

(2007) 09 MAD CK 0193

In the Madras High Court

Case No : Writ Petition (MD) No's. 4420 to 4423 of 2007 and M.P. No's. 1 of 2007 (All Wps) , etc. Batch

M.K.M. Geeyavudeen

APPELLANT

Vs

The Commissioner, Pudukkottai Municipality, Pudukkottai

RESPONDENT

Date of Decision : 20-09-2007

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 303, 303(1), 303(1)

Citation : (2007) 09 MAD CK 0193

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : R.P. Ramachandran and Mr. D. Rajakittu for M/s. A.L. Gandhimathi in W.P. 4470 to 4482/07, for the Appellant; P. Srinivas, for the Respondent

Final Decision : Allowed

Judgement

V. Ramasubramanian, J.—All these writ petitions have been filed by the lessees of various shops owned by the Pudukkottai Municipality, challenging individual communications issued to the petitioners enhancing the monthly rent for the shops, for the purpose of grant of renewal of the leases for a period of 3 years from 01.04.2007. Heard Mr. R.P. Ramachandran, learned counsel for the petitioners in all these writ petitions and Mr. P. Srinivas, learned Standing counsel for the respondent.

2. The enhancement of monthly rent for the shops in question is challenged by the petitioners on the ground that the enhancement is exorbitant and that the fixation has been made in an arbitrary manner in violation of the Government instructions prescribing an increase of 15% over and above the existing rent. The enhancement is sought to be defended by the Municipality on the ground that the Municipal Council passed a resolution on 29.03.2007, resolving to enhance the rent for all the shops whose leases became due for renewal and that the monthly rent was determined on the basis of the market rate of rent prevailing in the area.

3. A perusal of the impugned notices shows two things namely-

(a) that the existing rent has been enhanced manifold; and

(b) that the enhancement has not been made in an uniform pattern for all the shops.

4. The above two facts can be easily appreciated from the following Tabular Form.

S.No. - 1

W.P.No. - 4420 of 2007

Shop No. - 6

Existing Rent - 328

Revised Rent - 4800

[Items 2 to 69 omitted -]

5. The rationale behind such steep increase made all of a sudden without any uniformity, is not clear. All that the Municipality says is that the revision was made by the Municipal Council based upon the market rate of rent prevailing in the locality in respect of privately owned buildings.

6. But such a fixation does not appear to be a scientific method of fixation of fair rent for the shops in question. The term "Market Rate" is an abstract entity to which one can infuse life only if it is determined on the basis of several factors such as the value of land in the locality, cost of construction, amenities provided in the building, the accessibility by Public Transport Systems, etc. It appears that the Council fixed the fair rent in respect of the shops in question on the basis of oral enquires made in the locality, which in my considered view could never have formed the basis for fixing the fair rent for the Municipal Shops.

7. Way back in the year 1970 the Supreme Court had an occasion to consider the question relating to the method of assessment of annual value of lands and buildings, in *Guntur Municipal Council V. Guntur Town Rate Payers' Association* (AIR 1971 Supreme Court 353 = (1972) 85 L.W. 8 S.N.). Though the said case related to the method of assessment of annual value of buildings for the purpose of determining the property tax payable, the said decision gives a clue as to how the Municipality is obliged to determine the fair rent for the buildings for the purpose of deciding the annual value of the buildings. The Supreme Court held in the said judgment as follows:

Section 82 (2) of the Act makes provision for the fixation of annual value of lands and buildings. The test essentially is what rent the premises can lawfully fetch if let out to hypothetical tenant. The municipality is thus not free to assess any arbitrary annual value and has to look to and is bound by the fair or standard rent which would be payable for a particular premises under the Rent Control Act in force during the year of assessment.

There is no distinction between buildings the fair rent of which has actually been fixed by the Rent Controller and those in respect of which no such rent has been fixed. When the controller has not fixed the fair rent, the municipal authorities will have to arrive at their own figure of fair rent in accordance with the principles laid down in the Rent Control Act.

8. The aforesaid decision in Guntur Municipal Council case was followed in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, and later in *Morvi Municipality Vs. State of Gujarat and others*, In para 7 of the said decision the Supreme Court held as follows:

7. It is not necessary for us to go a detailed discussion of the pros and cons of the question since the question is no longer *res integra*. The decisions of this Court rendered in *Corporation of Calcutta V. Smt Padma Debt*, *Corporation of Calcutta V. Life Insurance Corporation of India*, *Guntur Municipal Council V. Guntur Town Rate Payers" Association* and *Dewan Daulat Rai Kapoor V. New Delhi Municipal Committee* have consistently held that it is not the value of occupation of the property to the tenant, but the rental income from it to the owner which is to be taken into consideration while estimating the reasonable return that a landlord can expect from his property.

