National Sample Survey Organisation and anr. Vs. Champa Properties Ltd. and anr.

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Court : Supreme Court of India

Decided On : Jul-07-2009

Reported in : AIR2010SC31; JT2009(9)SC516; 2009(9)SCALE350; 2009(7)LC3244(SC)

Judge : R.V. Raveendran and; J.M. Panchal, JJ.

Acts : West Bengal Premises Tenancy Act, 1956; Sixth Schedule to the Supply Act - Sections 49 and 59

Appeal No. : Civil Appeal No. 4153 of 2009 (Arising out of SLP (C) No. 1234 of 2007)

Appellant : National Sample Survey Organisation and anr.

Respondent : Champa Properties Ltd. and anr.

Advocate for Def. : Jaideep Gupta, Sr. Adv., ; C. Mukund, ; Ashok Jain, ;

Advocate for Pet/Ap. : Amarendra Sharan, ASG,; Shweta Garg,; Amit Tiwari,;

Disposition : Appeal allowed

Prior history : From the Judgment and Order dated 31.08.2006 of the High Court of Calcutta in A.P.O.T. No. 295 of 2003, APO No. 303 of 2003, W.P. No. 1679 of

1995

Judgement :

R.V. Raveendran, J.

1. Leave granted. Heard the learned Counsel.

2. The National Sample Survey Organization, the appellant herein was the tenant under the first respondent (for short the 'respondent') in respect of premises No. 25A, Shakespeare Sarani, Calcutta, a building constructed in 1925 with a carpet area of 16157 sq. ft. The premises was taken on lease on 1.6.1972 on a monthly rent of Rs. 13,733/- (at the rate of Rs 0.85 per sq. ft.). On a request by respondent for increase in rent, the appellant made a reference to the Hiring Committee for reassessment on 1.4.1986. Based on its recommendation, the rent was increased to Rs. 74,645/- per month (that is Rs. 4.62 per sq. ft.) with retrospective effect from 3.8.1983 and the increase was communicated as per the appellant's letter dated 27.7.1988. The very next day (28.7.1988), the respondent wrote to the appellant again requesting for reassessment of the rent for the period commencing from 3.8.1988 (that is, from the date of expiry of five years from the date of last increment) by referring the matter to the Hiring Committee. Acting on the said request, the appellant again made a request to the Hiring Committee, by letter dated 25.10.1988 for re-assessment of rent.

3. The Hiring Committee (consisting of three members - (i) Superintending Engineer, Calcutta Central Circle No. II, CPWD, (ii) the Estate Manager, and (iii) Surveyor of Works cum Executive Engineer, Calcutta Central Division No. IV CPWD) by its proceedings dated 6.6.1989, reassessed and recommended a rent of Rs. 13.10 per sq.ft. of carpet area (inclusive of all municipal taxes) with effect from 3.8.1988. The appellant found the increase suggested by the Hiring Committee was unreasonably high and therefore initiated correspondence with the Hiring Committee for reviewing the reassessment. When the matter was pending, the respondent, by letter dated 27.6.1989, requested the appellant to fix the rent at Rs. 19/- per sq.ft. plus municipal taxes.

4. In the meanwhile, the respondent landlord entered into lease agreements every year, with the appellant on 11.4.1989, 10.5.1990 and 29.4.1991 each for a duration of one year, on a monthly rent of Rs. 74,645.34.

5. As the premises was old and lacking in amenities and as the respondent was not interested in carrying out repairs/improvements in view of its intention to demolish and reconstruct the building, and as the appellant was unwilling to pay a higher rent, the appellant, by its letter dated 16.3.1992, notified the respondent of its intention to vacate the premises. In pursuance of it, the appellant vacated and delivered vacant possession of the premises to the respondent on 25.6.1992. The respondent however went on representing for revision of rent with effect from 3.8.1988. The appellant was not agreeable for the rent recommended by the Hiring Committee, and wrote to the Hiring Committee on 22.5.1992 and 5.11.1993 to review the reassessment of rent, and furnished several documents in support of its request. The Hiring Committee sent a reply dated 4.2.1994 stating that its recommendation in regard to rent will not be reviewed.

