

(2010) 10 MAD CK 0027

In the Madras High Court

Case No : CRP NPD No's. 3924 of 2008 and 585 of 2009 and M.P. No. 1 of 2008

New Era Engineering Company

APPELLANT

Vs

Ghyaz Hashim
Ghyaz Hashim Vs New Era Engineering
Company and J.S. Desai

RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:

Citation : (2010) 10 MAD CK 0027

Hon'ble Judges : V. Periya Karupiah, J

Bench : Single Bench

Advocate : A.J. Abdul Razak, in CRP. NPD. No. 3924 of 2008 and A. Seshan, in CRP. NPD. No.585/09, for the Appellant; A.J. Abdul Razak in CRP. NPD. No. 585 of 2009 and A. Seshan in CRP. NPD. No. 3924/08, for the Respondent

Judgement

V. Periya Karupiah, J.—C.R.P. NPD. No. 3924 of 2008:

This revision has been filed by the Petitioner/tenant against the order passed in R.C.A. No. 497 of 2003 dated 11.08.2008 by the Rent Controller

Appellate Authority confirming the fair rent fixed by the Rent Controller in R.C.O.P. No. 208 of 2001.

2. C.R.P.NPD. No. 585 of 2009:

This revision has been filed by the Petitioner/landlord against the fair rent fixed by the Rent Control Appellate Authority in R.C.A. No. 516 of

2003 dated 11.08.2008 rejecting the enhanced claim of the Appellant and confirming the order passed by the Rent Control Appellate Authority in

R.C.O.P. No. 208 of 2001.

For convenience sake, the rank of the parties before the Rent Controller is being maintained in these revisions.

3. The brief facts of the case of the Petitioner/landlord would be as follows:

The Respondent was inducted as a tenant at the ground floor and a room at the III floor at premises bearing Municipal Door No. 172, Thambu

Chetty street, also known as Door No. 1/11-D Errabalu Chetty Street, Chennai-600 001, morefully described in the petition for a monthly rent of

Rs. 1,575/-and the tenancy being computed according to English Calendar month. Accordingly, the Respondent/tenant is in occupation of ground

floor which measures about 1057 sq.ft and in third floor about 550 sq.ft for his use and the tenancy was for commercial purposes. The

construction was in brick-work in cement mortar and plastered with the same. The roofing is of R.C.C, the doors and windows conform to the

teakwood joiner. The entrance door in the ground floor is made on Aluminium channel with glass. The age of the building is about 45 years. The

flooring is of ordinary cement. The building comes under Class I.

The basic amenities available in Class-A is borewell, water tank, electricity and drainage connections. There is over head water tank and electric

motor. The property is situated in a commercial area and there are many commercial establishments, shops etc. It is very near to Madras High

Court, various banks, harbour, general post offices, Beach railway station, Law college, Police Station, Registration office, Burma Bazaar, Parrys

corner (bus terminus) hardware market. The amenities and facilities provided in the Petitioner mentioned premises had been located in main area

and the ground value of the said petition mentioned properties would be more than Rs. 70,000,00/-per ground.

The plinth area in the ground floor was 1057 sq.ft and the market value as per PWD rate would be at Rs. 353/-per sq.ft which would come to Rs.

3,73,121/-. The value of III floor for the area of 550 sq.ft at Rs. 335/-per sq.ft would be at Rs. 1,84,250/-and the total value is Rs. 5,57,371/-.

When the basic amenities provided is fixed at the rate of 20% for the said extent is Rs. 1,11,474/-and the total value of the building is Rs.

6,68,845/-. When depreciation at 1% for 45 years at the said value is calculated it comes to Rs. 4,25,509/-. With the vacant site in proportionate

with the ground and III floor is calculated it comes to 490 sq.ft at the value of Rs. 70,00,000/-per ground, it comes to Rs. 14,29,166/-. When cost

of construction and land value have been calculated on that basis it comes to Rs. 18,54,675/-after adding 3% in the schedule I amenities at Rs.

55,640/-it comes to Rs. 19,10,315/-. The fair rent at 12% per annum would be at Rs. 2,29,328/-and consequently the fair rent payable per month

would be at Rs. 19,103/-, since the petition mentioned premises being an non residential one it is not exempted from the provisions of the said Act.