9. In *East India Commercial Co. Pvt. Ltd. Vs. Corporation of Calcutta*, the Supreme Court held that when the Municipal Act requires the determination of the annual value, that Act has to be read along with the Rent Restriction Act which provides for the determination of fair rent or standard rent. In para 17 of the said judgment it was held as follows:

17. From the aforesaid decisions, the principle which is deducible is that when the Municipal Act requires the determination of the annual value, that Act has to be read along with the Rent Restriction Act which provides for the determination of fair rent or standard rent. Reading the two Acts together the ratable value cannot be more than the fair or standard rent which can be fixed under the Rent Control Act. The exception to this rule is that whenever any Municipal Act itself provides the mode of determination of the annual letting value like the Central Bank of India case relating to Ahmedabad or contains a non obstante clause as in *Ratnaprabha* case then the determination of the annual letting value has to be according to the terms of the Municipal Act.

10. The aforesaid decisions were considered in *The Commissioner Vs. Griha Yajamanula Samkhya and Others*, Though in para 35 of the said decision, the Supreme Court held that the Hyderabad Municipal Corporation Act is a complete Code for assessment of property tax and that there is no provision in the statute that the fair rent determined under the Rent Control Act in respect of a property is binding on the Commissioner, the Supreme Court nevertheless held in para 37 that "the intent and purpose of the exercise to determine the annual rental value is to avoid arbitrariness in the process of assessment of the tax."

11. In *India Automobiles (1960) Ltd. Vs. Calcutta Municipal Corporation and*

Another, , it was argued that conflicting views had emerged from the case in *The Corporation of Calcutta Vs. Sm. Padma Debi and Others*, up to the case in *Commissioner V. Griha Yajamanula and others*. But the Supreme Court pointed out that the law was settled on the point though distinction was made in some cases with reference to the relevant Municipal law. In para 24 of its judgment the Supreme Court held as follows:

24. We do not find any conflict in the judgments of this Court so far as the determination of annual value of the property under the municipal law is concerned. Distinction, if any, is based upon the relevant provision of the statute of a State with which this Court was dealing, particularly with respect to such statutes which contained a non obstante clause. We are of the view that the basis for determination of annual rent value has to be the standard rent where the Rent Control Act is applicable and in all other cases reasonable determination of such rent by the municipal authorities keeping in view various factors as indicated herein earlier, including the rent which the tenant is getting from his sub-tenant. In appropriate cases the owner of the property may be in a position to satisfy the authorities that the gross annual rent of the building of which the annual valuation was being determined cannot be more than the actual rent received by such owner from his tenant. The municipal authorities shall keep in mind the various pronouncements of this Court, the statutory provisions made in the specified Municipal Acts, keeping in mind the applicability or non-applicability of the Rent Act and the peculiar circumstances of each case, to find out the gross annual rent of the building including service charges, if any, at which such land or building might, at the time of assessment, be reasonably expected to let from year to year in terms of Section 174 of the 1980 Act.

12. Thus it is clear that if the provisions of a particular municipal law are silent about the method of determination of annual rental value, the municipalities are entitled to take recourse to the provisions of the relevant rent control legislation for the purpose of determining the annual rental value. Therefore, the same analogy has necessarily to be imported for the purpose of determining the rent chargeable by municipalities for the buildings let out by them to third parties, especially in the absence of any provision for the method of fixation of rent for the buildings owned by municipalities.

13. The Tamil Nadu District Municipalities Act by itself does not contain a provision either for letting out the buildings owned by municipalities or the method of fixation of the rental value of such buildings. It is only by the executive fiat that the Government had been directing the municipalities to adopt some method of fixation of fair rent. Section 303(1) of the Tamil Nadu District Municipalities Act, 1920 empowers the State Government to make rules to carry out the purposes of the Act. Sub-section (2) of Section 303 lists out the matters in relation to which such rules may be issued by the Government. Clause (d) under Subsection (2) of Section 303 reads as follows:

(2) in particular and without prejudice to the generality of the foregoing power

they may make rules -

(d) as to the conditions on which property may be acquired by the municipal council or on which property vested in or belonging to the municipal council may be transferred by sale, mortgage, lease, exchange or otherwise.

Thus it is left to the rule making power of the Government to provide for the conditions on which the property belonging to the municipal council may be transferred.

14. In exercise of the power so conferred u/s 303 (1) of the Tamil Nadu District Municipalities Act, 1920, the Government appears to have issued statutory rules. These rules are called "The Conduct of Election of Municipal Councilors Rules, 1962". Though the nomenclature given to the rules is misleading, the said rules cover various aspects. Chapter I of the said rules deals with "General Administration"; Chapter II deals with "Budget, Administration Report and Audit"; Chapter III deals with "Establishment"; Chapter IV deals with "Receipts and Expenditure"; Chapter V deals with "Assessment and Collection of Taxes"; Chapter VI deals with "Collection of other Revenues"; Chapter VII deals with "Education - Medical - Vaccination"; Chapter VIII deals with "Public Works"; Chapter IX deals with "Debt Heads" and Chapter X deals with "Accounts, Registers and Returns". These rules are available in Volume I of "Municipal Manual", the copies of which are now rare to find.

