

Prem Kumar Vs. State of Rajasthan and ors.

Prem Kumar Vs. State of Rajasthan and ors.

SooperKanoon Citation : sooperkanoon.com/762471

Court : Rajasthan

Decided On : Feb-25-1991

Reported in : 1991WLN(UC)129

Judge : A.K. Mathur, J.

Appeal No. : S.B. Civil Writ Petition No. 1551

Appellant : Prem Kumar

Respondent : State of Rajasthan and ors.

Judgement :

A.K. Mathur, J.

1. This writ petition along with other writ petitions mentioned in the Schedule A appended to this order, is disposed of by this common order as the question of law involve in these writ petition is common.
2. For the convenient disposal of all these writ petitions, the facts given in the case of Prem Kumar v. State of Rajasthan and Ors. S.B. Civil Writ Petition No. 1551/1989 are taken into consideration.
3. The Petitioner by this writ petition has prayed that the orders Exs. 2, 3 and 7 may be quashed and the respondents may be directed to accept rent @ Rs.80/- from the petitioner and adjust the amount already deposited in excess in the

previous years. It has also been prayed that decision taken by the Nazul land Price Fixing Committee for fixing the price of the shops @ Rs. 4500/- per sq. yards may be quashed.

4. The petitioner was allotted a shop No. 4 in the Kamla Nehru Market, Hanumangarh Junction. The petitioner is a vegetable vendor and use to sale vegetables on the foot-path in Hanumangarh Junction market. In the year 1976 for settlement of persons who use to sale vegetables on foot-path; the Municipal Council, Hanumangarh decided to construct the shops and from 1976 to 1978 total 66 shops have been constructed and this market was named as Kamla Nehru Market in Hanumangarh Junction. The size of the shop was 10' x 10'. The Municipal Council, Hanumangarh while allotting these shops in the year 1978 entered into an agreement with the owner of the shops which has been placed on the record as Ex. 1, to pay rent of Rs. 80/- per month. It is alleged that at the time of construction, the cost of each shop varies in between 5000/- to 7,000/-. It is alleged that in the year 1983 the State Government vide its order dated 10.8.1983 issued some guidelines regarding sale and allotment of the shops for residential and commercial purposes falling in Municipal limits. A copy of the order passed by the Government dated 10.8.1983 has been placed on the record as Ex.

2. In pursuance of the Government order dated 10.8.1983 (Ex. 2), the Municipal Council, Hanumangarh in its meeting dated 29.10.1983 increased the rent of all the shops to the extent of 10% allotted to the petitioner and other persons in Kamla Nehru Market, Hanumangarh Junction with effect from 1.11.1983 and also took a decision that there will be an increase of 10% in rent every subsequently year. Copy of this decision has also been placed on the record as Ex.

3. It is alleged that during the campaign known as 'Administration towards the Cities' and in this campaign the Nazul Land Price Fixing Committee formed under Rule 12 of the Rajasthan Municipal (Disposal of Urban Land) Rules, 1974)(here in after reffered to as the Rules of 1974') met in Hanumangarh Town on 15.9.1983 decided the price of the shops fall in Hanumangarh Town and fixed the price at the rate of Rs. 300/- per sq. yard for Zone-A, Rs. 250/- for zone B and Rs. 200/- for Zone-C. It is alleged that Municipal Council, Hanumangarh wrote a letter to the

Collector, Ganganagar for fixing the Price of the shops under the Rules of 1974. Thereafter, a meeting of this Nazul Land Price Fixing Committee was held on 9.5.1988 under the Chairmanship of Shri Ram Rakh, Additional Collector, Sri Ganganagar and other members of the Committee and Gurdeep Singh, B.G. Rajbaksh Executive Engineer and Public Construction Department Hanumangarh and Shri S.R. Joshi, Commissioner, Municipal Council, Hanumangarh as Member Secretary. These members of the Nazul Land Price Fixing Committee decided the matter and fixed the price of the shops of Kamla Nehru Market of main road shops at Rs. 4500/- per sq. yards and Rs. 3,500/- per sq. yards of the shops fall inside the market. This committee also confirmed the Resolution No. 11 dated 29.10.1983 passed by the Municipal Council, Hanumangarh for increasing the rent at the rate of 10% with effect from 1.11.1983. A copy of the same has been placed on the record as Ex.

