# Zafar Ibrahim Vs. Additional District Judge and ors.

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**SooperKanoon Citation** : sooperkanoon.com/494946

**Court** : Allahabad

**Decided On :** Sep-05-2006

**Reported in** : 2007(2)AWC1631

**Judge** : Rakesh Sharma, J.

**Appellant** : Zafar Ibrahim

**Respondent** : Additional District Judge and ors.

**Disposition** : Petition dismissed

**Judgement** :

**Rakesh Sharma, J.**

1. Both the above-noted writ petitions arise out of a common judgment and order dated 22.12.2003, passed by the Additional District Judge, Court No. 1, Lucknow and involve a common controversy, hence the same are being disposed of by a common judgment.

2. Sri Anil Kumar, advocate appears for the petitioner landlord, Zafar Ibrahim, owner of the building No. 31/37, also known as 14, Mahatma Gandhi Marg, Hazratganj, Lucknow, who has sought enhancement of rent of his aforesaid property, hereinafter referred to as the premises.

3. Sri Sudeep Seth, advocate has put in appearance on behalf of the respondent tenant, i.e., U.P. Cooperative Bank Limited (hereinafter referred to as the Bank), who is having its branch office at the above-mentioned premises in Hazratganj area of the city of Lucknow.

4. The landlord has assailed the judgment and order dated 22.12.2003 passed by the Additional District Judge, Court No. 1, Lucknow in Rent Appeal No. 26/2003, the U.P. Cooperative Bank Ltd. v. Zafar Ibrahim, thereby allowing the appeal of the tenant and modifying the judgment and order dated 27.5.2003 passed by the District Magistrate/Additional City Magistrate I, Rent Control, Lucknow, which had been passed on the application submitted by the landlord under Section 21(8) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Act XIII of 1972), hereinafter referred to as the Act, seeking enhancement of rent of the premises, having a covered area of 1,280 sq. ft. The District Magistrate/Additional City Magistrate I (Rent Control) had enhanced the rent from a meagre amount of Rs. 147.62 p. per month to Rs. 28,784 per month with effect from 1.8.2000 (i.e., from the date of submission of application for enhancement of rent).

5. As per learned Counsel for the landlord, an application under Section 21(8) of the Act regarding the above premises was submitted by the landlord on 13.7.2000. The premises in question is a two-storeyed building situate in main Hazratganj market, a posh central area of the city of Lucknow. From the very beginning, the building is being used for commercial purposes, to run a bank, which can be defined as a 'public sector corporation' as per definition given in Clause (p) of Section 3 of the Act. The Sub-section (8) of Section 21 of the Act is quoted below:

(8) Nothing in Clause (a) of Sub-section (1) shall apply to a building let out to the State Government or to a local authority or to a public sector corporation or to a recognized educational institution unless the prescribed authority is satisfied that the landlord is a person to whom Clause (ii) or Clause (iv) of the Explanation to Sub-section (1) is applicable:

Provided that in the case of such a building the District Magistrate may, on the application of the landlord, enhance the monthly rent payable therefor to a sum equivalent to one-twelfth of ten per cent of the market value of the building under tenancy, and the rent so enhanced shall be payable from the commencement of the month of tenancy following the date of the application:

Provided further that a similar application for further enhancement may be made after the expiration of a period of five years from the date of the last order of enhancement.

6. The tenant Bank was paying a meagre rent of Rs. 147.62 p. only and it was 'no rent' in the eye of law, hence the enhancement of rent was urgently required. The landlord, in support of his submissions, filed a report dated 18.10.2002 prepared by Sri J.G. Shinde, Engineer, Registered Approved Valuer. The landlord, on the basis of the value of the property (including costs of land and costs of construction) requested the Court to enhance the monthly rent of the premises from 147.62 p. to Rs. 32,000. This calculation was made on the basis of District Magistrate's circle rate as it stood on 1.11.1999. Calculating it on the District Magistrate's circle rate as on 1.4.2002, the monthly rent of Rs. 37,223.20 p. was to be paid by the tenant.

