(2013) 08 MAD CK 0109

In the Madras High Court

Case No : C.R.P. (NPD) No. 1214 of 2011

P. Savithri Padmanabhan (Deceased) and Others — APPELLANT

Vs

G.R. Nithyanandam and Geetha Nithyanandam — RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Evidence Act, 1872 — Section 64, 65, 65(f)
Land Acquisition Act, 1894 — Section 4, 51A
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 4

Citation : (2013) 5 CTC 810 : (2013) 5 LW 823 : (2013) 6 MLJ 405 : (2013) 2 RCR(Rent) 715

Hon'ble Judges : K. Ravichandra Baabu, J

Bench : Single Bench

Advocate : A.V. Arun, for the Appellant; M. Seenivasagan, for the Respondent

Final Decision : Allowed

Judgement

K. Ravichandra Baabu, J.—The petitioners are the tenants and the respondents are the landlords. The petitioners are aggrieved against the

fixation of fair rent by the Courts below. The petitioners'' father one Padmanabhan became a tenant under one Subadra Krishnan during the year

1976. These respondents purchased the property from the said person in the year 1988. After the death of their father, these petitioners continued

to be in possession of the said property as tenants on a monthly rent of Rs. 500/-. The property is situated at No. 188, T.T.K. Road, Alwarpet,

Chennai - 18, measuring an extent of 830 sq.ft. It is a flat located at the second floor o f the building. The respondents filed RCOP No. 739 of

1999 on 23.3.1999 seeking for fixation of fair rent u/s 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960. They sought a sum of

Rs. 9,888/- per month as fair rent to be fixed for the said property. The said application was resisted by the petitioners. The learned Rent

Controller, after considering the rival pleadings as well as various aspects involved in the fair rent fixation procedure, through his order dated

24.6.2003, fixed a sum of Rs. 9,888/- as fair rent per month with effect from the date of filing of the petition. Aggrieved by the said order, the

tenants preferred an appeal before the Rent Control Appellate Authority in R.C.A. No. 958 of 2003. By an order dated 16.12.2010, the

Appellate Authority fixed the fair rent at Rs. 9,352/- per month thereby modifying the order of the Rent Controller. Aggrieved against the same, the

present Revision is filed by the tenants.

2. Heard the learned counsel appearing for the petitioners and the respondents.

3. The learned counsel appearing for the petitioners submitted that the tenants are only disputing the quantum of market value of the land fixed by

the Courts below and in all other aspects, they do not have any grievance. According to the learned counsel, both the Courts below erred in

considering Ex.P6 sale deed for fixation of market value, since such document was not proved by the landlords by examining the parties to the

same. It is also his contention that the subject matter of property under Ex.P6 is lying far away from the petition mentioned property and therefore

the Courts below ought not to have taken note of the same. In support of his submissions, he relied on the decisions reported in Sakthi and Co.

Vs. Shree Desigachary, and K. Ramanathan (died) and Others Vs. B.K. Nalini Jayanthi,) to contend that Ex.P6 cannot be relied on without

examining the parties to the said document. He further relied on the decision of this court reported in A.V. Gopalakrishnan Vs. O.L.V.R.

Paramanandam to contend that the engineer cannot give evidence in respect of the value of the site. He also relied on a decision reported in V.S.

Kanodia Vs. A.L. Muthu (D) Thr. Lrs. and Another, of the Hon''ble Supreme Court to contend that in respect of the very same area the land

value per ground was fixed at Rs. 25 lakhs in the year 1994, wherein also the same Ex.P6 herein was taken into consideration. He submitted that

when the landlords themselves have claimed the market value of the land as Rs. 60/- lakhs, the Courts below erred in fixing the market value of the

land as Rs. 80/- lakhs. According to him, it can at the best be only Rs. 50/- lakhs and not Rs. 80/- lakhs as held by the Courts below. He also submitted that the tenants are willing to pay a rent between Rs. 6000 to Rs. 7000. He further contended that the guideline value do not form basis

for market value.