7. In pursuance of this decision a notice was issued in Dainik Tej Keshri dated 26.11.1988 a copy whereof has been placed on the record as Ex.

8. In view of the decision taken by the Committee to increase the rent by 10% with effect from 1.11.1983, in case the increased rent is not deposited or market price of allotment is not deposited then the allotment shall stand automatically cancelled and in this notice it was also mentioned that this notice was to come into force with effect from 1.12.1988. Therefore, the Kamla Nehru Market Association Hanumangarh Junction district Sri Ganganagar through its Secretary Prakash Chanana son of Dwarka Das Arora of Shop No. 26 of Kamla Nehru Market filed a writ petition which came to be registered as D.B. Civil Writ Petition No. 243/89. This petition was admitted and a limited stay order in favour of the petitioner was granted. There fore the petitioners have filed the present writ petitions individually.

5. The principal submission of the learned Counsel for the petitioners is that the petitioners are lessees and not licenses. Therefore, the rent cannot be increased. It is also submitted that the order passed by the State Government dated 10.8.1983 (Ex. 2) has not been passed in the purported exercise of any power and the increase in the rate of rent made by the Municipal Council on the basis of this direction of the State Government dated 10.8.1983 (Ex. 2) is also without

jurisdiction and the same deserves to be quashed. Similarly, it has been urged that valuation fixed by the Nazul Committee is also arbitrary and the same is liable to be quashed.

6. As against this, the respondent Municipal Council has filed a reply and contested the position and it has been submitted that the order (Ex. 2) dated 10.8.1983 has been passed by the State Government in the purported exercise of power under Section 297(2)(f) of the Rajasthan Municipalities Act, 1959 (referred to hereinafter as 'the Act') and submitted that the petitioner is not a lessee but he is a licensee and under Section 138 of the Rajasthan Municipalities Act, the State Government can issue a direction to the respondent to increase uniformly the licence fee.

7. The first and foremost question before me is that whether the petitioners are licensees or lessees. The distinction between the licensee and lessee is very thin. But it depends on the construction of the document and intention of the parties. Even the use of the word 'rent' in the document may not be conclusive of the nature of the deed. Even the expression 'rent' used in the document may in proper construction can be treated as a licence but it will depend on the document and intention of the parties.

8. This distinction between the expressions 'licence' and 'lease' has been subject-matter of controversy before their Lordships of the Supreme Court in *Associated Hotels of India Ltd. v. R.N. Kapoor* : [1960]1SCR368 . In this case, a room was rented out in a hotel and there the question was whether the room which was rented out in a hotel for carrying on the business of hair dresser amounts to lease or licence. In this connection, it was observed as under:

Where the question is whether the document is a lease or a licence it is the substance of the agreement that matters and not the form, for otherwise clever drafting can camouflage the real intention of the parties.

There is a marked distinction between a lease and a licence.

The following propositions may be taken as well established : (1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form, (2) the real test is the intention of the parties whether they intended to create a lease or a licence; (3) if the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence, and (4) if under the document a party gets exclusive possession of the property, *prima facie*, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease.

Applying these tests, held upon the terms of the document that the document was a lease and not licence. The solitary circumstance that the rooms let out in the present case were situated in a building wherein a hotel was run could not make any difference in the character of the holding. Under the document there was transfer of a right to enjoy the rooms, and, therefore, it created a tenancy in favour of the tenant.

9. Similarly, in the case of *B.M. Lall (dead) by his legal representatives v. Dunlop Rubber Co. (India) Ltd. and Anr.* : [1968]1SCR23 the question was whether the premises which were given out by the Company to its employees was a lease or licence. In this connection, it was observed as under:

A lease is the transfer of a right to enjoy the premises, whereas a licence is a privilege to do something on the premises which otherwise would be unlawful. If the agreement is in writing, it is a question of construction of the agreement having regard to its terms and where its language is ambiguous, having regard to its object, and the circumstances under which it was executed whether the rights of the occupier are those of a lessee or a licensee. The transaction is a lease, if it grants an interest of the land; it is a license if it gives a personal privilege with no interest in the land. The question is not of words but of substance and the label which the parties choose to put upon the transaction, though relevant, is not decisive. The test of exclusive possession is not conclusive, though it is a very important indication in favour of tenancy. If a servant is given a personal privilege to stay in a house for the greater convenience of his work, and it is treated as part

and parcel of his remuneration, then he is a licensee, even though the value of the house is quantified in money, but if he is given an interest in the land, separate and distinct from his contract of service, at a sum properly to be regarded as a rent, then he is a tenant and none the less a tenant because he is also a servant.

