(2006) 12 MAD CK 0213

In the Madras High Court

Case No : C.R.P. (NPD) No. 953 of 2003

Central Bank of India APPELLANT

Vs

A. Koteeswaran and K. Kala RESPONDENT

Date of Decision : 01-12-2006

Acts Referred:

Stamp Act, 1899 — Section 47A
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 4

Citation : (2007) 1 LW 700

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : T.R. Mani, for T.M. Hariharan, for the Appellant; AR. L. Sundaresan, for AL. Gandhimathi, for the Respondent

Judgement

R. Banumathi, J.—This revision arises out of the Order in RCA No. 30/1998 of Rent Control Appellate Authority/Sub Court, Villupuram, fixing the monthly rent at Rs. 31,450/-. In RCOP No. 14/1996, the Rent Controller had fixed the monthly rent at Rs. 41,500/-.

2. Brief facts are as follows:

2.1. The Petitioner Bank took the premises - Door No. 99, Mahathma Gandhi Road, Villupuram, on lease from the original owner under a registered lease deed dated 21.11.1990. The Bank occupies the entire ground floor - 3860 sq. ft. and 565 sq. ft. in the first floor and the remaining extent of the first floor is occupied by the Income Tax Department.

2.2. The Respondents/landlords purchased the premises from the original owner - an undivided half share under Exs. P-3 and P-4 [dated 3.4.1991] for Rs. 3,47,000/- each making a total of Rs. 6,94,900/-. Land value = Rs. 1,76,778/-, building value = Rs. 1,47,164/- with a lane valued at Rs. 23,058/-. The value of the site - 3,864 sq. ft. was Rs. 3,53,556/-. After the purchase, the Respondents accepted Ex. R-4 - lease deed under Notarized affidavits executed by them.

2.3. In 1994, the Respondents claimed higher rent of Rs. 12,600/- p.m. and the claim was resisted by the Petitioner Bank. On 24.11.1995, the Respondents issued Ex. R-3 - Notice claiming higher rent of Rs. 16,800/- p.m. and the same was resisted by the Petitioner Bank as unreasonable. On 05.07.1996, the Respondent issued Ex. P-1 Notice claiming a rent of Rs. 40,000/- p.m., for which the Petitioner/Bank has sent Ex. P-2 reply. On 08.08.1996, RCOP was filed u/s 4 of the Tamil Nadu Buildings [Lease & Rent Control] Act [for short, the Act] for fixation of fair rent, which was claimed at Rs. 43,390/- p.m.

2.4. In consideration of the evidence, the Rent Controller calculated the fair rent at Rs. 41,500/- as under:

Amount in Rs. Building cost - Ground Floor - 3860 sq.ft. at Rs. 300/- per sq.ft. = 11,58,000 First Floor - 565 sq.ft. at Rs. 275/- per sqf. t. = 1,55,375 Basic Amenities at 10% thereon = 1,31,337 Depreciation deducted at 1% for 16 years = 2,31,154 Net Value of the Building = 12,31,558 [sic]

For the entire extent of 3860 sq. ft., site value was fixed at Rs. 740/- per sq. ft. at Rs. 28,56,400/-. Total value of the site and building was thus calculated at Rs. 40,70,266/-. To this was added 2% for Schedule I amenities at Rs. 81,405/- making a total valuation of Rs. 41,51,671/-. On this basis, the monthly rent was fixed at Rs. 41,500/-

2.5. The Appellate Authority fixed the fair rent at Rs. 31,450/- as under-

For basic amenities, the Appellate Authority allowed 5% instead of 10% and increased the deprecation value to 11/2% for 16 years and thus fixed the value of the building at Rs. 10,48,068/-. The Appellate Authority took the land value at Rs. 724/- per sq. ft. based on Ex. A-7 Sale Deed of 14.04.1996 and fixed the land value at Rs. 27,94,640/- and disallowed any further deduction towards Schedule I amenities. Thus the total value was fixed as Rs. 31,42,708/- [sic] and thus fixed the monthly rent at Rs. 31,450/-.

