

(1997) 04 MAD CK 0001
In the Madras High Court
Case No : C.M.A. No. 1472 of 1994

C.V. Kannappan and six others

APPELLANT

Vs

S.L. Srikandhan

RESPONDENT

Date of Decision : 25-04-1997

Acts Referred:

Evidence Act, 1872 — Section 64, 65

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 4, 4(1)

Citation : (1997) 04 MAD CK 0001

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : V.T. Gopalan, for Mr. P. Mani, for the Appellant; G. Subramaniam, for Mr. K. Muthukumaraswami, for the Respondent

Judgement

S.S. Subramani, J.—This Civil Miscellaneous Appeal is filed by plaintiffs 1 to 3 and legal heirs of 4th plaintiff in O.S. 1076 of 1980, on the

file of III Additional Sub Judge, Coimbatore. The suit filed by them was one for recovery of possession from the respondent. Respondent claimed

the benefit of Tamil Nadu City Tenants Protection Act and the same was allowed. Thereafter the area necessary for convenient enjoyment of the

respondent was directed to be determined, and thereafter the market value was also decided by the impugned order. Plaintiffs are aggrieved by the

determination of the market value.

2. For the purpose of determining the market value, a Commissioner was deputed, who filed a Report. Before him, Exs.A-1 to A-13 were

marked, and Exs.B-1 to B-3 were also produced by Appellants. Exs B-2 and B-3 were discarded by the Commissioner on the ground that it was

after the date of the order, which declared the entitlement of the respondent to

purchase the property. Thereafter, taking into consideration Exs.A-1 to A-8, the market value was fixed at Rs. 28,363/- per cent. The area which the respondent was allowed to purchase was 5444 sq.ft. and the total market value payable by the respondent was assessed at Rs. 3,55,456/-. The Report was filed in Court for which the appellants filed serious objections. According to the appellants, the schedule properly is in a commercial locality, and the Commissioner has taken into consideration the market value for residential area. Further, the development that has taken place in the locality where the property is situated, was also not taken into consideration. It also found fault with the Commissioner in not taking into account Exs.-2 and B-3. According to the learned senior counsel for the appellants, even though Exs.B-2 and B-3 were executed after the relevant date, those documents came into existence on the basis of prior agreement for sale wherein the market value was fixed by agreement. It was further submitted by learned counsel that the Court is concerned only with the average market value for a period of three years prior to the date of the order. Learned Counsel submitted that it is not the date of the document that is relevant for consideration. According to him, even if the document comes into existence later, if the parties have already agreed on a particular price prior to the relevant date, that is relevant document to be taken note of. It was further contended that the lower court also mechanically accepted the recommendation of the Commissioner in rejecting Ex.B-2 and B-3, and also in accepting the valuation.

3. Learned Senior Counsel for the respondent submitted that no other evidence has been let in either by the plaintiffs or by any person on their behalf, and if at all any evidence has been let in, it is only by them. Learned senior counsel wanted to take into account Ex.A-5 where the percentage value is only Rs. 27,053/-. Learned counsel submitted that P.W.1 had been examined to prove Ex A-5. Even if we ignore all other documents, Ex A-5 will have to be accepted in fixing the value. The lower Court has awarded a little more amount. It was further contended that even though various sale deeds have been produced before the Commissioner, except the documents that were proved through the evidence of P.W.2, the other documents have not been proved, in accordance with law and, therefore, they should not have been taken into consideration.

4. After hearing learned senior counsel on both sides, I feel that the entire matter has to go back to the trial Court for fresh consideration.