Therefore, the Petitioner prays that the fair rent may be fixed at Rs. 19,103/-for the said premises, bearing Municipal Door No. 172, Thambu

Chetty street, which forms part 1/11-D, Erabalu Chetty street (corner building) Chennai-600 001, morefully described in the schedule, with costs.

4. The contention of the Respondent/tenant would be thus:

Petitioner has already filed R.C.O.P. No. 1575 of 2000 on the file of XV Judge, Small Causes court and the same petition was dismissed as not

pressed and therefore, the present petition is barred by doctrine of res-judicata. However, without prejudice to the said contention the

Respondent/tenant would state that the rent for the ground floor and III floor occupied by the Respondent is at Rs. 1575/-per month. However,

the Respondent/tenant was not in occupation of the entire 1057 sq.ft in the ground floor and 550 sq.ft in the III floor. The petition mentioned

property is situated in commercial area and there are many commercial establishments, shops etc., and it very near to Madras High court, various

banks, harbour, general post office, Beach railway station, Law college, Police station, Registration office, Burma bazaar, Parry's corner (bus

terminus) hardware market etc are denied. The street in which the petition mentioned street is situated is a one way traffic and it is always very

congested and it is very difficult to move freely. The submission of the Petitioner regarding the construction of the building in brick work in cement

mortar and plastered with the same and the roofing is of R.C.C and the doors and windows conform to the teakwood joiner and the entrance door

in the ground floor is made of Aluminium channel with glass are to be proved by the Petitioner. The ground value of the petition mentioned

premises is more than Rs. 70,00,000/-per ground is also not correct and it would not fetch the value of Rs. 25,00,000/-per ground and due to

inflation no buyer is willing to take the land for Rs. 25,00,000/-in the area. The Petitioner did not properly calculate the fair rent and the fair rent

asked for by the Petitioner/landlord at Rs. 19,103/-is highly excessive and therefore, the said petition may be dismissed with exemplary costs.

5. After the examination of witnesses on either side, the learned Rent Controller has come to the conclusion that the ground value of the petition

mentioned premises would be at Rs. 60,00,000/-and on the evidence adduced before him and the extent of the property leased to the Respondent

had calculated and fixed the fair rent at Rs. 11,095/-from the date of filing of the petition and allowed the same.

6. Aggrieved by the said fixation, the Respondent/tenant have preferred an appeal before the Rent Control Appellate Authority in R.C.A. No. 497

of 2003 questioning the fixation of fair rent at Rs. 11,095/-per month. Similarly the Petitioner/landlord has also preferred an appeal against the

fixation of fair rent by the Rent Control Appellate Authority in R.C.A. No. 516 of 2003 that the fair rent fixed is not adequate and for the

enhancement of fair rent as claimed in the petition filed before the Rent Controller. Both the appeals were heard together by the Rent Control

Appellate Authority and the Appellate Authority have confirmed with the finding reached by the Rent Controller and thus dismissed both the

appeals.

7. Aggrieved on the said dismissals by the Rent Control Appellate Authority, the Petitioner/landlord preferred C.R.P.(NPD). No. 585 of 2009

seeking for enhancement of fair rent as claimed by him in the petition and the Respondent/tenant had preferred the revision in C.R.P.NPD. No.

3924 of 2008 questioning the confirmation of the fair rent fixed by the learned Rent Controller. Since both the decisions are arising out of same

judgment, I'am of the view to hear both the revisions combinedly, for disposal.

8. Heard Mr. A. Seshan, learned Counsel for the Petitioner in C.R.P.NPD. No. 585 of 2009 and for the Respondent in C.R.P.NPD. No. 3924

of 2008 and Mr. A.J. Abdul Razak,learned Counsel for the Respondents in C.R.P.NPD. No. 585 of 2009 and for the Petitioners in C.R.P.NPD.

No. 3924 of 2008.