3. Contending that the rent fixed by the Courts below is unreasonable, the learned Senior Counsel for the Petitioner Bank has submitted that there are several flaws in the Judgments of the Courts below. It was further submitted that the market value of the site has been entirely placed upon the Petitioner Tenant and the Courts below failed to take into account that part of the upstairs building 299 sq. ft. is in the occupation of another Tenant. Assailing the fixation of the market value for the site, the learned Senior Counsel submitted that the Courts below committed serious error in placing reliance upon Ex. A-7 Sale Deed which is sold for a very small extent. It was also submitted that the guideline value which has been adopted in Ex. A-7 was followed by the Courts below and as per the Full bench Decision reported in 2006 (2) MLJ 295 and the guideline value in Basic Valuation Register cannot form basis for calculating the market value.

4. Countering the arguments, the learned Senior Counsel for the landlords submitted that only as a supporting evidence, the guideline value in Ex. X-1 has

been taken note of by the Courts below. It was further submitted that in support of the guideline value and to provide a bonafide sale, Ex. A-7 Sale Deed has been produced and the purchaser under Ex. A-7 Sale Deed was examined as PW-4 and hence, the Courts below have rightly fixed the market value at Rs. 750/- and Rs. 724/- per sq. ft. respectively. It was further submitted that notwithstanding the contractual rate of rent payable, it is the duty of the Court to apply formula to fix the fair rent. Reliance was placed upon 1993 (1) MLJ 232 and 2001 (1) LW 826.

5. I have carefully examined the records and considered the submissions of learned Counsel on either side.

6. Facts are not in dispute. Ex. B-4 [dated 21.11.1990] - Registered Lease Deed was entered between the Petitioner/Bank and the original owner Mohammed Ali. The rent of Rs. 4,500/- is payable p.m. from 01.10.1989 before the 5th of every English Calendar month. The lease was for a term of five years. As per the terms of the lease deed, if the lessee is desirous of continuing the term, it is extendable for a further term of five years and the lessee shall give notice in writing to the lessor of the desire and shall pay the rent which was reserved by the parties. Even during the subsistence of the said lease, the Respondents landlords have purchased the property on 03.04.1991.

7. At the outset the unreasonableness of the demand of rent is to be pointed out. Immediately after the term is over i.e. in 1994, the Respondent claimed a higher rent of Rs. 12,600/- p.m. Ex. R-3 Notice [dated 24.11.1995] was issued by the Respondent claiming a higher rent of Rs. 16,800/- p.m. Even eight months thereafter, i.e. in July 1996, the Respondents issued Ex. P-1 Notice claiming an exorbitant rent of Rs. 40,000 p.m., which is nearly 21/2 times of rent what was claimed under Ex. R-3. The Petitioner/Bank had sent Ex. P-2 reply referring to the terms of the lease that the lease was for a period of five years certain, with option to renew for a further period of five years with interest of 20% in the rent payable and the amount claimed is not in consonance with the prior payments of Rs. 11,600/- and Rs. 16,800/-.

8. After issuance of Ex. P-1 Notice, within one month, the Respondent landlord filed RCOP No. 14/1996 on 08.08.1996 again making enhanced claim of rent of Rs. 43,390/-. There is much force in the contention of the learned Senior Counsel for the Petitioners on the unreasonableness of the demand by the Respondents/landlords.

9. Firstly, it is necessary to point out the serious error committed by the Courts below. The Respondents purchased the premises under Ex. P-3 and P-4, each Sale Deed [dated 03.04.1991] for Rs. 3,47,000/- each making a total of Rs. 6,94,000/-. Land value = Rs. 1,76,778/-, building value = Rs. 1,47,164/- with a lane valued at Rs. 23,058/-. The value of the site - 3,864 sq. ft. was Rs. 3,53,556/-. After the purchase, the Respondents accepted Ex. R-4 lease deed under Notarized affidavits executed by them. Value of the site is Rs. 3,53,556/-.