A limited company which owned certain premises was under an obligation to provide free accommodation to its staff officers by virtue of an agreement. In a suit for recovery of possession of certain flats from the premises which were in occupation of tenants for accommodating its staff officers.

Held that the agreement on its true construction read in the light of the surrounding circumstances operated as a license and not as a tenancy. It created no interest in the land. It gave only a personal privilege or license to the servant to occupy the premises for the greater convenience of his work. He being a licensee his occupation would be on behalf of the company and the requirement would be for its occupation.

10. Similarly, in *Konchada Ramamurthy Subudhi (dead) by his legal representatives v. Gopinath Naik and Ors.* : [1967]2SCR559 the question was that whether the compromise deed was a lease or licence where the suit for ejectment of tenant after termination of tenancy, having been dismissed, a compromise decree was passed in the appellate court, enabling the decree-holder, by its terms to execute the decree if the judgment-debtor failed to pay rent for any three consecutive months. After reviewing all the facts, their Lordships of the Supreme Court observed as under:

Held the compromise deed did not create a lease but a license. It was difficult to impute to the decree-holder an intention to create a fresh tenancy while the fact that he brought the suit showed that his intention was to eject the judgment-debtor after having purported to terminate the tenancy. The fact that the word 'rent' had been used in the compromise deed was not conclusive as in its wider sense rent meant any payment made for the use of land or buildings and thus included the payment by a licensee in respect of the use and occupation of any land or buildings. The period of five years granted under the deed to the judgment-debtor for continuation of the possession also did not militate against the construction that

the compromise only created a license for the decree-holder had lost in the trial court and it was only in the court of appeal that the compromise was arrived at.

11. Therefore, in this case, it was held by the Hon'ble Supreme Court that the intention of the parties was not to create a fresh tenancy but by way of compromise a license was given to the tenant live in the premises for some time.

12. From the review of the cases on the subject referred to above, it appears that much depends upon the intention of the parties and the nature of the document. Broadly, it can be said that where the premises has been given for on rent with possession then it is a lease-deed and where the premises has been given only for use then it will amount to license.

13. This distinction appears to have been kept in mind under the Rajasthan Municipalities Act, 1959. Section 80 of the Act of 1959 deals with transfers of immovable property. Section 80 reads as under:

80. Provisions relating to transfers of property and contracts. - (1) Every board shall be competent, subject to the prescribed restrictions and conditions to lease, or otherwise transfer any movable or immovable property belonging to it, including municipal and as also any Government land and so far as it is not inconsistent with the provisions and purposes of this Act and the rules made thereunder to enter into and perform all such contracts as it may consider necessary or expedient in order to carry into effect the said provisions and purposes:

Provided that-

(i) no such lease, sale, transfer and contract shall be binding on a board unless it is in conformity with the provisions of this Act and the rules made thereunder; and

(ii) no lease, sale, transfer of, or any other contract respecting any Government land shall be valid unless it is confirmed by the prescribed authority in the prescribed manner and on the prescribed conditions.

Explanation : - For the purposes of this section, the expression 'Government land' means any land-

(a) which has become vested in a board under Clause (2) of Sub-section (2) of Section 92; or

(b) which is a Nazul-land as defined in Section 3 of the Rajasthan Land Revenue Act, 1956 (Rajasthan Act 15 of 1956); or

(c) which may be placed at the disposal of a municipality by the State Government.

(2)(a) The State Government or any officer authorised by it in this behalf may, for the purpose of satisfying as to the correctness, legality or propriety of any proposal to lease sell or transfer any Government land made by or on behalf of a board or by any member, chairman, vice-chairman or officer of a board or officer or a board call for the relevant record, and may while doing so direct that pending the examination of the matter, the proposal to lease, sell or transfer of the Government land shall remain in abeyance and no action in furtherance thereof shall be taken till the decision of the State Government or of the authorised officer under Sub-section (2)(b).