7. The landlord had filed the report of aforesaid Engineer, Registered Approved Valuer alongwith his own affidavit, which was sworn on 22.10.2002, before the Court of Additional City Magistrate I (Rent Control), Lucknow. The said valuation report dated 18.10.2002 and the affidavit submitted by the valuer Sri J.G. Shinde on 22.10.2002 have been brought on record by the landlord. It is relevant to mention that before the trial court, the tenant Bank did not file any report of its valuer. The case was fixed for hearing of arguments on 2.4.2003. In fact the tenant Bank had stated before the trial court that it would not file anything in rebuttal. Accordingly, the trial court decided the matter and fixed Rs. 28,784 per month as rent of the premises in question (in place of Rs. 147.62 p.) with effect from 1.8.2000. The judgment and order was passed on 27.5.2003 by the said court. The tenant Bank went in appeal against the said judgment and order under Section 22 of the Act, which has been decided by the learned Additional District Judge, Court No. 1, Lucknow by the impugned judgment and order dated 22.12.2003.

8. At the appellate stage, the tenant Bank had moved an application on 9.9.2003 for filing additional evidence. It filed a valuation report prepared by Sri Amal Kumar Mukerjee, Engineer. The appellate court was pleased to take this additional evidence of the tenant Bank on record of the case. The landlord filed his reply to the same on 22.9.2003 alongwith a counter-affidavit. The appellate court after hearing the parties decided the said rent appeal vide its judgment and order dated 22.12.2003. The learned appellate court fixed the rent of the premises in question at the rate of Rs. 12,000 per month with effect from 1.8.2000, reversing and modifying the judgment of learned Additional City Magistrate I (Rent Control), who had fixed the rent of Rs. 28,784 per month.

9. Sri Anil Kumar, learned Counsel for the landlord has challenged this order passed by the appellate court on several ground, branding it illegal, arbitrary and without jurisdiction. As per petitioner, the appellate court did not apply its mind and had decided the rent appeal ignoring his valuer's report and the District Magistrate's circle rates, which were supported by affidavits. The appellate court has ignored the statutory provisions of law. In the present case, the tenant Bank had paid rent upto 3.8.2000 only; thereafter it had defaulted in payment of rent. The trial court's judgment and order dated 27.5.2003 was based on the evidence on record and the same was passed in accordance with the provisions of Section 21(8) of the Act. The appellate court has erred in interfering with the order of trial court dated 27.5.2003 and reducing the monthly rent of the premises. The premises is situate in one of the most prime locations, i.e., Hazratganj market of the city of Lucknow. Hazratganj has been the main market center since the period of Nawabs and British period, The appellate authority has not applied any formula, nor has it indicated any reasons for arriving at such a conclusion.

10. Learned Counsel for the landlord has relied on the following documents in support of his submissions regarding enhancement of rent:

1. Circle rate fixed by the District Magistrate in respect of the land situate in district Lucknow on 1.11.1999.

2. Circle rate fixed by the District Magistrate in respect of the land situate in district Lucknow as on 1.4.2002.

3. The valuation report dated 18.10.2002 prepared by Sri J.G. Shinde, Engineer, Approved Valuer and the affidavit submitted by Sri Shinde on 22.10.2002.

11. Sri Anil Kumar, learned Counsel for the landlord has submitted that the concerned authority enhancing the rent must consider the value of property and land appurtenant which are in tenancy, District Magistrate circle rates, engineer/valuer's report, affidavit etc. According to the learned Counsel for the petitioner, the decision taken by the trial court was in accordance with the statutory provisions and the law laid down by the Hon'ble Supreme Court of India and this Court. In support of his submissions, he has relied on the following case laws:

1. State of U.P. and Ors. v. VII Additional District Judge and Ors. : AIR 1993 SC1232 ;

2. State of U.P. through District Commandant, Home Guard. Sitapur v. Roop Kishore Tandon and Ors. 1987 (2) ARC 359;

3. Punjab and Sindh Bank v. VIIth A.D.J. Bulandshahar and Ors. 2000 (2) ARC 431 : 2000 (4) AWC 2772;

4. Indian Overseas Bank v. VIIIth Additional District Judge, Muzaffarnagar and Ors. 2002 (1) ARC 586 : 2002 (3) AWC 1857;

