



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6858 OF 1998

1. Shri Ashok Mohanshankar Vernekar
since deceased through legal heirs and
representatives

1A. Jyotsna Ashok Vernekar

1B. Tanmay Ashok Vernekar

....*Petitioners*

: *Versus* :

1. Shri Shantaram M. Bhat

(since deceased), through his legal Heirs
and representatives

1A. Smt. Sulochana S. Bhat

(deleted since deceased)

2. Shri. Nootan Shantaram Bhat

(Also as legal heir & representative
of Sulochana S. Bhat)

....*Respondents*

Mr. Shailendra S. Kanetkar with Mr. Rahul Mestry, Ms. Akshada Jagdale and Mr. Jugal Chhed, for the Petitioners.

Mr. Nitin Thakkar, Senior Advocate with Mr. P. G. Lad i/b Ms. Aparna Kalathil, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Reserved On : 29 November 2024.

Pronounced On : 5 December 2024.

JUDGMENT :-

1) Petitioner-landlord has filed this petition challenging the judgment and order dated 18 March 1998 passed by the Appellate Bench of the Small Causes Court allowing the Revision Application No.33/1997 filed by the Respondent-tenant and setting aside the order dated 24 December 1996 passed by the Small Causes Court by which R.A.N. Application No. 691/SR of 1979 filed by the Respondent-tenant for fixation of standard rent in respect of the suit premises was rejected. The Revisional Court has fixed the standard rent of the suit premises at Rs.1000/- per month by reducing the same from contractual rent of Rs.2,000/- per month.

2) The Petitioner is an owner in respect of land bearing Plot No.4, admeasuring 3017 sq. yards, Revised Suburban Scheme No. III (Group-A) at Chembur, Mumbai (**suit premises**). By Deed of Lease dated 9 June 1962, Petitioner leased out in Respondent's favour the suit premises by accepting Rs.12,000/- as deposit and rent of Rs.2,000/- per month. The tenure of the lease is for 99 years. As per the conditions of the lease, Respondent has constructed a cinema hall on the suit premises.

3) By advocate's letter dated 4 December 1978, Respondent requested the landlord to furnish all particulars relating to standard rent of premises including the value thereof and demanded reduction of rent to a fair and reasonable figure. Since Petitioner-landlord failed to respond to the said letter, the

Respondent-tenant filed R.A.N. Application No. 691/SR of 1979 for fixation of standard rent in respect of the suit premises at Rs. 5/- per month. The application was resisted by the Petitioner-landlord by filing his reply. Based on the pleadings, the Small Causes Court framed the issue as to whether the rent charged by the Petitioner-landlord was excessive or exorbitant. Both the sides led evidence in support of their respective claims. After considering the pleadings, documentary and oral evidence, the Small Causes Court proceeded to reject the application for fixation of standard rent by its order dated 24 December 1996 by holding that the rent charged by the landlord was neither excessive nor exorbitant. The Respondent-tenant filed Revision Application No. 33/1997 challenging the Small Causes Court's order dated 24 December 1996 before the Appellate Bench of the Small Causes Court. The Revision Application filed by the Respondent-tenant has been allowed by the Appellate Bench by reducing the standard rent in respect of the suit premises to Rs.1,000/- per month. Aggrieved by the order dated 18 March 1998 passed by the Appellate Bench of the Small Causes Court, the Petitioner-landlord has filed the present petition. By order dated 19 February 1999, the petition was admitted and prayer for interim relief was rejected. The petition is called out for final hearing.