9. Learned Counsel for the Petitioner/landlord would submit in his argument that the property namely Door No. 172, Thambu Chetty street, also

known as 1/11-D Errabalu Chetty street, Chennai-600 001 is located in a prime locality very near to Madras High court and it is a corner building

abutting Thambu Chetty street and therefore, it has got more significant value and in the said area the value of one ground is Rs. 70,00,000/-or

more and the value of the said property is increasing day by day and the Respondents/tenants is occupying 1057 sq.ft and 557 sq.ft in the ground

and III floor respectively and is paying a paltry sum of Rs. 1575/-per month which is not in accordance with law and the fair rent has to be fixed as

per the request made by the Petitioner/landlord in his petition for a sum of Rs. 19,103/-from the date of the filing of the petition. He would further

submit in his argument that the Petitioner has established his case that the fair rent for the property would fetch Rs. 19,103/-by examining the

expert as P.W.2 and the report and plan filed by him as Ex.P.4 and Ex.P.5 would go to show that the fair rent calculated in accordance with the

provisions of the Act would be at Rs. 19,103/-. However, the lower court had fixed at Rs. 11,095/-per month only, which was also not

considered by the Rent Control Appellate Authority for enhancement of fair rent and therefore, the order passed by the Appellate authority should

have been interfered. He would further submit in his argument that the Petitioner had produced Ex.P.6 sale deed in which one ground of property

at Thambu Chetty street was valued at Rs. 45 lakhs as per Ex.P.6 sale deed dated 05.06.1995 and therefore, it would be fetching more than one

crore, if 20% of the appreciation per year is given or applied for 51/2 years. Therefore, the value given by the Petitioner at Rs. 70,00,000/-should

have been taken as market value for calculation. He would further submit in his argument that the engineer examined by him as P.W.2 had drawn a

sketch in Ex.P.5 supported by his report in Ex.P.4 would go to show that the ground floor measured at 1057 sq.ft and III floor building measuring

550 sq.ft and when the evidence of P.W.1 coupled with Ex.P.4 and P.5, the extent of property has been promptly proved and both the courts

below have wrongly come to a conclusion that the Petitioner/landlord did not prove the extent of property as detailed in the petition. He would

further submit in his argument that the evidence of the Respondent and the engineer as R.W.2 on the side of the Respondent/tenant had not

produced any evidence and therefore, the evidence on the side of the Petitioner should have been considered for calculating the value of both

vacant site as well as the constructed areas. If it was promptly exercised, by the lower court the fair rent to be fixed for the said premises would be

as prayed for in the petition and therefore, the revision filed by the Petitioner/landlord may be allowed after setting aside the orders passed by the

learned Rent Control Appellate Authority.

10. Learned Counsel for the Respondent/tenant would submit in his argument that it is a settled law that the Petitioner has to prove the extent of the

property, the value and the amenities provided in the said premises so as to fix the fair rent as claimed by the Petitioner. He would further submit in

his argument that the Petitioner having failed to produce the documents like planning permit, plan as issued by the granting authorities as well as the

document of title relating to the said property, into court so as to prove the extent of the property. He would further submit in his argument that the

Petitioner ought to have proved the existence of the amenities in order to enable the court to come to a conclusion about the cost of those

amenities provided for fixing the fair rent. The Petitioner has to prove the value of the ground as on date but he had produced a sale deed in Ex.P.6

of the year 1995 and in the absence of proof of value on the date of petition it is necessary to fix fair rent on the basis of the document produced

therein and not on the basis of guess work conclusions. He would further submit that the value fixed at Rs. 60,00,000/-per one ground in the said

location without based upon any document would not be sustainable. Both the learned Rent Controller and the learned Rent Control Appellate

Authority have miserably failed to prove the contention of the Respondents/tenants that no valid documents have been produced to prove that the

petition mentioned property could be valued at Rs. 60,00,000/-per one ground or Rs. 70,00,000/-per ground as claimed by the

Petitioner/landlord. He would therefore submit in his argument that the calculation on the basis of the imaginary value fixing the fair rent is not

sustainable and therefore, it has to be set aside and the fair rent be fixed on the oral and documentary evidence adduced on either side and

therefore, the order passed by the learned Rent Controller which was confirmed by the Rent Control Appellate Authority may be set aside and a

lesser fair rent may be fixed.