4. Per contra, learned counsel appearing for the respondents submitted that the Courts below have rightly fixed the market value of the land by

taking note of Ex.P6 document, in the absence of any contra evidence by the tenants. The engineer who was examined on the side of the landlords

had also spoken about the value of the property and nothing wrong in taking such evidence for arriving at the valuation. He further submitted that

parties to the documents need not be examined as held in Ranvir Singh and Another Vs. Union of India (UOI), and Cement Corporation of India

Ltd. Vs. Purya and Others, When the admissibility of the document was not disputed or denied by the tenants, the contents under the said

document viz., Ex.P6 cannot be questioned latter.

5. Going by the respective pleadings and the submissions made by the learned counsels, the point that arises for consideration in this Civil Revision

Petition is as to whether the fixation of market value of the property as Rs. 80/- lakhs per ground is correct?

6. As submitted by the learned counsel appearing for the petitioners, the only dispute herein is with regard to the fixation of market value of the

property. Both the courts below concurrently fixed the land value as Rs. 80 lakhs per ground. While considering the land cost, the Courts below

have taken note of the evidence of P.W.1 and P.W.2 who had spoken that the land value per ground was not less than Rs. 60/- lakhs. On the

other hand, it was contended by the tenants, that the land value per ground is Rs. 15 lakhs. Even though the tenants have claimed so, they have not

marked any documents on their side to prove such contention. On the other hand, their engineer who deposed as R.W.2 stated that the market

value of the land was Rs. 18/- lakhs per ground. Thus, all these are only oral testimonies related to value of the land. Apart from these testimonies,

the landlords filed Ex.P2 sale deed of the petition premises and Ex.P6 sample sale deed dated 9.12.1997 in support of their claim.

7. Under Ex.P2, the petitioners have purchased the petition premises for a sum of Rs. 56,000/- on 22.7.1988. In Ex.P6 sample sale deed, the

subject matter property therein is also situated in the same T.T.K Road, where the present property is situated. The market value of the land was

shown as Rs. 78/- lakhs therein in the year 1988. So, by considering these two documents, the Courts below fixed the land value at Rs. 80/- lakhs

per ground apart from taking note of the locational advantages.

8. Now, fixation of this value of the land is disputed by the tenants by contending that parties to Ex.P6 were not examined and therefore, the said

document ought not to have taken been into consideration. The learned counsel for the tenants in support of such contention relied on Sakthi and

Co. Vs. Shree Desigachary, a Full Bench Decision of this Hon''ble Court arising out of Section 4 of the Tamil Nadu Buildings (Lease and Rent

Control) Act. The question that arose for consideration before the Hon''ble Full Bench was as to whether the guideline value contained in the

revenue records or the market value as per the sale deed executed in the relevant point of time is to be taken into account by the Rent Controller

for fixation of fair rent. After analysing the said issue in detail and considering various decisions on this aspect, the Hon''ble Full Bench at paragraph

18 held as follows:--

18. Therefore, our conclusions are as follows:

(1) The guideline value, contained in the Basic Valuation Register, maintained by the Revenue Department or the Municipality for the purpose of

collecting stamp duty, has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument

brought for registration.

(2) Evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land

possessing same or similar advantageous features would furnish basis to determine the market value. In this case, the guideline value alone has been

considered, which, in our view, is illegal.

(3) The Rent Controller and the Rent Control Appellate Authority, in the present case, are not right in relying upon the guideline value, maintained

by the Revenue Department, for arriving at a fair rent, to be fixed u/s 4 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960.

