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Court : Uttaranchal

Decided On : Feb-08-2005

Reported in : AIR2006Utr4

Judge : V.S. Sirpurkar, C.J. and; P.C. Pant, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : W.P. No. 105 (MB) of 2001

Appellant : P.C. Sharma and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : V.K. Bisht, Sr. Counsel

Advocate for Pet/Ap. : Rajendra Dobhal, Adv.

Disposition : Petition dismissed

Judgement :

V.S. Sirpurkar, C.J.

1. Heard Sri Rajendra Dobhal, learned counsel for the petitioners and learned standing counsel for the respondents.

2. This writ petition has a chequered history. Initially what is being challenged is the order dated 11-6-1999 as received by the petitioners on 26-6-2000 (Annexure-19 to the writ petition) as also Order dated 2-8-2000 which is nothing but a consequential demand notice issued to the petitioners and also the notice issued to the petitioners to vacate the leased plots. By the second prayer the petitioners also seek to get the rent for the plot re-fixed in terms of paragraphs 3, 4 and 5 of the circular dated 29-8-1995. Few fact:

3. Petitioners are occupying the leasehold plots belonging to the railway property in Tanakpur. They use the bare plots for storing the stone boulders, which are rolled from river Sharda and the other tributaries and rivulets. These boulders are collected and sold by the petitioners. It is only for the storage of these boulders that the said plots are used by the petitioners. Initially the rent of these plots was Rs. 50/- per thousand sq. ft. in the year 1981. Subsequently the rates were increased to Rs. 200/- per thousand sq. ft. It is the case of the petitioners that in year 1987, the petitioners were served with the demand notice, demanding rent for the year 1987-88 at the rate of Rs. 1870/-per 1000 sq. feet. It seems that the petitioners challenged these notices and the increased rate by various writ petitions. The first amongst them being the writ petition No. 7100 of 1989 before the Allahabad High Court. It seems that they were permitted to make representations. Ultimately, a fresh circular came to be issued on 29-8-1995, whereby earlier circular was superseded and therefore petitioners withdrew the writ petition No. 7100 of 1989. It is the case of the petitioners' that thereafter they filed representations to the respondents for refixing the rent in the light of the light of the principles laid down in the circular dated 29-8-19,95 and more particularly in paragraphs Nos. 3 and 4 thereof. According to the petitioners the first representation was sent on 1-10-1997 through the registered post, requesting the respondents to pass the orders. The petitioners also claimed that along with the representation, they had sent the copies of the some sale deeds of the adjoining properties in the year 1995. Therewith they had also sent copy of the rates prevailing in the area. However, according to them. Railway Authority did nothing in the matter and it did not pass any order thereupon. It is their case that without giving any opportunity to show cause and without finalizing the rates as per the circular dated 22-9-1987 the respondents sent a demand notice by way of

Annexurc-8. It is further the case of the petitioners that against this illegal demand again a writ petition No. 27 150 of 1998 P. C. Sharma v. Union of India came to be filed, where the same demand was reiterated that there should be a fixation of lease rent in terms of the paragraphs Nos. 3 and 4 of the Circular dated 29-8-1995. It was pointed out that when that writ petition came up before the Hon'ble Allahabad High Court on 19-9-1998. the Court again directed the petitioners to make fresh representation within a period of three weeks and the representations were directed to be decided by the respondents.

4. Petitioners' case is that accordingly such representations were sent on 8-5-1998 in the shape of joint representation. It is the case of the petitioners that though representation was made, it was not disposed of by the Railway Authorities and that they had not complied with the order of the High Court for deciding the representation at all. It is the further case that later, on 28-4-1999, the petitioners were directed to pay the entire arrears of these rents for the plots up to 30th April, 1999 and it was informed that on the failure to do so they would be ousted from the plot by taking coercive action against them. It is their case that a further joint representation dated 18th May, 1999 also' came to be filed and the letter dated 23-7-1999 came to be served by the respondents, wherein the respondents have allegedly disposed of the representation dated 18-5-1999. The petitioners' case is that though there was a direction to decide the earlier representation of the year 1998. in that writ petition the said reply dated 23-7-1995 was never filed. In the short the petitioners' case is that the Railway Authorities have not decided the representations and whatever decisions have been taken by it is in complete ignorance of the principles laid down vide paragraphs Nos. 3 and 4 of the Railway circular dated 29-8-1995. The main stress of the learned counsel before us is that there has been either no decision on the representation made by the petitioners regarding the rent or the rent has been incorrectly fixed without taking into consideration the principles in the said Railway Circular.