11. I have given anxious thoughts to the arguments advanced on either side. The Petitioner had let the demised property to the Respondents for a

monthly rent of Rs. 1575/-for commercial purposes. There is no dispute that the petition mentioned premises is located at the ground floor and in

the III floor of the said building. The extent of the ground floor is stated to be at

1057 sq.ft and a room at III floor at 550 sq.ft which was resisted by the Respondents that it is only 1023.47 sq.ft in the ground floor and 446.22 sq.ft in the III floor premises.

12. The learned Rent Controller had considered the evidence adduced on both sides and had come to the conclusion that in a fixation of fair rent

case, it is the duty of the Petitioner/landlord to prove the case. If there is no proof, the admitted case of the Respondent/tenant should have been

considered and accordingly, he has considered and fixed the fair rent. Accordingly, he had scrutinised the evidence regarding the proof of the

allegation that the extent of 1057 sq.ft in the ground floor and 550 sq.ft in the III floor was leased out to the tenant. The learned Rent Controller

had found that the landlord did not produce any document like planning permission for proving the extent of the said property constructed nor any

commissioner has been appointed before the learned Rent Controller to ascertain the correct extent of the suit property in both floors. According

to the evidence of P.W.2, the engineer examined on the side of the Petitioner it was 1057 and 550 sq.ft in both the floors respectively. According

to the evidence of R.W.2 the engineer examined on the side of the Respondent, it was 1023.47 sq.ft and 446.22 sq.ft respectively.

13. In the said circumstances, the learned Rent controller had relied upon the admission given by the Respondent through the evidence of R.W.2

that the extent of the ground floor was at 1023.47 and extent of III floor was at 446.22 sq.ft. There is no dispute regarding the value of the public

works department in respect of super structure on the date of filing of the petition. While calculating the depreciation of the building the learned

Rent Controller has adopted a similar method of accepting the admission of the Respondents for 55 years rejecting the claim of the Petitioner at 45

years, since there was no proof produced on the side of the Petitioner. The amenities provided and calculated on either side would be on the basis

of such value of the superstructure need not be disturbed because it is depending only upon the quantum of such value of the superstructure. In the

backdrop, when we peruse the evidence adduced by the parties to the proceedings the finding of the Rent Controller and the Appellate Authority

in respect of calculating the value of superstructure at Rs. 3,38,630.93ps did not warrant any re-consideration.

14. As regards the value of the vacant site upon which the superstructure stand the extent of the vacant site calculated at 303.97 which is

corresponding to the ground floor construction and III floor construction is also found to be quite correct. However, the value of the said vacant

site was followed on the basis of a document produced by the Petitioner in Ex.P.6. The said document Ex.P.6 was a sale deed for a property in

Thambu Chetty street dated 05.06.1995. According to the value mentioned in the said document it was fixed at Rs. 45,60,000/-per one ground.

The said value given in the said document was not questioned by the Respondent/tenant. The only question raised by the Respondent/tenant was

that the Rent Control Appellate Authority has concurred with the finding of the learned Rent Controller, who had guessed for a value at Rs.

60,00,000/-without any reasons which would certainly affect the rights of the Respondent/tenant.

15. Admittedly, there was no other document available to fix the value of the property in that locality. The tenant also did not produce any

document to support his case that it is valued only at Rs. 30,000,00/-per ground. However, it is not disputed that one ground of vacant site in that

locality is valued at Rs. 45,60,000/-on 05.06.1995, the value fixed in the year 2001. The evidence of P.W.2 that the property has been

appreciated by 20% per annum and the property would be therefore valued at Rs. 1,36,16,087/-per ground in the year 2001 was rejected by

both the courts, since there was no evidence produced in that aspect. But both the courts below, have considered the advantages enjoyed by the

Respondents in the petition mentioned premises, they have inclined to fix the market value at Rs. 60,00,000/-per ground. Certainly the lower court

did not follow any formula to arrive to a value of Rs. 60,00,000/-per one ground.

16. In a judgment of Hon''ble Apex court reported in The Special Land Acquisition Officer, BTDA, Bagalkot Vs. Mohd. Hanif Sahib Bawa

Sahib, , it has been categorically held as follows:

After due deliberations on the contentions raised by the counsel for the parties, we are of the opinion that on the given facts and circumstances of

the present case the appreciation of 10% per annum given for the subsequent years is neither excessive nor unreasonable so as to call for our

interference. Counsel for the parties did not dispute that after the submersion of

the old township area of Bagalkot in water, a new township was being built up. For this lot of developmental activities are taking place.