6. When matters stood thus, the respondent filed W.P. No. 1675/1995 in the Calcutta High Court for the following reliefs : (i) a direction to respondents to reassess the rent from 3.8.1988 in accordance with the guidelines contained in the Government order dated 13.6.1985 and related orders/circulars; and (ii) to give effect to the decision of the Hiring Committee recommending Rs. 13.10 per sq. ft. with effect from 3.8.1988 by way of interim reassessment of rent subject to final assessment.

7. In the said proceedings, by interim order dated 6.2.1998 and 24.2.1998, the High Court directed the appellant to pay Rs. 5.08 (that is the rent of Rs. 4.62 plus 10% increase) for the period 3.8.1988 to 25.6.1992. The appellant paid the rent accordingly. The writ petition was allowed by a Learned Single Judge, by order dated 22.8.2002, directing the appellant to pay the rent in regard to the period 3.8.1988 to 25.6.1992, to the respondent in accordance with the recommendations of the Hiring Committee, within 6 weeks with interest at the rate of 8.33% from 1998 till date of payment and in default to make payment within 6 weeks, pay interest at 10% per annum. The learned Single Judge was of the view that the

matter was covered by a decision of the division bench of that High Court in Regional Director (ER, AMD), Department of Atomic Energy v. Rabindra Nath Nandi (A.P.O. No. 243-244/1996 decided on 16.5.1997/18.9.1998) and that the appellant was bound to pay increased rent as assessed by the Hiring Committee.

8. Feeling aggrieved, the appellant challenged the order of the learned Single Judge in an appeal. By interim order dated 16.6.2003, the division bench stayed the operation of the order of the Learned Single Judge, subject to appellant depositing 50% of the rent calculated at the rate of Rs. 13/10 per sq.ft. recommended by the Hiring Committee, with liberty to the respondent to withdraw the same. The Division Bench disposed of the appeal by order dated 31.8.2006 with the following directions, purporting to follow the decision in Rabindra Nath Nandi (supra):

(i) The appellant should deposit the balance 50% of the arrears calculated at the rate of Rs. 13.10 per sq.ft. within two weeks.

(ii) As the Hiring Committee had made available the details of calculations, the appellant and respondent should offer their views on the assessment of rent by Hiring Committee within four weeks.

(iii) The Hiring Committee should reconsider the matter (in the light of the observations of the High Court in Rabindra Nath Nandi) and take a final decision within three months thereafter.

(iv) The Hiring Committee should communicate its recommendations along with all calculations in support of it, to both the parties.

(v) The appellant should then take a decision on the said recommendations in the light of the observations contained in Rabindra Nath Nandi within four weeks thereafter. If the recommendation was not accepted, it should communicate the reason for non-acceptance to the respondent within 48 hours thereof. If the recommendation was accepted, all outstanding dues should be paid to respondent with interest at 10% per annum, within four weeks.

(vi) The Bank guarantee furnished by the respondent should continue till the controversy was finally resolved. The respondent would be entitled to withdraw further 50% of the amounts deposited by the appellant by furnishing a further bank guarantee.

9. The said order is challenged in this appeal by special leave. The appellant contends that the writ petition was not maintainable, as the lease agreement contained an arbitration clause for settlement of disputes. It also contends that the landlord was entitled to increase in rent only in terms of the provisions of the West Bengal Premises Tenancy Act, 1956 and not otherwise. It is further contended that the reassessment by the Hiring Committee was only a recommendation and as the increase recommended by the Hiring Committee was arbitrary and excessive, it was not bound to accept the same. Lastly it is pointed out that it had already vacated the premises on 25.6.1992 and the tenancy till that date was regulated by lease agreements executed on 11.4.1989, 10.5.1990 and 29.4.1991 which stipulated a monthly rent of Rs. 74,645/-, and therefore it was not liable to pay any increased rent. On the contentions urged, the following questions arise for our consideration:

(i) Whether the writ petition by the respondent was not maintainable, in view of Clause 17 of the lease agreements dated 11.4.1989, 10.5.1990 and 29.4.1991 providing for settlement of disputes by arbitration ?

