

(1981) 12 MAD CK 0009

In the Madras High Court

Case No : Civil Revision Petition No's. 676 of 1980 and 256 and 615 of 1981

N. Sambandam and Others

APPELLANT

Vs

Accommodation Controller and Others

RESPONDENT

Date of Decision : 01-12-1981

Acts Referred:

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

Citation : (1982) ILR (Mad) 311

Hon'ble Judges : Singaravelu, J

Bench : Single Bench

Advocate : M. Srinivasan and V. Natarajan, for the Appellant; King and Partridge, for the Respondent

Final Decision : Allowed

Judgement

Singaravelu, J.—One Samabandam the landlord filed a petition House Rent Case No. 181 of 1976 for fixation of fair rent u/s 4 of Tamil

Nadu Act XVIII of 1960 in respect of a nonresidential building situated at Sterling Road, Madras. This building is situated in a spacious compound

of 18 grounds and the plinth area of the building is about 5,300 sq.ft. and odd. The Accommodation Controller, Madras took up the building on

lease and tentatively fixed a rent of Rs. 3,012 per mensem subject to fixation of fair rent by the Rent Controller. The Accommodation Controller

then allotted the building to its nominee the Tamil Nadu Goods Transport Corporation Madras for the purpose of running a lorry transport office

and for receiving and clearance of goods. The landlord claimed that the fair rent will work out to Rs. 7,400 per mensem and that the same should

be fixed for this building. The Accommodation Controller contended that the fair rent claimed is excessive and that the present rate of rent viz- Rs.

3,012 is a fair and reasonable rent for the building. He has also submitted a valuation report. The allotted namely The Tamil Nadu Goods

Transport Corporation Ltd. remained ex parte. The premises is admittedly used for nonresidential purposes and after working out the schedule, the

Rent Controller fixed the fair rent at Rs. 5 302 per mensem from the date of the petition. Both the landlord and the tenant preferred appeals against

this order. The landlord filed an appeal House Rent Appeal No. 104 of 1979, whereas the tenant's appeal was House Rent Appeal No. 267 of

1979. Unfortunately, these two appeals against the same order were posted before two different Judges of Small Causes Court, Madras. The

appeal preferred by the tenant, namely House Rent Appeal No. 267 of 1979 was disposed of by the III Judge of the Court of Small Causes on

11th December, 1979 under which he modified the order and reduced the fair rent from 5,302 to Rs. 411. Much later, the other appeal by the

landlord House Rent Appeal No. 104 of 1979 was heard by a different Judge viz., II Judge of the Court of Small Causes and was disposed by

him on 14th August, 1980, confirming the fixation of fair rent at Rs. 5,302 as fixed by the Rent Controller. However, the operative portion of the

judgment in this appeal, House Rent Appeal No. 104 of 1979, preferred by the landlord reads that the appeal was allowed in part and that the

fixation of fair rent will have respective effect from the date of the tenancy itself instead of from the date of the petition.

2. Now, the landlord has filed two revision petitions, namely Civil Revision Petitioner No. 676 of 1980 and Civil Revision Petition No. 615 of

1981; the first against the order of reduction of rent from Rs. 5,302 to Rs. 3,411 and the second petition for enhancement of the rent, which was

rejected in House Rent Appeal No. 104 of 1979. The second Respondent in the main petition, House Rent Case No. 181 of 1976, namely, the

allotted under the Accommodation Controller has filed Civil Revision Petition No. 256 of 1981 against the order in House Rent Appeal No. 104

of 1979 confirming the rent fixed by the Rent Controller at Rs. 5,302. All these petitions were heard together and common arguments were

advanced by learned Counsel.

3. I shall first take up and dispose of the preliminary objection with regard to the maintainability of Civil Revision Petition No. 256 of 1981, filed by

the allotted, namely, The Tamil Nadu Goods Transport Corporation Limited. A preliminary objection was taken on behalf of the landlord that the revision petition by the allotted under the Accommodation Controller is not maintainable as there is no privity of contract between it and the landlord. The Petitioner in this petition is only a nominee of the tenant, viz., Accommodation Controller and therefore, it is contended that it cannot file this petition, especially when it originally remained ex parte before the Rent Controller and also before the Appellate Authority. This argument no doubt appears to be plausible, but then, it must be remembered that the allotted is also an aggrieved party which has to bear the rent fixed by the Court. Therefore in the interest of justice and in fairness, the party who is already on record can agitate the matter even if the tenant viz., Accommodation Controller has kept quiet.