9. In the said decision, the Hon''ble full Bench had also considered a Division Bench decision of our High Court reported in K. Ramanathan (died)

and Others Vs. B.K. Nalini Jayanthi, In the said Division Bench judgment, it has been held that for determining the market value for the purpose of

fixation of fair rent, an evidence let in must be by examining the persons connected with the sale deed or the transactions. Paragraph 30 of the said

judgment is extracted hereunder:--

30. To determine the fair rent u/s 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act evidence in each case is absolutely necessary. It will

not be possible for any Court to have an idea about the relevant factors, viz., location of the site, proximity, nearness to the developed areas,

frontage, situation, etc., etc., in any case, merely on the basis of sale deeds pertaining to some lands in the locality. Even the particulars contained in

a given case are sufficient to prove the nature and character of the lands, dealt with therein, there must be evidence before the Court to the effect

that the lands are similar in nature and the character of the lands dealt with in such sale deeds, and those documents could be taken into

consideration for fixing the fair rent for any residential of non-residential building. If a party rests content with producing some sale deeds and if

there is no material before Court, the sale deeds cannot be taken into account by the Court for determining the market value. Therefore, as held by

the Supreme Court in Inder Singh v. Union of India, and Gulzara Singh and Ors. v. State of

Punjab and Ors., referred to supra, persons connected with the sale transactions or the attesting witnesses should be examined in order to prove

the transactions as well as the factors referred to therein. The burden of proof is always on the landlord to prove in each case the market value of

the site in which the building is constructed, the cost of construction of the building and the cost of provision of anyone or more of the amenities

specified in Schedule I as on the date of application for fixation of fair rent. u/s 64 of the Evidence Act, documents must be proved by primary

evidence except in cases mentioned in Section 65 of the Evidence Act.

10. Similarly, in a decision reported in C.B. Muthusamy Chettiar and Company Vs. A. Sundar Raj a learned single Judge of this Court at

paragraphs 16 and 17 has held that unless the parties to the sale deed are examined before the Court, the sale deed will not prove its contents

even though it was marked by consent of both the parties. Paragraphs 16 and 17 are extracted hereunder:--

16. Following the above said Supreme Court judgment, a learned Single Judge of this court in the decision reported in Susainathan and Another

Vs. T. Vijayan, held that while fixing the fair rent under Sec. 4 of the Act, certified copies of sale deed could be considered for computing market

value of the property without examining anybody concerned with the transactions for proving the market value.

17. As rightly pointed out by the learned Senior Counsel for the tenant the decision of the Hon''ble Supreme Court reported in 2001 (2) CTC 424

(cited supra) was delivered by taking into consideration Sec. 51-A of Land Acquisition Act and there is no such provision in the Tamil Nadu

(Buildings Lease and Rent Control) Act, 1960. Therefore I am inclined to prefer the decision of the Division Bench of this court reported in K.

Ramanathan (died) and Others Vs. B.K. Nalini Jayanthi, to the decision of the learned Single Judge reported in Susainathan and Another Vs. T.

Vijayan, which was passed without considering the decision rendered by the Division Bench of this court. Therefore I am of the opinion that unless

the parties to the sale deed are examined before the court the sale deed will not prove its contents even though it is marked by consent of both the

parties.

11. Likewise, in the decision reported in Greaves Ltd. Vs. V.S. Raghavan and Vijayaraghavan, the learned single Judge of this Court at paragraph

20 held as follows:--

20. For the foregoing discussion, Exhibits P-3 and P-6 cannot at all form basis for fixing the market value. Holding that mere production and

marking of document by consent is not sufficient; to prove its contents and proving of the facts or contents stated in the document, evidence of

person is necessary, in K. Ramanathan (died) and Others Vs. B.K. Nalini Jayanthi, First Bench of this Court has held as follows:

...Therefore, as held by the Supreme Court in Inder Singh and Others Vs. Union of India (UOI) and Others, and Periyar and Pareekanni Rubbers

Ltd. Vs. State of Kerala, persons connected with the sale transactions or the attesting witnesses should be examined in order to prove the

transactions as well as the factors referred to therein. The burden of proof is always on the landlord to prove in each case the market value of the site in which the building is constructed, the cost of construction of the building and the cost of provision of anyone or more of the amenities

specified for fixation of fair rent.

12. A perusal of all these decisions would undoubtedly show that mere production of the document is not sufficient unless the parties to the said

document are examined to prove its contents. As rightly pointed out by the learned single Judge in the decision made in the case of C.B.

