

(1990) 08 MAD CK 0084
In the Madras High Court
Case No : O.S.A. No. 179 of 1989

E.V. Palanivelu and 5 others

APPELLANT

Vs

M/s. Sri Krishna Talkies and 10 others

RESPONDENT

Date of Decision : 30-08-1990

Acts Referred:

Madras City Tenants Protection Act, 1922 — Section 6

Citation : (1990) 08 MAD CK 0084

Hon'ble Judges : Venkataswami, J;Kanakaraj, J

Bench : Division Bench

Advocate : D. Peter Francis, for the Appellant; R. Gandhi and P. Seshayya, for the Respondent

Judgement

1. The appeal is preferred against the judgment and decree in Application No. 4595 of 1986 dated 18-8-1988 made in C.S. No. 471 of 1966 by the plaintiffs in the suit. The suit C.S. No. 471 of 1966 was instituted by the appellants as the owners/lessors of the vacant land measuring about 13-1/2 grounds against the lessees of the land for recovery of possession of the property together with superstructures, furniture, fittings, equipments, etc., comprised in a cinema theatre known as "Krishna Talkies". By the lease deed dated 12-12-1946, the said lands were leased out to the respondents for a monthly rent of Rs. 575, later increased to Rs. 600 per month. The lease was for a period of 39 years. The lease deed provided that at the end of the lease, the lessees will have the option to purchase the land at the then market value. By a notice dated 1-12-1985, the appellants/plaintiffs had terminated the tenancy in favour of the respondents/defendants ending with 28-2-1986. The defendants in their reply dated 27-1-1986, had suggested that the value of the lands should be fixed at the rate of Rs. 24,000 per ground. In as much as the defendants did not exercise the option to purchase the lands at a proper price, the plaintiffs had to file the suit for the reliefs above said. In Application No. 4595 of 1986, the respondents came forward with an application to direct the appellants to sell the vacant land to the respondents for a price to be fixed by this court, by following the procedure

prescribed under S. 9 of the Madras City Tenants Protection Act, 1922, hereinafter called the 'Act'. By an order dated 10-8-1988, a commissioner was appointed to determine the land required for convenient enjoyment of the theatre. The appeal has been filed on 15-2-1989 on the ground that the learned judge had wrongly assumed that the appellants had consented for the sale of property at the rate of Rs. 5 lakhs per ground. The contention in the appeal seems to be that the offer to sell the lands at Rs. 5 lakhs per ground was without prejudice to the contentions raised in the suit, if the respondents were ready and willing to settle the matter without recourse to S. 9 of the Act. On 27-4-1989 Srinivasan. J. passed another order in the same Application No. 4595 of 1986 appointing the commissioner to fix the value of the land and submit his report by 7-7-1989. All further proceedings in Application No. 4595 of 1986 were stayed by the division bench while entertaining the present appeal. The appeal itself was heard on several dates and ultimately an agreed order was passed on 6-10-1989. In fact, preamble to the order says that after a good deal of arguments, both the learned counsels who are instructed by their respective parties in the court were agreeable to the said order. The sum and substance of the said order is that an income tax valuer be appointed to value the entire extent of 13-? grounds. The amount arrived at by the valuer shall be paid in stated instalments and that thereafter the appellants shall execute a sale deed in favour of the respondents or their nominees conveying the vacant land to the respondents. The report was to be submitted on or before 16-10-1989. There was one other clause in the said order dated 6-10-1989 which said that the valuation so fixed by the valuer shall be final and shall not be questioned, by either of the parties. The respondents/lessees took up the matter by way of a SLP to the Supreme Court of India. The Supreme Court confirmed the order dated 6-10-1989 except to the extent that the order dated 6-10-1989 prevented either party from questioning the quantum of valuation. The Supreme Court also observed that the High Court has power to condone the delay in the filing of the report by the valuer. Giving liberty to the parties to raise their objections in accordance with law regarding the quantum of valuation, the SLP was ordered in the above terms. Before us the question of delay was not raised at all by the counsel for the respondent. Therefore, what remains in the appeal is to find out whether the valuation as arrived at by the valuer having regard to the objections raised by both parties, is in order subject to the delay in filing the report being condoned.