10. It is well settled that the site value in the case of a building having more than

one floor must be proportionately distributed in accordance with the stories in the building. In 1993 (1) LW 344 M. Radhakrishna Rao v. A.B. Ahmed basha and Anr., Justice Srinivasan had a occasion to deal with the site value of a building having more than one floor and has held as under:

With regard to fixation of fair rent u/s 4 of the Tamil Nadu buildings etc. Act, the decision of Ramaprasada Rao, J. in 1968 (2) MLJ 406, as to what is the meaning of the word ''site'' with reference to a building having more than one floor, may be referred to. He held that in the case of such buildings, the principle ought to be one of apportionment in accordance with the number of storeys. In so far as the ground floor is concerned, he interpreted the word ''site'' as it is ordinarily understood as that on which the ground floor stands. With reference to the first floor, second floor or the ninth floor, he held that it would mean that portion of the building on which the respective flat or storey was built upon or imposed.

8. In 1972 (2) MLJ 466, it is pointed out that the site value in the case of a building having more than one floor must be proportionately distributed in accordance with the number of storeys in the building.

11. The Courts below erred in calculating the rent payable by the Petitioner on the market value of the entire site without apportioning. Admittedly, the premises has a first floor. A portion of the first floor - i.e. 2,299 sq. ft. is in the occupation of another Tenant - Income Tax Department, stated to be on a monthly rent of Rs. 5,000/-. Without taking into account that fact, that part of the upstairs is in occupation of another Tenant, the Courts below have calculated rent payable by the Petitioner/Bank on the basis of the entire site, which is a serious flaw committed by the Courts below.

BUILDING COST:

12. The building has got ground floor, first floor and a small portion in second floor [vide Ex. A-6]. The building was constructed by RCC Foundation with brick works in cement mortar. PW-3 Private Engineer in his report - Ex. A-6, has noted cement concrete flooring with mosaic tiles and other basic amenities like sanitary installation and water supply and electricity. Rent Controller fixed the value of the building cost for the ground floor at Rs. 11,58,000/- [at Rs. 3,00/- per sq. ft.]. For the first floor of the Petitioner/Bank 565 sq. ft., building cost was fixed at Rs. 1,55,375/- [at Rs. 275/- per sq. ft.]. The Rent Controller has allowed basic amenities at 10% and deducted depreciation at the rate of 1% for 16 years and calculated the net value of the building at Rs. 12,31,558/-.

13. The Appellate Authority allowed 5% for basic amenities and increased depreciation value at 11/2% for 16 years and fixed the value of the building at Rs. 10,48,068/-.

14. Schedule I of the Act lists 17 items of amenities like - Air Conditioner, Lift, Water cooler, Garden etc. In consideration of the limited amenities available in the building, the Appellate Authority has rightly reduced the amenities to 5%.

The building was built by RCC Foundation with brick cement mortar. Hence the Appellate Authority has rightly adopted the depreciation at 11/2% and calculated the value of the building in occupation of the Petitioner/Bank at Rs. 10,48,068/-. The net value of the building in occupation of the Petitioner Tenant fixed by the Appellate Authority does not suffer from any serious flaws. In fact, both parties have not raised serious objections regarding the value of the building fixed by the Appellate Authority.

VALUE OF THE SITE:

15. The subject matter of the controversy narrows down to the value of the site alone. As noted earlier, under Exs. P-3 and P-4 [dated 3.4.1991], Sale Deeds, 46'' x 84'' = 3,684 sq. ft., was purchased by the Respondents under Exs. P-3 and P-4 [dated 3.4.1991] for Rs. 3,53,556/-. In 1991, the Petitioners have thus purchased the property at sq. ft. valued at Rs. 91.50/-.