(b) If after examination of the record and after giving to the persons interested in such proposal, a reasonable opportunity of being heard, the State Government or the officer authorised as aforesaid, is satisfied that the proposal to lease, sell or transfer the Government land is not in accordance with or is in contravention of the provisions of this Act, it may by order published in the Official Gazette, modify, cancel or rescind wholly or in part the proposal made for lease, sale or transfer of the Government land or any action or proceeding taken in pursuance thereof or may give any other direction as may be deemed proper.

(3) Where in pursuance of any lease, sale, transfer or any other contract made by a board or by the chairman, vice-chairman or any member or officer of a board, in contravention of the provisions of this section, any person has entered into the possession of any municipal land or Government land, such person shall be deemed to be in unauthorised occupation within the meaning of the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1965 (Rajasthan Act 2 of 1965) and shall be liable to eviction from such land and to all the liabilities as to

the payment of rent or damages for use and occupation under that Act unless notwithstanding anything contained in that Act, such lease, sale or transfer contract or is confirmed by the State Government or the prescribed authority In the prescribed manner and on the prescribed conditions;

Provided that where any such lease, sale, transfer or contract is not confirmed as aforesaid, the consideration, if any, received by the board, chairman, vice-chairman, member or officer of the board for such lease, sale, transfer or contract shall, as far as possible, be refunded to the person evicted from such land.

14. For engbling these transfer of property, the Government has also framed the Rules known as the Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974 (hereinafter referred to as 'the Rules of 1974') Section 138 lays, down the power of the board to charge fees. Under Section 138 the Board may charge fee for certain licences. The Section 138 reads as under:

138. Board may charge fee for certain licences : - When any licence is granted by the-board under this Act or when permission as given by it for making any temporary erection or for putting up any projection, or for the temporary occupation or any public street or other land vested in the board, the board may charge a fee for such licence or permission.

(2) The board may charge a higher fee by way of penalty for any erection or projection, or for the use or occupation of any public street or other land vested in the board by any person without its permission or licence. Such fee shall be leviable irrespective of any other penalty or liability to which the person liable to pay the same may be subject under any other provision of this Act or any other law for the time being in force. The rates of such higher fetes shall determined by rules.

(3) The board may also charge such fees as may be fixed by bye-laws under Clauses (a), (q) and (r) of Sub-section (1) of Section 90, for the use of any such places mentioned in that sub-section as belong to the board.

(4) It shall be lawful for the board to lease the levy of any fee that may be imposed under Sub-section (3) by public auction.

(5) When any fee has been leased under Sub-section (4), any person employed by the lessee to collect such fees or the lessee himself may, subject to the conditions of the lessee, collect the fee or expel from the place for the use of which the fee is payable any person who is liable to pay the fee but refuses to pay it.

15. These provisions of the Rajasthan Municipalities Act go to show that the Municipalities can lease out their premises and they can also grant licences for use of the premises.

16. Now, in this back-ground, I have to examine whether the document Ex. 1 which was executed by the Municipal Council with the petitioner was a lease-deed or a licence. The petitioner's case is that they were vegetable vendors and they were selling the vegetable on the foot-path and thereafter in order to house these vegetable vendors the Municipal Council constructed the shops and allotted them on a monthly rent as is evident from Ex. 1. Therefore, so long as these vegetable vendors were selling the vegetable on foot-path that was only a permission given to these vegetable vendors for which a licence was required to be issued otherwise the selling of vegetable on foot-path would have been illegal. Therefore, till that stage these petitioners remained licensees. But after-wards when the permanent shops were constructed and allotted to these vendors and for that an agreement was executed though it is styled as a 'Kirayanama' which has been placed on the record as Ex. 1 then such would be a lease-deed. The possession was given to these persons and they were only permitted to use these shops, therefore, it cannot said to be a licence. As a distinction has been made by various decisions of the Hon'ble Supreme Court as quoted above, the lease creates an interest in the property, whereas a licence is a privilege to do something on the premises otherwise which would be unlawful. In the present case, as mentioned above, these vegetable vendors were permitted to use the foot-path and/or a small open area by putting stall etc. which would have been otherwise unlawful. Therefore, permission was given to them on payment of certain fee hence they were licensee but in case a pucca constructed premises are let out on a fixed