(ii) Whether the recommendation by the Hiring Committee was binding on the appellant and whether the respondent- landlord could enforce payment of the rent recommended by the Hiring Committee ?

(iii)Whether the directions issued by the High Court in the impugned order dated 31.8.2006 are warranted or justified ?

Re : Question No. (i):

10. The appellant submit that the parties had entered into three lease agreements dated 11.4.1989, 10.5.1990 and 29.4.1991 in regard to the periods 1.4.1989 to 31.3.1990, 1.4.1990 to 31.3.1991 and 1.4.1991 to 31.3.1992 and all the three

agreements contained an arbitration Clause (Clause No. 17) providing that any dispute or difference arising between the parties, concerning the subject matter of the lease agreements or any covenant, clause or thing contained therein or otherwise arising out of the said leases, shall be referred to an arbitrator to be appointed by the Government of India and the decision of such arbitrator shall be conclusive and binding on the parties hereto. Having regard to the said provision for arbitration, the appellant contends that the remedy of the landlord-respondent, if it wanted any increase in rent, was to seek reference to arbitration and the writ petition was misconceived and not maintainable.

11. A careful reading of the arbitration clause in the lease agreements discloses that what is referable to arbitration, is any dispute or difference concerning the subject matter of said three lease agreements or any clauses thereof or any matter arising out of the said lease agreements. But the writ petition was not in respect of any of the said three lease agreements or any term thereof. The grievance of the respondent put forth in the writ petition is as under:

On 28.7.1988, the respondent requested the appellant to refix the rent for a period of five years with effect from 3.8.1988 by referring the matter to the Hiring Committee. The appellant accordingly referred the matter to the Hiring Committee by letter dated 25.10.1988. The Hiring Committee after considering the matter, recommended payment of rent of Rs. 13.10 per sq. ft. of carpet area, inclusive of all municipal taxes with effect from 3.8.1988. The appellant, a department of Government of India, was bound by the said recommendation, having regard to the terms of the Official Memoranda dated 19.7.1972, 1.9.1982, 9.5.1983, 22.8.1984 and 13.6.1985 of Government of India. But the appellant failed to implement the said recommendation of the Hiring Committee. Nor did it choose to itself reassess the rent from 3.8.1988 in terms of the O.M. Dated 13.6.1985, if it was not agreeable to accept the recommendation of the Hiring Committee. Therefore the appellant should be directed to increase the rent from 3.8.1988 in terms of the O.M. dated 13.6.1985.

The relief sought in the writ petition thus did not relate to, nor arise from the contract of lease (the three lease agreements containing the arbitration

agreement) but allegedly arose out of the O.M. dated 13.6.1985 and related official memoranda issued by the Government of India. The subject matter of those official memoranda was not subject to any provision for arbitration. The arbitration clauses in the lease agreements dated 11.4.1989, 10.5.1990 and 29.4.1991, therefore, did not cover or govern the issue raised in the writ petition. Therefore the arbitration clause in the three lease agreements would not come in the way of the writ petition being entertained. We are fortified in our view by the decision in Titagarh Paper Mills Ltd. v. Orissa State Electricity Board : (1975)2SCC436 wherein this Court held:.when the Board decided to levy the coal surcharge on the consumers receiving electricity from the Talcher-Hirakund grid, it claimed to do so under Sections 49 and 59 and the Sixth Schedule to the Supply Act. We must, therefore, first examine whether any of these provisions of the Supply Act empowered the Board to levy the coal surcharge. We fail to see how the machinery of arbitration contained in Clause (23) of the agreement can possibly cover such a question. The arbitration agreement in that clause applies only to a dispute or difference 'as to the supply of electrical energy hereunder or the pressure thereof or as to the interpretation of this Agreement or the right of the supplier or the consumer respectively to determine the same or any other question, matter or thing arising hereunder. The question as to whether the Board had the power under Sections 49 and 59 and the Sixth Schedule to the Supply Act to levy the coal surcharge is not a question, matter or thing arising under the agreement. It is a claim founded on the provisions of the Supply Act to impose the coal surcharge in addition to the rates payable by the appellant to the Board under the agreement. Such a claim clearly falls outside the ambit and coverage of the arbitration provision contained in Clause (23) of the agreement. The arbitration agreement cannot therefore, be regarded as a relevant factor which should legitimately influence the discretion of the Court in declining to entertain the writ petition on merits.

