial locality. Further, it is contended that even though there was increase in the width of road, the public flow has also not been increased and naturally, there is no increase in the business activity. Though, the shop is near to world tourist center, there is no heavy commercial activity in the nearby area.

29. In the case of **Mohammad Ahmad** (4th cited supra), the Apex Court has laid down certain principles which shall be taken into account while fixing fair rent. Fixation of fair rent should be just, proper and adequate, keeping in mind location, type of construction, accessibility with the main road, parking space facilities and other are to be considered. Seeing from such parameters, fixing of Rs.3,600/- per month as fair rent is very reasonable and just and it doesn't require interference by this Court.

Point No.3:-

30. In the result, the Civil Revision Petition is partly allowed and findings of both the Courts below in respect of fixation of fair rent are confirmed and findings of both the Courts in respect of periodical increase in the rental value by 10% 'for every two years' is modified, instead such increase is 'for every three years'. The rest of the findings of both the Courts below are confirmed. There shall be no order as to costs. Miscellaneous petitions, if any, pending, shall stand closed.

Date: 25.01.2023
GVR

M.LAXMAN, J