payment and possession thereof has been given to the incumbents and they are enjoying the use of those premises then it cannot be said to be licensees but they are licensees. As pointed out above, these vegetable vendors were selling their vegetable on the foot-path thereafter the Municipal Council decided to construct pucca shops and constructed the shops to house these vegetable vendors who were selling their vegetables on foot-path and these shops were, allotted to these vendors and were permitted to use these shops on payment of fees/rent then such vegetable vendors who were enjoying the premises on payment of rent, cannot be termed as licensees but they are lessees.

17. In this back-ground, I have to examine whether the Government order Ex. 2 dated 10.8.1983 can be issued by the State Government directing the Municipalities to increase the rent by 10% unilaterally and to further increase the rent by 10% every year.

18. Mr. Jangid, learned Counsel appearing for the respondent Municipal Council, submitted that the petitioners were licensees, therefore, the State Government under Section 297(2)(f) can issue a direction for increasing the license fee.

19. Now, I shall examine the validity of the Government order (Ex. 2) dated 10.8.1983. The learned Counsel for the respondents has argued that this order has been issued under Section 297(2)(f) which relates to increasing of the license fee. Section 297 which is relevant for our present purpose reads as under:

297. Power of Government to make rules and order - (1) The State Government may make rules or orders generally for the purpose of carrying into effect the provisions of this Act and prescribe forms for any proceedings for which it considers that a form should be provided.

(2) In particular, and without prejudice to the generality of the foregoing power, the State Government may make rules or orders-

(a) XXX XXX XXX(aa) XXX XXX XXX(b) XXX XXX XXX(c) XXX XXX XXX(d) XXX XXX XXX(e) XXX XXX XXX(f) for prescribing the fees payable for such licences and the conditions on or subject to which such licences may be granted, refused,

suspended, revoked or withdrawn; XXX XXX XXX XXX XXX XXX

20. Section 297(1) gives a general power to the State Government to make rules or issue orders generally for the purpose of carrying into effect the provisions of the Act. Sub-section (2) of Section 297 lays down the subjects on which the State Government can frame the rules or issue orders. Clause (f) of Sub-section (2) of Section 297 relates to for prescribing the fees payable by the licensees The Government order (Ex. 2) dated 10.8.1983 reads as under:

jktLFkku ljdkj

Lok;Rr 'kklu foHkkx jkt-

dzekad%& ,Q@293@LFkk-fu-@11@2183&2730 fnukad vxLr 10] 1983

vkns'k

jktLFkku dh fofHkUu uxjikfydkvks }kjk vkoklh;] O;olkf;d ,oa vkS|ksfxd Hkw[k.M+ks dks okf'kZd vFkok ekfld fdjk;s ij fn;s tkus rFkk lg cktkjH vFkok y?kq vof/k yht gks YM ij fn;s x;s Hkw[k.m+ks dks fu;fer djus laca/kh ekeyk dkQh le; ls ljdkj ds fopkjk/khu Fkk vc jkT; ljdkj us bl lEcU/k es xfBr lfefr ds vuq'ka'kkvks dks /;ku es j[krs gq, ,rn~}kjk fuEu funsZ'k fn;s tkrs gS%&

1-jktLFkku uxjikfydk Hkwfe fu'iknu fu;e 1974 ds izko/kkuks ds vuqlkj Hkfo'; es fdlh Hkh voLFkk es uxjikfydkvks }kjk lg cktkjH ij vFkok y?kq vof/k ds fy, Hkwfe yht ij ugh nh tkosxh rFkk mDr fu;eks ds izko/kkuks ds vuqlkj Hkw[k.M+ks dsoy 99 o'kZ dh yht gks YM vk/kkj ij gh fu'ikfnr fd;s tkosxsA

2- uxjikfydkvks }kjk ,sls Hkw[k.M+ tks mDr fu;e ds izHkko'khy nsus ls iwoZ lg cktkjH ij vFkok y?kq vof/k yht ij fn;s gq, gS] dks mDr fu;eks ds fu;e 12 es xfBr lfefr tks ,rn~ i'pkr uwy lfefr dgyk;sxh A dks izR;sd ekeys ds xq.kkoxq.kks ds vk/kkj ij fu;fer djus dk vf/kdkj gksxk A