(emphasis supplied)

Re : Questions (ii) and (iii):

13. Neither the Single Judge nor the division bench of the High Court examined the scope, purport and effect of the O.M. dated 13.6.1985 and other related government orders. They merely relied upon the earlier judgment in Rabindra Nath Nandi and held that the appellant was legally bound to increase the rent from 3.8.1988 as per the recommendations of the Hiring Committee.

14. It is necessary to refer to the background in which Hiring Committees were constituted and the effect of the Official Memoranda relating to assessment/reassessment of rent, before examining these questions. Government was taking on rent several privately owned premises. The officers in charge of the hiring departments of the government were not experienced in real estate matters and lacked the technical expertise in rent fixation. They faced difficulties in verifying whether the rents demanded by the landlords were reasonable or excessive. Many a time, owners of plots were also required to construct buildings or make additions to existing rented premises, to meet the specific requirements of the government departments. That also gave rise to problems in assessing the reasonable rent. Sometimes, there was also collusion between the building owners and the local officers of the government departments, resulting in fixation of exorbitant rent for the premises, to the detriment of public interest. Having thus felt the need to have expert advise, the government constituted 'Hiring Committees' consisting of Engineers from Public Works department, in various cities to advise the hiring government departments proposing to take private buildings on rent. A somewhat similar difficulty was also faced when it became necessary to increase the rent at the time of renewal or extension of lease, as refusal to increase rents, after the expiry of the lease period was likely to result in action for eviction. It was therefore necessary to periodically re-assess the rent for purpose of revising the rent. Where the contracts of lease did not provide for periodical increases, subject to facts and circumstances of each case, it was thought fit to increase the rent every five years, by consent of both parties. Here again, the expertise of the Hiring Committee was required to assess the increase in rent, so as to enable the lessee departments to negotiate with the landlords to arrive at an agreed increase in rent.

14.1) The first circular regarding revision in rent was issued by the Government of India on 19th July, 1972. It directed that rents once assessed cannot be enhanced even by mutual agreement. But a request from the landlord for revision was to be forwarded by the hiring department to the CPWD. The CPWD authorities were required to decide whether the rent required an equitable revision, after ascertaining whether any of the following circumstances existed:

(i) Alternations/additions to the building having been carried out by the landlord, thereby increasing its effective utilizable area;

(ii) Additional facilities/amenities having been provided in the building (such as additional fans, geysers, bath rooms, additional electric appliances etc.) by the landlord, after the initial letting;

(iii) Increase in the property/house tax by the local authorities;

(iv) Imposition of new element of tax such as education cess by the State/Local authorities.

(v) The rent control law applicable to the town/city concerned requiring increase in rent.

14.2) The subsequent OM dated 1st September, 1982 noted that the standard lease deeds provided for the repairs to be carried out by the landlord and in default of such repairs by the landlord, the government could execute the repairs and recover the cost from the rent. It was also noted that the landlords were not undertaking repairs or works of maintenance, as they were not assured of suitable enhancement in rent. A decision was therefore taken for allowing periodical revision of rent payable for private buildings. It was decided that the reasonableness of the rent may be got assessed from the CPWD on the expiry of the period of five years (from the date of original assessment or the date of the issue of the said OM dated 1.9.1982, whichever was later) and after every five years thereafter. In making the reassessment, the CPWD was required to take into the account the variation in the cost index during the relevant period in addition to the factors mentioned in the O.M. dated 10.7.1972.

14.3) The third OM dated 9th May 1983 provided that the reassessment was to be done keeping in view, the variation in the cost of construction of the building including land appurtenant thereto and the depreciation due to wear and tear during the relevant period in addition to the factors mentioned in the O.M. dated 10.7.1972.

