

SUPREME COURT OF INDIA

N.Motilal

Vs.

Faisal Bin Ali

C.A.No.710 of 2020

(Ashok Bhushan and M.R.Shah,JJ.,)

30.01.2020

JUDGMENT

Ashok Bhushan.J.,

SLP (C) No.28951 of 2019

1. This appeal has been filed by the appellants, who are tenants of a non-residential building, challenging the judgment of the High Court for the State of Telangana at Hyderabad dated 30.08.2019 by which civil revision petition filed by the appellants challenging the order dated 30.04.2019 of the Chief Judge, City Small Causes Court, Hyderabad has been dismissed.

2. Brief facts of the case necessary to be noted for deciding the appeal are:

The appellants are tenants of a Shop No.M-1- 938/39 admeasuring 390 sq. ft. in New Marketing Complex, Tilak Road, Abids, Hyderabad. The appellants had entered into a lease agreement dated 27.08.1990 with the landlord by which the premises was let out for 20 years to the appellants from 21.08.1990 to 31.07.2010. The previous landlord Osman Bin Saleh transferred the premises in question in favour of respondent Nos.1 and 2 by registered sale deed dated 28.03.2008. The appellants were tenants on a monthly rent of Rs.1840/- excluding electricity charges and water charges. Respondent Nos. 1 and 2 who purchased the property on 28.03.2008 filed an application on 29.09.2009 for enhancement of rent. The application was contested by the appellants. The appellants had admitted the tenancy at the monthly rate of Rs.1840/-. The landlord had claimed that the market rent of the similar premises is Rs.75/- per sq. ft. and as per the market rent value the monthly rent of the shop shall be Rs.29,250/-. The Rent Controller, Hyderabad by order dated 04.11.2013 allowed the application of the respondents and fixed the fair rent at the rate of Rs.60/- per sq. ft i.e. Rs.23,400/-. The tenants were directed to pay the fair rent from the date of filing of the petition with future enhancement of 10% for every two years. Aggrieved by the judgment of the III Additional Rent

Controller an appeal was filed by the appellants which appeal was dismissed by the Chief Judge, City Small Causes Court vide judgment and order dated 05.06.2017. Against the Appellate order dated 05.06.2017 a civil revision petition was allowed by the High Court on 20.09.2018 and the matter was remanded back to the Appellate Authority. After remand, Chief Judge, City Small Causes Court vide order dated 30.04.2019 dismissed the R.A.No.5 of 2014. Aggrieved by which judgment Civil Revision Petition No.1650 of 2019 was filed by the appellants in the High Court. The High Court after considering the submissions of the parties dismissed the revision petition vide its judgment dated 30.08.2019 which judgment has been challenged by the appellants in this appeal.

3. Shri Yelamanchili Shiva Santosh Kumar, learned counsel for the appellants submits that the contract of tenancy between the appellants and the landlord entered into on 27.08.1990 was to subsist till 31.07.2010, hence, the respondent-landlord had no authority or jurisdiction to file the application for enhancement of rent on 29.09.2009. He submits that Section 4 of the Telangana Building (Lease, Rent and Eviction) Control Rent, 1960 has no application on the contractual tenancy. It is submitted that landlord is bound by the contractual rent and during subsistence of contractual tenancy he cannot be allowed to file application for enhancement of rent. He submits that permitting the landlord to file application for enhancement of rent even though he is bound by a contract, will be permitting something which is against Rent Control Legislation. The Rent Control Legislations have to be interpreted in a manner so as to save tenant from exorbitant rent.

4. Learned counsel for appellants has placed strong reliance on minority judgment of this Court delivered by Bhagwati, J. in *M/s. Raval and Co. vs. K.G. Ramachandran*!,. Reliance has been placed on paragraphs 25 to 30 of the minority judgment which had taken the view that it is only when the contract of tenancy is lawfully determined that the landlord becomes entitled to apply for fixation of fair rent and during subsistence of contractual tenancy landlord is precluded from making an application for fixation of fair rent. Learned counsel further submits that the respondents have purchased the property for a meagre amount of Rs.5,24,500/- in the year 2008 and looking to the fair rent fixed by the Rent Controller 20 months of rent covers the sale price of the property.

5. Learned counsel for the appellants has further submitted that Model Rent Control Legislation has been circulated by the Central Government to all States to uniformly amend the State Legislation where it is now provided that during subsistence of contract landlord is precluded from making any application for fair rent.