16. The Rent Controller and the Appellate Authority have fixed the value of the site at Rs. 750/- and Rs. 724/- per sq. ft., respectively based upon Ex. A-4-Sale Deed dated 10.04.1996. Ex. A-7 is the Sale Deed in favour of Abdul Majid by one Shamshad relating to a property situated on the western side of M.G. Road in Vinod Bazar. The property sold under Ex. P-7 measures 8 3/4'' x 11 1/4'' = 98.43 sq. ft. In Ex. A-7 - Sale Deed the site was valued at Rs. 74,635.91/-. The Rent Controller has fixed the value at Rs. 750/- per sq. ft. and the Appellate Authority has fixed at Rs. 724/- per sq. ft., based on Ex. A-7 Sale Deed and the evidence of PW-4 - Purchaser under Ex. A-7.

17. Ex. X-1 is the guideline value for MG Road, as per which, the current value is Rs. 758.20 sq. ft. as on 01.04.1996. Previously on 01.04.1994, the guideline value was Rs. 621.60.

18. Regarding Ex. A-7, PW-4 has stated that he has purchased a small strip of site 8 3/4'' x 11 1/4'' = 98.43 sq. ft. along with the building thereon and he purchased the site for Rs. 71,000/-. In Ex. A-7, the site value is stated as Rs. 74,635.91. The value of the site appears to be just following the guideline value. The property covered under Ex. A-7 - Sale Deed is on the southern side of MG Road situated in Vinod Bazar. Admittedly, it is also situated on the southern side of Seetharaman Theatre. That small strip of site with the building thereon might have been purchased on demand since the same is located in bazar. The valuation adopted in Ex. A-7 is verbatim the guideline value as in Ex. X-1. The Sale Deed Ex. A-7 which has just adopted the guideline value cannot form the basis for the larger extent of site 3,864 sq. ft.

19. Holding that guideline value fixed is not final and not prima facie rate prevailing, in 2004 SCC Crl. 377 R. Sai Bharathi v. J. Jayalalitha and Ors., the Supreme Court has held thus:

22. The guideline value has relevance only in the context of Section 47A of the Indian Stamp Act [as amended by T.N. Act 24 of 1967] which provides for

dealing with instruments of conveyance which are undervalued. The guideline value is a rate fixed by authorities under the Stamp Act for purposes of determinign the true market value of the property disclosed in an instrument requiring payment of stamp duty. Thus the guideline value fixed is not final but only a prima facie rate prevailing in an area. It is open to the registering authority as well as the person seeking registration to prove the actual market value of property. The authorities cannot regard the guideline valuation as the last word on the subject of market value....

20. Referring to the above decision and various other decisions, holding that the guideline value cannot form a foundation to determine the marketvalue, in Sakthi and Co. Vs. Shree Desigachary, , a Full Bench of this Court has held thus:

16. In view of the above ratio decidendi fixed by the Supreme Court, the fixation of market value on the basis of guideline value or valuation register, summoned from Sub-Registrar''s Office and the Engineer, is illegal and unsustainable.

18. Therefore, our conclusions are as follows:

(1) The guideline value, contained in the Basic Valuation Register, maintained by the Revenue Department or the Municipality for the purpose of collecting stamp duty, has no statutory base or force. It cannot forma foundation to determine the market value mentioned thereunder in instrument brought for registration.

(2) Evidence of bonafide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features would furnish basis to determine the market value. In this case, the guideline value alone has been considered, which, in our view, is illegal.

(3) The Rent Controller and the Rent Control Appellate Authority, in the present case, are not right in relying upon the guideline value, maintained by the Revenue Department, for arriving at a fair rent, to be fixed u/s 4 of the Tamil Nadu Buildings [Lease & Rent Control] Act, 1960.

21. The learned Senior Counsel for the Respondents/landlords has contended that in the present case, the Respondents have not merely placed reliance upon the guideline value, but have produced Ex. A-7 Sale Deed which is a bonafide sale between the prudent vendor and a prudent purchaser of the site situated near the demised premises and have also examined PW-4 to prove Ex. A-7. The learned Senior Counsel for the Respondents has further submitted that since the Respondents have produced Ex. A-7 Sale Deed and have also examined PW-4, the Courts below have rightly taken the valuation in Ex. A-7 as the basis to determine the market value and it is not as if the guideline value alone was taken into consideration for calculating the market value of the site.