4) Mr. Kanetkar, the learned counsel appearing for the Petitioner-landlord would submit that the tenant agreed to pay rent at the rate of Rs.2,000/- per month by Indenture of Lease dated 9 June 1962 and he continued paying the same without any demur and raised the issue about the quantum of rent for the first

time by notice dated 4 December 1978. That no event had occurred which would enable the Respondent-tenant to file an application for reduction of contractual rent. That from contractual rent of Rs. 2,000/- per month, Respondent-tenant prayed for fixation of standard rent at Rs. 5/- per month. He would submit that the Revisional Court has erroneously rejected the valuation report of Mr. Vaidya. That the Respondent-tenant never filed any application for cross-examining Mr. Vaidya and on account of lack of interest shown by the Respondent-tenant, the Trial Court did not summon him for cross-examination. That the findings recorded by the Appellate Court are otherwise perverse as the Appellate Court erroneously took into consideration the valuation indicated in the Gift-Deed, which did not represent the correct market value in respect of the suit premises. That the Appellate Court erred in not appreciating the fact that by letter dated 5 December 1960, Respondent's father had shown willingness to purchase the suit premises at the cost of Rs. 4,50,000/-. He would submit that the suit premises comprise of large tract of land on which Respondent-tenant not only operates a Cinema Theater, but has further rented out few shops to outsiders and is profiteering at the cost of the landlord. He would accordingly pray for setting aside the order passed by the Revisional Court.

5) The petition is opposed by Mr. Thakkar, the learned senior advocate appearing for the Respondent-tenant. He would submit that the Revisional Court has considered the entire material on record for arriving at the correct finding of fact about valuation of the suit premises. That the Trial Court had erred in

relying on valuation report of Mr. Vaidya though opportunity of cross-examining the said witness was never given to the Respondent-tenant. That the Appellate Court has rightly taken into consideration the valuation indicated in the Gift-Deed dated 3 August 1961 at Rs. 10,000/-. That the Appellate Court has rightly ignored the letter of father of Respondent showing intention to purchase the land at Rs. 4,50,000/- in the year 1960. That the said offer is irrelevant for the purpose of determining the standard rent in respect of the suit premises. He would submit that the Respondent-tenant has already made a hefty security deposit of Rs.12,000/- at the time of execution of the lease-deed, corresponding to the market value of the land. That the Revisional Court has correctly adopted the methodology for finding out fair market value as well as fair rental returns in respect of the suit premises. He would therefore submit that no interference is warranted in the impugned order passed by the Revisional Court. He would pray for dismissal of the petition.

6) Rival contentions of the parties now fall for my consideration.

7) Before proceeding to examine the controversy about the adequacy of quantum of standard rent in respect of the suit premises, it would be first necessary to consider the statutory scheme of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (**Bombay Rent Act**) which was enacted as a temporary measure initially for a period of two years and got extended endlessly till its journey was finally halted by enactment

of Maharashtra Rent Control Act, 1999 (MRC Act) w.e.f. 31 March 2000.

8) The term 'standard rent' is defined under Section 5(10) of the Bombay Rent Act as under:

5(10) "standard rent" in relation to any premises means-

(a) where the standard rent is fixed by the Court and the Controller respectively under the Bombay Rent Restriction Act, 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, such standard rent; or

(b) when the Standard rent is not so fixed, subject to the provisions of section 11,-

(i) the rent at which the premises were let on the first day of September 1940, or

(ii) where they were not let on the first day of September 1940, the rent at which they were last let before that day, or

(iii) where they were first let after the first day of September 1940, the rent at which they were first let, or

(iii-a) notwithstanding anything contained in paragraph (iii), the rent of the premises referred to in sub-section (1-A) of section 4 shall, on expiry of the period of five years mentioned in that sub-section, not exceed the amount equivalent to the amount of net return of fifteen per cent, on the investment in the land and building and all the outgoings in respect of such premises; or

(iv) on any of the cases specified in section 11, the rent fixed by the Court;

9) Thus, under definition of the term 'standard rent' under clause (10) of Section 5, the standard rent is :

(i) rent at which the premises were let on 1 September 1940,

(ii) where they were not let on 1 September 1940, the rent at which they were last let before that day,

(iii) where they were first let after 1 September 1940, the rent at which they were first let.

