CASE NO.:
Appeal (civil) 1565 of 2001
Special Leave Petition (crl.) 7960 of 2000

PETITIONER:
M/S.SHAW WALLACE & CO. LTD.

Vs.

RESPONDENT:
GOVINDAS PURUSHOTHAMDAS & ANR.

DATE OF JUDGMENT: 27/02/2001

BENCH:
S.V.Patil, D.P.Mohapatro

JUDGMENT:

D.P.Mohapatra,J.
L.....I.....T.....T.....T.....T.....T.....T..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 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 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. 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 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. 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.). 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 (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.

(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.

(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. [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:

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.Ãº [Emphasis supplied]

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

In the case of M.S.Zahed vs. 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.

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 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 negatived.

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

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.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURSIDICTION

CIVIL APPEAL NO. 1874 OF 1992

District Magistrate, Allahabad & Anr. Appellants

Versus

Harminder Pal Singh & Anr. Respondents

J U D G M E N T

RAJENDRA BABU, J. :

A lease was granted for a piece of Nazul land bearing plot No. 8, Nashibpur, Baskhtiara, Allahabad to one Begum Mehdi Husain for a period of 30 years from August 21, 1940 with the provision of two further renewals of 30 years. In 1983 the Vice-Chairman, Allahabad Development Authority (ADA) sanctioned a plan subject to countersigning by the District Magistrate. The lease was renewed on December 4, 1987 in the names of Smt. Jagjit Kaur Gulati, Shri Harminder Pal Singh, Shri Jitendra Singh, Smt. Bhulari Devi, Shri Rajendra Singh, Shri Pramod Kumar Agarwal and Nazir Faiyaz Khan. By a letter dated January 22, 1987 all the District Magistrates in Uttar Pradesh were informed regarding construction of multi storey buildings on Nazul Land to the effect that the Government has no objection for building up multi storey building in the Nazul land as per the procedure prescribed by the Government in the order dated October 16, 1986 provided the balance lease period is more than 15 years and that as per the building construction laws, the construction of the proposed building is permissible. It was also made clear therein that in case of sale of such flats, the real rent should be realised after proportionately distributing the rent between the flat owners. Based on this Government order it is stated that the plan had been sanctioned by the Vice-Chairman, ADA. When the District Magistrate did not countersign the said sanctioned plan, a writ petition was filed before the High Court. The High Court directed the Vice-Chairman, ADA to release the sanctioned plan dated May 20, 1989 in favour of the respondents. This petition was contested both by the State and by the Vice-Chairman, ADA. The stand of the appellants is that the respondents filed an application for a plan on March 10, 1989 for the construction of the multi storey residential complex which was sanctioned by the Vice-Chairman, ADA as communicated to them on May 24, 1989. It was stated that the plan could be released after countersignature was obtained from the District Magistrate. The District Magistrate did not countersign the sanctioned plan and when the matter was pending before him, another order dated November 10, 1989 had been issued which provided that before allowing residential construction of the group housing the premium and rent should be realised on commercial rates from the lessee and thus the respondents had to pay certain sum towards premium and annual rent at certain rate. The High Court felt that the only objection raised on behalf of the District Magistrate is the payment of the premium and the rent as provided in the order dated November 10, 1989. The High Court examined the provisions of the lease deed and is of the opinion that the sanction of both the Collector and the Board was not essential and it was sufficient if the Board gave its approval and, in the present case, the Vice-Chairman, ADA had given such sanction. After analysing the relevant enactments, it took the view that the powers of the Board stood transferred to different authorities and ultimately vested in the Development Authority and, therefore, the Vice-Chairman, ADA could grant sanction to the plan. The High Court, therefore, rejected the contention raised on behalf of the appellants thereby allowing the writ petition. Hence this appeal by special leave.

The lease deed has been made available to us which has been executed on behalf of the Governor of the United Provinces on the one part and Begum Mehdi Husain on the other part to be effective for a period of 30 years from August 21, 1940 which has been renewed from time to time on certain terms of agreed rent. The lease deed also provides as follows :-

AND ALSO will within twenty four calendar months next after the date of these presents at his expense and to the satisfaction of the Collector for the time being of
Board of Allahabad
in a good substantial and workmanlike manner erect and complete on such parts of the said premises as are marked out on the plan hereto annexed a dwelling-house and out-buildings according to a plan and elevation to be approved by such Collector which

dwelling-house
Board
and out-buildings shall be of the value of Rs. 5,000/- at least AND ALSO that no part of the external elevation or plan of such dwelling-house and out-buildings shall at any time be altered or varied from the original elevation or plan thereof without the written consent of such Collector and no other building shall be erected on
Board
the said premises without the like consent.

This lease deed had been granted for and on behalf of the Government is clear in terms of Article 299 of the Constitution and it is also clear by the communication No. 278/9-Nazul-87/485N/86 the Government had instructed all the District Magistrates as to the manner of construction of multi storey buildings also to be made on Nazul land, to which we have adverted to. By letter dated January 22, 1987 when that procedure had been prescribed and the lease itself is under the Nazul Rules framed pursuant to the executive orders of the Government, we fail to understand as to how any other procedure is required in matters of this nature. The argument that the permission of the Collector or the Board is required in spite of orders made by the Government dated January 22, 1987 is untenable. Under the terms of the orders of the Government all the District Magistrates are bound to act and permit the construction on such land. Such buildings can be constructed under the Building Construction Laws. Under the Uttar Pradesh Urban Planning and Development Act, 1973, the development can take place in terms of Section 14 of the Urban Planning and Development Act, 1973 and whenever any development takes place, sanction of the Development Authority is required. Thus the construction had to be made only under the Building Construction Laws as stated in the Government order and there is no other requirement to be complied with. Therefore, it is unnecessary to engage our attention to the argument advanced on behalf of the appellants that the sanction of the Collector as well as the Board is required in a matter of this nature. Apart from the ambiguity arising on account of non-striking off of irrelevant portions in the lease deed, the Government order makes it clear the manner of construction of multi storey buildings on Nazul Land, the same can be complied with. If that is so, the District Magistrates or the Collectors permission though required, it will have to be in terms of the Government order dated January 22, 1987. Thus the later order issued on November 10, 1989 had no application to the case since sanction had been given to the plan by the Vice-Chairman, ADA on May 24, 1989. Thus the view taken by the High Court is unexceptionable and calls for no interference.

Therefore, we dismiss this appeal.

..J.
[S. RAJENDRA BABU]

..J.
[SHIVARAJ V. PATIL]

NEW DELHI,
MARCH 2, 2001.
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