14.4) The fourth OM dated 22nd August, 1994 provided the following clarifications : (1) No initiative for revision was to be taken by the government (tenant) and the process of reassessment should be initiated only after a request from the owner of the leased premises, the later of the dates between the date of receipt of the request and the date on which the revision was due being adopted as the date for revision of rent. (2) In all such cases or reassessment of reasonable rent, a fresh lease agreement in the form prescribed was to be entered into with the concerned landlord. (3) Wherever Hiring Committees were functioning (such as in Bombay, Calcutta, Delhi etc.), refixation of rent was to be done by such committees and intimated to the concerned departments with details. (4) All the Ministries/Departments were required to finalize the cases of reassessment of rents in consultation with the concerned Hiring Committee.

14.5) The last OM dated 13.6.1985 required the Hiring Committees to follow the guidelines given below, while reassessing the rents:

(i) to work out the reproduction cost of the building as on the date of hiring based on the ruling cost of building construction in the locality.

(ii) to work out the depreciated value of the property assuming a straight-line variation of depreciation depending on the age of the building.

(iii) to work out the land area appurtenant to the building taking into account local bye laws or in its absence with reference to the general practice in the locality.

(iv) to work out the cost of land on the basis of prevailing market rates for comparable land in the locality and also the value of land appurtenant to the building and the surplus land separately.

(v) to add the cost of appurtenant land to the depreciated value of the building to assess the reasonable return on the property.

(vi) to add : (a) the actual Municipal taxes; (b) maintenance and repairs (12% of the Gross returns) and (c) an appropriate provision in the form of a sinking fund for recovery of capital after expiry of life of the building (with reference to Sinking Fund Table).

The said OM dated 13.6.1985 contained the following further instructions:

3. In all cases, in addition to working out the rent on the principles of valuation as enumerated above, the market rate of the rent prevalent in the area should also be ascertained by the authority giving the rent reasonableness certificate. Such inquiries may be made taking into account rent being paid for properties taken on lease by other government or semi government organizations like public sector undertakings, banks etc. for similar accommodation in the locality. Officers of the CPWD should ascertain such figures of prevailing market rents and collect authentic date preferably based on documents taking into account the conditions included in the particular lease deed of those premises from which the figure is taken and also keeping in view the relative areas/size. The properties should be comparable in specifications and amenities provided. They should make sure that the conditions of hiring are similar and also ensure that the factors for which landlord is landlord like municipal taxes, maintenance and repairs etc in the cases are similar.

4. After assessing the two values for rent as enumerated above i.e. rent based on recognized principles of valuation and rent based on prevailing market rates in the locality, the reasonable rent certificate should indicate both figures in all cases where the prevailing market rent is more than the rent calculated on the principles of valuation otherwise the lower figure only need be indicated. The final decision regarding the actual rent to the paid to the owner of the building will rest with the authorities desiring to hire the property keeping in view the two figures of rent indicated in the certificate, their own needs and availability of the accommodation in the locality at the rent to be determined.

5. Reassessment of rent of leased building will be treated as fresh case of rent assessment and may be done according to the same principles as discussed in the preceding paragraphs.

(emphasis supplied)

15. In Rabindra Nath Nandi, which was followed by the impugned judgment, the Calcutta High Court after referring to the O.Ms. dated 19.7.1972, 1.9.1982, 9.5.1983, 22.8.1984 and 13.6.1985 concluded as under:

(a) The five circulars (Official Memoranda) in effect provided for and envisaged revision of rent by consent. As the revision of rent could not be left to the discretion of any individual officer and to lay down a uniform policy, rationalized principles were laid down by the said circulars. The said circulars regulated not only the grant of consent but also provided the method by which the consent could be accorded by the government department.

(b) The policy decision contained in the said circulars did not amount to contracting out of the provisions of the West Bengal Premises Tenancy Act, 1956, as the said Act recognized the right of parties to determine by consent reasonable rate of rent payable in regard to any premises covered by the said Act.