10) Section 7 of the Bombay Rent Act prohibited the landlord from charging rent in excess of standard rent. Freezing of standard rent in respect of tenanted premises caused unrest amongst landlords, who started feeling the heat as time progressed and maintaining the tenanted buildings through paltry amount of rent became increasingly difficult. The standard rent so frozen under the provisions of the Bombay Rent Act no longer represented, even remotely, any return for the landlord on investment made in land and building. In Malpe Vishwanath Acharya and others Versus. State of Maharashtra and another¹, the Apex Court has considered challenge to the constitutional validity of the provisions relating to standard rent fixation under the Bombay Rent Act. The Apex Court was about to declare the provisions under the Bombay Rent Act relating to standard rent fixation as unconstitutional and arbitrary. However, on account of assurance given by the State Government that it was in the process of bringing in new Rent Act, the Apex Court restrained itself from declaring the provisions of standard rent fixation to be unconstitutional. In this regard, it would be relevant to reproduce the observations made by the Apex Court in paragraphs 22, 31 and 32 of the judgment in *Malpe Vishwanath Acharya* :

22. The aforesaid illustration, which has not been seriously disputed, clearly brings out the arbitrariness of the standard rent provisions contained in the Bombay Rent Act. It is true that the aforesaid illustration has references to the monthly rent of Rs. 100 as on 1-9 1940 and does not relate to the premises which are let out after the Act had come in force. **As far as Section 5 (10) is concerned the standard rent of the premises let out after 1-9-1940 is that rent at which the premises were first let. Even so with the rapid increase in the expenses for repair and other**

¹ (1998) 2 SCC 1

outgoings and the decreasing net amount of rent which remains with the landlord, clearly show that the non-provision in the Act for reasonable increase in the rent, with the passage of time, is leading to arbitrary results.

31. Taking all the facts and circumstances into consideration we have no doubt that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be reasonable. The said provisions would have been struck down as having now become unreasonable and arbitrary but we think it is not necessary to strike down the same in view of the fact that the present extended period of the Bombay Rent Act comes to an end on 31st march, 1998. The government's thinking reflected in various documents itself shows that the existing provisions have now become unreasonable and, therefore, require reconsideration. The new bill is under consideration and we leave it to the legislature to frame a just and fair law keeping in view the interests of all concerned and in particular the resolution of the State Ministers for Housing of 1992 and the National Model law which has been circulated by the Central Government in 1992. We are not expressing any opinion on the provisions of the said Model law but as the same has been drafted and circulated amongst all the States after due deliberation and thought, there will, perhaps, have to be very good end compelling reasons in departing from the said Model Law. Mr. Nargolkar assured us that this Model law will be taken into consideration in the framing of the proposed new Rent Act.

32. We, accordingly, dispose of these appeals without granting any immediate relief but we hold that the decision of the High Court upholding validity of the impugned provisions relating to standard rent was not correct. We however refrain from striking down the said provision as the existing Act elapses on 31.3.1998 and we hope that new Rent Control Act will be enacted with effect from 1st April, 1998 keeping in view the observations made in this judgment in so far as fixation of standard rent is concerned. It is, however, made clear that any further extension of the existing provisions without bringing them in line with the views expressed in this judgment, would be invalid as being arbitrary and violative of Article 14 of the Constitution and therefore of no consequence. The respondents will pay the Costs.

(emphasis and underlining supplied)

11) In the present case, the premises are let after 1 September 1940 and therefore the rent at which they were first let would be the 'standard rent' under the provisions of Section 5(10)(b) of the Bombay Rent Act. Under the Indenture of Lease dated 9 June 1962, the Respondent-tenant agreed to pay rent at Rs. 2,000/- per month in respect of the suit premises. Therefore, under the provisions of Section 5(10)(b) of the Bombay Rent Act, Rs.2,000/- became the standard rent in respect of the suit premises.

