

Nanagram Vs. Ghinsilal

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Court : Rajasthan

Decided On : Sep-24-1951

Reported in : AIR1952Raj107

Judge : Ranawat and; Sharma, JJ.

Acts : [Constitution of India](#) - Article 226; Jaipur Rent Control Order, 1947 - Sections 6(2)

Appeal No. : Misc. Writ Appln. No. 12 of 1950

Appellant : Nanagram

Respondent : Ghinsilal

Advocate for Def. : G.N. Sharma, Adv.

Advocate for Pet/Ap. : R.K. Rastogi, Adv.

Disposition : Application allowed

Judgement :

Ranawat, J.

1. This is an application under Article 226 of the [Constitution of India](#). The petitioners Nanagram and Ballilal are the owners of a shop in Johri Bazar of which the opposite party Ghinsi Lal is the tenant. The petitioners purchased this shop

from Khavas Eala Baksh on the 30th of May, 1937 when the opposite party Ghinsilal was in possession of it as a tenant on a monthly rent of Rs. 55/- and after the purchase of the shop by the petitioners, Ghinsi Lal attorned in favour of the petitioners and executed a rent note on the 10th of July, 1937 stipulating to pay Rs. 65/-Jharsai per month. On the 11th of January, 1940, another rent note was executed by Ghinsi Lal by which the monthly rent was reduced to Rs. 50/- Indian Coin. The petitioners constructed a verandah in front of the shop on the 1st of November, 1943 at a cost of Rs. 1200/-and on the 26th March, 1948 the rent of the shop was increased to Rs. 70/- Indian Coin per month and a fresh rent note was executed by the opposite party.

On the 15th of April. 1949. the petitioner's served a notice on Ghinsi Lal, informing him of their intention to increase the rent of the shop to Rs. 130/- per month which was calculated at twice the rate at which the premises were let on the first of September, 1939 and a further sum of Rs. 778 per month was added on account of the improvements made by the petitioners. Thus the petitioners claimed a sum of Rs. 137/8 per month from the opposite party, but Ghinsi Lal declined to accept the demand made by the petitioners. The dispute regarding the standard rent payable in respect of the shop in question was submitted to the Rent Controller, Jaipur under Section 6 of the Jaipur Rent Control Order, 1947 (hereinafter to be referred to as the Order) by an application dated the 10th March, .1949. The Rent Controller gave his decision, holding thatthe rent payable on the 1st September, 1939 was Rs. 65/- kaldar per month. Consequently the standard rent of the shop in question was determined to be Rs. 130/- per month plus Rs. 2/8 per month on account of improvements.

Ghinsi Lal filed an appeal against the order of the Rent Controller in the Court of the Collector, who was the appellate authority under the Jaipur Rent Control Order. The Collector held that as the shop was not given on rent on the first day of September, 1939, but as it was previously let out to Ghinsi Lal, second schedule of the Jaipur Rent Control Order did not apply to this case and the standard rent was therefore, determined under the provisions of Section 6 (2) of the Order. The standard rent fixed by the Collector was Rs. 65/- plus Rs. 2/8 per month on account of improvements. The petitioner, Nanagram and Ballilal have now filed

this application against the judgment of the Collector, Jaipur dated 28th of April, 1950 on the grounds that: (1) The collector erroneously exercised the jurisdiction in fixing the standard rent of the shop under Section 6 (2) of the Jaipur Rent Control Order by misinterpreting the clear language of Section 1 (b) (i) of the second schedule. (2) Even under Section 6 (2) of the Order the rent was fixed arbitrarily and in disregard of the considerations specified under Section 6 (2) of the Order.

2. Section 1 of the second schedule of the Jaipur Rent Control Order is as follows:

'1. In this schedule, 'basic rent', in relation to any premises mean:

(a) Where the fair rent of the premises has been determined or re-determined under the provisions of the Jaipur House Rent Control Order, 1943, the rent as so determined or, as the case may be, re-determined, and

(b) in any other case:

(i) the rent at which the premises were let on the first day of September, 1939 or

(ii) if the premises were not let on that date, the rent at which they were first let after that date.'

3. Under the provisions of the second schedule, basic rent in relation to any premises has got to be determined in cases not falling in Sub-clause (a) on the basis of the rent payable on the 1st day of September, 1939 in case the premises were already let on that day and in other cases on the basis of the rent at which they were first let after that date. The Collector has misunderstood the meaning of the language of Section 1 (b) (i). According to the Collector, the premises must have been given on rent on the 1st day of September, 1939 or thereafter in order to enable the authority to fix the standard rent under the second schedule. The language used in Section 1 (b) (i) of the second schedule is that 'the rent at which the premises were let on the 1st day of September, 1939.' 'Let' means on hire. The express meaning of Section 1 (b) (i) is therefore, that in case the premises were on hire on the 1st day of September, 1939 then the standard rent is to be fixed on the basis of the rent payable on the 1st day ,of September, 1939. The language of

Section 1 (b) (i) does not admit of the meaning which the Collector has drawn from it.