15. Interestingly each rule in the aforesaid rules is also termed as Paragraphs. Paragraph 12 of the aforesaid rules deals with "Acquisition and Transfer of Immovable Property by Municipal Councils." Several conditions and restrictions are imposed under paragraphs 12-2 to 12-8 of the aforesaid rules, on the transfer of -

- (i) immovable properties vesting in but not belonging to a municipal council;
- (ii) immovable properties belonging to a municipal council; and
- (iii) properties such as road-sides and street margins.

Paragraph 12-4 deals with Transfer of immovable property belonging to a Municipal Council by way of lease and it reads as follows:

12-4: Transfer by lease of immovable property belonging to a Municipal Council.-

(1) A Municipal Council may lease out any immovable property belonging to it: Provided that no such lease shall be valid in case the period of the lease exceeds three years or where the lessee is permitted to put up any building or structure whether of masonry, bricks, wood, mud or metal, unless the sanction of the Inspector of Municipal Councils and Local Boards has been obtained therefore.

(2) The lease deed shall be in Form III (a) in Schedule III appended to these rules with such variations as circumstances may require.

16. The manner in which transfers and leases of immovable properties belonging

to Municipalities could be granted, is detailed under paragraph 12-7 of the aforesaid rules, which reads as follows:

12-7: Publication of proposed transfers and leases.-

(1) In every case of transfer or lease falling under rule 12-3, 12-4, 12-5 or 12-6, the Municipal Council shall publish a notice of the proposed transfer or lease, giving full particulars of the property to be transferred or leased, the name of the proposed transferee or lessee and the consideration for the transfer or the rent reserved under the lease-

(a) in the District Gazette, if the consideration for the transfer exceeds Rs. 500 or if the rent reserved under the lease exceeds Rs. 100 per annum and

(b) by affixture in a conspicuous position-

(i) at the offices of the Municipal Council, of the Collector of the district and of the Revenue Divisional Officer,

(ii) at the taluk office,

(iii) at the Village chavadi of the village in which the property is situated, and

(iv) on the property to be transferred or leased.

(2) In every case where such transfer or lease is to be by public auction, a notice with full particulars of the property to be transferred or leased shall be published-

(a) in the District Gazette and in one or two prominent Local Newspapers circulated within the jurisdiction of the Municipal Council if the consideration for the transfer exceeds Rs. 500 or if the rent reserved under the lease exceeds Rs. 100 per annum,

(b) in the manner specified in clause (b) of sub-rule (1); and

(c) by tom-tom in suitable places.

(3) The Municipal Council may dispense with the publication in the District Gazette as required by sub-rules (1) and (2) in the cases of leases which are granted during the course of a financial year owing to the failure of the original lessee to fulfill the terms of his lease.

(4) Publication of the notice in the District Gazette as required by sub-rules (1) and (2) shall not be necessary during the continuance of the present war.

17. It appears from paragraph 12-8 that the leases of any immovable property belonging to the Municipalities would be valid only if the lessee is made to pay such assessment, ground-rent or quit-rent as the Collector may determine. It is perhaps in the light of the said paragraph that the Government of Tamil Nadu issued G.O.Ms. No. 147 Municipal Administration and Water Supply Department dated 30.12.2000, prescribing certain guidelines for the renewal of leases and for fixation of rent. Paragraph 4(3) of the said Government Order reads as follows:

18. Curiously the aforesaid Government Order G.O.Ms. No. 147, dated 30.12.2000 does not specify as to whether it was issued in exercise of any of the powers conferred under the aforesaid rules namely "The Conduct of Election of Municipal Councilors Rules, 1962". As stated earlier, the only rule which deals with the determination of assessment, ground-rent or quit-rent for the properties leased out by Municipalities, is in paragraph 12-8 of the aforesaid rules. But the said paragraph 12-8 does not appear to delegate the power to fix ground-rent or quit-rent upon the Government. Therefore, the aforesaid Government Order does not trace its existence to any delegation of powers either under the Statute or under the Rules. But nevertheless the aforesaid Government Order made two things clear namely -

(a) that the Market rental value should be fixed on the basis of certain parameters such as (i) the rent that the municipal shops fetched in an auction conducted in the past one year, (ii) the rent fixed for private shops or for the buildings owned by the Government or Government owned institutions; and

(b) that the enhancement of rent should be atleast by 15% of the existing rent.