12) On account of statutory freezing of standard rent under the provisions of the Bombay Rent Act, it would be impermissible for the landlord to demand rent in excess of the standard rent under the provisions of Section 7 of the Bombay Rent Act. However, Section 7 of the Bombay Rent Act prohibited only the landlord from seeking increase in the standard rent. So far as the tenant is concerned, if the contractual rent agreed after 1 September 1940 was found to be excessive, the legislature left window open for the tenant to file an application for fixation of standard rent under the provisions of Section 11 of the Bombay Rent Act. Under the provisions of Section 11(1)(a) of the Bombay Rent Act, in respect of the premises let after 1 September 1940, if the tenant satisfied the Court that the rent at which they were so let is excessive, the Court was empowered to fix standard rent in such a case. Section 11(1) of the Bombay Rent Act provides thus :

11. Court may fix standard rent and permitted increases in certain cases.

(1) Subject to the provisions of section 11A in any of the following cases the Court may, upon an application made to it for that purpose, or in any suit or proceedings, fix the standard rent at such amount as, having regard to the provisions of this Act and the circumstances of the case, the Court deems just-

(a) where any premises are first let after the first day of September 1940, and the rent at which they are so let is in the opinion of the Court excessive; or

(b) where the Court is satisfied that there is no sufficient evidence to ascertain the rent at which the premises were let in any one of the cases mentioned in paragraph (i) and (iii) of sub-clause (b) of clause (10) of section 5; or

(c) where by reason of the premises having been let at one time as a whole or in parts and at another time, in parts or as a whole, or for any other reason, any difficulty arises in giving effect to this Part; or

(d) where any premises have been or are let rent-free or at a nominal rent or for some consideration in addition to rent; or

(d-1) without prejudice to the provisions of sub-section (1A) of section 4 and paragraph (iii-a) of sub-clause (b) of clause 10 of section 5, where the Court is satisfied that the rent in respect of the premises referred to therein exceeds the limit of standard rent laid down in the said paragraph (iii-a); or

(e) where there is any dispute between the landlord and the tenant regarding the amount of standard rent.

13) This is how the Legislature created one way mechanism only in favour of the tenant for reduction of contractual rent while imposing total freeze on increase of contractual rent by the landlord. In the present case, the Respondent-tenant has attempted to take benefit of the provisions under Section 11(1)(a) of the Bombay Rent Act for reducing the amount of contractual rent in respect of the suit premises from Rs.2,000/- per month to a ludicrously low figure of Rs. 5/-. The factual dispute between the parties about adequacy of rent contractually fixed by them is required to be considered in the light of the statutory scheme and the Legislative intent behind

freezing of standard rent in respect of the premises covered by the Bombay Rent Act.

14) It must be noted at once that the rival parties to the present proceedings were entering into commercial transaction at time of execution of the Indenture of Lease dated 9 June 1962. The Respondent-tenant's intention was to construct and operate a Cinema Theater on the vacant portion of the land demised in his favour. The lease is granted for a tenure of 99 years commencing from 1 January 1961 at the monthly rent of Rs. 2,000/-. After execution of the Indenture of Lease dated 9 June 1962, Respondent-tenant paid the contractually agreed rent of Rs.2,000/- per month from 1 January 1961 without any demur till he addressed advocate's notice dated 4 December 1978 requesting reduction of the rent. Thus, for 17 long years, Respondent-tenant continued paying contractual rent of Rs. 2,000/- per month without raising any objection. This arrangement was commercially accepted by the Respondent-tenant by securing lease in respect of the suit premises for construction and operation of a Cinema Theater upon payment of Rs. 2,000/- towards monthly rent and Rs. 12,000/- towards security deposit. This is not a case involving a landlord taking undue benefit from a tenant in respect of the residential premises by charging exorbitant rent. This is also not a case where the Respondent-tenant filed application for fixation of standard rent within a reasonable time of execution of Indenture of Lease. He occupied the premises for over 18 years, commercially exploited the same by paying Rs.2,000/- towards monthly rent.

