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SHAW WALLACE AND CO. LTD.

v

GOVINDAS PURUSHOTHAMDAS AND ANR.

FEBRUARY 27, 2001

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[D.P. MOHAPATRA AND SHIVARAJ V. PATIL, JJ.]

Rent Control and Eviction :

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 : Sections 54

C and 25.

Fair rent—Fixation of—Interference with—In revisional jurisdiction—Permissibility of—Trial court and appellate court excluded “platform and henpen” from the plinth area and fixed fair rent accordingly—Tenant admitted the said “platform and henpen” as part of plinth area—High Court, in revision, included the said “platform and henpen” in the plinth area and enhanced the fair rent—Legality of—Held : Revisional jurisdiction vested in the High Court under S.25 is wider than that vested in S.115 CPC High Court interfered with the concurrent findings as the courts below ignored the admission of the tenant—Hence, High Court rightly modified the fair rent as assessed by courts below—Code of Civil Procedure, S.115.

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The respondent-landlord filed an application under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 for fixation of fair rent of the building in occupation of the appellant-tenant. The Rent Controller and the Appellate Authority gave concurrent findings that “platform and henpen” were not part of the building and accordingly fixed the fair rent. However, the High Court, in revision, enhanced the fair rent on the ground that the said “platform and henpen” were part of the building.

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On behalf of the respondent it was contended that the High Court was right in interfering with the order of the appellate court since the courts below had overlooked the admission of the tenant that the “platform and henpen” were part of the building.

Dismissing the appeal, the Court

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HELD : 1. For the purpose of assessment of fair rent not only the area

on which the building is constructed, but also the land appurtenant to it subject to the limit prescribed in the Statute and other structure appurtenant to the main building and also the amenities described in Schedule I of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 are all to be taken into account. Therefore, the appellant's contention that the "platform and henpen" are not to be included in calculating the area for the purpose of assessment of fair rent, since it cannot be used as a building, cannot be accepted having regard to the facts found in the case. [139-D]

2.1. Revisional jurisdiction vested in the High Court under Section 25 of the Act is wider than that vested in Section 115 of the Code of Civil Procedure, 1908. The High Court is entitled to satisfy itself as to the regularity of the proceeding or the correctness, legality or propriety of any decision or order passed therein and if, on examination, it appears to the High Court that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass such orders accordingly. [139-H; 140-A]

2.2. The High Court interfered with the orders passed by the courts below mainly for the reason that the courts below had ignored the specific averment made by the landlords in their pleadings that the "platform and henpen" are part of the building, which was admitted by the tenant to be true. [139-F-G]

2.3. The High Court, therefore, cannot be faulted for having interfered with the judgments/orders of the courts below and modifying the fair rent as assessed therein. [140-D]

M.S. Zahed v. K. Raghavan, [1999] 1 SCC 439, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1565 of 2001.

From the Judgment and Order dated 24.12.99 of the Madras High Court in C.R.P. No. 2317 of 1996.

Dr. A.M. Singhvi, Rajesh Malhotra and Dalip Kumar Malhotra for the Appellant.

T.L.V. Iyer, P.S. Sudheer, for M/s K.J. John & Co. for the Respondents.

The Judgment of the Court was delivered by

A D.P. MOHAPATRA, J. Leave granted.

Whether the revisional order dated 24th December, 1999 passed by the High Court of Madras in C.R.P.No.2317 of 1996 suffers from any serious illegality which warrants interference by this Court is the question for determination in this case. M/s.Shaw Wallace & Co. Ltd., the tenant in occupation of the premises, has filed this appeal assailing the aforementioned order of the High Court.

The proceeding was initiated on the application filed by the landlords - Shri Govindas Purushothamdas and Shri Girdhari Govindas, respondents herein, for fixation of fair rent of the premises under Section 4 of the Tamil

C Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as 'the Act'). The controversy in the present proceeding relates to inclusion of the area of 1752 sq.ft. (approximately) described as 'platform and henpen' as a part of the building. The Rent Controller and the Appellate Authority excluded the said area and assessed the fair rent on the basis of plinth area

D of 4850 Sq.ft. The fair rent was calculated as Rs.22403/- per month. In the revision petition filed by the landlord under Section 25 of the Act, the High Court set aside the order of the trial Court as confirmed by the Appellate Authority determined Rs.28,000/-in place of Rs.22,403/- per month as fair rent. The said order is under challenge in this appeal.

E The main thrust of the submissions made by Dr.A.M.Singhvi, learned senior counsel appearing for the appellant is that the High Court erred in including the 'henpen and platform' within the plinth area of the building. According to the learned counsel, those structures cannot be said to be a part of the building and cannot be utilised as such. He further contended that the

F High Court should not have interfered with the concurrent findings of fact recorded by the trial Court and the Appellate Authority that the area covered by the 'henpen and platform' is not a part of the building.

G Per contra, Shri T.L.V. Iyer, learned senior counsel appearing for the respondents, contended that in this case the High Court was justified in interfering with the order of the trial Court which was confirmed by the Appellate Court, since the courts below had overlooked the admission of the landlord in the pleadings that the plinth area of the structure in occupation of the tenant is 6602 Sq.ft. (not 4850 Sq.ft.).

H Before proceeding to consider the merits of the contentions raised by learned counsel for the parties, it will be convenient to notice some provisions

of the Act which are relevant for the case. Section 2(2) of the Act, which defines "building" reads as follows:

"2(2) "building" means any building or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes and includes-

- (a) the garden, grounds and out-houses, if any, appurtenant to such building, hut or part of such building or hut and let or to be let along with such building or hut,
- (b) any furniture supplied by the landlord for use in such building or part of a building or hut, but does not include a room in a hotel or boarding house;".

