

(2006) 12 MAD CK 0111
In the Madras High Court
Case No : C.R.P. (NPD) No. 817 of 2003

Allahabad Bank

APPELLANT

Vs

Malathi Balasubramanian

RESPONDENT

Date of Decision : 11-12-2006

Acts Referred:

Madras Buildings (Lease and Rent Control) Act, 1961 — Section 4
Pondicherry Buildings (Lease and Rent Control) Act, 1969 — Section 25, 5(1)

Citation : (2007) 1 CTC 567 : (2007) 3 LW 855

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Advocate : P. Sugumar, for the Appellant; Sai, Bharath and Ilan, for the Respondent

Final Decision : Allowed

Judgement

S. Rajeswaran, J.—This Revision Petition has been filed against the order dated 7.11.2001, made in R.C.A. No. 2/2000 on the file of the Rent Control Appellate Authority, Pondicherry (Principal District Court, Pondicherry), confirming the order dated 22.9.1998 in H.R.C.O.P. No. 32/1994, on the file of the Rent Controller, Pondicherry.

2. The tenant has filed the above revision petition.

3. RCOP No. 32/1994 was filed by the landlady against the tenant which is a nationalised bank, u/s 5(1) of the Pondicherry Buildings (Lease & Rent Control) Act, 1969 hereinafter called "the Act", to fix fair rent for the schedule property at the rate of Rs.7,000/- per month. The rent controller by order dated 22.9.1998 fixed the fair rent at Rs.5,675/- per month payable from the date of the petition. Aggrieved by the order of the rent controller, the tenant/bank filed RCA No. 2/2000 and the appellate authority by its order dated 7.11.2001 confirmed the order of the rent controller by fixing fair rent at Rs.5,675/- per month. Against such concurrent findings of the authorities below fixing the fair rent at Rs.5,675/- per month, the above revision petition has been filed by the tenant/bank u/s 25

of the Act, 1969.

4. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent. I have also gone through the documents and the judgments referred to by them filed in support of their submissions.

5. Though a number of grounds have been raised in the revision petition, the learned Counsel for the revision petitioner mainly contended that the cost of the land arrived at by both the courts below at Rs.2,80,675/- is obviously wrong. Learned Counsel submitted that as there are two floors in the building, the value of the land should have been apportioned between the two floors and if so apportioned, the cost of the land should have been 50% of Rs.2,80,675/-, ie., Rs.1,40,335/- only. If the cost of the land is taken as Rs.1,40,335/-, then the fair rent should be fixed at Rs.4,272/- per month instead of Rs.5,675/- per month as wrongly fixed by the authorities below.

6. In support of his contentions, learned Counsel relied on the following judgments:

- 1) 1968 I M.L.J. 410 : (81) L.W. 196 A.C. Charities v. S. Aushadhalaya
- 2) 1972 II M.L.J. 446 Rainbow Electric Supply Corporation v. Chenchuramiah
- 3) 1969 I M.L.J. 101 Sivagnanam v. Everest; Boarding and lodging

7. Per contra, learned Counsel for the respondent/landlady submitted that both the authorities below fixed the fair rent which need not be interfered with, under the revisional jurisdiction of this Court.

8. In 1968 I M.L.J. 410 81 L.W. 196 this Court held that in the case of building having two floors, the market value of the land for the first floor will be half and if there are more than two storeys, it will be proportionately distributed in accordance with the number of storeys in the building.

9. 1972 II M.L.J. 446 (cited supra), this Court held as follows:

16. The extent of the ground floor is 2207 sq. feet while in the first floor, the built up area, is 950 sq. feet. Though the building in question is partly residential and partly non-residential, the courts below have found that it is predominantly non-residential and we will have to proceed on this basis. Ramaprasada Rao, J., in S. Attendrooloo Ghetty's Charities and Others Vs. Sadhana Aushadalaya, held that fixation of fair rent for the site value in an application u/s 4 of the Madras Buildings (Lease and Rent Control) Act, 1961, in the case of buildings having more than one floor, ought to be one of apportionment in accordance with the number of storeys. The learned Judge held that if there are more than two storeys the site value has to be proportionately distributed in accordance with the number of storeys in the buildings. The question in the present case is whether there is a second storey in the building in question. The learned Counsel for the tenant urges that in the second floor a structure with asbestos cement roofing is in existence and the landlord is deriving rent therefrom and the

contention is that the court has to apportion the site value amongst the ground floor, first floor and the second floor. The landlord's reply to this contention is that the structure in the second floor does not belong to him. The courts below have accepted the landlords' case and held that the second floor construction should not be taken into account in arriving at the site value. I accept the finding of the appellate Judge and hold that the apportionment of the site value should be only confined only to the ground floor and the first floor.