15) It must also be borne in mind that the suit premises comprise of land admeasuring 3017 sq.yards which is equivalent to 27,000 sq.ft. Therefore, by the time the Respondent-tenant filed R.A.N. Application for fixation of standard rent in the year 1979, he was already occupying and commercially exploiting the vast tract of land admeasuring 27,000 sq.ft. in Chembur area in Mumbai City at paltry sum of Rs. 2,000/- per month payable towards rent. Having not raised any objection towards contractual rent so fixed and paid for 18 long years, it becomes questionable as to what prompted the Respondent to seek reduction of such rent to ludicrously low figure of Rs. 5/- per month in the year 1979. This is not a case where there was any obstruction for use or occupation of the premises due to natural calamity or change in municipal laws or encroachment etc. The application filed by the Respondent-tenant does not refer to any such eventuality. Without there being any valid reason for seeking reduction of contractually fixed rent, the Respondent-tenant filed a baseless application in the year 1979 for reduction of rent to unimaginable figure of Rs. 5/-. The Respondent-tenant thus expected right to occupy large tract of land admeasuring 27,000/- sq.ft in Chembur area of Mumbai City virtually free as payment of rent of Rs.5/- would have almost amounted to allowing the tenant to use and occupy the land by operating a Cinema Theater thereon free of cost. Respondent-tenant thus expected that he must be allowed to profiteer on the land belonging to the Petitioner-landlord virtually free of cost. This in my view is gross abuse of the protection granted under the provisions of the Bombay Rent Act from rent escalation and eviction.

16) The protection under the Bombay Rent Act to a tenant from rent escalation cannot be overstretched to ridiculous level where a commercial tenant exploiting the land for operation of Cinema Theater within Mumbai City is permitted to profiteer therefrom without paying any rent or by paying negligible sum towards rent to the landlord. While interfering in the order of the Small Causes Court, the learned Judges of the Appellate Bench did not appreciate the above position while reducing the contractually fixed standard rent from Rs.2,000/- to Rs.1,000/- by passing order dated 18 March 1998.

17) The Appellate Court was unnecessarily swayed by the valuation indicated in the Gift Deed dated 3 August 1961 by which the land was gifted to the Petitioner-landlord. The Appellate Court ought to have appreciated that what was granted in favour of the Petitioner was ultimately a Gift, under which the value of the land need not even be indicated. The valuation may have been indicated for the purpose of computation of stamp duty. It however cannot be inferred that the figure indicated in the Gift-Deed would represent true or correct market value in respect of the land in question at the relevant time. The Appellate Court failed to appreciate the position that by letter dated 5 December 1960, Petitioner's father was willing to purchase the land in question at Rs. 4,50,000/-. The father of the Respondent-tenant himself believed that the land was worth at least Rs.4,50,000/- as on 5 December 1960. The landlord did not accept the offer. The Appellate Court erroneously ignored the said letter on the ground that the same was produced during examination of

the Petitioner that too before the Commissioner. The findings recorded by the Appellate Bench in para-17 of the judgment relating to letter dated 5 December 1960 are totally perverse. Even if the value accepted by Respondent's father of Rs. 4,50,000/- is taken into consideration, the rental return @ 6% would be Rs. 2250/- per month, whereas the parties agreed at reduced rent of Rs. 2000/-. Therefore it cannot be stated that the rent contractually agreed between the parties is excessive so as to invoke jurisdiction under Section 11(1)(a) of the Bombay Rent Act.

