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Court : Mumbai

Decided On : Aug-14-1985

Reported in : AIR1986Bom259; 1986(1)BomCR590; 1986MhLJ66

Judge : Patel and;Deshpande, JJ.

Acts : Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 - Sections 2; Central Provinces and Berar Letting of houses and Rent Control Order, 1949

Appeal No. : Letters Patent Appeal No. 174 of 1983

Appellant : Bata India Ltd.

Respondent : Additional District Magistrate, Nagpur and ors.

Advocate for Def. : V.P. Karekar, Adv.

Advocate for Pet/Ap. : S.P. Dharmadhikari and;K.H. Deshpande, Adv.

Judgement :

Deshpande, J.

1. This appeal is directed against the order passed by the learned Single Judge of this Court refusing to interfere with the monthly rent of Rs. 2000/- fixed by the Rent Control authorities, on the ground that the question involved was purely one of

fact.

*Against judgment of Mr. Joshi, J. in Writ Petn. No. 1774 of 1983, D/-9-8-1983 (Bom).

2. Respondents Nos. 2 to 4 are the owners of the building known as 'Amar Chambers', situate at Central Avenue Road, Nagpur. They filed an application on Mar. 27, 1975, for fixation of fair rent, under Ss. 4, 5 and 7(2) of the C.P. and Berar Letting of Houses and Rent Control Order, 1949 ('the Rent Control Order', for short), on the ground that the prevailing rates of rent had increased enormously and there was an enormous rise also in the cost of building and materials since the year 1964. The appellant, on the other hand, contended that the fair rent was Rs. 300/- per month. After considering the evidence, the Rent Controller fixed the rent at Rs. 2000/- per month and this was affirmed by the appellate authority. The learned single Judge dismissed the appellant's writ petition No. 1774 of 1983 as it involved purely a question of fact on which the authorities below had recorded concurrent findings.

3. The contention of the learned Counsel for the appellant, firstly, is that the rents, which the authorities below had taken into consideration as prevailing rents, were of the buildings which had been constructed ten to fifteen years after the construction of the house in question, and Cl. 7(2) of the Rent Control Order required that the prevailing rates of rent of the houses which were constructed during the same time span should be taken into consideration. There is no dispute that the house in question was constructed after 1st April, 1940 (i.e. in or about 1962), and the premises came to be let out to the appellant by the lease-deed, dt. 12th May, 1964, at a monthly rent of Rs. 700/-. The only question, that requires consideration, is whether the expression 'prevailing rent for same or similar houses' in Cl. 7(2) of the Rent Control Order has reference to the same time span as the houses of which the fair rent is to be fixed.

4. Chapter II of the Rent Control Order deals with the fixation of rent and other terms. Cl. 6 deals with the determination of fair rent of the houses used for residential purposes, while Cl. 7 deals with the rents of the houses for non residential purposes. Cl. 7 is as follows :-

7. (1) In determining the fair rent under Cl. 5 of a house constructed before the 1st April 1940 and occupied wholly and mainly of non-residential purposes, the Controller shall have due regard to the prevailing rates of rent for the same or a similar house in similar circumstances during the twelve months immediately before that due date and may, after considering any general rise in the rental values for business or other similar purposes, increase the rent so determined up to 50 per cent if he is satisfied that the house has been maintained by the landlord in a proper state or repair.

Provided that where a house has been let for educational purposes, the increase shall not exceed 12 1/2 per cent.

(2) In determining the fair rent under Cl. 5 of a house constructed after the 1st April 1940 and occupied wholly or mainly for non-residential purposes, the Controller shall have due regard to the prevailing rates of rent for the same or a similar house for similar purposes and also to any general increase in the cost of sites and building construction.