6. Smt. Kiran Suri, learned senior counsel appearing for the respondents refuting the submission of the counsel for the appellants contends that the reliance of appellants on a minority judgment of this Court in *M/s. Raval and Co.* is misplaced. The majority judgment delivered by Alagiriswami, J. has categorically laid down that in Section 4 of the Tamil Nadu (Lease, Rent and Eviction) Control Act, 1960(Tamil Nadu Act 18 of 1960) which is *pari materia* of Section 4 of Telangana Buildings (Lease, Rent and Eviction) Control Act, 1960 permits filing of application for fixing of fair rent by the landlord during

subsistence of contractual tenancy. She further submits that the judgment of this Court in *M/s. Raval & Co.* has been further approved by seven- Judge judgment in *V. Dhanapal Chettiar vs. Yesodal Ammal²*. It is further submitted that the appellants cannot be allowed to make submission in regard to sale consideration of the property, sale between the relatives, consideration was fixed accordingly.

7. We have considered the submissions of learned counsel of the parties and perused the records.

8. The moot question to be answered in this appeal is as to whether during currency of contractual tenancy i.e. during the currency of agreed rent between the landlord and the tenant whether landlord is precluded from making an application for determination of fair rent. Section 4 of the Telangana Act, 1960 provides for determination of fair rent. Section 4(1) provides:

"Section 4(1) The Controller shall, on application by the tenant or landlord of a building fix the fair rent for such building after holding such inquiry as the Controller thinks fit."

9. The above provision gives right to both the tenant and the landlord of a building to make an application for fixing fair rent. The provision of Section 4(1) cannot be read in a manner that it is not applicable with regard to the contractual tenancy. The Rent Control Legislations are enacted to protect both tenant and the landlord. In the event the submission of the appellants is accepted that during the currency of the contract of tenancy, no one can file application for fixing of fair rent, the said provision shall operate detrimental to both the tenant and the landlord. This can be explained by taking an illustration. A tenant, who is in urgent need of premises, entered into a contract with landlord where he had to agree to pay an unreasonable higher rent during the force of circumstances, if the tenant has no right to make an application for fixing of fair rent during the currency of tenancy, the said provision will harshly operate against the tenant. The concept of determination of fair rent is to operate equal for the tenant as well as the landlord. The object of the Act is that neither the landlord should charge more than the fair rent of the premises nor tenant should be forced to pay higher rent than the fair rent. The statutory scheme brought in the statute by way of Section 4 which is a beneficial both to the tenant as well as the landlord.

10. The Constitution Bench of this Court in *M/s. Raval & Co.* had occasion to consider Section 4 of the Tamil Nadu Act 18 of 1960. Section 4 of the said Act provides for application for fixation of the fair rent for the tenant as well as the landlord. In the majority judgment speaking through Alagiriswami, J. in paragraphs 18 and 19 following has been laid down:

"18. The provisions of the Act under consideration show that they are to take effect notwithstanding any contract even during the Subsistence of the contract. We have already referred to the definition of the terms 'landlord' and 'tenant' which applies

both to subsisting tenancies as well as tenancies which might have come to an end. We may also refer to the provision in Section 7(2) which lays down that where the fair rent of a building has not been fixed the landlord shall not claim anything in addition to the agreed rent, thus showing that the fair rent can be fixed even where there is an agreed rent. That is why we have earlier pointed out that the various English decisions which provide for fixation of rent only where the contractual tenancy has come to an end do not apply here. We may also refer to Sub-section (3) of Section 10 which deals with cases where a landlord requires a residential or non-residential building for his own use. Clause (d) of that sub-section provides that where the tenancy is for a term the landlord cannot get possession before the expiry of the term, thus showing that in other cases of eviction covered by Section 10 eviction is permissible even during the continuance of the contractual tenancy if the conditions laid down in Section 10 are satisfied.

19. A close analysis of the Madras Act shows that it has a scheme of its own and it is intended to provide a complete code in respect of both contractual tenancies as well as what are popularly called statutory tenancies. As noticed earlier the definition of the term 'landlord' as well as the term 'tenant' shows that the Act applies to contractual tenancies as well as cases of "statutory tenants" and their landlords. On some supposed general principles governing all Rent Acts it cannot be argued that such fixation can only be for the benefit of the tenants when the Act clearly lays down that both landlords and tenants can apply for fixation of fair rent. A close reading of the Act shows that the fair rent is fixed for the building and it is payable by whoever is the tenant whether a contractual tenant or statutory tenant. What is fixed is not the fair rent payable by the tenant or to the landlord who applies for fixation of fair rent but fair rent for the building, something like an incident of the tenure regarding the building."