5. I give below the reasons for my conclusion.

6. The relevant date for fixing the market value is 12-11-1987 which declared the entitlement of the respondent to purchase the property. As per

the provisions of the City Tenants Protection Act, the average price for a period of three years prior to 12-11-1987 has to be taken into

consideration. Exs. B-2 and B-3 are dated 30-11-1987 and 16-03-1988 respectively. Even though they are after the relevant date, it is seen from

those documents that there was a written agreement for sale entered into between the parties, and it is pursuant to the same, the documents were

executed. So, the market value of the property was fixed on the basis of the agreement under which the documents came into existence after the

relevant date. As contended by learned senior counsel for the appellants, the Statute does not say that the market value can be fixed only on the

basis of registered documents which came into existence within three years prior to the relevant date. The Act only contemplates the market value

of the property three years prior to that date. It may also be noted that whenever a sale deed is executed, that is on the basis of a prior contract of

sale between the parties, and it is the concluded contract that is put down into writing. The sale deed by itself is not a contract. The agreement is

anterior to the execution of the sale deed. When the parties arrive at a consideration, it could be presumed that parties might have bargained taking

into consideration the relevant market value on that date. It is only for the purpose of validating the agreement already entered into, a registered

document comes into existence. If so, it was not proper on the part of the Commissioner to ignore Exs.B-2 and B-3, nor was the Lower Court

correct in adopting such a procedure, and in accepting the same. This finding itself will be sufficient to set aside the impugned Order. But I find

some more reasons also for setting aside the same.

7. While fixing the market value of the property the following principles will have to be taken into consideration, as was decided by the Supreme

Court in the decision reported in K. Posayya and Others Vs. Special Tahsildar, . In paragraph 6 of the judgment it has been held thus:

...Market value cannot be fixed with mathematical precision but must be based

on sound discretion exercised by the reference Court in arriving at a just and reasonable price. It should not be based on feats of imagination or flight of fancy. Determination of compensation for compulsory acquisition involves consideration of the price which a hypothetical willing purchaser can be expected to pay for the lands in the existing use as well as relatable potentialities. The acid test is the arm chair of the willing vendor would offer and a prudent willing buyer, taking all relevant prevailing conditions of the normal market, fertility of the land, location, suitability of the purpose for which it was purchased, its existing potentialities and likely use to which the land is capable of being put in the same condition would, offer to pay the price, as on the date of the notification. In case of acquisition of large tracts of lands for projects situated in several villages, stray sale deed of small extent here and there would not form the basis to determine the compensation. The reference Court should be circumspect, pragmatic and careful in analysing the evidence and arriving at just and fair market value of the lands under acquisition which could be fetched on the date of the notification. The nature of the land, the crops raised and the nature of the income likely to be derived from the lands, the expenditure to be incurred for raising the crops and the net profits, etc. would be the relevant factors in arriving at the net market value and if evidence is produced in that behalf on its basis applying the suitable 10 years" multiplier, the market value need to be determined. The owner or claimant should not be put to loss by undervaluation. But, at the same time public exchequer should not be put to undue burden by excess valuation. It is the statutory "duty of the Court to maintain the balance between diverse interests.

(Emphasis supplied)

8. Learned senior counsel for the appellants also brought to my notice the Town Map to show the location of the schedule property. On going through the same, I feel that the property is situated in a very important locality, and it is in a commercial area. The property is situated in a corner of a junction where three roads meet. Most of the documents that are filed in this case on the side of the respondent though relate to properties which are nearer to the schedule property, those properties are situated in residential locality and not in commercial area. So, the value fixed for

residential locality cannot really reflect the market value of a property situated in a commercial area. Ex A-5 for which importance was given by

learned senior counsel for the respondent is also only in respect of a property situated in a residential area. At the same time, properties covered

under, Exs B-2 and B-3, though a little away from the schedule property, are in a commercial area having similar advantages. The same were

ignored by the lower Court, as recommended by the Commissioner.

