

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 1237 OF 2004

TRUST JAMA MASJID WAQF NO. 31

.....Appellants

Versus

M/S. LAKSHMI TALKIES AND ORS.

.....Respondents

W I T H

CIVIL APPEAL NO. 6175 OF 2004

Date: 16/08/2010

These appeals were called on for judgment today.

For Petitioner(s)

CA 1237/2004

Mr. H.C. Kharbanda, Adv.

Mr. V.K. Singh, Adv.

Mr. T.N. Saxena, Adv.

CA 6175/2004

Mr. M.P. Shorawala, Adv.

Ms. Jyoti Saxena, Adv.

Mr. Vipin K. Saxena, Adv.

For Respondent(s)

CA 6175/2004

Mr. H.C. Kharbanda, Adv.

Mr. V.K. Singh, Adv.

Mr. T.N. Saxena, Adv.

CA 1237/2004

Mr. M.P. Shorawala, Adv.

Ms. Jyoti Saxena, Adv.

Mr. Vipin K. Saxena, Adv.

Hon'ble Mr. Justice R.M. Lodha pronounced the judgment of the Bench comprising Hon'ble Mr. Justice Aftab Alam and His Lordship.

The appeal of the landlord is allowed to the extent indicated in the signed judgment while the tenant's appeal is dismissed. No order as to costs.

(N.S.K. Kamesh)
Court Master

(S.S.R. Krishna)
Court Master

(signed reportable judgment is placed on the file)

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1237 OF 2004

Trust Jama Masjid Waqf No. 31

.... Appellant

Vs.

M/s Lakshmi Talkies and Ors.

... Respondents

WITH

CIVIL APPEAL NO. 6175 OF 2004

JUDGEMENT

R.M. Lodha, J.

These two appeals are directed against the judgment and order dated September 10, 2003 passed by the High Court of Judicature at Allahabad. The High Court by that order modified the order of Rent Control and Eviction Officer, Mathura (for short, 'RCEO') dated March 13, 1991 and fixed the rent of the subject land at Rs. 2500/- p.m. w.e.f. June 1, 1984 instead of Rs. 12,808/- p.m. fixed by the RCEO w.e.f. June 2, 1977.

2. The brief facts are these. Trust of Jama Masjid Nawab Abdul Nabi Khan Chauk Bazar, Mathura (hereinafter referred to as 'landlord') owns a piece of land admeasuring 914.89 sq. yds. situate in Mohalla Naugaza, Mathura (for short, 'the said land' / 'the demised land'). Prior to June 1, 1970, the said land was let out to some other tenant who, with the consent of the landlord, built a Cinema Hall thereon. M/s Laxmi Talkies, a registered partnership firm purchased the super structure (Cinema Hall) from the erstwhile tenant and took the said land on lease from the landlord for a rent of Rs. 70/- p.m. from June 1, 1970 for a term of 7 years vide lease deed executed on June 2, 1970. For brevity, we shall refer M/s Laxmi Talkies - lessee as 'tenants'. The lease provided that in case one month's prior notice for renewal before the expiry of the lease was given by the tenants and landlord fails to renew then the lease shall continue for another term. The lease also provided that tenants will have a right of renewal of lease on the terms and conditions as agreed upon but on every renewal, the tenants shall be bound to enhance the rate of rent at 5% on total rent of the year at the time of every renewal. The landlord claims that on expiry of 7 years of lease, there was no agreement between the parties with respect to renewal of lease and the rent. On the other hand, the tenants claim that on expiry of first term, the lease was renewed from June 1, 1977 at the increased rent of Rs. 105/- p.m. and thereafter got automatically renewed from June 1, 1984.

3. The U.P. Urban Buildings (Regulation of Lettings, Rent and

Eviction) Act, 1972 (for short, '1972 U.P. Act') came to be amended by U.P. Act 28 of 1976 whereby Section 29-A was inserted. The newly inserted

Section 29-A came into force on July 5, 1976. In the light of the provisions contained in Section 29-A, the landlord made an application for determination of the annual rent for the demised land before the RCEO, Mathura stating therein that the cost of the land leased out to the tenants was not less than Rs. 20 lakhs and, accordingly, they are entitled to have the rent fixed at Rs. 16,666.66 p.m. from July 5, 1976. The tenants contested the said application and raised the plea that the lease stood renewed from June 1, 1977 automatically and was operative upto 1991 and, therefore, no rent can be increased. They also disputed that the market value of the land was Rs. 20 lakhs as suggested by the landlord.

4. The landlord submitted affidavits in support of their claim along with a valuation report. The tenants filed affidavit in rebuttal.