19. In modification of the aforesaid Government Order, the Government issued another order in G.O.Ms. No. 92 Municipal Administration and Water Supply Department dated 03.07.2007. Under para 4(ii) of the said Government Order, the Government directed that the municipal shops could be leased out for a period of 3 years at a time and that the lease could be renewed automatically on the expiry of 3 years. The renewals could continue for a total period of 9 years and the rent could be enhanced by 15% once in 3 years. Para 4(iii) of the said Government Order directed that the rent should be re-determined after 9 years and that such re-determination shall be on the basis of the market rate of rent.

20. But the said Government Order is also silent on the question as to how the market rate of rent is to be determined. Therefore, the method of determination of rent as fixed under para 4(3) of the previous Government Order G.O.Ms. No. 147, dated 30.12.2000 does not appear to have undergone any change, under the recent Government Order G.O.Ms. No. 92, dated 03.07.2007. In any case the respondent is obliged to follow the recent order G.O.Ms. No. 92, dated 03.07.2007, only in respect of leases which are in force as on the date of issue of the G.O. namely, 03.07.2007, by virtue of the direction issued in the last line of para 4(ii). In the present case, the Municipal Council of the respondent passed a resolution on 29.03.2007 fixing the rent payable for all the shops, for the purpose of considering the question of renewal of the leases with effect from 01.04.2007. Therefore, the order applicable to the case on hand is only G.O.Ms. No. 147, dated 30.12.2000. But unfortunately both the Government Orders do not prescribe a scientific method of fixation of fair rent.

21. Interestingly, the previous Government Order G.O.Ms. No. 147, dated 30.12.2000 prescribed an enhancement of rent by a minimum of 15% over and above the existing rent. In other words, the Government Order gave a leverage

to the Municipal Councils to fix a rent which is not less than 15% over and above the existing rent. But the present Government Order G.O.Ms. No. 92, dated 03.07.2007 has fixed 15% enhancement uniformly without any leverage for the Municipal Council. It is not known as to how far the present Government Order would be valid, if tested on the touchstone of the Tamil Nadu District Municipalities Act and the rules issued thereunder.

22. However, I am not for a moment, concerned with the question of validity of G.O.Ms. No. 92, dated 03.07.2007 in this case. The aforesaid Government Orders were referred to, just for the purpose of testing whether they throw any light upon the method of fixation of rent. But they do not, except to some extent, in para 4(3) of G.O.Ms. No. 147, dated 30.12.2000. But the method of fixation of rent provided in para 4(3) of the said G.O. is also not scientific.

23. Therefore, one has to necessarily seek an extraneous aid for the purpose of finding out as to how the rent for a building offered on lease by the Municipality is to be fixed. As seen from the decision of the Supreme Court in Guntur Municipal Council case, the method of fixation of fair rent as prescribed under the Rent Control Act was imported into the District Municipalities Act for the purpose of enabling the Municipality to determine the annual value of the buildings. Therefore, by the same analogy, the fair rent for the buildings offered on lease by Municipalities, has also to be determined on the same basis. In the absence of a specific provision in the Tamil Nadu District Municipalities Act, 1920 the recourse to the method of fixation of fair rent as provided under the Tamil Nadu Buildings (Lease and Rent Control) Act, alone, in my considered view, could provide a scientific and logical basis for the fixation of fair rent.

24. Recourse to the provisions of the Rent Control Act for the purpose of determining the fair rent that could be charged by municipalities for their buildings would not only avoid arbitrariness but also ensure uniformity in the matter of charging rent. The Tabular Form extracted in para 5 above shows that in one case the enhancement of rent by the respondent is by 5 times (Serial No. 36 Shop No. 1). On the other extreme the enhancement in respect of Shop No. 31 (Serial No. 52) is by 177 times. Such enhancement, in individual cases may even be justified but such justification will go on record only if the method of fixation is scientific and uniform. In view of the above, all the Writ Petitions are allowed, the impugned notices are set aside and the respondent Municipality is directed

(a) To determine the fair rent for each of the shops taken on lease by the petitioners, separately by adopting the same principles as laid down under the Tamil Nadu Buildings (Lease and Rent Control) Act, for fixation of fair rent.

(b) After determining the fair rent on a provisional basis, by adopting the above method, the respondent shall serve notices on the writ petitioners, enclosing copies of the working sheets containing details of the calculations so made and call upon the lessees to furnish their objections in writing.

(c) After the lessees submit their objections, to the notices so issued by the respondent, the respondent shall pass final orders fixing the fair rent. It is made clear that such fixation of fair rent, shall be with effect from 01.04.2007, since the exercise for enhancement of rent was undertaken by the Municipality with effect from 01.04.2007.

(d) It is also made clear that the lessees should furnish whatever documents they rely upon, for the purpose of arriving at the fair rent for the building, along with their objections, so that the exercise of determining the fair rent can be completed by the Municipality at the earliest. No costs. Consequently, connected miscellaneous petitions are closed.