2. It is not disputed that as per the order dated 6-10-1989, the valuation report should have been filed by 16-10-1989. Actually the report was filed only on 29-11-1989. Learned counsel for the appellants said that the delay could be excused in accordance with the observations of the judgments of the Supreme Court. Learned counsel for the respondents did not advert to this aspect at all and we, therefore, take it that the respondents have no objection to the report being received. Even otherwise there is good cause for condoning the delay. We, therefore, excuse the delay of about 43 days in filing the valuation report. Before

examining the correctness of the valuation, we may also observe that the order dated 6-10-1989 did not specifically say whether the valuation should be in accordance with S. 9 of the Act or whether the valuer was expected to fix the market value as on the date of the valuation. This question assumes importance because as per the lease deed, there was an option to the lessees to purchase the land at the then prevailing market value. The lessees also had a claim under S. 9 of the Act. It has not been decided as to whether the right of the lessees/respondents had been upheld on the basis of their rights under the lease deed or under S. 9 of the Act. The lessees claimed a right to purchase the lands under the City Tenants Protection Act. They have also a right under the lease deed itself. It is the case of the plaintiffs/lessors that the lessees did not properly exercise the option to purchase the vacant land under the lease deed itself. Therefore it appears to us that while assessing the market value, we have to keep in mind the principles enunciated in S. 9 of the Act. The order dated 6-10-1989 in the O.S. appeal does not give an indication on this crucial aspect. Apparently neither counsel bestowed their attention to this aspect of the case. Before us also no arguments were advanced on either side on the question of S. 9 of the Act. For the reasons already given we feel, however, that compensation must be determined on the basis of S. 9 of the Act. The valuer, appointed by this court, has fixed the value of the land at the rate of Rs. 5 lakhs per ground and has arrived at the total value of Rs. 67,50,000. For the purpose of arriving at this value, the valuer has adopted three methods of valuation. (1) By the method of comparable sales, the value per ground was arrived at as Rs. 47 lakhs. (2) By adopting the valuation by profit method, the value per ground was arrived at as Rs. 5,35 lakhs- (3) By adopting development method, the rate per ground arrived at was Rs. 14.6 lakhs The valuer himself has ignored the development method and has taken an average of the first two methods and has fixed the value at Rs. 5 lakhs per ground. The valuer also says that the rent capitalisation method could not be adopted because only the vacant land had been leased out.

3. The appellants have filed detailed objections pursuant to the order of the Supreme Court. It is not necessary for us to record here the various written objections. We will, only refer to the arguments advanced before us. Mr. D. Peter Francis, learned counsel appearing for the appellants, says that while considering the document Ex.R7, the valuer has committed a mistake in adopting the land value as Rs. 2,23,343, The sale deed dated 12-5-1989 is in respect of a land measuring 1 ground and 155 sq.ft. with superstructure thereon. The total sale price is given as Rs. 4,50,000. According to the learned counsel for the appellants, the valuer has taken the market value of the building alone at Rs. 4,50,00 Therefore, the entire balance of Rs. 4,05,000 should have been treated as the value of the vacant land 1 ground and 55 sq. ft. On the other hand, learned counsel for the respondents argues that the annexure 1A appended to the sale deed itself shows that the value of the land has been shown as Rs. 2,23,563. There is apparently a mistake in the said annexure 1A because the value of the building is shown as Rs. 4,50,000 whereas the entire sale price is

only Rs. 4,50,000. The valuer has taken the value given in the annexure in respect of the vacant land as Rs. 2,23,563, and has worked out the value per ground as Rs. 2,10,000. The second contention of the learned counsel for the appellants is that the valuer should have taken the average of all the three methods including the development method by which the value per ground was arrived at Rs. 14.6 lakhs per ground. Learned counsel for the appellants also refers to the finding of the valuer that the land is in a very good commercial area and is close to several important commercial centres. It is also found to be in a thickly populated area and within the reach of schools, colleges, hospitals, markets, banks, railway stations and bus stops. In the memorandum of objections, the appellants claimed that the value should be fixed as Rs. 10 lakhs per ground.