5. In support of his arguments, Mr. Dobhal relied on the fact that the concerned respondents in their last order have not bothered to look into the other sale deeds which were sent regarding market value of the property. According to the learned counsel in deciding rate of rent, a complete arbitrary approach has been made by

the Railway Authorities and consequently, the rates have been fixed arbitrarily causing injustice to the petitioner. When we see the said circular, which is the main basis of this writ petition, it suggests that there was a necessity felt of thrashing out some principles for fixing up the rent regarding the rent of the railway property, which was let out to the persons like the petitioners. After number of deliberations, a committee was formed and that committee ultimately thrashed out certain principles. Paragraph 3 deals with the rates of the licence fees. It suggests that the licence fee of the plot would be fixed on the percentage of the land value determined as per the percentage in the paragraph 4. The present percentage applicable was also given in the table. Relevant entry in this table would be entry (b), which relates to ordinary commercial plot without structure. Earlier the percentage was 10 per cent of the land value but now it was to be reduced to the 6 per cent of the land value. Paragraph 4 gives the procedure to fix the land value. For the sake of convenience, the whole paragraph is quoted as under :-

4.1. As the land use of the land licensed for the above purposes is generally directly related to traffic movement. It does not bear any direct relation the land value advised by the revenue authorities etc. which is for a different use. A market value would, however, be required to be taken to serve as a base value for working out rental fee payable, This shall be fixed on the basis of the land value of the surrounding area as on 1-1-1985, as determined from the Revenue authorities and/or from the following :-

- a. Evaluation of town planning department.
- b. Actual as per RVVO and CPWD transactions
- c. Actual transaction per documents filed in the office of the Sub-Registrar.
- d. Value of land as assessed by professional evaluators of the state and Central Governments.

4.2 The value so fixed shall be increased notionally every year on the 1st of April, starting from 1 -4-88 at the rate of 10% over the previous year's value to arrive at the land value for the following years based on which the licences fee to be paid

shall be fixed. Once the notional value has been so obtained it shall apply to all plots at that station.

However, for the metropolitan towns of Bombay, Calcutta, Delhi and Madras, if the MOS's committee feel that the land rates are widely varying within the city, two or more rates can be utilized for that city. Using this method, there should henceforth be no need to seek fresh values from the revenue authorities nor should arrears of collection of licence fee on this account be allowed to accumulate.

6. A mere look at these paragraphs suggests that the land value has to be determined as per the guidelines contained in para 4.1 quoted above. The Committee is required to take into account all these factors for fixing the said market value. The percentage of which would be charged as the rent. Now the complaint of the petitioners is that these principles have not been followed or they have been followed only in their breach. We have seen the order passed, which is in the nature of the reply to the representation made by the petitioners. When we go through this reply, it is clear that all the principles in the said circular No. 82/W-2/LM/18/87 dated 29-8-1995 have been followed. Not only this but the said reply suggests that for the land evaluation, the Railway Authorities have used the valuation of the land fixed by the Revenue Authorities. The said circular which has been relied upon suggests that :-

- a) This valuation depends upon the evaluation of town planning department.
- b) Actual rent as per C.P.W.D. and RWO.
- c) Actual transaction as per documents filed in the office of the Sub-Registrar.
- d) Value of land as assessed by professional evaluators of the State and Central Governments and all the options.

7. It is reiterated that on the basis of this the concerned Committee came to the conclusion that the rent of the land was between Rs. 225/- to Rs. 300/- per sq. metre. On this basis. Railway Authorities came to the conclusion that the land should be assessed at Rs. 263/- per sq. metre. Now this report is given by the Committee consisting of the Senior Divisional Engineer. South-Eastern Railway.

Izzat Nagar. Senior Divisional Account Officer. South-Eastern Railway, Izzat Nagar and Senior Divisional Commercial Manager. South-Eastern Railway. Izzat Nagar.

8. In fact this should be the complete answer to the petitioners claim that the rent has been fixed arbitrarily without taking into consideration any of the principles much less the principles enshrined in paragraphs 3 and 4 of the aforementioned circular. We are completely satisfied by the stand taken : and we are of the opinion that the petitioners have unnecessarily been alleging arbitrariness against the Railway Authorities. In fact when we see the whole tenor of the petition we do not see any mala fides on the part of Railway officers.

9. Again it will not be our task to go into correctness or otherwise of the findings given by the Committee and the rates fixed by them which was the expert body. In the aforementioned document the Railway Authorities have completely justified as to the data used by them to fix the rent one way or the other. We do not see anything else for accepting the claim of the petitioners that what has been done has been done arbitrarily.

10. Mr. Dobhal was at pains to point out that there are certain transactions which he had pointed out to the Committee in the representation and those transactions pertaining to the sale of adjoining properties have not been taken into consideration. We are again unable to accept this plea for the simple reason that the order itself suggests that many other factors were considered by the Committee. Once there are no allegations of mala fides against the Committee, we must go by verdict of the Committee without going into questions of facts, which would not be in our jurisdiction under Article 226 of the [Constitution of India](#)

11. In short, we are of the clear opinion that the demand notices are validly issued. They are issued by the Authorities having power to do so and there is no arbitrary demand, nor is there any arbitrariness in fixation of the rent. It is reported at this stage that none of the petitioners is in possession of the land. The Railway Authorities shall now recover the remaining rent, which has remained unpaid.

12. With this observation, the writ petition is dismissed. No order as to costs.

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