3- ftu uxjikfydkvks us Loa; }kjk fufeZr nqdkuks vFkok vSk|kfxd bdkbZ;ks dks okf'kZd] ekfld vFkok fdlh vU; vk/kkj ij fdjk;s ij nh gqbZ gS mUgs iwoZor fdjk;s ij gh fn; tkos vFkok pkyw j[kk tkos] tc rd fd fo'ks'k :i ls vU;Fkk dksbZ 'krZ vuqcfU/kr ugh dh tk; A izR;sd o'kZ U;wure 10 izfr'kr fdjk;k Lor% c gqvk ekuk tkosxk A nksusk

lk{kks dh lgefr ls bles vf/kd fdjk;k ckdj fu'fpr fd;k tkosxk Anqdkuks vFkok vkS|kfxd bdkb;ks dk okf'kZd fdjk;k Hkwfe dh cktkj nj o fufeZr Hkou dh izfrQqV fuekZ.knj dks vk/kkj ekurs gq, izklr ewY; dk 20 izfr'kr dh okf'kZd dh nj ls fd;k tkosxk A fdjk;s dk fu/kkZj.k utwy lfefr }kjk gh fd;k tkosxk A ,d ckj fdjk;k fu/kkZj.k djus ds i'pkr 10 izfr'kr cksRrjh ds fy, ekeyk mDr utwy lfefr ds le{k j[kuk vko;'d ugh gksxk] cfYd vuqcU/k dh 'krksZ es gh bldk lekos'k dj fy;k tkosxk A

4-jkgn IEcfU/kr uxjikydk fof'k'V vioknkRed dkj.kks ls fyf[kr es vfHkysf[kr fd;s tkosxs A ;g izLrko djs fd muds }kjk fufeZr nqdkus vFkok Hkw[k.M+ks dks 99 os o'kZ dh yht ij fodz; fd;k tk; rks ,sls izLrko ij mDr utwy lfefr IEcfU/kr uxjikydk ds vk; lk/kuks dks /;ku es j[krs gq, vko;'d fu.kZ; yasxh A ;fn utwy lfefr uxjikydk ds izLrko ds lger gksrh gS A

5- ftu O;olkf;d ,oa vkS|ksfxd fjDr Hkw[k.M+ks ij yht gksYMLZ }kjk vius Loa; ds O;; ls fuekZ.k dj fy;k x;k gS ,sls Hkw[k.M+ks dks 99 os o'kZ dh yht gks YM vk/kkj ij fuEu 'krZ ds lkFk fu;fer fd;k tkosxk A

1 ,sls O;olkf;d ,oa vkS|ksfxd Hkw[k.M+ks dks dsoy utwy lfefr }kjk fu/kkZfjr cktkj ewY; ij gh fodz; fd;k tkosxk A

2;fn yht gks YM+j ds fcuk uxjikydk dh iwoZ Lohd`fr ds O;kolkf;dks Hkw[k.M+ks ij fuekZ.k fd;k gS rks mls cktkj nj dks cjkcj 'kkfLr vkSj nsuh gksxh rFkk vkS|ksfxd Hkw[k.M+ks dh voLFkk es cktkj nj dks 50 izfr'kr 'kkfLr ns; gksxh A

6- lgcktkjsk ij vFkok y?kq vof/k ij fn;s gq, ,sls O;olkf;d ,oa vkS|kfxd Hkw[k.M ftu ij dksbZ fuekZ.k ugh gqv k gS] ,sls Hkw[k.M+ks dk orZeku yht gks YM+j ls [kkyh uhykeh ds tfj;s gh fodz; fd;k tkosxk A ,sls Hkw[k.M+ks dh voLFkk es ogkW rhoz vof/k leklr gks tk pqdh gS mudk dCtk leklr dj rRdky uhykeh }kjk fodz; fd;k tk;sxk A rFkk tgkW vHkh yht vof/k 'ks'k gS] ,sls ekeyks es yht vof/k leklr gksus ij gh uhyke fd;k tkosxk A