10. In the above decision this Court followed the earlier decisions reported in 1968 I M.L.J.410 (cited supra) and held that the apportionment of the site value should be in accordance with the number of storeyes.

11. In 1969 II M.L.J. 101 (cited supra), this Court held that the market value of that portion of the site on which the residential building is constructed, has to be constructed in a liberal way and building in that expression is the entire building, not merely that part of the building which is within the purview of the Act.

12. In the light of the above facts and principles of law enunciated by this Court, let me consider the case of the petitioner.

13. It is true that the cost of the land where the demised premises is situated is taken at Rs.250/- per sq.ft., and the entire cost of the land is arrived at Rs.2,80,675/-. On that basis, the rent controller proceeded to fix the fair rent at Rs.5,675/- per month.

14. The appellate authority, on appeal confirmed the cost of the land at Rs.2,80,675/-.

15. Learned Counsel for the revision petitioner while agreeing with the cost of the land fixed at Rs.2,80,675/- for the vacant building, strongly objected to the inaction of the authorities below in not apportioning the cost of the land between the two floors of the building in which the petitioner is occupying only one floor namely, the ground floor and the 1st floor of the building is in occupation of the respondent/landlady for her residential purpose.

16. I find force in the submissions of the learned Counsel for the revision petitioner.

17. In the light of the decisions rendered by this Court referred to above, the cost of the land has to be necessarily apportioned between the two floors when the building has two floors. It is not in dispute that the building in question has two floors in which the tenant/revision petitioner is in occupation of the ground floor. In such circumstances, the cost of the land as arrived at by the authorities below at Rs.2,80,675/- ought to have apportioned and the cost of the land should have been fixed at Rs.1,40,335/- for the portion under the occupation of the tenant/revision petitioner.

18. The calculation arrived at by the authorities below for fixing the fair rent at Rs.5,675/- per month is as under:

_____		Calculation		Description		as considered by		the courts
below		~~~~~		~~~~~		~~~~~		~~~~~
		~~~~~		Built up area is 1122.7 sft.				
				(full extent of built up area		is taken into account)		
				Market value of the site		-----		
				Cost of land on which		the demised building		
				1122.7 x Rs.250/- = Rs.2,80,675/-		is constructed		
				For vacant area		50% of the cost of		
				2,80,675/2 = Rs.1,40,335/-		land over which the building is		
				-----		constructed		
				Total cost of site				
				Rs.4,21,010/-		Add cost of building		
				Rs.1,46,522/-		(after depreciation)		
				-----		Total cost of site & building		
				Rs.5,67,532/-		Annual fair rent @ 12% of the value		
				Rs. 68,104/-		Rent per month		
				Rs. 5,675/-		_____		

19. From the above it is very clear that the entire cost of land was taken into consideration by the authorities below without apportionment between the two floors. Even though a specific ground is taken by the revision petitioner in this regard in the appeal filed before the appellate authority, the same was not considered by the appellate authority. Therefore I am of the opinion that the cost of land for the demised premises in the ground floor should be taken as Rs.1,40,335/- and on that basis the fair rent is to be calculated as under:

_____		Description		Calculations submitted		by the petitioner		for consideration		by this Hon"ble court		~~~~~		~~~~~		
				Built up area is 1122.7 sft.		(If value of site is apportioned		as per number of storeys)								
				Market value of the site		-----										
				Cost of land on which		1122.7 x Rs.250/-		the demised building								
				-----		= Rs.1,40,335/-		is constructed		2						
				For vacant area		50% of the cost of land		2,80,675/2 = Rs.1,40,335/-		over which the						
				building is constructed		-----										
				Total cost of site												
				Rs.2,80,670/-		Add cost of building		Rs.1,46,522/-		(after depreciation)						
				-----												
				Total cost of site & building												
				Rs.4,27,192/-		-----										
				Annual Fair Rt @ 12% of the value												
				Rs. 51,263/-												
				Rent per month		Rs. 4,272/-										

20. Therefore I am inclined to interfere with the orders of the authorities below to the extent as mentioned above and the fair rent is to be fixed at Rs.4,272/- instead of Rs.5,675/- per month as fixed by the authorities below.

21. The Civil Revision Petition is allowed to that extent only and the same is ordered accordingly. No costs.

22. It is reported by the learned Counsel for the petitioner that the tenant/bank has already vacated the premises and the excess rent fixed by the authorities below has been deposited in the court below. If so, it is for the revision petitioner to get refund if any, from the court below in which the amount is deposited on the basis of the fair rent fixed by this Court.