Muthusamy Chettiar and Company Vs. A. Sundar Raj , mere marking of the document itself will not prove its contents unless the parties who

marked such documents prove the same in a manner known to law. The Hon''ble Division Bench in Ramanthan''s case has in categorical terms

observed that the persons connected with the sale transactions or the attesting witnesses should be examined in order to prove the transactions as

well as the factors referred to therein.

13. No doubt, the learned counsel appearing for the respondents relied on Ranvir Singh and Another Vs. Union of India (UOI), and Cement

Corporation of India Ltd. Vs. Purya and Others, to contend that the parties to the documents need not be examined for the purpose of proving the

market value of the property. A perusal of both the decisions would show that they are in respect of proceedings under the Land Acquisition Act

1894. In both the decisions the Hon''ble Supreme Court has taken into consideration of Section 51-A of the Land Acquisition Act and came to the

conclusion that in view of exception made u/s 51-A, certified copies may be brought on record evidencing a transaction and the same may be

accepted as evidence thereon. For the purpose of clear understanding, Para 28 of the judgment reported in Cement Corporation of India Ltd. Vs.

Purya and Others, is extracted hereunder:--

28. Section 51-A of the LA Act may be read literally and having regard to the ordinary meaning which can be attributed to the term ""acceptance

of evidence"" relating to transaction evidenced by a sale deed, its admissibility in evidence would be beyond any question. We are not oblivious of

the fact that only by bringing a documentary evidence in the record it is not automatically brought on the record. For bringing a documentary

evidence on the record, the same must not only be admissible but the contents thereof must be proved in accordance with law. But when the statute enables a court to accept a sale deed on the records evidencing a transaction, nothing further is required to be done. The admissibility of a

certified copy of sale deed by itself could not be held to be inadmissible as thereby a secondary evidence has been brought on record without

proving the absence of primary evidence. Even the vendor or vendee thereof is not required to examine themselves for proving the contents

thereof. This, however, would not mean that the contents of the transaction as evidenced by the registered sale deed would automatically be

accepted. The legislature advisedly has used the word ""may"". A discretion, therefore, has been conferred upon a court to be exercised judicially

i.e. upon taking into consideration the relevant factors.

14. As already found in both the cases before the Apex Court, the subject matter is in respect of the land acquisition proceedings. Under the Land

Acquisition Act, Section 51-A was introduced whereby certified copies have been permitted to be brought on record therein. Taking note of such

enabling provision, the Apex Court has held that such production of certified copies of the sale transactions can be made to rely on the contents of

the said document without having to examine the vendor or vendee of the said document. However, in the very same decision, the Apex Court has

also observed that it would not mean that the contents of the transaction as evidenced by the registered sale deed would automatically be accepted

and a discretion has been conferred upon a court to be exercised judicially for taking into consideration of the relevant factors.

15. Thus, from the perusal of the above decision of the Apex Court it is clear that under land acquisition proceedings even though the documents

can be marked without examining the parties to the same, still it cannot be construed that the transaction evidenced under the said document has to

be accepted automatically and on the other hand, the courts are expected to exercise judicial discretion while taking into consideration of the

relevant factors stated in the said documents. In fact the Hon''ble Division Bench of our High Court in K. Ramanthan''s case has also considered

the scope of Section 51-A of the Land Acquisition Act and held at paragraph 31 of this decision as follows:--

31. Section 51-A of the Land Acquisition Act has been introduced in the Land Acquisition Act. By virtue of the said section, the provisions of

Section 65(f) of the Evidence Act become operative and registration copies of sale deeds or other documents may be accepted as evidence of the

transaction recorded in the document in the proceedings under the Land Acquisition Act. Section 51-A of the Land Acquisition Act does not

dispense with proof of the relevant factors which are absolutely necessary to enable the Court to determine the market value of the land.

Therefore, oral evidence is necessary to speak about the transactions proved by the sale deeds. We have already extracted the observations made

by the Supreme Court in Inder Singh and Others Vs. Union of India (UOI) and Others, wherein the Supreme Court has expressly referred to the

provisions of Section 51-A of the Land Acquisition Act. Our above view is also fortified by many rulings referred to in the earlier part of this

judgment.