22. As noted earlier, in Ex. A-7 Sale Deed, consideration is stated in accordance with the guideline value. If the parties have not adopted the guideline value, the document would have been certainly impounded for undervaluation, which the

purchaser might not have desired. As stated earlier, the property purchased under Ex. A-7 is a small strip 8 3/4'' x 11 1/4'' = 98.43 sq. ft. That small strip of site cannot be made basis for determination of the value of large extent of site.

23. In a case dealing with the Land Acquisition Act, in AIR 1993 SC 1557, the Supreme Court has held ''that it is well settled that the prices fetched under Sale Deeds of small bits of land ought not ordinarily be made the basis for determination of the value of large extents of land''. When the land relates to a small bit of land, it does not reflect the true market value. It is often seen that sale for a smaller plot of site fetches more consideration than larger or bigger piece of land. Ex. A-7 Sale Deed which for a small bit of land cannot be relied on for fixing the value of the larger extent of site which is nearly 3864 sq. ft.

24. By careful analysis, it is seen that the site purchased under Ex. A-7 is situated in Vinod Bazar. There is nothing on record to show that the demised premises has some or similar advantageous features. On the other hand, by perusal of Ex. A-5 Plan, it is seen that the demised premises is not exactly in MG Road, but about 100 to 200 feet interior and connecting to MG road by a small lane. When the demised premises is situated interior, it cannot be stated that the demised premises has some or similar advantages as that of the small site purchased under Ex. A-7, which is situated in a Bazar. While so, the Courts below erred in taking Ex. P-7 as the basis for calculating the market value and fixing the value of the site at Rs. 724 per sq. ft.

25. As noted earlier, the Respondents themselves purchased the site in 1991, per sq. ft. at Rs. 91.50. Admittedly, in November 1995, the Respondents/landlords issued Ex. R-3 - Notice demanding a rent of Rs. 16,800/-. The Courts below committed serious error in overlooking these aspects. Taking into consideration the location of the demised premises and that it is connected to MG Road through a narrow lane, Rs. 724 per sq. ft., which is mainly based on the guideline value, cannot form basis for calculation of the market value. In consideration of the location of the site and the value for which the Respondents have purchased the property in 1991, it would be appropriate to fix the value of the site at Rs. 300 per sq. ft. and the total value of the site is thus fixed at Rs. 11,59,200/- [Rs. 300 x 3684''].

26. Fair rent is fixed at Rs. 17,125/- as under:

Value of the site Per sq.ft value = Rs. 300 Rs.300 x 3864'' = Rs. 11,59,200 Total constructed area = 7728 Sq. ft. Plinth Area occupied by the Tenant Bank = 4,429 Sq. ft. Amount in Rs. Market value of the site apportioned to the Petitioner/ Tenant Bank = 11,59,200 x 4429/7728 = 6,64,350 Value of the Building fixed by the Appellate Authority = 10,48,068 ____________ 17,12,418 ____________ Monthly rent fixed = 17,12,418 x 1/12 x 12/100 = 17,124 rounded to Rs. 17,125 27. Fixation of fair rent of Rs. 17,125/- is also in accordance with the approximate claim of rent by the Respondents/landlords in November 1995 under Ex.R-3-Notice. Fair rent of Rs. 17,125/- is payable from the date of Petition i.e. 08.08.1996. The Petitioner/Bank is stated to have vacated the premises on 31.03.2005. The arrears of rent is payable from 08.08.1996 to 31.03.2005, less the amount already paid to the Respondents landlords as rent.

28. The Order of the Rent Control Appellate Authority passed in RCA No. 30/98 dated 28.03.2002 on the file of the Rent Control Appellate Authority [Principal Sub Court] Villupuram is modified and this Revision Petition is partly allowed. Fair rent is fixed at Rs. 17,125/- and the Petitioner/Bank is directed to pay the same from the date of Petition till the date of vacating i.e. from 08.08.1996 to 31.03.2005 [less the amount if any paid already]. No costs. Consequently, C.M.P. No. 9919/2003 is also closed.