5. Har Piari Devi Gupta (Smt.) and Ors. v. State of U.P. and Ors. 2002 (2) ARC 271 : 2002 (3) AWC 2379; and

6. Institute of Co-operative Management 224 Rajpur Road, Dehradun v. State of U.P. and Ors. 2004 (3) ARC 595 (Utt HC).

12. Sri Sudeep Seth, learned Counsel appearing for the tenant Bank has strenuously resisted the writ petition. It has been submitted that the Bank is a tenant in the backside of the ground floor of the premises; it has no access to the front portion and for entering into the occupied portion of the premises, one has to go through a narrow lane, known as Maqbara road. The portion of the building occupied by the Bank is in a very bad condition and the same is being used for the purposes of a godown. The Bank had filed its objection on 15.1.2001 to the

application dated 13.7.2000 filed by the landlord under Section 21(8) of the Act seeking enhancement of rent. The Bank had demonstrated before the trial court that it was occupying backside of ground floor of the building and the access to the premises is through a narrow lane known as Maqbara road. The landlord had not spent any amount to repair the building. It was indicated to the prescribed authority that the premises was rented out at a fixed rent and in addition to this, the tenant Bank pays the charges of water, etc. The premises in question has no connection with the main Mahatma Gandhi Road. The building is not being properly maintained. In fact the tenant Bank is keeping the building in proper condition by incurring expenses. The tenant Bank has also placed on record the annual rental value of the premises as fixed by the Lucknow Nagar Nigam which comes to Rs. 8,251 only. The learned trial court has wrongly rejected the report of Sri Mohammad Kabi Khan, Engineer submitted by the Bank and has given weightage to the report submitted by the landlord's valuer Sri J.G. Shinde. The trial court's order was based on Sri Shinde's report only and the rent fixed by it is too excessive.

13. Sri Sudeep Seth has vehemently argued that the premises although situates in Hazratganj area, but has access to the same only from Maqbara road, which is a narrow lane. Considering its location, the rent fixed by the trial court is highly inflated. According to him, the value of the property was Rs. one lac only and applying the formula of 1/10th or 1/12th, the monthly rent comes to Rs. 825. As per Sri Sudeep Seth, by no stretch of imagination, the rent could be assessed at Rs. 28,784 per month. He has also submitted that the adjacent buildings are used for residential purposes by their tenants.

14. Sri Sudeep Seth has further contended that Sri J.G. Shinde, valuer of the landlord has not given reasons for such assessment of the valuation of the property and the land. This report was contested by the tenant Bank by filing its Engineer's report. The court below, ought to have taken into account the report of Engineer, Valuer submitted by the Bank. The location of the building plays an important role in assessing the rental value of the premises. The Bank had also submitted the report of Sri Amal Kumar Mukerjee, Enginee Valuer, who had calculated the rent of the premises as Rs. 1756.33 p. As per Sri Sudeep Seth, the

District Magistrate's circle rates have no evidentiary value.

15. Sri Sudeep Seth has placed reliance on two sets of Judgments in support of his submissions. In one set, the valuation of the land/market value for the purposes of compensation under the relevant Land Acquisition Act and the rules has been considered. These cases are:

1. P. Ram Reddy and Ors. v. Land Acquisition Officer, Hyderabad Urban Development Authority and Ors. : [1995]1SCR584 ;

2. Land Acquisition Officer, Eluru and Ors. v. Jasti Rohini (Smt.) and Anr. : (1995)1SCC717 ; and

3. Jawajee Nagnatham v. Revenue Divisional Officer, Adilabad, A.P. and Ors. : [1994]1SCR368 .

16. Another set of cases deals with the proposition that the location of the property is important and the District Magistrate's report and the Circle Rates fixed by the Collector for the purposes of stamp duty cannot be taken to be final as regards market value of the land. These cases are:

1. Gurmeet Kaur (Smt.) v. IIIrd Additional District Judge, Saharanpur and Ors. 2003 (1) ARC 553 and

2. State of U.P. and Ors. v. IInd Additional District Judge, Jhansi and Ors. 2004 (22) LCD 434 : 2004 (1) AWC 220.

17. Sri Anil Kumar, learned Counsel for the landlord has rebutted the submissions of the tenant Bank indicating that Sri J.G. Shinde's report and his affidavit have remained unchallenged till date. This report on the valuation of the land and building has not been controverted. This issue has been dealt with by the Hon'ble Uttaranchal High Court in a recent Judgment in Institute of Co-operative Management, 224 Rajpur Road, Dehradun v. State of U.P. and Ors. 2004 (3) ARC 595 (Uttar. H.C.). The Uttaranchal High Court has relied upon various judgments of this Court. He has further submitted that the building is situate between the main Hazratganj road and Maqbara road. This Maqbara road is a broad 20 ft. wide

metalled road, on which two big vehicles can pass together. In addition to the metalled road, there are footpaths on both sides of the road. It is not a narrow lane as surprisingly defined by the learned Counsel for the tenant.