According to the learned Counsel for the appellant, the expression 'prevailing rates of rent for the same or a similar house for similar purposes' must be construed to mean those houses which were constructed around the same period when the house in question came to be constructed. In Chambers Twentieth Century Dictionary, 'Similar' means 'Like'; resembling ; exactly corresponding in shape, without regard to size'. In Venkataramaiya's Law Lexicon & Legal Maxims, 2nd Edition, 'similar' means nearly corresponding; resembling in many respects; somewhat like, having a general likeness, although allowing for some degree of difference. The word 'similar' is generally interpreted to mean that one thing has a resemblance in many respects; somewhat like, having a general likeness, although allowing for some degree of difference. The word 'similar' is generally interpreted to mean that one thing has a resemblance in many respects, nearly corresponds, is somewhat like, or has in general likeness to some other thing but is not identical in form and substance, although in some cases 'similar' may mean identical or exactly alike. it is a word with different meanings depending on context in which it is used. There is nothing in the Rent Control Order which would control

the meaning of the words 'the same or a similar house' in sub-cl. (2) of Cl. 7. Therefore, there would be no justification for restricting the amplitude of these words, or reading them as restricting the enquiry to finding out the prevailing rents of the houses of the same vintage.

5. According to the learned Counsel for the appellant, since the Rent Control Order has been framed under S. 2 of the C. P. & Berar Regulation of Letting of Accommodation Act, 1946, by the Provincial Government, inter alia, for controlling the rents for accommodation either generally or when let to specified persons or class of persons or in specified circumstances, the expression 'fair rent' cannot be equated with market rate of rent, as in that event, the very object of controlling the rents would be frustrated. The submission was that Cl. 7 is a complete code in itself, and since sub-clause (1) indicated that regard shall be had to the rents prevailing during the twelve months before that due date and the rise in the rent was to be limited up to 50 per cent, sub-cl. (2) would also have to be construed in a similar manner. It must, however, be noted that the restrictions placed, while determining the fair rent in respect of the houses constructed before 1st April, 1940 by sub-cl. (1), have not been placed in respect of the latter category of houses, while fixing the fair rent. Under Cl. 8, when the Controller has determined the fair rent of a house, the landlord shall not claim or receive any premium or other like sum in addition to rent, or any rent in excess of such fair rent, but may stipulate for the payment of such rent in advance each month; and any agreement for the payment of any sum in addition to rent or of rent in excess of such fair rent shall be null and void in respect of such addition or excess and shall be construed as if it were an agreement for the payment of fair rent; and any sum paid in excess will have to be refunded by the landlord from increasing the rent determined, unless some additions, improvements or alterations are effected.

6. The learned Counsel for the appellant relied on the observations of a single Bench of this Court in *K. K. Dabir v. City of Nagpur Corpn.*, : AIR1976 Bom117 , that no distinction can be made between buildings the fair rent of which has been actually fixed by the Controller and those in respect of which no such rent has been fixed, and the assessment of valuation of the premises must take into account the measure of fair rent as determinable under the Act. these observations

were made in case where the owner himself was occupying the house, and the test for determining the annual letting value in such a case being what rent the premises can lawfully fetch if let out to hypothetical tenant, the learned Judge observed in this context that the Municipality is not free to assess any arbitrary annual value and has to look to and is bound by the fair or the standard rent which would be payable for a particular premises under the Act in force during the year of assessment. The question, which arises for decision in this case, could not and did not arise for consideration there, as the house with which that case dealt was one which was constructed before the 1st April, 1940. Reference was made on behalf of the appellant also to a single Bench decision of this Court in *Gulabrao Ganpatrao Bhise v. Devidas Ramchandre Walkare* (Spl Civil Apn. No. 150 of 1970, decided on 26-7-1971), but there is nothing in that decision which helps the appellant with regard to the construction of sub-cl. (2) of Cl. 7 of the Rent Control Order.

7. The learned Counsel for the appellant then contended that words of limitation on the word of the words 'the same or a similar house for similar purposes' would be found in sub-cl. (2) itself, which required the Controller to have due regard also to any general increase in the cost of sites and building construction. We find it difficult to accept the construction and the limitation which is sought to be put on that expression, because the general increase in the cost of sites and building construction is an additional factor to be considered, while fixing the fair rent. There is nothing in sub-clause (2) which excludes the market rate of rent from consideration. On the other hand, the expression 'prevailing rates of rent' shows that it is the prevailing market rate of rent which has to be considered, and that market rate should be in respect of the same or similar houses for similar purposes, irrespective of the period when the houses, of which the rents have to be taken into account, were built. In our view, under Cl. 7(2) the Controller has to consider the prevailing rates of the rent for the same or similar houses for similar purposes, irrespective of the time span, or the year of their construction, and additionally also, any general increase in the cost of sites or building construction.

8. We, therefore, see no merit in this appeal and it is dismissed with costs.

9. Appeal dismissed.

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