4. Mr. R Gandhi, learned senior counsel, appearing for the respondents, has relied on Cl.4 of the order of Srinivasan, J., to which we have already made reference. We are of the opinion that the said clause cannot be relied upon because it is superseded by the order in appeal dt.6-10-1989. Consequently, learned counsel argues that there is no reason why Exs. R6 and R15 should not have been acted upon. According to the learned counsel for the respondents, Ex.R6 relates to a sale deed dated 22-2-1988 in respect of a comparable land. Learned counsel stresses the point that the said sale deed dated 22-2-1988 is in respect of what is called the Bharath Theatre and therefore should be considered as the ideal comparable land. The vacant land in that sale deed was I ground and 871 sq .ft. over which the Bharath Theatre had been built up. In that sale deed 10% of the ownership right had been sold for Rs. 2 lakhs. If the value had been adopted, the rate per ground in respect of the suit land can only be Rs. 1,39,620 per ground. Ex.R5 also works out to the same rate. Ex.R7 works out to a rate of Rs. 2,10,000 per ground. According to the respondents, if the average of these three documents is taken, it works out to Rs. 1,74,810 per ground. According to the respondents, the said rate is the correct market rate for the suit lands. In answer to the said argument of Mr. R. Gandhi, learned counsel for the appellants points out that Exs.R6 and R15 had been considered by the valuer and rejected for valid reasons. It is pointed out that there are recitals in the sale deed itself that on account of certain pressing debts, the vendor had to sell the lands. It is needless to point out that such distress sales cannot be taken note of for the purpose of fixing the market value of comparable lands.

5. Having heard the arguments of both the counsels and having perused the report of the valuer and the objections of both the parties, we are of the opinion that the value of the lands in question can be arrived at only by the method of comparable sales. The valuation by the profit method, adopted by the valuer does not appeal to us. The valuer has taken note of the theatre as such and has purported to arrive at the annual income from the theatre and after giving credit to the expenses the valuer has capitalised the net income on the basis of a 9% return. From this value of Rs. 94,16,111, the valuer has deducted the value of the building arrived at Rs. 22 lakhs. From this, the value per ground is taken as

Rs. 5,35 lakhs. We do not think such a method can be adopted in this case because we are concerned only with the value of the vacant land. It may not, therefore, be proper to consider the existence of a theatre over the vacant land, estimate the income from the theatre and then proceed to arrive at the value of the land. Similarly, the development method proceeds on an entirely speculative process and arrives at a figure viz, Rs. 14.6 lakhs per ground as the value. Even the valuer had ignored this development method on the ground that it is normally adopted only in acquisition under the income tax Act. Therefore, the value arrived at on the basis of development method has to be ignored. The question is whether the valuer was right in taking the average of the value arrived at by the comparable sales method and the value arrived at by the profit method. Here again we are of the opinion that there is no scope for taking the average of two methods. No principle of fixing compensation for lands has been cited before us, which authorises the taking of average between two methods. The market value should be arrived at by any one method which the valuer finds most suitable in respect of the lands in question. For instance, where the comparable sales method is not suitable, the authorities say that the rent capitalisation method should be adopted. In this case, admittedly, the rent capitalisation method could not be adopted because the land rent was fixed years ago and cannot form the basis for capitalisation. Therefore, we are left only with the comparable sales method. The documents that are available for comparison are Exs.A3, R6, R7 and R15. All the other sale deeds, as rightly pointed out by the valuer, had taken place more than 3 years preceding the date of the order. Of the four documents available, Ex.R6 and R7 are distress sales. Therefore, we are left with only Exs.A3 and R7 (sic). Under Ex.A3 dated 4-7-1988 an extent of 1144 sq.ft. with a building had been sold for Rs. 1,79,000. The document itself gives the value of the land as Rs. 1,50,500 and the building as Rs. 29,000. The land is said to be 0.6 K.M. away from the theatre. The value of the land works out to Rs. 3,15,734 per ground. The valuer points out that this land is in an area which is commercially lesser in importance than the area where the theatre is situate. On the other hand, Ex.R-7 dated 12-5-1989 is in respect of an extent of I ground and 155 sq.ft. with a building thereon. As already stated, annexure 1-A appended to the sale deed gives the value of I ground and 150 sq.ft. as Rs. 2,23,563. The value of the building should, naturally, be the balance of total consideration. The total consideration being Rs. 4,50,000, the balance will be Rs. 2,26,437. Unfortunately, there is a mistake in the annexure 1-A relating to the value of the lands. We have already referred to this fact. Inasmuch as the value of the land 1 ground and 150 sq.ft. is clearly given as Rs. 2,23,563, we are of the opinion that the valuer is right in taking the value per ground as Rs. 2,10,000. This land is said to be in the same survey number where the suit Krishna Talkies is also situate. Inasmuch as there is a dispute as to the value of the land in the sale deed (sic) Ex.R7. we think it is safer to ignore this sale deed and proceed on the basis of the only other comparable sale deed namely Ex.A3.