5. In his order dated March 13, 1991, RCEO held that market value of land was not less than Rs. 1400/- per sq. yd. He thus computed the total cost of land at Rs. 12, 80,846/- and fixed the rent at Rs. 12,808/- p.m. Against this decision, the tenants filed a writ petition before the High Court. As noticed above, the High Court allowed the writ petition in part and fixed the rent at Rs. 2500/- p.m. payable from June 1, 1984.

6. Mr. H.C. Kharbanda, learned counsel for the landlord urged that the High Court erred in modifying the rent fixed by the RCEO on the basis of the circle rates fixed by the District Magistrate under Stamp Rules by holding that such rates are fixed on the higher side. Learned counsel would submit that the RCEO on the basis of the available material and substantive assessment of the factual position viz., that no land is available for sale in the area; the demised land is situate on the main Mathura-Agra Road in the heart of the city and the valuation report given by the government approved valuer, recorded a finding of fact that market value of the demised land was not less than Rs. 1400/- per sq. yd. and accordingly fixed the rent at Rs. 12808/- p.m. and, therefore, there was no justification for the High Court to interfere with the order of the RCEO.

7. On the other hand, Mr. Rajiv Dutta, learned senior counsel for the tenants heavily relied upon the terms of lease (particularly clauses 4 and 5) and submitted that in view of these terms, the lease stood renewed automatically and rent had been enhanced w.e.f. June 1, 1977 and, therefore,

Section 29-A of 1972 U.P. Act was not attracted.

8. Section 29-A of 1972 U.P. Act which came into force w.e.f. July 5, 1976 reads thus:

"S.29-A. Protection against eviction to certain classes of tenants of land on which building exists. - (1) For the purposes of this section, the expressions 'tenant' and 'landlord' shall have the meanings respectively assigned to them in Clauses (a) and (j) of Section 3 with the substitution of the word 'land' for the word 'building'.

(2) This section applies only to land let out, either before or after the commencement of this section, where the tenant, with the landlord's consent has erected any permanent structure and incurred expenses in execution thereof.

(3) Subject to the provisions hereinafter contained in this section, the provisions of Section 20 shall apply in relation to any land referred to in sub-section (2) as they apply in relation to any building.

(4) The tenant of any land to which this section applies shall be liable to pay to the landlord such rent as may be mutually agreed upon. These two appeals are directed against the judgment and order

dated September 10, 2003 passed by the High Court of Judicature at Allahabad. The High Court by that order modified the order of Rent Control and Eviction Officer, Mathura (for short, 'RCEO') dated March 13, 1991 and fixed the rent of the subject land at Rs. 2500/- p.m. w.e.f. June 1, 1984 instead of Rs. 12,808/- p.m. fixed by the RCEO w.e.f. June 2, 1977.

2. The brief facts are these. Trust of Jama Masjid Nawab Abdul Nabi Khan Chauk Bazar, Mathura (hereinafter referred to as 'landlord') owns a piece of land admeasuring 914.89 sq. yds. situate in Mohalla Naugaza, Mathura (for short, 'the said land' / 'the demised land'). Prior to June 1, 1970, the said land was let out to some other tenant who, with the consent of the landlord, built a Cinema Hall thereon. M/s Laxmi Talkies, a registered partnership firm purchased the super structure (Cinema Hall) from the erstwhile tenant and took the said land on lease from the landlord for a rent of Rs. 70/- p.m. from June 1, 1970 for a term of 7 years vide lease deed executed on June 2, 1970. For brevity, we shall refer M/s Laxmi Talkies - lessee as 'tenants'. The lease provided that in case one month's prior notice for renewal before the expiry of the lease was given by the tenants and landlord fails to renew then the lease shall continue for another term. The lease also provided that tenants will have a right of renewal of lease on the terms and conditions as agreed upon but on every renewal, the tenants shall be bound to enhance the rate of rent at 5% on total rent of the year at the time of every renewal. The landlord claims that on expiry of 7 years of

lease, there was no agreement between the parties with respect to renewal of lease and the rent. On the other hand, the tenants claim that on expiry of first term, the lease was renewed from June 1, 1977 at the increased rent of Rs. 105/- p.m. and thereafter got automatically renewed from June 1, 1984.

3. The U.P. Urban Buildings (Regulation of Lettings, Rent and Eviction) Act, 1972 (for short, '1972 U.P. Act') came to be amended by U.P. Act 28 of 1976 whereby Section 29-A was inserted. The newly inserted Section 29-A came into force on July 5, 1976. In the light of the provisions contained in Section 29-A, the landlord made an application for determination of the annual rent for the demised land before the RCEO, Mathura stating therein that the cost of the land leased out to the tenants was not less than Rs. 20 lakhs and, accordingly, they are entitled to have the rent fixed at Rs. 16,666.66 p.m. from July 5, 1976. The tenants contested the said application and raised the plea that the lease stood renewed from June 1, 1977 automatically and was operative upto 1991 and, therefore, no rent can be increased. They also disputed that the market value of the land was Rs. 20 lakhs as suggested by the landlord.

