

(2004) 04 MAD CK 0132

In the Madras High Court

Case No : C.R.P. (NPD) No's. 164, 165 and 799 of 2002

Namath Watch Co.

APPELLANT

Vs

G. Vijayakumar and G. Ashok Kumar
G. Vijayakumar
and G. Ashok Kumar Vs Namath Watch Co.

RESPONDENT

Date of Decision : 17-04-2004

Acts Referred:

Citation : (2004) 4 LW 712 : (2004) 3 MLJ 1

Hon'ble Judges : M. Thanikachalam, J

Bench : Single Bench

Advocate : T.V. Ramanujam for T.V. Krishnamachari and G. Sethuraman, for the Appellant;

Judgement

M. Thanikachalam, J.—The landlords, not satisfied by the fixation of fair rent by the courts below, has filed this revision petition.

The tenant, who failed in his attempt, to question the fair rent fixed by the Rent Controller, successfully in R.C.A. No. 422/95 and also failed to resist the R.C.A.1157/96 filed by the landlords, is the revision petitioner in both the cases.

This order shall dispose of the above three C.R. Ps. For the sake of convenience, the petitioner(s) and respondent(s) concerned in the above C.R. Ps. are described as landlords and tenant.

2. The landlords are the owner of a building bearing Door No. 37/38, situated in Irusappa Maistry Street, Rattan Bazaar Road, Madras, which measures an area of 1091 sq.ft. The tenant is in occupation of the said premises, agreeing to pay a monthly rent of Rs.350/-. The landlords, considering the location of the building and the advantages enjoyed by the building commercially, felt that the rent at present being paid by the tenant, is very much low and the same is not in conformity with the fair rent payable under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, hereinafter called "the Act". In this view, calculating the total cost of the building at Rs.4,19,053/-, the landlords have

claimed fixation of fair rent at the rate of Rs.4200/- per month.

3. The tenant, accepting the tenancy, opposed the application contending, that the value adopted by the landlords and the total cost arrived for the building, are wrong. It is the further contention of the tenant, that the building will not fetch the monthly rent Rs.4200/-, as claimed by the landlords and in this view, the tenant prayed for the dismissal of the application.

4. The Rent Controller, on the basis of the materials placed before him, had calculated the total cost of the building at Rs.4,11,764/-. Since the building is used for non-residential purpose, he had fixed the rent at 12% of the annual gross return, which worked out at Rs.4118/-. Thus, fixing the fair rent as above, the petition was allowed on 1.9.1993.

5. The tenant aggrieved by the fixation of the fair rent at Rs.4118/-, questioned the same before the appellate authority in R.C.A. No. 422/95 praying reduction, since according to him, the site value and other values were not properly calculated or fixed.

6. The landlords not satisfied with the fixation of fair rent, preferred R.C.A. No. 1157/96, claiming enhancement of fair rent, by filing some additional evidence. The appellate authority, after considering both the appeals together and allowing the document to be marked as Ex.P.4, felt that the land value i.e. site value is not properly fixed by the Rent Controller. On the basis of Ex.P.4, the appellate authority fixed the ground value at Rs.42 lakhs, thereby fixing the site value, for the demised premises at Rs.19,09,250/-. As far as the depreciated value of the building is concerned, the appellate authority adopted the same value, as fixed by the Rent Controller at Rs.48,098/-. The appellate authority, calculating the total cost of the building at Rs.19,57,347/-, had worked out the fair rent at Rs.19,543/-. In this view, the R.C.A. filed by the landlords had been allowed, dismissing the other R.C.A. filed by the tenant.

7. Neither the tenant nor the landlords have satisfied themselves about the fixation of fair rent and the result is the revision petitions.

8. Heard the learned counsel appearing for the landlords, Mr. G. Sethuraman and the learned senior counsel appearing for the tenant, Mr. T.V. Ramanujam.

9. The only point raised, in these revisions, is the market value of the site adopted by the courts below. The Rent Controller had fixed the depreciated value of the building at Rs.48,098/-, which was adopted and accepted by the appellate authority. This value is not challenged by either side. The Rent Controller fixed the ground value for the demised premises at Rs.8,00,000/-, which was enhanced by the appellate authority to Rs.42,00,000/-. The acceptance of the market value of the site at Rs.8,00,000/-, as well as the enhancement of the market value for the site to Rs.42,00,000/-, are questioned by the tenant, as highly exorbitant, not based on materials.

10. On the other hand, the learned counsel for the landlords submits, that the

market value adopted by both the courts below is too low, since the actual market value per ground in this area is at the rate of Rs.93,00,000/-. In this view, the learned counsel for the landlords prays further fixation of fair rent, enhancing the rent already fixed. But, the learned counsel for the tenant submits, that the value adopted by the appellate authority should be reduced.