7- ,sls ekeyks es tgkW vkolh;] O;olkf;d vFkok vkS|kfxd Hkw[k.M+ ewy yht gks YM+j }kjk vU; O;fDr dks fdjk;s ij vFkok vU;Fkk gLrkUrj.k ds vuqlkj fd;k tk ldsxk A fdUrq ,sls ekeyks es Hkw[k.M+ dh cktkj nj dh 50 izfr'kr ds cjkcj 'kkfLr vfrfjDr vksj olwy dh tkosxh A ftu ekeyks es yht vof/k iwoZ es gh leklr gks pqdh gS rFkk uxj ikfydk us

yht vof/k ugh ckbZ gS vkSj Hkwfe dks gh izklr ugh fd;k gS ,sls ekeyks es uxjikfydk;s ,slh yht vof/k dks orZeku frfFk rd ck ns rFkk ,sls Hkw[k.M+ks dk utwy lfefr }kjk dh xbZ flQkfj'kks ds vuqlkj fu;eu fd;k tkosxk A

8- ,sls Hkw[k.M+ks ls lgcktkjh vFkok y?kq vof/k dh yht ij fn;s x;s gS ,oa ikfydk {ks= ds ekaxks] ukyh;sk o ugjks vkfn ij fLFkr gS A vFkok eq[; uxj fu;kstd jktLFkku }kjk vuqeksfnr ;kstuk es] lfEefyr ugh gS mudk Hkw[k.M+ fu;eu fdlh voLFkk es ugh fd;k tk;sxk o mudk dCtk uxjikfydk }kjk ys fy;k tkosxk ;fn ,sls Hkw[k.M+ks es eq[; uxj fu;kstd] jktLFkku dh lfefr ds vuqlkj fuekZ.k tu lqfo/kk ds foijhr gS rks ,sls fuekZ.k dks fo/oal djok;k tkosxk A

21. A perusal of the Government order dated 10.8.1983 as quoted above would show that it is a composite order and whereby a direction has been given for increasing the rent for commercial and non-commercial premises of the Municipalities and other related matters. This will not fall in Clause (f) exclusively as it talks about execution of the lease-deed and increasing of the rent. It further contemplates that the rules of Teh Bazari have been dispensed with and now the Rules of 1974 will govern. Therefore, to say that this Government order provides for a licence fee and that can be covered by Section 297(2)(f) is not correct. A reading of whole of the order would show that these are the general guidelines which purported to have been issued under Section 297(1) of the Act and not by Section 297(2)(f) which talks about prescribing of licence fees only. Therefore, the contention of learned Counsel for the respondent that this order has been issued under Section 297(2)(f) cannot be sustained nor this can be made the basis for increasing the rent of these lease-holders, as I have found that the petitioners are lease-holders and rent of such lease-holders cannot be unilaterally increased. Therefore, this Government order cannot provide a valid basis for increasing the rent of the petitioners. In this connection, reference may be made to Hari Kishan etc. v. State of Raj. and Anr. 1982 R.L.R. 921 wherein it was held as under:

Notices by 'Devasthan' deptt. to tenants of Devasthan properties for enhanced amount of rent-Devasthan deptt. cannot enhance rent unilaterally because rent is payable according to bilateral contract and as such, held no liability for increased rent arises.

22. Before parting with the case, I may also like to refer to the decision given by Hon'ble Mr. M.C. Jain, J. as he then was, in the case of Nathmal v. The Municipal Council, Jodhpur S.B. Civil Writ Petition No. 1199/80, decided on 26.11.1990 on the facts in that case it was found that the premises were given to the petitioners as a licensee and not by way of lease deed. As against this in the present case I have found in the back ground of the whole case that the petitioners are lessees, therefore, the ratio laid down in that case is not applicable in the present case.

23. However, these persons are occupying these premises for quite some time and the price index has increased all round, therefore, the petitioners shall pay the increased rent to the extent of 10% of their basic rent and for future increase of the rent, it will be open for the Municipal Council to decide in accordance with law.

24. In the result, I allow the writ petition and quash the orders Exs. 3 and 7 and direct that the petitioner shall pay 10% increased rent and future increase of rent shall be decided by the Municipal Council in accordance with law.

25. All the writ petitions mentioned in Schedule A are also disposed of accordingly.