In 'DHANRAJGIRJI v. W. G. WARD', 27 Bom L R 877; 'MT. JAWAHARBAI v. KUNDAN-DAS', AIR 1951 Ajmer 51 (1); 'POONAM CHAND v. TIKAM CHAND', AIR 1951 Ajmer 32 and 'MADODASS BHAGWANDAS v. S. SO-BHAG MAL', AIR 1950 Ajmer 34(1), standard rent has been calculated on the basis of the rent payable on the appointed day and the language of the Bombay and Ajmer Rent Control Acts was similar to the language in this behalf of the Jaipur Rent Control Order. There is, therefore, an error in the judgment of the Collector which is patent on the face of the record. A perusal of the judgment of the Collector alone, would make it evident that he has misconceived the language used by the law and has drawn a meaning which was not contemplated by the language of the law. As has already been observed above, the plain meaning of Section 1 (b) (i) of the second schedule is that of the premises were on hire on the first day of September, 1939, the rent payable on that day should be regarded as the basic rent for fixing the standard rent. In the present case, the shop was on hire on the 1st day of September, 1939 as is admitted by both the parties. The Collector ought to have, therefore, fixed the standard rent of the premises under the second schedule on the basis of the basic rent which was payable on the 1st day of September 1939.

By misconstruing the meaning of Section 1 of the second schedule, the Collector has assumed jurisdiction in fixing the rent under Section 6(2) of the Order which was not proper. Under Section 6 (2) standard rent could be fixed only in case, it was not possible for the rent control authorities to fix any rent under the provisions of the second schedule but where rent could be fixed under the provisions of the second schedule, it was not open to the authorities to fix the standard rent under Section 6(2) of the Act. Thus it becomes evident that the Collector, in the present case, has exercised his jurisdiction wrongly by misconstruing the provisions of the language of Section 1 (b) (i) of the second schedule.

4. The learned counsel for the opposite party has placed reliance on 'MAHSINALI MA-HOMEDALI v. STATE OF BOMBAY', AIR 1951 Bom 303, in arguing that the decision of the Collector whether right or wrong should not be interfered with by

this Court in this application by issue of a writ of certiorari. Chagla C. J. has observed in 'MOHASINALI MAHO-MEDALI v. STATE OF BOMBAY', AIR 1951 Bom, 303, as follows:

The jurisdiction that the High Court exercises when it issues the high prerogative writ of certiorari is a limited jurisdiction. Thus, when, any Court has been empowered to determine certain question and jurisdiction has been conferred upon it to determine those questions then the determination by the Ct. of those questions, however, erroneous in fact or in law, cannot call into question the jurisdiction of the High Court under its high prerogative of issuing a writ of certiorari. To this principle there are two exceptions: the first is that the Superior Court will interfere when an error of law is patent on the face of record; and the second is that the determination is arrived at mala fide in which case it will not be a determination at all and fraud or mala fides will vitiate any decision however arrived at.

5. The principle that the jurisdiction of the High Court in issuing a writ of certiorari is limited and when any Court has been empowered to determine certain questions and jurisdiction has been conferred upon it to determine those questions, then the determination by the Court of those questions however erroneous in fact or in law cannot be called into question is subject to two important exceptions that have been given in the passage quoted above. The first is that the superior Court has to interfere where an error of law is patent on the face of the record and the second is that the determination is arrived at mala fide.

In the present case, we are concerned with the first exception. As has been already noted above that the Court of the Collector in deciding the appeal has committed a patent error in interpreting Section 1 (b) (i) of the second schedule of the Order and he has exercised his jurisdiction erroneously under Section 6(2) of the Order which it was not open for him so to do, if he had not misconstrued the plain meaning of the provisions of the second schedule of the Order. The authority which has been relied upon by the learned counsel for the opposite party itself goes against his case. It is not disputed by either of the parties that the decision of the Collector acting as an appellate authority in a case under the Jaipur Rent

Control Order is in exercise of his judicial or quasi judicial functions and consequently his decision is amenable to the jurisdiction of this Court in issuing a writ of certiorari under Article 226 of the [Constitution of India](#).

Under these circumstances, it is the duty of this Court to correct the error committed by an inferior Court and to direct it to exercise its jurisdiction according to law. In view of the decision being in favour of the petitioner on the first point, it is not necessary to go into the second question raised by him that the rent has been fixed arbitrarily. This application is, therefore allowed and the decision of the Collector is set aside and he is directed to fix the standard rent of the premises according to law applying the provisions of the second schedule of the Order,

Sharma, J.

6. I agree.

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