11. The landlords in their petition had valued the site at Rs.6,00,000/- per ground and on that basis, the cost of the site is worked out to Rs.2,72,850/- (actually Rs.2,72,750/-). Therefore, ordinarily the petitioners are not entitled to claim more than that value. But, the learned counsel for the landlords placing reliance in *Dovo Tax Company, M/s. v. T.R. Ramanath* 1999 L.W. 269 submits, that the fair rent is to be fixed, for the building in question, in accordance with the provisions of the Act, though the landlords had claimed some amount in the petition. S.A. Khader, J. (as His Lordship then was) in this case has ruled that,

"The fair rent is fixed for the building in question in accordance with the provisions of the Act. It is not fair rent for the landlord or for the tenant, but for the building and as such the Rent Controller is free to fix the fair rent as per law untrammelled by the contentions of the parties."

12. The Court is bound to take into account the value adopted by the parties and spoken, since they are bound to supply the materials, for the fixation of total cost. In this view, if the landlords had claimed the market value of the site at Rs.6,00,000/- per ground, then there is no possibility, to increase the same, ordinarily. In the case involved in the above decision, the landlord had claimed the fair rent at Rs.1250/-, whereas the Rent Controller had fixed the fair rent at Rs.1510/- i.e. above the amount claimed by the landlord. But, it is on the basis of the materials produced by the parties. When the fair rent is worked out, it exceeded the amount claimed in the petition and therefore, it is held irrespective of the fair rent claimed in the petition, on the basis of the materials, fair rent has to be fixed for the building, which should depend upon the value given by the parties. Here the landlords have claimed only six lakhs per ground, and that should represent, generally the market value of the site. Thus, calculating the market value, if the fair rent comes to more than Rs.4200/-, which is claimed in the petition, then the Rent Controller can fix the market value over and above, but that does not mean, that the Rent Controller, should ignore the value adopted by the landlords. However, if the evidence are available indisputably, on that basis also, fair rent has to be fixed.

13. Ignoring the market value adopted for the site by the landlords, the learned counsel for the landlords very much relied upon Exs.P.4 and P.5, to fix the market value, per ground, for the demised premises at Rs.93,35,150/-. The property covered under this document is in N.S.C. Bose Road, George Town, whereas the property, for which the fair rent is sought to be fixed, is situated at Rattan Bazaar Street, an inside road. Both the properties are not identical having same facilities, advantages, etc. Therefore, at no stretch of imagination, the value given under Ex.P.4 or the value adopted by the Engineer in Ex.P.5 could be

adopted for fixing the market value, for the site in question. N.S.C. Bose Road is a main road having all facilities in this Metro. Irusappa Maistry Street, which is at Park Town, is not having the same facilities and no willing purchaser, would pay the same price, for both the properties, situated at NSC Bose Road as well as at Irusappa Maistry Street, Rattan Bazaar Road. In this view, adopting the value given in Exs.P.4 and P.5, fixing the market value for the petition mentioned property, may not be correct legally and in this view, the value sought to be established under Exs.P.4 & P5 should be rejected.

14. The learned counsel for the tenant, relied on Exs.R5 & R6, to prove the value per ground at Rs.13,25,150/-. Under Ex.R5, a sale deed was executed by the Court, in pursuance of a decree, for specific performance, which was filed on the basis of an agreement of sale dated 21.3.1979. The Engineer, assessing the value of the building, giving appreciation for the site at 10% per annum, had worked out the market value of one ground, as on July 1998 at Rs.13,25,150/-. This property situates in the same street, where the demised premises is situated. Therefore, the value adopted in Ex.R5, which was assessed under Ex.R6, has to be accepted, giving some appreciated value, considering the fact, that the agreement was entered into between the parties elsewhere in the year 1979. Thus, considering the facts and circumstances, as well as the location of the property, I fix the market value per ground at Rs.20,00,000/-, which should be reasonable.

15. The appellate authority without any yardstick, abruptly had fixed the market value at Rs.42 lakhs, which also failed to satisfy the landlords, thereby showing his avarice in nature. The landlords have not produced any document, for enhancing the market value at Rs.93,35,150/- in and around the petition mentioned property. Taking into consideration Ex.R5, and giving some percentage, considering the passage of time, as well as the escalation of the price, I feel it will be reasonable to fix the ground value, at Rs.20,00,000/-, though it is fixed at Rs.13,12,150/- in Ex.R.6 by the engineer concerned. On this basis alone, fair rent has to be fixed. As aforementioned, there is no dispute regarding the depreciated value of the building, which was worked out at Rs.48,098/-. Thus, fixing the market value per ground for the demised premises at Rs.20,00,000/- the site value comes to Rs.9,09,166/- ($20,00,000 \times 1091/2400$) and the total cost of the building comes to Rs.9,57,264/-. Since this building is let out for commercial purpose, the annual return has to be fixed at 12%, which works out the monthly rent of Rs.9572/-, which is more than the amount claimed by the landlords in the petition.

For the foregoing reasons, dismissing C.R.P.799/2002 filed by the landlords, allowing the revision petitions (C.R.P.Nos.164 & 165/2002) filed by the tenant to the above said extent, the fair rent for the building is fixed at Rs.9572/- per month, which is payable by the tenant, from the date of filing of the petition. The parties are directed to bear their respective costs.