

CASE NO.:
Appeal (civil) 2573 of 2004

PETITIONER:
Syed Jameel Abbas & Ors.

RESPONDENT:
Mohd. Yamin @ Kallu Khan

DATE OF JUDGMENT: 20/04/2004

BENCH:
R.C. LAHOTI & ASHOK BHAN.

JUDGMENT:
J U D G M E N T

(Arising out of SLP(C) No.19058/2003)

WITH

Civil Appeal Nos. _____/2004
(Arising out of SLP(C) Nos.19142-19143/2003)

R.C. Lahoti, J.

Leave granted in all the three SLPs.

The appellants are the landlords and the three respondents in the three appeals are three tenants in three shop-premises belonging to the appellants. Proceedings for eviction of the tenant-respondents were initiated by the landlord-appellants on the ground available under clause (h) of sub-Section (1) of Section 12 of the M.P. Accommodation Control Act, 1961, hereinafter, the Act, for short, alleging the bona fide requirement of the landlords for the purpose of re-building the shops. The suit was decreed. As required by Section 18 of the Act, the Court appointed the time for vacating of the premises by the tenants accompanied by direction for reoccupation by the tenants after the premises have been rebuilt.

On 13.11.00 the tenants vacated the premises and delivered possession to the landlords. One year's time was allowed to the landlords for completing the rebuilding and offering the premises for reoccupation by the tenants. The landlords failed to honour their obligation of offering the shops for reoccupation by the tenants. The tenants initiated proceedings for restoration of possession and compensation for breach of obligation by the landlords. They succeeded from the Trial Court, the First Appellate Court as also from the High Court. Feeling aggrieved the landlords have filed these appeals by special leave.

It is notable that the Trial Court has not only directed possession being restored to the tenants but has also directed a compensation calculated at the rate of Rs.3,000/- per month to be paid by the landlords to each of the tenants.

During the course of hearing we tried to explore the possibility of settlement between the parties. The landlords have produced a site plan of newly built premises for the perusal of the Court. It appears that a huge shopping complex has come up in place of the old building. There are 18 shops on the ground floor. The landlords offered to the tenants the three shops situated contiguously, each measuring 8' x 8'. on the north-eastern end of the building. The

shops were not acceptable to the tenant-respondents for reoccupation mainly for two reasons. Firstly, the shops were situated on the back part of the building at a distance from the front portion of the building while the shops they had vacated were situated in the front portion of the old building abutting on the main road. Secondly, the area of the shops was much less compared to the area of the shops previously in occupation of the tenants. There were other incidental and ancillary disputes. However, the learned counsel for the respondents has been able to persuade the respondents to occupy the shops offered by the landlords and it is reported that on 2nd April, 2004 three shops measuring 8' x 8' each have been occupied by the three tenant-respondents. This brings to an end one and the major part of the controversy.

The learned senior counsel for the landlord-appellants submitted that as the tenant-respondents had delayed in delivery of possession over the erstwhile tenancy premises therefore they had lost their right to reoccupation. Still in deference to the wishes of the Court they have given possession to the tenant-respondents over three shops. Therefore, the respondents must agree to pay rent at the rate of Rs.1500/- per month per shop as is the prevalent market rate and being paid by other tenants of the adjoining shops. Secondly, submitted the learned senior counsel for the appellants, that the direction as to payment of compensation by the appellants to the respondents should be set aside as the same is unjust and uncalled for. The Court has not recorded any evidence nor the respondents have brought any material on record of the Court to form an opinion that the quantum of loss allegedly suffered by each of the respondents was at the rate of Rs.3000/- per month.

We do not propose to enter into niceties and perpetuate the litigation. Inasmuch as the principal and major part of the controversy has come to an end by the landlords having offered three shops to the three tenant-respondents and the shops have also been occupied by them, the remaining other disputes need a summary burial and that can be done by making reasonable directions. We agree with the learned counsel for the landlord-appellants that in the absence of any material supporting the finding, the direction for payment of compensation to each of the tenant-respondents at the rate of Rs.3,000/- per month for the period for which they have been out of occupation cannot be sustained. The learned counsel for the tenant-respondents has conveyed the willingness on the part of the tenant-respondents to pay reasonable rent to the landlord-appellants in view of the premises having been newly constructed.

In our opinion, the same rent which is being paid by the tenants in the adjoining shops would be a fair measure of rent which the tenant-respondents should be directed to pay. However, what is the rent which is being paid by those tenants is not clear from the record.

All the three appeals are disposed of in terms of the following directions :-

(1) The three tenant-respondents who have entered into possession of the three shops on 2nd April, 2004 situated in the north-east corner of the building shall be deemed to be holding the shops in their respective possession as tenants with effect from 2nd April, 2004. They will execute such rent notes in favour of landlords as may be approved by the trial Court. If the terms of lease are not settled then the tenancy between the parties shall remain one for non-residential purpose running month by month.

(2) The Trial Court shall ascertain the rent which is being paid by

the tenants in the adjoining shops preferably the three shops which are of the dimension of 8'-0"x8', 7'-10"x8' and 7'- 8"x8' and appoint the same rent to be paid by each of the three tenants to the landlords month by month with effect from 2nd April, 2004.

(3) The tenant-respondents are entitled for payment of compensation for the period commencing 13th November, 2001 upto 9th April, 2003, the day of the order of the High Court reserving three shops for occupation by the tenants and which the tenants refused to occupy. The rate of compensation payable by the landlords to the tenants shall be calculated at the same rate at which rent is appointed by the Trial Court for payment by the tenants to the landlords. It shall be in the discretion of the Trial Court to direct the compensation being paid by the landlords to the tenants lumpsum or to direct the same being adjusted as against payment of rent by the tenants to landlords after the amount of compensation has been quantified.

The appeals stand disposed of in terms abovesaid. Costs as incurred.