18) In my view therefore, the order passed by the Appellate Bench of the Small Causes Court for reducing the contractual rent from Rs.2,000/- to Rs.1,000/- is unsustainable. The entire enquiry into the market value of the land as well as the rental returns, in my view, was in fact unnecessary in the light of commercial bargain struck between the parties in the year 1961 for grant of lease at contractually agreed rent coupled with the conduct of the Respondent-tenant in paying such contractual rent without any demur for 18 long years. The Appellate Court has misdirected itself in conducting enquiry into the market value of the property as well as fair market rent. Apart from the fact that such enquiry was unnecessary, the enquiry conducted otherwise suffers from patent errors and findings recorded by it are perverse. The Appellate Court ought to have appreciated that the Respondent-tenant was otherwise paying paltry sum of Rs.2,000/- for occupying land admeasuring 27,000/- sq.ft. in Mumbai City by operating a Cinema Theater therein and further enjoying protection from rent escalation and eviction. On account of

provisions of Section 7 of the Bombay Rent Act, it is not lawful for the Petitioner-landlord to increase the rent beyond Rs. 2,000/- which got fossilized as a standard rent on account of provisions of Section 5(10)(b) of the Bombay Rent Act. The position has continued under the Maharashtra Rent Control Act, 1999 as definition of the term 'standard rent' under Section 7(14)(b) once again freezes the rent at which the premises are let before the first day of October 1987 to be standard rent (plus increase of 5% on rent fixed prior to 1 October 1987). Thus, till 31 March 2000, for about 40 long years, the rent in respect of the land admeasuring 27,000/- sq.ft. remained frozen at Rs. 2,000/- on account of provisions of the Bombay Rent Act. After coming into effect of the Maharashtra Rent Control Act on 31 March 2000, the rent got increased by 5% (Rs. 100/-) to Rs. 2100/- and the same would continue to increase by 4% each year under the provisions of Section 11 of the MRC Act. Apart from the fact that the increase in the rent permitted under the provisions of the Maharashtra Rent Control Act after 31 March 2000 being minuscule (which is a subject matter of challenge before the Apex Court), the standard rent remained frozen without any increase in the present case for 40 long years. In such circumstances, reduction of contractually fixed rent by the Appellate Court on 18 March 1998, by which time the tenant was paying Rs.2,000/- for about 37 long years was clearly unwarranted.

19) It is not known whether the Respondent-tenant started paying rent at reduced rate of Rs.1,000/- on account of order of Revisional Court dated 18 March 1998 or not. In the event, the

Respondent-tenant has paid reduced rent at Rs. 1,000/- per month as per the order passed by the Revisional Court, he shall be liable to pay the entire difference in the rent arising out of dismissal of R.A.N. Application No. 691/SR of 1979 by taking into consideration the provisions of Section 7(15)(b) as well as Section 11 of the MRC Act to the Petitioner-landlord. Respondent-tenant shall also be liable to pay interest @ 8% p.a. on the amount of different in rent.

20) The petition accordingly succeeds, and I proceed to pass the following order:

- (i) The judgment and order dated 18 March 1998 passed by the Appellate Bench of the Small Causes Court in Revision Application No. 33/1997 is set aside.
- (ii) The order dated 24 December 1996 passed by the Small Causes Court in R.A.N. Application No.691/SR of 1979 is confirmed.
- (iii) Respondent-Tenant shall pay the amount of difference in the rent arising out of dismissal of R.A.N. Application No. 691/SR of 1979 by taking into consideration the provisions of Section 7(15)(b) as well as Section 11 of the MRC Act to the Petitioner-landlord, together with simple interest @ 8% p.a. from the date the difference is payable till actual payment of differential amount.

- (iv) The Petitioner-landlord shall accordingly communicate the differential amount, with interest, to the Respondent-tenant within a period of 4 weeks. On receipt of communication from the Petitioner-landlord, the Respondent-tenant shall pay the differential amount and interest to the Petitioner-landlord within 8 weeks thereafter.

21) The Writ Petition is accordingly **allowed**. Rule is made absolute. Considering the fact and circumstances of the case, there shall be no order as to costs.

[SANDEEP V. MARNE, J.]