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5. In his order dated March 13, 1991, RCEO held that market value of land was not less than Rs. 1400/- per sq. yd. He thus computed the total cost of land at Rs. 12, 80,846/- and fixed the rent at Rs. 12,808/- p.m. Against this decision, the tenants filed a writ petition before the High Court. As noticed above, the High Court allowed the writ petition in part and fixed the rent at Rs. 2500/- p.m. payable from June 1, 1984.

6. Mr. H.C. Kharbanda, learned counsel for the landlord urged that the High Court erred in modifying the rent fixed by the RCEO on the basis of the circle rates fixed by the District Magistrate under Stamp Rules by holding that such rates are fixed on the higher side. Learned counsel would submit that the RCEO on the basis of the available material and substantive assessment of the factual position viz., that no land is available for sale in the area; the demised land is situate on the main Mathura-Agra Road in the heart of the city and the valuation report given by the government approved valuer, recorded a finding of fact that market value of the demised land was

not less than Rs. 1400/- per sq. yd. and accordingly fixed the rent at Rs. 12808/- p.m. and, therefore, there was no justification for the High Court to interfere with the order of the RCEO.

7. On the other hand, Mr. Rajiv Dutta, learned senior counsel for the tenants heavily relied upon the terms of lease (particularly clauses 4 and 5) and submitted that in view of these terms, the lease stood renewed automatically and rent had been enhanced w.e.f. June 1, 1977 and, therefore, Section 29-A of 1972 U.P. Act was not attracted.

8. Section 29-A of 1972 U.P. Act which came into force w.e.f. July 5, 1976 reads thus: between the parties, and in the absence of agreement, the rent determined in accordance with sub-section (5).

(5) The District Magistrate shall on the application of the landlord or the tenant determine the annual rent payable in respect of such land at the rate of ten per cent per annum of the prevailing market value of the land, and such rent shall be payable, except as provided in sub-section (6) from the date of expiration of the term for which the land was let or from the commencement of this section, whichever is later.

(6)(a) In any suit or appeal or other proceeding pending immediately before the date of commencement of this section, no decree for eviction of a tenant from any land to which this section applies, shall be passed or executed except on one or more of the grounds mentioned in sub-section (2) of Section 20, provided the tenant, within a period of three months from the commencement of this section by an application to the Court, unconditionally offers to pay to the landlord the enhanced rent of the land for the entire period in suit and onwards at the rate of ten per cent per annum of the prevailing market value of the land together with costs of the suit (including costs of any appeal or of any execution of other proceedings).

(b) In every such case, the enhanced rent shall, notwithstanding anything contained in sub-section (5), be determined by the Court seized of the case at any stage.

(c) Upon payment against a receipt duly signed by the plaintiff or decree-holder or his Counsel or deposit in Court of such enhanced rent with costs as aforesaid being made by the tenant within such time as the Court may fix in this behalf, the Court shall dismiss the suit, or, as the case may be, discharge the decree for eviction, and the tenancy thereafter shall continue annually on the basis of the rent so enhanced.

(d) If the tenant fails to pay the said amount within the time so fixed (including any extended time, if any, that the Court may fix or for sufficient cause allow) the Court shall proceed further in the case as if the foregoing provisions of this section were not in force.

(7) The provisions of this Section shall have effect notwithstanding anything to the contrary contained in any contract or instrument or in any other law for the time being in force.

Explanation. - For the purposes of sub-section (6) where a case has been decided against a tenant by one Court and the limitation for an appeal therefrom has not expired on the date immediately before the commencement of this section, this section shall apply as it applies to pending proceedings and the tenant may apply to that Court for a review of the judgment in accordance with the provisions of this section."

9. For applicability of Section 29-A as provided by sub-section (2), two conditions must be satisfied, namely, (one) that land alone has been let out and (two) that permanent structure has been constructed by the tenant with landlord's consent incurring his own expenses. It is not important whether the land has been let out either before or after the commencement of Section 29-A. Sub-section (4) provides for the liability of the tenant to pay to the landlord mutually agreed rent and in the absence of such agreement, the rent as may be determined under sub section (5). The District Magistrate is empowered under sub-section (5) to determine the annual rent payable in respect of such land at the rate of 10% per annum of its prevailing market value. Such determination of annual rent can be made by the District Magistrate at the instance of the landlord or the tenant and the rent so determined is payable from the date of expiration of the lease period or from the commencement of Section 29-A, whichever is later. By virtue of sub-section (7), the provisions contained in Section 29-A override any term to the contrary in the contract between the landlord and tenant or instrument or any other existing law. That the conditions stated in sub-section (2) of Section 29-A are satisfied is not in dispute before us. What has been argued by the learned senior counsel for the tenants is that the lease provides for automatic renewal on expiry of its term and since rent was mutually enhanced to Rs. 105/- p.m., the lease got automatically renewed and, therefore, Section 29-A is not attracted. We fail to perceive any force in the argument of the learned senior counsel for tenants. Clauses 4 and 5 of the Lease Deed upon which reliance was placed by the learned senior counsel for the tenants read as follows:

"4. That if the lessee duly observe and perform the conditions and covenants herein contained in that case the lessees will have a right of renewal of the lease on the same terms and conditions or agreed upon, but on every renewal on existing rate of rent, the lessees shall be bound to enhance rate of rent @ 5% on total rent of the year at the time of every renewal.

5. That at least one month before the expiry of the lease the lessees shall communicate to the lessor for getting the lease renewed. In case the lessor fails to get executed the renewed lease the lease "shall continue for another terms."

It is true that under the aforementioned clauses of lease, tenants have been given right of renewal by giving notice of at least one month before the expiry of the lease to the landlord for getting the lease renewed but what is seen from the material on record is that initial rent as provided in the lease was enhanced to

Rs. 105/- p.m. and the tenants continued to remain in possession of leased premises. Such possession of the tenants does not render Section 29-A inoperative. In the absence of any agreed rent between the parties for the land let out to the tenants, after expiry of lease, it is open to the landlord or tenant to get the annual rent determined in respect of such land under sub-section (5) on the basis of the prevailing market value. Seen thus, there remains no doubt that rent of the said land is determinable under Section 29-A (5). As a matter of fact, on this aspect the finding of the High Court is against the tenants and we do not find any error in that finding.

10. As to the extent of rent payable by the tenants to the landlord for the demised land, the High Court referred to the rate of Rs. 350/- per sq. yd. fixed by the District Magistrate under Stamp Rules and held that the circle rate determined by the District Magistrate under Stamp Rules is rather on the higher side and accordingly fixed the market value of the demised land on that basis. We are unable to subscribe to the view of the High Court. The circle rate fixed under the Stamp Rules is ordinarily general rate for a particular area and may provide some indication but such rate cannot be decisive of the prevalent market value of the concerned land. An exemplar showing sale of nearby land may help in determining the market value of the demised land but there is no exemplar here. The valuer's report, however, shows that the demised land is situate on the main road from Holy Gate to Collectorate and Civil Lines near the Roadways Bus Stand and Mathura-Cantt., Railway Station. The High Court has not taken into consideration the valuer's report and the evidence let in by the landlord at all. We are, thus, satisfied that the High Court was not justified in fixing the rent of the said land at the rate of Rs. 2500/- p.m. solely based on the circle rate fixed under the Stamp Rules. The consideration of the matter by the High Court suffers from legal flaw and cannot be sustained. The order of RCEO also suffers from a fundamental error. Even if it is assumed that RCEO was right in fixing the market value of demised land at Rs. 12,80,846/-, the annual rent at the rate of 10% of that value comes to Rs. 1,28,084/- and, therefore, monthly rent determined by the RCEO at Rs. 12,808/- is clearly erroneous.

11. By way of foot-note, we may state that we granted an opportunity to the parties to settle the dispute amicably as we thought that it was the best

way to bring an end to already two-decade old litigation but, unfortunately, the parties failed to arrive at mutually agreed rate of rent.

12. In the circumstances, the order dated September 10, 2003 passed by the High Court and the order dated March 13, 1991 passed by the Rent Control and Eviction Officer, Mathura are set aside and Case no. 146 of 1988, Trust Jama Masjid, Mathura Vs. M/s Laxmi Talkies and Ors., is restored to the file of Rent Control and Eviction Officer, Mathura, for determination of the annual rent of the demised land afresh in accordance with law. Needless to say that annual rent so determined shall be payable from the date stated in Section 29-A (5). We further direct that until the determination of annual rent under Section 29-A (5) and subject thereto, the tenants shall pay rent to the landlord at the rate of Rs. 10,000/- p.m. from the month of September, 2010 provisionally. The provisional rent so paid by the tenants shall be adjusted against the rent that may be finally determined under Section 29-A (5) of 1972 U.P. Act. The appeal of the landlord is allowed to the extent indicated above while the tenants' appeal is dismissed. No order as to costs.

.....J.
(Aftab Alam)

..... J.
(R.M. Lodha)

New Delhi,
August 16, 2010