18. I have heard the learned Counsel for the parties and perused the record.

19. I find force in the submissions of the learned Counsel for the landlord. Sri Zafar Ibrahim is admittedly the owner of two-storeyed building, which is situate In the posh Hazratganj area of the city of Lucknow. The building was let out to the Bank at a meagre monthly rent of Rs. 147.62 p. which Is In fact 'no rent' in the eye of law, as has been held in various recent judgments of this Court pronounced at. Allahabad. The landlord had filed the application for enhancement of rent on 13.7.2000 before the District Magistrate/Additional City Magistrate I (Rent Control), Lucknow under Section 21 (8) of the Act XIII of 1972. He had highlighted the location of the building in his application before the trial court as also before the appellate court. It was also indicated that the building's front portion faces Mahatma Gandhi Road, main Hazratganj Road. Several commercial establishments, Insurance Companies offices etc. are located on this road. It has been demonstrated by the learned Counsel for the landlord that Maqbara road, which runs parallel to main Hazratganj Road, Mahatma Gandhi Road is a broad road, on which two vehicles can pass together. There are footpaths also on both sides of this metalled road, on which important commercial establishments are located. This Maqbara road is also a busy commercial area, a part of Hazratganj area in the city of Lucknow. This point, te., the location of the property is very important for assessing the monthly rent of the premises. It is admitted to the parties that the premises is a two-storeyed building having a covered area of 1,280 sq. ft. The judgment in Gurmeet Kaur's, case (supra), cited by Sri Sundeep Seth, learned Counsel for the tenant Bank also deals with the point of importance of location of the properties. In the present case, the unrebutted report of Sri J.G. Shinde, Engineer, Approved Valuer, which was supported by an affidavit gives the real value of the land and the property.

20. I have gone through the said valuation report and the affidavit of Sri Shinde. It is a detailed report. The Valuer has dealt with each and every detail of the

property, i.e., its location, boundaries, other descriptions and rental value. Learned Counsel for the landlord has also given a detailed chart in this regard to support his submissions. The learned trial court has placed reliance on this valuers report and the affidavit. The tenant Bank despite given an opportunity did not file any objection to rebut the report of Sri Shinde in the trial court. The appellate court had exercised his power under law and acted fairly while taking the additional evidence submitted by the tenant Bank on record, which was considered by it.

21. Section 21(8) of the Act empowers the landlord to seek enhancement of the rent. This enhancement has been sought on the basis of the report of Sri J.G. Shinde, Engineer/Approved Valuer, which was accepted by the trial court. A perusal of the appellate court's order dated 22.12.2003 reveals that it has not properly dealt with and appreciated the report of Sri Shinde and his own affidavit, the details of the property and the reasons for seeking enhancement of the rent. The appellate court ought to have dealt with the said unrebutted report of the approved valuer and must have recorded its findings. The landlord has demonstrated before the trial court, the appellate court and this Court the basis and the reasons for enhancement of the rent. He has established his case before the courts below that Rs. 147.62 p. was 'no rent' in the eye of law. The adequate and proper rent was fixed by the trial court as Rs. 28,784 on the basis of formula in the relevant Rent Control Laws. It is strange to note as to how the rent Rs. 1,200 per month has been assessed as appropriate rent by the learned appellate court. It has concluded the matter in few lines branding the rent claimed by the tenant on the basis of approved valuer's report as exaggerated. The appellate court has not recorded the reasons and basis for such findings. Obviously the appellate authority has passed a non-reasoned and non-speaking order. The appellate court had not adopted any formula for fixing Rs. 1200 per month as rent for the premises. It has actually erred in reducing the monthly rent of the premises and modifying the just and proper order of the prescribed authority passed on 27.5.2003. This Court has held in various decisions that strict principles of pleadings as provided in C.P.C. are not applicable to the proceedings under Rent Control Act. The authority dealing with the application for enhancement of rent under Section 21(8) of the Act as delegatee of the District Magistrate is an executive authority and not the Court. The Additional City Magistrate I (Rent