This is evident from the fact that number of acquisitions have been made for the development of the new township of Bagalkot. In this order,

reference has been made to the earlier acquisition of 1979. In Civil Appeal Nos. 1552-54 of 2000 as well, acquisition of the land was made for

formation of a link road to the new town. We agree with the counsel for the Appellant that the reference Court wrongly valued the land at Rs. 6.85

per sq.ft for the year 1985 taking the base price of the land at Rs. 3/-per sq.ft for the year 1979 on an appreciation of 10% per annum for every

subsequent year. The appreciation of value of land at 10% on the base price of Rs. 3/-per sq.ft would increase the value of the land @ 0.30 paise

per year. 0.30 paise multiplied by 7 would come to Rs. 2.10 paise. If the appreciation in value of the land for the next seven years is taken at Rs.

2.10 paise and added to the base value of Rs. 3/-, the market value of the land under acquisition in the year 1985 would come to Rs. 5.10 paise.

We agree with the counsel for the Respondents that deduction on account of development charges from the price fixed cannot be made as the base

price of Rs. 3/- had been determined in the earlier cases after taking into account the development charges.

According to the dictum laid down by the Hon'ble Apex court, whenever there is no current document to show the market value of any property

lying within the municipal area and if earlier document is available to show such a value adding 10% of appreciation to the said value annum will not

be harmful. This property is admittedly situated within the corporation area and in a prime locality near Madras High Court. Therefore, there

cannot be any hesitation to apply the said ratio as enunciated in the judgment of Hon'ble Apex court. When we calculate the years passed from the

date of the said sale deed till the date of filing of the petition, it is 5 1/2 years. Therefore, a appreciation of 55% has to be added to the value so as

to find the value of the said suit property as on 2001. When it is applied on the value of with Rs. 45,60,000/- the ascertained total value of the

property as on 2001 would be at Rs. 70,68,000/-. But the case of the Petitioner is that the value of the vacant site would be at Rs. 70,00,000/-

only. Therefore, the said market value Rs. 70,00,000/- which is lesser than the

ascertained value can be adopted for calculating the fair rent.

17. Accordingly, the value of the admitted apportioned land of an extent of 303.97 sq.ft at Rs. 70,00,000/-per ground is as below:

303.97*70,00,000/

2400

Consequently the total value of land and building would come to Rs. 12,25,210.10, when the value of superstructure at Rs. 3,38,630.93ps. The

amenities as per schedule I at 1% would be Rs. 12,252.10. Therefore, the total cost of land and building would be Rs. 12,37,462.50ps. Being a

non residential building the annual return calculated at 12% of the total cost is Rs. 1,48,495.50ps and monthly fair rent arrived as per calculation

would be Rs. 12374.62 rounded off to Rs. 12375/-. Therefore, the Rent Control Appellate Authority ought to have followed the said formula laid

down by the Hon"ble Apex court and should have enhanced the fair rent fixed by the Rent Controller at Rs. 11095/-but it did not do so.

Therefore, it has become necessary to fix the fair rent at Rs. 12,375/-per month from the date of filing of the petition for the demised premises.

18. For the foregoing discussion, the revision preferred by the Respondents/tenants in C.R.P.NPD. No. 3924 of 2008 is necessarily to be

dismissed, as there is no chance for reducing the fair rent as fixed by the Rent Controll appellate authority and accordingly it is dismissed. As

regards the C.R.P.NPD. No. 585 of 2009, it is partly ordered by enhancing the fair rent from Rs. 11,095/-to Rs. 12,375/- per month.

Accordingly, the fair rent fixed by the Rent Controller as confirmed by the Rent Control Appellate Authority at Rs. 11,095/- is enhanced to a sum

of Rs. 12375/-per month. The revision is accordingly ordered with costs.

19. In fine the revision in C.R.P.NPD. No. 3924 of 2008 is dismissed, consequently, connected miscellaneous petition is closed. No costs. The

revision in C.R.P.NPD. No. 585 of 2009 is ordered as stated above with costs.