16. Therefore, I am of the view that learned counsel for the respondents/ landlords is not justified in relying on those decisions as they are

applicable only in respect of land acquisition proceedings. Thus, I am of the view that mere marking of the document Ex.P6 will not entitle the

landlords to seek for accepting the value stated therein as correct. At the same time we have to see as to whether any contra evidence was let in

by the tenants to take a different view. Except placing an oral testimony of the engineer as R.W.2 and marking his report as Ex.R2, no other

sample sale deeds have been marked by the tenants. On the other hand, the landlords have marked Ex.P2 sale deed dated 22.7.1988 which is in

respect of the petition premises, apart from Ex.P6. However, no useful information was derived by the Courts below from Ex.P2 with regard to

value of the land.

17. No doubt Ex.P6, ought not to have been accepted as a conclusive evidence for fixing the market value of the property in the absence of

examination of the parties to the document. But, at the same time, it to be noted that the very same sale deed was taken into consideration by the

Hon''ble Supreme Court in a decision reported in V.S. Kanodia Vs. A.L. Muthu (D) Thr. Lrs. and Another, as admitted by the petitioners''

counsel. In that case, the RCOP was of the year 1994 and it appears that the very same Ex.P6 herein was marked as Ex.A4 therein. The Apex

Court, by taking note of the fact that in respect of another property at the very same road, the market value of the land was fixed at Rs. 25 lakhs

per ground remitted the matter to the Rent Controller to re-determine the market value of the land taking into consideration of the evidence on

record including Ex.A4 (Ex.P6 herein). Therefore, the very same Ex.P6 was taken into consideration by the Hon''ble Supreme Court in the above

said decision to re-determine the market value of the property. Thus, the fact remains that the said document was not rejected by the Hon''ble

Supreme Court. When that being the factual position, and when the very same document is also marked in this case, I am of the view that Ex.P6

need not be rejected on the reason of non-examining the parties to the same. On the other hand, the same can be taken into consideration, since a

value of Rs. 25 lakhs per ground was accepted by the Apex Court in respect of RCOP filed in the year 1994 in the above said decision of the

Apex Court reported in V.S. Kanodia Vs. A.L. Muthu (D) Thr. Lrs. and Another, by relying on the very same document.

18. In this case, the RCOP was filed in the year 1999. Therefore, after five years also Rs. 25 lakhs as land value may not be the proper figure. If

the ground value in the year 1994 is Rs. 25 lakhs per ground as found by the Apex Court, then by giving 10% increase per year it would come to

around Rs. 50 lakhs per ground in the year 1999. Of course by considering the other advantageous positions viz., nearness of commercial

complex, Banks and Clubs, Post Office and Hospitals etc., as found by the Courts below, it may fetch another Rs. 10 lakhs or so. Thus, in my

considered view, the market value of the property in this case be fixed at Rs. 60 lakhs per ground instead of Rs. 80 lakhs as fixed by the Courts

below. Accordingly the market value of the petition mentioned property is fixed at Rs. 60 lakhs per ground and consequently, the fair rent has to

be calculated accordingly. Thus, the land value of the petition mentioned property is fixed as follows:--

In so far as the building is concerned, the lower Appellate Court has already fixed a sum of Rs. 2,22,477/- as the valuation with which there is no

quarrel. Thus, the total market value of the property is fixed at Rs. 9,91,927/- by giving further addition under Schedule -1 towards amenities @

2%. Thus, the fair rent for the petition premises can be fixed @ 9% of Rs. 9,91,927/- for 12 months, which comes to Rs. 7,440/- per month.

Accordingly, the fair rent is fixed at Rs. 7,440/- per month.

The Civil Revision Petition is allowed and the order of the Appellate Authority is modified. The fair rent for the petition premises is fixed at Rs.

7,440/- per month from the date of filing of RCOP. No costs.