11. Learned counsel for the appellants has placed reliance on the minority judgment delivered by Bhagwati, J. for himself and K.K. Mathew, J. although the minority judgment has held that landlord can make an application for determination of fair rent only after the determination of tenancy and during subsistence of contractual rent no application for fair rent can be given. We are bound by the majority opinion of the Constitution Bench in *M/s. Raval & Co.* We further notice that both the learned counsel have referred to seven-Judge Bench judgment of this Court. Seven-Judge Bench had occasion to refer to the Constitution Bench judgment in *M/s. Raval & Co.* (supra) which was quoted with approval. Referring to majority judgment in *M/s. Raval & Co.*'s case seven-Judge Bench made following observation:

"15 Alagiriswami J. at page 635 after having made that observation with reference to *Bhaiya Panjalat's* case has said-"Be that as it may, we are now concerned with the question of fixation of a fair rent." In our opinion the majority decision with regard to Section 4 was undoubtedly correct and the minority stretched the law, if we may say so with respect, too far to hold that Section 4 was not available to the landlord. It should be remembered, as we have said above, that the field of freedom of contract was encroached upon to a very

large extent by the State Rent Acts. The encroachment was not entirely and wholly one sided. Same encroachment was envisaged in the interest of the landlord also and equity and justice demanded a fair play on the part of the legislature not to completely ignore the helpless situation of many landlords who are also compared to some big tenants sometimes weaker Section of the society. As for example a widow or a minor lets out a family house in a helpless situation to tide over the financial difficulty and later wants a fair rent to be determined. Again suppose for instance in a city there is an apprehension of external aggression, severe internal disturbances or spread of epidemics, A man in possession of his house may go to another town letting out his premises to a tenant financially strong and of strong, nerves at a rate comparatively much lower than the prevailing market rates. Later on, on the normalization of the situation as against the agreed rate of rent be approaches the Building Controller for fixing a fair rent in accordance with a particular State Rent Act. Why should she or he be debarred from doing so. The statute gives him the protection and enables the Controller to intervene to fix a fair rent as against the term of contract between the parties. In a large number of cases it is the tenant who gets this protection. But in some as in the case of Raval the landlord needs and gets the protection. But this is not a direct authority on the point of notice."

12. The above observation clearly indicates that majority view of the Constitution Bench expressed by Alagiriswami, J. was quoted with approval and the seven-Judge Bench held that the encroachment on the freedom of contract between the landlord and tenant has been envisaged for protecting both the tenant and landlord. The example as quoted in paragraph 15 as extracted above clearly indicates that denial of landlord in moving application for fixation of rent in several cases may operate against the interest of the landlord.

13. The Constitution Bench judgment in M/s. Raval & Co.'s case as well as seven-Judge Bench judgment in V. Dhanapal Chettiar's case are binding which categorically had laid down that application for determination of fair rent can be made both by the landlord and tenant which can be made even during currency of contractual tenancy. We, thus, find the submission made by the learned counsel for the appellants in the above regard without any substance.

14. The submission of the counsel for the appellants that the consideration on which property was purchased by the landlord in 2008 is equivalent to 20 months' rent as enhanced by Rent Controller has no bearing on the issue which has been sought to be raised. The determination of the fair rent has to be made as per the provisions of the 1960 Act and the above submission in no manner advance the case of the appellant.

15. The last submission of the learned counsel for the appellants is that the Central Government, Ministry of Housing and Urban Development has circulated a Model Rent Control Legislation to be adopted by all the States which precludes the landlord for making application for fixation of fair rent during the currency of contractual tenancy (which circular has also not been brought on record), suffice it to say that as per submission of the counsel for the appellants himself that Model Legislations are only guidelines, which in no manner, can have any effect on the statutory provisions of 1960 Act which are still

occupying the field. No other submission has been advanced by the counsel for the appellants.

16. We do not find any merit in this appeal. The appeal is dismissed.

Judgment Referred.

¹(1974)1 SCC 0424

²(1979) 4 SCC 0214