(c) As the circular dated 13.6.1985 and connected circulars were valid and binding on the Hiring Department (Government) and the Hiring Committee had the jurisdiction to assess and recommend the rent, the assessment by the Hiring Committee were binding on the Hiring Department (tenant) if the assessment has been made strictly in the manner prescribed in the circulars.

(d) The Hiring Department cannot refuse to follow the recommendations of the Hiring Committee except on the ground that it was not in accordance with the circulars. If the recommendation by the Hiring Committee was not in accordance with the circulars, the following procedure had to be followed:

(i) The Hiring Committee must make available to the parties the details of all calculations made with regard to the assessment of rents within four weeks from date;

(ii) any objections to such calculations by either party must be specific and made within four weeks thereafter;

(iii) within the same period any relevant evidence as to the market rate for the periods in question with full particulars may be submitted by either party to the Hiring Committee with copies to the other side;

(iv) the Hiring Committee will then reconsider the matter in the light of the observations in this judgment and take a decision on the materials before it after verification within period of three months thereafter;

(v) the recommendations alongwith all the calculations in support thereof will be communicated to both parties within 48 hours thereof;

(vi) the Department shall take a decision on the recommendation in the light of the observations contained in the judgment within four weeks thereafter. If the recommendation is not accepted, detailed reasons for such non-acceptance must be recorded and communicated to the landlord within 48 hours thereof;

(vii) if the recommendation is accepted, payments of all outstanding on account of such reassessed rents must be made to the landlords within four weeks from the date of the decision together with interest at the rate of 8 1/3% simple interest per annum calculated from the date on which the payments were due upto the date of payment.

The decision is curiously silent as to what should happen if the Hiring Department does not accept the recommendation of the Hiring Committee and gives the reasons for such non-acceptance. Be that as it may.

16. We are of the view that the elaborate decision in Rabindra Nath Nandi missed the core issue and ignored the relevant law governing landlords and tenants. A lease is governed by the terms of the contract (deed or agreement of lease) between the parties. If the contract prescribes a rent for the period of lease, the same being agreed rent, it is binding on the parties. If the lease provides for revision of rents periodically, and specifies the method and manner of revision, such revised rent would also be the agreed rent. Where a statute governing

tenancies and/or rents provides for fixation of rent or increases in rent, and such statute is applicable to the tenancy in question, then the rent will have to be determined in accordance with the statutory provisions. Subject to the above, any increase can be only by consent of parties. If the lease period expires and the parties are not able to agree upon the increase in rent or terms of renewal, it is open to the landlord to initiate action for evicting the tenant. But under no circumstances can the landlord require the tenant to pay during the period of a lease, a rent higher than what is agreed between them or what is provided for in the statute. The assessment or determination of rent by the Hiring Committee is an expert advice to the lessee and nothing more. Except where there is an agreement to abide by the fixation of rent by the Hiring Committee, neither party can insist or require the other party to abide by the rent assessed by such Committee, as determination of rent by the Hiring Committee is not statutory or contractually binding on the parties.

17. If the parties (lessor and lessee) agree that an increase in rent determined by the Hiring Committee will be binding on them, then of course, the determination by the Hiring Committee will be binding upon the parties. The lease deed/agreement between the parties itself may contain a clause that the rent will be as determined by the Hiring Committee and the parties will be bound by the same. It is of some relevance to note that in the year 1987, the respondent proposed to demolish the existing building and construct a new building. The appellant and respondent entered into a memorandum of agreement dated 28.9.1987 under which the respondent agreed to put up an additional building in the vacant space, and the appellant agreed to temporarily shift to the said building to enable the landlord to demolish the old building and reconstruct the same and thereafter let out the reconstructed building to the appellant. The said agreement specifically contemplated (Proviso to Clause 31) fixation of rent as assessed by the Hiring Committee. But the said proposal for demolition and reconstruction did not materialise. Be that as it may.