6. Further, though Ex.R7 land is said to be in the same survey number, the

distance between Ex.R-7 land and the suit lands are not known. It is very clear that they are situated in different areas as will be seen from the street names. It is not uncommon in the City to find two lands in the same survey number but situated far away and having totally different market values. As already stated, there is no clear evidence regarding the value of the lands in Ex.R7. We are therefore constrained to rule Ex.R7 also out of consideration.

8. We are therefore left only with Ex.A3 with a value of Rs. 3,15,734 per ground on 4-7-1988. From this we have to arrive at the land value of the suit lands. The valuer has reduced 10% on the ground that Ex.A3 relates to a small plot of 1144 sq.ft. and has added 10% for arriving at the value on 6-10-1989 and has again added 50% for the commercial importance of the suit lands. We do not accept all the above deductions and additions at the rates adopted by valuer. We are not reducing any amount on the ground Ex.A3 land relates to a small plot. This is because, only in valuing large areas on the ground of potential house-sites, the value of small developed plots is not adopted because provision for roads and amenities has to be taken note of. But here, we are concerned with a compact plot of 13,? grounds within the City enjoying all the benefits. People dealing in real estate, will vie with one another to acquire such a compact piece of land in the City. So far as increasing the rate for arriving at the value of the suit lands which is commercially in a superior area enjoying proximity to several important places, we feel that the valuer is right in adopting 50% more than the value of Ex.A3 lands. Therefore, the value of the suit lands as on 4-7-1988 will be Rs. 4,73,601 per ground.

9. We are not however adding anything to arrive at the value as on 6-10-1989 or updating the value. This is because there is an argument advanced on behalf of the respondents that as per S. 9 of the Act only the average of the values for the three years immediately preceding 6-10-1989 should be taken as the price, of the lands. Since there is only one legally acceptable document for all the three years, namely, 1987, 1988 and 1989, we can safely adopt it as the average of the market value for three years preceding the date of order viz., 6-10-1989.

10. Learned counsel also cited the decisions in Metha Ravindrarai Ajitrai (deceased) through his heirs and L R.s. and others v. State of Gujarat 1989-4-S.C.C., 250 and Special Land Acquisition Officer, Davangere Vs. P. Veerabhadarappa and Others, . The ratio of these decisions do not have any application to the facts of our case.

11. Therefore, the price of the lands is fixed at Rs. 4,73,601 or rounding it off, at Rs. 4,73,600 per ground. The total price for 13? grounds works out to Rs. 63,93,600. The last question is the period within which, the respondents should pay the price. Having regard to the delay in fixing the price, the earlier schedule as fixed in the order dated 6-10-1989 cannot be insisted upon. It is stated that a sum of Rs. 8,00,000 has already been deposited as per order of this court in C.M.P. No. 3725 of 1990 dated 13-4-1990. The balance is Rs. 55,93,600. We direct the payment of this amount in two equal instalments, first to be paid on or

before 31-3-1991 and the balance on or before 31-12-1991. The other clauses of the order dated 6-10-1989 made in this appeal will automatically come into play as per the judgment of the Supreme Court in M/s. Sri Krishna Talkies and Ors. v. E.V. Palanivelu and Ors. There will be no order as to costs.