Control) has properly dealt with the matter. For determining the market value, the consideration of Circle Rates as fixed by the Collector under Rule 340 of the U.P. Stamp Rules was taken by him as guidelines only. The trial court had taken into account all the relevant facts, like-location of the property, valuation of the land and construction, having a covered area of 1,280 sq. ft, standard mode for determining the valuation of the property and for enhancement of rent. The findings of the trial court are based on relevant material on record, the approved valuer's report, which was duly supported by an affidavit and I see no error in its findings. The tenant has failed to demolish this report and the findings recorded by the trial court. The landlord's case is fully covered by the judgments cited by the learned Counsel for the landlord. Even considering this case in the light of two decisions cited by the learned Counsel for the tenant Bank, i.e., Gurmeet Kaur (Smt.) v. IIIrd Additional District Judge, Saharanpur and Ors. 2003 (1) ARC 553 and State of U.P. and Ors. v. End Additional District Judge, Jhansi and Ors. 2004 (22) LCD 434 : 2004 (1) AWC 220, the tenant has fully established his case for enhancement of rent. The landlord's version, as relied upon by the learned trial court for arriving at its conclusions, is based on following details and formula:

(A) Calculation of monthly rent as per District Magistrate's declared circle rates which were prevailing on 1.11.1999:Total covered area of building in 1,280 sq. ft.question:As the premises is a two-storeyed 118.96 x 1/2building, so half of the land area: = 59.47 sq. mt.(i) Cost of land as District 59,47 x 1310 = Rs. 7,79,057.00Magistrate's circle rateprevailing on 1.11.1999:(ii) Cost of the construction: 118.96 x 70 x 300=Rs. 24,98,160.00Total cost of the property (i) and (ii): Rs. 32,77,217.001/10th of the cost of building: Rs. 3,27,721.701/12th of Rs. 3,27,721.70: Rs. 27,310.14

22. The monthly rent of the premises in question as per District Magistrate's Circle rate as on 1.11.1999 thus comes to Rs. 27.310.14.

(A) Calculation of monthly rent as per District Magistrate's declared circle rates, which were prevailing on 1.4.2002:Total covered area of building in 1,280 sq. ft.question:118.96 sq. mt.As the premises is a two-storeyed 118.96 x 1/2building, so half of the land area: = 59.47 sq. mt.(i) Cost of land as District 59.47 x 1510 =

Rs. 8,97,997.00Magistrate's circle rateprevailing on 1.4.2002:(ii) Cost of the construction: 118.96 x 100 x 300 = Rs.35,68,800.00Total cost of the property (i) and (ii):Rs. 44,66,767.001/10th of the cost of building: Rs. 4,66,679.701/12th of Rs. 4,66,679.70: Rs. 37,223.20

The monthly rent of the premises in question as per District Magistrate's Circle rate as on 1.11.1999 thus comes to Rs. 37,223.20.

23. The other case-laws cited by the learned Counsel for the tenant Bank deal with value of land, acquired by the land acquisition authorities for the purpose of allowlag compensation to the landlords. This is a case of enhancement of rent of a two-storeyed building having a covered area of 1,280 sq. ft., located in the posh area of Hazratganj in the city of Lucknow, hence the said set of case laws are not applicable. The landlord has also a case for enhancement of rent in the light of principles of law as laid down in Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. (2005) 1 SCC 705.

24. In view of the above discussion, Writ Petition No. 26 of 2004 (R/C) is allowed. The judgment and order of the appellate court dated 22.12.2003 is quashed. The judgment and order of the trial court dated 27.5.2003 is upheld and the same shall be followed. The tenant Bank (i.e., the U.P. Co-operative Bank Ltd., Mahatma Gandhi Marg, opposite P.M.G. Office, Hazratganj, Lucknow) is directed to pay rent of the premises (i.e., building No. 31/37, also known as 14, Mahatma Gandhi Marg, Hazratganj, Lucknow) to the landlord Sri Zafar Ibrahim at the rate of Rs. 28,784 per month with effect from 1.8.2000 in furtherance of the judgment and order dated 27.5.2003 passed by the learned trial court, i.e., District Magistrate/Additional City Magistrate I (Rent Control), Lucknow. The arrears oi rent shall be paid to the landlord within three months from today. The landlord shall also be entitled for further enhancement of rent in accordance with law.

For reasons recorded hereinabove, connected Writ Petition No. 62 of 2004 (R/C) is dismissed.