Madras High Court
Maya Appliances And Control ... vs A. Sulochana Reddy And Anr. on 29 February, 1996
Equivalent citations: 1996 (1) CTC 567
Author: S Subramani
Bench: S Subramani
ORDER S.S. Subramani, J.

1. C.R.P. No. 2750 of 1990 is by the tenant and the other Revision is by the landlord in R.C.O.P. No. 3284 of 1984, on the file of the Rent Controller (12th June, Court of Small Causes) at Madras.

2. The landlord filed the present petition for fixation of fair rent of the Scheduled premiss. The agreed rent is Rs. 4,500/- and the tenancy began on 10.5.1981. According to the landlord, the rent that is now being paid by the tenant is not in accordance with the prevailing rate. According to him atleast the fair rent has to be fixed at Rs. 13,780/- taking into consideration the market value of the land, amenities, cost of construction, etc.

3. Tenant contended that there is no necessity for fixation of fair rent, and the present rent is reasonable, and that has to be fixed as fair rent.

4. The Rent Controller, after taking evidence, came to the conclusion that the fair rent will be at Rs. 6,810/-. Both the landlord and tenant filed Appeals before the Appellate Authority as R.C.A. No. 194 of 1988 and R.C.A. No. 5 of 1988, respectively. The Appellate Authority dismissed the appeal of the tenant and fixed the fair rent of the building at Rs. 8,967/-. It is against the judgment, both the parties have filed these Revisions.

5. Under Section 4 of the Rent Control Act, for the purpose of fixing the fair rent, the cost of the site in which the building is constructed and the cost of construction of the building as determined under the Section, have to be taken into consideration. In regard to the cost of construction of the building including the electrical installations, due regard had to be given for the rates adopted for the purpose of estimation by P.W.D. Proviso to Section 4(4) of the Rent Control Act also says how the vacant site also has to betaken into consideration for fixing fair rent.

6. On going through these ingredients in fixing the fair rent, I feel that the Authorities below have not correctly followed the same. The total area is more than 9 grounds i.e. 21600 sq.ft. Out of the same, the landlord says that the ground floor comes to 4058 sq.ft and the first floor is 2978 sq.ft. According to the tenant, the ground floor comes to 3495 sq.ft. only. The same was accepted by the Courts below. Even through there is an Engineer's Report which shows that the built up area comes to more than 4000 sq.ft. the same was not allowed by the Rent Controller, for the reason that nearly 600 sq.ft. of built up structure was put up by the tenant and, therefore, that has to be excluded for the purpose of consideration in fixing the fair rent. Learned counsel for the landlord submitted that in the counter-statement by the tenant, he has no case that he has put up any construction in the property and the exclusion of that area from consideration was, therefore, improper.

7. Before the Rent controller, the approved plan for the construction of the building was not filed. But when the matter was taken in Appeal the landlord produced the approved plant wherein it showed that the area now alleged by the Landlord is included in the approved plan. So, naturally, it has to be taken that the building as it now stands was put up by the landlord himself. The learned counsel for the tenant submitted that even if there is a building plan, it does not follow that the landlord alone has constructed the entire structure. He also wants to rely on the evidence of the landlord's witness wherein he said that an area of 600 sq.ft. was constructed by the tenant. According to me, the witness who is an Engineer, cannot say or is not competent to say as to who constructed the building. He went to the property for the purpose of valuing it and also for measuring the same. When the landlord has taken building plant and the plinth area of the building is also more or less the same as shown in the plant, an inference can be had that the entire structure was made by the landlord, himself. The exclusion of that area by both the Authorities below was, therefore, not proper. Regarding the market value of the land, the Rent Controller said that Rs. 47,000 will be a fair market price for ground. The landlord did not file any document before the Rent Controller. The tenant alone filed it stating that in 1980, a transaction in respect of a land close by has taken place, calculating the market value at Rs. 47,000 per ground. The fair rent application was filed in the year 1984. it is common knowledge that after 1980, the market value of the landed property has increased 100 times. So, the reliance on a stray document of 1980 was not proper. When the matter was taken in Appeal, the landlord filed additional document to prove the market value. Of course, it is a document executed in 1984. It is an adjacent property where the market value was fixed at Rs. 4 lakhs per ground. The learned counsel for the landlord wanted that to be taken into consideration for the purpose of arriving at the market value. For the said contention, the learned counsel for the tenant contended that the document which was filed before the Appellate Authority was after the institution of proceeding and, therefore, cannot be taken into consideration. If the entire transaction was after 1984, I would have agreed with the said submission. But, from a reading of the document, it is clear that two Corporate Bodies have entered into the transaction. We find that even though the transaction was formally executed in 1984, the entire consideration was paid by cheque even in the year 1982. The transaction was completed in 1982. But a formal Resolution had to be passed by the vendor company. Thus, there was delay in getting the Resolution. That could be passed only a few years after. If in 1982, the market value of the land is Rs. 4 lakhs per ground, I think that is a material piece of evidence which the Courts below ought to have taken into consideration. The appellate Authority fixed the market value was at Rs. 1 lakh. In 1980, the market value was Rs. 47,000 and by 1982 it has come to Rs. 4 lakhs. Naturally, in 1984, when the Fair Rent Application was filed, it would have been much more. The fixation at Rs. 1 lakh as market value by the Appellate Authority according to me, was not proper.

8. Learned counsel for the tenant submitted that even in the Fair Rent Application, landlord has only said that the market value is at Rs. 2.5 lakhs. That is only an assessment by the Landlord, but not an admission. It is settled law that merely because the landlord says that a particular amount is the market value it is not on that basis the fair rent is fixed. The mere opinion by the landlord cannot be treated as a market value of the land- For assessing the same, there are legal principles which have to be taken into consideration. A transaction by a willing seller to a willing purchaser in open market for a similar land is one of the methods to arrive at the market value and not an opinion or suggestion by the landlord.