9. The Commissioner as well as the lower Court has accepted the statements in the sale deeds as gospel truth. Now, the stamp duty and

registration fees are also on the higher side. When the purchaser has to bear the expenses for taking the sale deed, they show lesser consideration

than the real bargain. So, unless and until real consideration is proved, the documents cannot be taken as representing the real consideration. The

parties may be bound by the statement in the document. But a stranger like the appellants herein can prove that the documents do not reflect the

real consideration. For proving the contents of a document, a recent decision of the Supreme Court reported in *The Manipur Tea Co. Pvt. Ltd.*

Vs. Collector of Hailakandi, will have to be considered. Their Lordships said that mere production of a document will not amount to proof of

contents thereof, unless the correctness or truthfulness is also proved by examining some persons connected therewith. In the case that came for

consideration before the Supreme Court, claim for enhanced value was rejected on the ground that the land owner did not prove the contents of

the document, either by examining the purchaser or the vendor. At the same time, the sale statistics relied on by the Land Acquisition Officer was

accepted and also relied on the statements in the documents alone without examining the real persons who were parties to the transaction. The

Supreme Court did not accept that procedure. It was held thus:

On the face of it, we find force in the contention. The sale statistics relied on by the Land Acquisition Officer are not a proof unless persons

connected with the sale deeds and the documents, also made part of the record, are examined. Therefore, the sale statistics cannot ipso facto form

a basis to determine the compensation. As regards the three sale deeds relied on by the appellant, both the High Court as well as the reference

Court came to the conclusion that they relate to the agricultural land while the

acquisition is in respect of lea garden. Therefore, they could not form the basis to determine compensation. Moreover, it was also found that they relate to sale transactions which took place 5 years prior to the date of the notification published u/s 4(1). Neither the vendors nor the vendee were examined as witnesses. Therefore the rejection of those sale deeds is perfectly "in accordance with law. They do not form any base for determination of the compensation

(Emphasis Supplied)

Similar question came for consideration by this Court and the same has been decided in the judgment reported in K. Ramanathan (died) and others

v. B.K. Nalini Jayanthi 1996-2-L.W.658; That was a case relating to fixation of fair rent, and land value was also an issue to be decided. While deciding that case, this Court held thus:

To determine the fair rent u/s 4 of the Tamil Nadu Building. (Lease and Rent Control) Act, evidence in each case is absolutely necessary. It will not

be possible for any Court to have an idea about the relevant factors, viz., location of the site, proximity, nearness to the developed areas, frontage,

situation, etc, etc in any case merely on the basis of sale deeds pertaining to some lands in the locality. Even the particulars contained in a given

case are sufficient to prove the nature and character of the lands, dealt with therein, there must be evidence before the Court to the effect that the

lands are similar in nature and the character of the lands dealt with in such sale deeds, and those documents could be taken into consideration for

fixing the fair rent for any residential or non-residential building. If a party rests content with producing some sale deeds cannot be taken into

account by the Court for determining the market value. Therefore, as held by the Supreme Court in Inder Singh and Others Vs. Union of India

(UOI) and Others, referred to supra, persons connected with the sale transactions or the attesting witnesses should be examined in order to prove

the transactions as well as the factors referred to therein. The burden of proof is always on the landlord to prove in each case the market "value or

the site in which the building is constructed, the cost of construction of the building the cost of provision of any one or more of the amenities

specified in Schedule I as on the date of application for fixation of fair rent. u/s 64 of the Evidence Act, documents must be proved by primary

evidence except in cases mentioned in Section 65 of the Evidence Act.

In view of the above settled position of law, I think it will be proper on my part to set aside the impugned order and remand the matter to the lower

Court to consider the same fresh on the basis of this order. On receipt of the records, the lower Court will give reasonable opportunity to both

parties to adduce evidence. Parties are at liberty to adduce further evidence also apart from the documents which were taken note of by the

Commissioner. I make it clear that for proving the transactions, persons connected with the documents may be examined, (as held in the decision

cited supra) if they are to be taken into consideration for fixing the market value. Exs B-2 and B-3 which have been rejected also could be taken

into consideration if the contents thereof are proved in accordance with law. There will be no order as to costs in this Appeal. Parties are directed

to appear before the lower Court on 16-06-1997.