Section 4, which deals with the fixation of fair rent reads:

"4. *Fixation of fair rent.* - (1) The Controller shall on application made by the tenant or the landlord of a building and after holding such enquiry as he thinks fit, fix the fair rent for such building in accordance with the principles set out in the following sub- sections.

(2) The fair rent for residential building shall be nine per cent gross return per annum on the total cost of such building.

(3) The fair rent for any non-residential building shall be twelve per cent gross return per annum on the total cost of such building.

(4) The total cost referred to in sub-section (2) and sub-section (3) shall consist of the market value of the site in which the building is constructed, the cost of construction of the building and the cost of provision of anyone or more of the amenities specified in Schedule I as on the date of application for fixation of fair rent.

Provided that while calculating the market value of the site in which the building is constructed, the Controller shall take into account only that portion of the site on which the building is constructed and of a portion upto fifty per cent, thereof of the vacant land, if any, appurtenant to such building the excess portion of the vacant land, being treated as amenity.

Provided further that the cost of provision of amenities specified in Schedule I shall not exceed -

A (i) in the case of any residential building, fifteen per cent; and
(ii) in the case of any non-residential building, twenty-five per cent of the cost of site in which the building is constructed, and the cost of construction of the building as determined under this section.

B (5)(a) the cost of construction of the building including cost of internal water-supply, sanitary and electrical installations shall be determined with due regard to the rates adopted for the purpose of estimation by the Public Works Department of the Government for the area concerned. The Controller may, in appropriate cases, allow or disallow an amount not exceeding thirty per cent, of construction having regard to the nature of construction of the building.

C (b) The Controller shall deduct from the cost of construction determined in the manner specified in clause (a), depreciation, calculated at the rates specified in Schedule II."

D [Emphasis supplied]

The other statutory provisions, which is relevant, is Section 25(1) which provides for a revision to the High Court. The provision is quoted hereunder:

E “25. Revision.- (1) The High Court may, on the application of any person aggrieved by an order of the Appellate Authority, call for and examine the record of the Appellate Authority, to satisfy itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein and if, in any case, it appears to the High Court that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass orders accordingly.”

F [Emphasis supplied]

Schedule I in the Act enumerates the amenities within the meaning of Section 4 of the Act.

G From a plain reading of the statutory provisions quoted above, it is clear that the expression "building" includes any building with the garden, grounds and out-houses appurtenant to such building, or part of such building let or to be let along with such building. In view of the expansive definition of the term, any structure which is part of the premises let out or to be let out comes within the purview of "building". This position becomes further clear on

reading sub-section (4) of Section 4 wherein it is provided that the total cost referred to in sub-section (2) and sub-section (3) shall consist of the market value of the site in which the building is constructed, the cost of construction of the building and the cost of provision of anyone or more of the amenities specified in Schedule I as on the date of application for fixation of fair rent. In the first proviso to the sub- section (4) it is laid down while calculating the market value of the site in which the building is constructed, the Controller shall take into account only that portion of the site on which the building is constructed and of a portion upto fifty per cent thereof the vacant land, if any, appurtenant to such building, the excess portion of the vacant land, being treated as amenity.

Reading the two provisions together, it is clear to us that for the purpose of assessment of fair rent not only the area on which the building is constructed, but also the land appurtenant to it subject to the limit prescribed in the Statute and other structure appurtenant to the main building and also the amenities described in Schedule I of the Act are all to be taken into account. Therefore, the contention raised by Dr.Singhvi that the 'platform and the henpen' are not to be included in calculating the area for the purpose of assessment of fair rent, since it cannot be used as a building, cannot be accepted having regard to the facts found in the case. The High Court, in our considered view, did not commit any illegality in including the said structures within the plinth area for the purpose of fixation of fair rent.

Coming to the question of revisional jurisdiction of the High Court under Section 25 of the Act, the contention raised by Dr.Singhvi is that the limited jurisdiction vested in the said Section does not permit the High Court to disturb concurrent findings of fact recorded by the courts below.

From the judgment/order of the High Court it is manifest that the High Court felt inclined to interfere with the orders passed by the Courts below mainly for the reason that the Courts below had ignored the specific averment made by the landlords in their pleadings that the total plinth area is 6602 Sq.ft. which was admitted by the tenant to be true in para 12 of its counter affidavit. The question, therefore, is the High Court not have the power to disturb the findings of fact concurrently recorded by the Courts below in such circumstance?

On a plain reading of Section 25 of the Act, it is clear that the revisional jurisdiction vested in the High Court under that Section is wider than Section

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A 115 of the Code of Civil Procedure. The High Court is entitled to satisfy itself as to the regularity of the proceeding of the correctness, legality or propriety of any decision or order passed therein and if, on examination, it appears to the High Court that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass such orders accordingly.

B In the case of *M.S. Zahed v. K. Raghavan* reported in, [1999] 1 SCC 439, this Court, interpreting Section 50 of the Karnataka Rent Control Act, 1961 which is *pari materia* to Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, held that it is within the scope of revisional jurisdiction of the High Court to interfere with the findings of fact, illegally or incorrectly arrived at.

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In the present case, the trial Court and the Appellate Court had not only ignored the admission of the landlord in the pleadings but also misread and misconstrued the provisions of the Act. In the circumstances, the High Court cannot be faulted for having interfered with the judgments/orders of the

D Courts below and modifying the fair rent as assessed therein. The contention raised by Dr.Singhvi questioning the jurisdiction of the High Court has also to be negated.

In the result, the appeal being devoid of merit, is dismissed with costs. Hearing fee is assessed at Rs.10,000/-.

E On the prayer made by Dr.A.M.Singhvi, learned senior counsel, the appellant is granted one month time to pay the arrear rent due in compliance of the order passed by the High Court.

V.S.S.

Appeal dismissed.

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