

(1989) 05 GAU CK 0005

Gauhati High Court

Case No: M.A.(F) No. 77 of 1979

Jhumar Mal Jain

APPELLANT

Vs

Kamakhya Temple

Represented By

Jhandu Prasad Sarma

Doloi

RESPONDENT

Date of Decision: May 3, 1989

Acts Referred:

- Assam Urban Areas Rent Control Act, 1972 - Section 3(2), 3(2), 4(1), 4(1)

Citation: (1989) 1 GLJ 451 : (1989) 2 GLR 116

Hon'ble Judges: S.Haque, J

Bench: Single Bench

Advocate: B.K.Goswami, R.Choudhary, K.P.Sharma, R.K.Jain, N.C.Das, Advocates appearing for Parties

Judgement

1. The appellants assail the judgment dated 19.8.1979 passed by the learned Assistant District Judge No. 1, Guwahati in Miscellaneous (J) Case No. 37 of 1973 under section 4 (1) of the Assam Urban Areas Rent Control Act fixing fair rent at Rs. 3,733.18 P. per month with effect from 19th August, 1979 in respect of the rented premises in question.

2. The appellants are tenants under the respondents in respect of the R. C. C. building with all fittings and fixtures under Municipal Holding No. 20 (of the year 1968), Ward No. V of the" Gauhati Municipality (year 1968) in the Fancy Bazar area, standing on 0 B. 1 K. 17 L. of land of Dag No. 2ul7, at monthly rent of Rs. 2,100.00 only and the tenancy commenced according to the English Calendar from 1st day of April, 1968 under the lease deed dated 24.7.1968 (Deed Ext, "K"). The respondents filed the Misc. Case (J) under section 4 (1) of the Assam Urban Areas Rent Control Act, 1972 to determine fair rent/standard rent of the rented building. The appellants contested the case. On the basis of evidence within the scope and procedure of section 3, the court fixed the fair/standard

rent at Rs. 3,733.18 P. per month which will operative from 19th August, 1979. Hence, the appeal by the tenants.

3. Learned counsel Mr. B. K. Goswami for the appellants submits that the standard rent fixed by the court has taken the shape by which the enhanced portion becomes more than the fifty percent of the rent proceeding to the fixation in violation of the provision of section 3 (2) of the Act. According to Mr. Goswami, the proceeding standard rent, prior to the fixation under the procedure of section 3(2), was the contractual rent between the parties. Mr. K. P. Sarma, counsel for the respondents, on the other hand, submits that the standard rent preceding to the fixing of the fair rent can not be the contractual rent but it is the rate fixed as standard rent by the court on previous occasion and that the enhancement rate to the extent maximum upto fifty percent would be applicable only in case of revision of the standard rent after five years of its fixation. As per the definition the "standard rent" is the rent calculated under the provision of section 3. Submission of Mr. K. P. Sarma has force. Contractual rent may be lesser than the standard rent in view of the section 3 (1), but it cannot be termed as standard rent. "Standard rent" referred in section 3 (2) is the rent fixed by the court on procedural calculation and not the contractual rent agreed by the parties. Once the standard/fair rent is fixed by the court, revision of the same can be made only after every five years. But once the contractual rent is agreed by the parties, prayer for determination of standard/fair rent by court can be made at any time by any of the parties.

4. In fact the fair/standard rent fixed had exceeded fifty percent of the contractual rent existed preceding the fixation. The rent fixation court must carefully assess all the circumstances in order to assure substantial justice to both the parties at a stage when the enhanced portion of fair/standard rent fixed exceeds considerably above fifty percent of the contractual rent preceding fixation. In this view of the matter, slight alteration by fixing the fair rent at Rs. 3,500.00 in place of Rs. 3,733.18 P. per month with effect from 19.8.1979 would meet the ends of justice. The alteration must be done in the manner not to change the structure of the fair/standard rent fixed by the court. The alteration in this case does not change the character of the excess of more than fifty percent of the contractual rent preceding fixation by court. The fair/standard rent fixed by a court, for the first time, may exceed more than fifty percent of the existing contractual rent and such fixation is allowable under the law ; but in exceptional cases where the fair rent fixed exceeds considerably high than fifty percent of the existing contractual rent, the court may exercise its discretion to assure substantial justice to the parties in such a manner so that the tenant's burden may not be increased unbearably and the landlord also may not suffer a loss.

5. This appeal is partly allowed by fixing the fair rent at Rs. 3,500.00 (Rupees three thousand five hundred only) per month with effect from 19th day of August, 1979. The appellants shall now pay regular rent at Rs. 3,500.00 per month from April, 1989 The appellants (tenants) are directed to pay the arrear portion of the rent accrued due to fixation of fair rent during the period from 19.8.1979 to March, 1989 by monthly

instalments of Rs. 6,000.00 (Rupees six thousand only) per month and this shall be paid with the regular rents from April, 1989.

6. The parties shall share the costs of the enquiry and the appeal equally.