9. Even assuming the contention of the tenant that the document filed before the Appellate Authority is of 1984. I do not think that it can be excluded from consideration. Even if a transaction takes place in a nearby locality after the institution of the fair rent application, that will be of material use in considering how far the value of the land has gone high or gone down in a period of years. If a transaction takes place within a reasonable period after the filing of the petition, that also can be taken into consideration. The tenant has no case that it is because of the claim put forward by the landlord in this case, the price of adjacent property has increased. Even in land acquisition cases, where there is a statutory bar for taking into consideration documents after Section 4(3) Notification, courts have held that documents for subsequent period also can be taken into consideration, subject only to the condition that increase in the value was not due to land acquisition. So in either way, the document filed by the landlord before the Appellate Authority and proved by P.W.3 should have been taken into consideration in arriving at the market value. The Authorities below have filed to do so.

10. Regarding the cost of construction, the Statute provides that as far as possible, P.W.D. rates have to be taken into consideration as a Guideline. The landlord said that the cost of construction will be about Rs. 60/- per sq.ft. The P.W.D. rate was much higher even during that time. That can be seen from a few decisions of this court.

11. In Collector of Madras v. A.N. Gajendran, 1988 (2) LW 49 the cost of construction during 1981-82 was taken to be Rs. 76/-. That is clear from paragraph 4 of the said judgment, at page 51 of the Reports.

12. In Emberumanar, A. v. K. Raghvan, 1988(1) LW 568 the cost of construction was taken as Rs. 79 per sq.ft. That is also for the period 1981-82. In both these decisions, this court held that the P.W.D Rates have to be followed, and it was further held that the mini hand book retained by the P.WD. can be made use of for fixing the rates. Their Lordships also said that the rates certified by the P.W.D. and the rates mentioned in the mini handbook are different and the rates mentioned in the handbook are higher than the certified rates. Their Lordships said that there is no secrecy for the mine handbook and that also could be accepted.

13. Learned counsel for the landlord wanted the cost of construction to be fixed at that rate. The said contention is opposed by the learned counsel for the tenant on the ground that even in the petition, the rate is claimed only at less than Rs. 60 and the Rent Controller was generous enough to grant something more than what was claimed. As stated earlier, nothing turns on the admission of a party in these proceedings, for the court is directed to determine the fair rent of a building in accordance with a Statute. When the Statute provides certain Guidelines and also directs that a rent has to be fixed in accordance with it, the court is bound to take note of that alone for the purpose of fixing the fair rent. According to me the cost of construction, was also not properly considered by the Authorities below.

14. Regarding the vacant site, learned counsel for the tenant has grievance since authorities below have not followed the Full Bench decision reported in H.C. Lodha v. Dr. C Ranganathan etc., 1989 (1) LW 137. In the Full Bench decision, this court interpreted the proviso to Section 4(4) of the Rent

Control Act thus:-

"……The Division Bench in K. Kaliammal and Ors. Athi v. Ramachandran and Ors., 1983 (II) MLJ 252 apprehends a resultant anomaly, if the construction, which we have now approved, is to be adopted. The division Bench has lost sight of the significance of the expressions 'upto fifty per cent' and 'of the vacant land, if any, appurtenant to, occurring in the proviso. An area 'upto fifty per cent' of the extent or portion of the site on which the building is constructed has to be carved out of the vacant land, if any appurtenant to such building. Only if there is any vacant land, appurtenant to such building, the application of this formula would arise. If here is no vacant land appurtenant to such building, the contingency to apply this formula would not arise at all. If there is any vacant land, appurtenant to such building but its extent is equal to or less than the build up extent, the same will have to be annexed to the built up extent, to form the aggregated basis for arriving at the market value of the site. If there is any vacant land appurtenant to such building, and its extent is in excess of the built up extent carving out of it fifty per cent of the built up extent, to be added to the built up extent, for calculating the market value of the site, the residue of the vacant land has to be treated as amenity.....

15. Learned counsel for the landlord argued that the Full Bench decision requires reconsideration and the same is against the provisions of the statute. I do not think that I should refer the matter to a larger Bench. Even subsequent to this decision, this court has followed in various cases stating that it is the correct law. I am also bound to follow that Full Bench decision. The Authorities below have not followed the principles enunciated by the Full Bench regarding the fixation of value of the vacant site. As per the Full Bench decision, the site and one half of the built up area is to be added for the purpose of fixation of market value and the remaining extent is to be considered as an amenity. It is not in that way the Authorities below have considered the value in this case. They have added one half of the entire vacant site for calculating the market value. This, according to me, is against law.

16. Since I hold that the fair rent has not been fixed in accordance with law, while allowing the revision petition I have to set aside the decision of both the Authorities below and remand the case.

17. Learned counsel on both sides agree that instead, of remanding the matter to the Rent Court, it will be sufficient if the remand is made to the Appellate Authority- Accordingly R.C.A. Nos. 5 and 194 of 1988, on the file of the VIII Judge, court of Small Causes, Madras are remanded to the Appellate Authority. On receipt of records, the Appellate Authority shall take such evidence as required by both parties, after giving them reasonable opportunity, and enter a finding on all the questions, in the light of the observations made above. I am sure, being an old case, the Appellate Authority shall give top priority to the matter and dispose of the same expeditiously, at any rate on or before 31.8.1996. Parties arc directed to appear before the Appellate Authority on 2.4.1996. There will be no order as to cost in these Revision Petitions.