4. Learned Counsel for the landlord submitted before me that the Accommodation Controller himself has addressed the Government of Tamil Nadu accepting the fixation of Rs. 5,302 per mensem as rent for the building and that the Government also has passed a G.O. and addressed the Collector of Madras that the rent at Rs. 5,302 for the building is fair and that it may be implemented. Learned Counsel for the landlord produced a copy of the order before this Court for perusal. This shows that the tenant himself is not aggrieved with the fixation of fair rent but only the allotted.

5. Now, we have before us two conflicting orders of the Appellate Authorities, one fixing the fair rent at Rs. 3,411 per mensem (House Rent Appeal No. 267 of 1979) and the other at Rs. 5,302 per mensem (House Rent Appeal No. 104 of 1979) in respect of the same premises. I have

perused the orders of the Appellate Authorities and that of the Rent Controller. P.W. 1 is a retired Assistant Engineer of the Public Works

Department who valued the building and prepared a plan. Exhibits P-1 and P-2 are the report and plan respectively for the building in question. As

already pointed out, the building in question is situated in a very prominent locality, namely Sterling Road, Madras in a compound of 18 grounds

with a plinth area of 5,384 sq.ft. There is plenty of vacant space around the building suited for goods transport and for loading and unloading of

lorries. The Accommodation Controller examined P.W. 1 who is an Assistant Engineer in service in the Public Works Department and he has

produced the rental valuation, exhibit R-I. The Rent Controller accepted the measurements given in exhibit R-I. According to exhibit R-I, the site value is Rs. 18,000 per ground, whereas P.W. 1 has valued at Rs. 36,000. The Assistant Commissioner (ULT) has valued the land at Rs. 20,000 per ground in the year 1975. The Rent Controller as well as the Appellate Authority in House Rent Appeal No. 104 of 1979 considered this aspect of the matter and has accepted the value under exhibit R-I. The value of half the vacant site was also taken into consideration. Twenty (20) percent of the actual cost of amenities was allowed. The landlord has conveniently avoided the witness box and he has not even produced any document to show as to when the building was constructed. In other words, the age of the building was not proved satisfactorily. In this state of evidence the Appellate Authority in House Rent Appeal No. 104 of 1979 and the Rent Controller rightly accepted the site value at Rs. 24,000 and worked out the schedule. The provision for amenities at 20 percent is also very reasonable as against the maximum of 25 percent. These are Findings based on evidence with which the revisional Court cannot lightly interfere.

6. Learned Counsel for the landlord argued that the value of the site must be fixed at Rs. 30,000 per ground and that the cost of amenities should be worked out at 25 per cent instead of 20 per cent. I do not see any basis for any such enhancement, and the basis arrived at by the Court below is reasonable and supported by evidence.

7. Learned Counsel for the landlord further Contended that in any event the two conflicting orders with reference to fixation of fair rent must be set right by this Court. In other were, it is contended that the order of the Appellate Authority in House Rent Appeal No. 257 of 1979 reducing the fair rent from Rs. 5,302 Rs. 3,411 must be corrected. The Appellate Authority in House Rent Appeal No. 267 of 1979, according to the landlord, has not considered the matter in proper perspective. Having read the evidence and the orders of the Courts below, I am inclined to accept the argument of the learned Counsel when he says that the fair rent must be fixed at Rs. 5,302 per mensem as done by the Rent Controller and accepted by the appellate Authority in House Rent Appeal No. 104 of 1979. While coming to this conclusion I have also taken into consideration,

the admitted fact that the Government has also accepted Rs. 5,302 as fair rent and addressed the revenue officials to implement it.

8. The result of my discussion is this Civil Revision Petition No. 676 of 1980 is allowed in that the fair rent is fixed at Rs. 5,302 per month. The

other petition preferred by the Landlord, viz., Civil Revision Petition No. 615 of 1981 for enhancement of rent is dismissed. Consequently, the

petition by the allotted viz., Civil Revision Petition No. 256 of 1981 is dismissed. However, there is an error of law and procedure committed by

the Appellate Authority in House Rent Appeal No. 104 of 1979. The Appellate Authority therein, while confirming the fixation of fair rent at Rs.

5,302 has directed that the same will take effect from the date of the commencement of the tenancy. This is unreasonable and unfair and cannot be

sustained. Ordinarily, the fair rent can take effect only from the date of the petition and never from the date of the commencement of tenancy. In

this view of the matter the order of the Appellate Authority in House Rent Appeal No. 104 of 1979 fixing the starting point of the fair rent from the

date of the commencement to tenancy is set aside and it is ordered that fixation of fair rent will take effect only from the date of the petition and not

earlier as rightly ordered by the Rent Controller. I direct each party to bear his its own costs in these three civil revision petitions.