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Court : Madhya Pradesh

Decided On : Feb-08-1991

Reported in : AIR1991MP326

Judge : Shacheendra Dwivedi, J.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 7(2) and 10(4)

Appeal No. : Misc. Appeal No. 105 of 1986

Appellant : Chhogalal

Respondent : Shushil Chand

Advocate for Def. : K.K. Lahoti, Adv.

Advocate for Pet/Ap. : N.K. Jain, Adv.

Judgement :

Shacheendra Dwivedi, J.

1. This appeal under Section 32 of the M.P. Accommodation Control Act, 1961, (for short, 'the Act') is directed against the order of District Judge, Guna, whereby the appeal of the appellant was only partly allowed by modifying the amount of the standard rent fixing it at Rs. 42.55, per month, instead of Rs. 46.20 as fixed by the

Rent Controlling Authority, Guna, (for short, 'Authority').

2. Before the Authority, respondent/landlord filed an application for the fixation of standard rent of the suit premises, stating that appellant-non-applicant is a tenant at Rs. 26/- per month, in the suit-premises, since 11-4-1954. According to the landlord, the rent of the suit premises could be realised on 1-1-1948 at the rate of Rs. 25/- per month. The respondent landlord claimed increase at the rate of 70% on the rent as could be realised on 1-1-1948, with further increase of 10% of the house tax and prayer standard rent to be thus fixed at Rs. 46.90 per month.

3. The appellant-non-applicant contested the case, denying the claim of the respondent-applicant. The fact of tenancy and the rate of rent at Rs. 26/- p.m., was admitted, but it was denied that the rent of the suit shop could be realised on 1-1-1948 at the rate of Rs. 25/-p.m. It was further stated that since the respondent did not keep the shop in dispute in good condition, after the necessary repairs, the owner was not entitled to any increase at the rate of 70% of the rent. It was also stated that the increase of 10% of the house-tax could be permitted.

4. In this appeal, the point which needs consideration is as to which provision of the Act would be applicable in this case for fixing the standard rent. Under the Act, Sections 7 and 10 deal with the fixation of standard rent. If for any reason standard rent cannot be Determined under Section 7 of the Act, then only Section 10 of the Act comes into play. Section 10(4) of the Act reads as follows :

'10. Rent Controlling Authority to fix standard rent etc. -

(I) to (3)

(4) Where for any reason it is not possible to determine the standard rent of any accommodation on the principles set forth under Section 7, the Rent Controlling Authority may fix such rent as would be reasonable having regard to the situation, locality and condition of the accommodation and the amenities provided therein and where there are similar accommodations in the locality, having regard also to the standard rent payable in respect of such accommodation.'

When an application was made to the Authority for fixation of standard rent in relation to the disputed accommodation, of which no reasonable annual rent or fair rent was fixed by the Authority, under the repealed Act, then Sub-section (2) of Section 7 of the Act was taken resort to. Sub-section (2) of Section 7 of the Act reads thus :

'7. Standard rent - 'Standard rent' in relation to any accommodation means-

(1).....

(2) (i) Where the accommodation was let out on or before the 1st day of January, 1948, and the reasonable annual rent or fair rent has not been so fixed, the rent of that accommodation as shown in the Municipal Assessment Register or as was realised on the 1st day of January, 1948, whichever is less; or

(ii) Where the accommodation was not let out on or before the 1st day of January, 1948, the rent of that accommodation as shown in the Municipal Assessment Register or as could be realised on the 1st day of January, 1948, which increased-
...'

5. Thus, Sub-section 2(ii) of Sec. 7 of the Act was made applicable to the present case, as the criterion laid down is applicable to those cases, where the accommodation was not let out on or before the 1st day of January, 1948. As such, the amount of rent, as shown in Municipal Assessment Register or as could be realised with regard to disputed accommodation on the 1st day of January, 1948, whichever is less, would be fixed as the standard rent. Thus, the curx of such fixation, or determination would be 'whichever is less'. In the present case, the admitted position is that with regard to first part of no assessment of accommodation was shown in the Municipal Assessment Register and there is no entry on record. The evidence was led only with regard to the second part of the clause, i.e., the rent that could be realised on the 1st day of January, 1948.

6. Under the provisions of Section 7(2), when the first criterion did not exist, the Authority could not deal with the application for the fixation of standard rent under Section 7; and in that situation, the standard rent could be determined only u/ S.

10(4) of the Act. I am fortified in my view by a Division Bench decision of this Court, reported in 1972 Jab LJ 32: (AIR 1972 Madh Pra 73) (Laxmandas v. Berfibai). In that case importance of words 'whichever is less' appearing in S. 7(2)(ii) and Section 7(3)(c) of the Act was explained and applied, holding that both the criteria available in Section 7(2) and 7(3)(c) are to be proved for the determination of standard rent u/ Section 7 of the Act. In para 8 of Laxmandas' case (supra), it has been held:

'The words' whichever is less' occurring in Clause (2) and Sub-clause (c) of Clause (3) make it clear that both the criteria laid down therein must be proved because a comparison of the two is essential and the standard rent has to be determined on the basis of the one, which is less.

For purpose of both Clause (2) as well as Sub clause (c) of Clause (3) the words 'whichever is less' are of great significance, making it obligatory on the party which wants to have the standard rent determined on the principles laid down in the said clause to prove both the criteria.'

7. In the instant case, there being no evidence, as to the first criterion, only the second criterion, i.e., the rent which could be realised on 1-1-1948, has been proved, as such, the Authority could not have proceeded to determine the standard rent u/ Section 7 and the only course left open to the Authority was to determine the standard rent under Clause (4) of Section 10.

8. Incidentally some evidence has come on record as to the locality and the condition of the suit accommodation but that does not fulfil the requirement of Clause (4) of Section 10 of the Act. The parties and the Courts below have jumbled up the issues. The findings of the two Courts below are based on the second criterion of Sub-clause (ii) of the Act.

9. In the result, the case is remanded back to the Rent Controlling Authority, Ashok-nagar, with a direction that the Authority will determine the standard rent by holding enquiry afresh, providing opportunity to the parties to lead evidence on all issues as per the requirement of Clause (4) of Section 10 of the Act, within a period of six months from the date of appearance of the parties before him. Parties herein

arc directed to appear before the Rent Controlling Authority, Ashoknagar, on 25-2-1991. Parties to bear their own costs.

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