18. The fundamental requirement relating to consent, has been ignored in Rabindra Nath Nandi. The said decision proceeds on the assumption that the O.M. dated 13.6.1985 and other related circulars prescribed the procedure for revision

of rents every five years, and there was an implied consent on the part of the government department to revise the rent as assessed by the Hiring Committee and pay rent in terms of it. It also proceeds on the assumption that whenever government takes a premises on lease, irrespective of the contract of lease, the OM dated 13.6.1985 and related circulars would make it obligatory for the government to revise the rent every five years. Both these assumptions are baseless and arise from a misreading of the said OMs. The decision ignores the specific provision in the OM dated 13.6.1985 that any assessment or reassessment of rent by the Hiring Committee will be only recommendatory and not binding upon the Hiring Department, which takes the premises on lease from the private landlord. The OM dated 13.6.1985 specifically states that the final decision regarding the actual rent to be paid to the owner of the building will rest with the authorities desiring to hire the property keeping in view the two figures of rent indicated in the certificate, their own needs and availability of the accommodation in the locality at the rent to be determined.

19. As rightly observed in Rabindra Nath Nandi, the government was aware of the fact that the Hiring Departments or their individual officers will not have the expertise to assess the rent. Therefore, it devised a procedure for assessment or reassessment of rent by an Expert Committee (Hiring Committee) whose recommendation would help the Hiring department to take a decision in regard to fixation of rent or revision of rent. But the mere fact that a mechanism had been evolved to assess or reassess the rent by the Hiring Committees or that a Hiring department had referred a demand for increase for rent by the landlord, to the Hiring Committee for its assessment/recommendation, does not mean that the assessment or reassessment of rent by the Hiring Committee is binding upon the Hiring department or the landlord. Nor will the assessment by the Hiring Committee, would create in the private landlord or the tenant (government department), an enforceable right with reference to the recommendation of rent made by the Hiring Committee, against the other party to the lease. The Hiring Committee is an expert body, and a consultant to the lessee department. In considering the recommendations of the Hiring Committee, the Hiring department is of course expected to act reasonably and not arbitrarily. The Hiring department may also usually abide by the advise of the Hiring Committee. But the Hiring

department is not bound by its recommendation. For several reasons, it may refuse to act upon it. The following portion of the proceedings dated 6.6.1989 of the Hiring Committee itself makes this clear:

From the directives contained in the office Memo dated 13.6.85, it will be observed that the final decision regarding the actual rent to be paid to owner of the premises will rest with the authorities intending to hire the property, keeping in view the above two figures of rent, their own needs, and , no less, the availability of accommodation in the locality at the rent to be determined.

We are therefore of the considered view that in the absence of an express contract agreeing to be bound by the recommendation of rent by the Hiring Committee, its recommendations are neither binding on the hiring departments nor on the lessors. Rabindra Nath Nandi, to the extent it holds to the contrary, in our considered view, is not good law.

20. It is relevant to note that even the respondent proceeded on the basis that the reassessment by the Hire Committee was only recommendatory and was not binding. In its letter dated 27.6.1989 addressed to the appellant, the respondent referred to the recommendation by the Hiring Committee in regard to a rent of Rs. 13.10 per sq. ft. (inclusive of municipal taxes), but requested the appellant to fix the rent at Rs. 19 per sq. ft. exclusive of municipal taxes with effect from 3.8.1988. Even in the writ petition filed by respondent, the contention of the respondent was not that the rent of Rs. 13.10 recommended by the Hiring Committee was only provisional and its prayer was for increasing the rent in terms of the O.M. dated 13.6.1985 for the period commencing from 3.8.1988.

21. The appellant has categorically stated that it was not willing to pay the higher rent suggested by the Hiring Committee. In fact, it made it clear that it was not willing to pay higher rent as the landlord failed to carryout repairs/maintenance and as it vacated the premises. There is therefore no question of subjecting the question of rent to another round of determination by the Hiring Committee. The respondent is not entitled to the reliefs sought in the writ petition.

22. We therefore allow this appeal, set aside the orders of the Single Judge and Division Bench of the High Court and dismiss the writ petition. The respondent shall refund all amounts received in excess of the agreed rent, to the appellant within three months.