
(1974) 02 MAD CK 0020
In the Madras High Court

P.M. Raval and Others

APPELLANT

Vs

K.G. Ramachandran and Others
M. Venkatachalam Vs
Seth Kishanchand Hassaran Mahbhubani and Others

RESPONDENT

Date of Decision : 14-02-1974

Acts Referred:

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

Citation : (1975) 88 LW 257 : (1975) 1 MLJ 231

Hon'ble Judges : M.M. Ismail, J

Bench : Division Bench

Judgement

M.M. Ismail, J.—The petitioners in the former two writ petitions are one and the same and they are the tenants of premises Nos. 16 and 17

Poonamallee High Road, Madras-3 and respondents 1 to 3 therein are the owners of the said premises. The petitioner in W.P. No. 1154 of 1971

along with his brother owns premises Nos. 40 41 and 42, Irusappa Maistry Street, Madras, while the first respondent in that writ petition is the

tenant of the said premises. The prayer in the former two writ petitions is for the issue of a writ of prohibition restraining the fourth respondent in

the writ petitions, who is functioning as the Rent Controller, not to proceed with H.R.C. Nos. 2489 of 1966 and 2942 of 1963 respectively,

pending on his file. Those rent control petitions were filed u/s 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, (Tamil Nadu Act

XIX of 1960), hereinafter referred to as the Act, for fixation of fair rent in respect of the buildings in question. Similarly, W.P. No. 1154 of 1971

prays for the issue of a writ of prohibition restraining the second respondent therein, namely, the Rent Controller, from proceeding with the Rent

Control proceedings H.R.C-No. 3885 of 1970, which was a petition filed u/s 4 of

the Act for fixation of fair rent.

2. For the purpose of understanding the arguments advanced before me, it is necessary to refer to the relevant provisions of the Act. Section 4 (1)

of the Act states that the Controller shall, on application by the tenant or the landlord of a building and after holding such inquiry as the Controller

thinks fit fix the fair rent for such building in accordance with the principles set out in Sub-section (2) or in Sub-section (3) as the case may be, and

such other principles as may be prescribed. Sub-section (2) deals with the principles applicable to a residential building, while Sub-section (4)

deals with the principles applicable to a non-residential building. We are concerned in the writ petitions only with a non-residential building and as

there is no substantial difference between the two sub-sections, I reproduce Sub-section (3) of Section 4 below:

3(a) The fair rent for any non-residential building shall be at nine per cent. gross return per annum on the total cost of such building.

(b) The total cost referred to in Clause (a) shall consist of

(i) the cost of construction as calculated according to such rates for such classes of non-residential buildings as may be prescribed less the

depreciation at such rates as may be prescribed ;

(ii) the market value of that portion of the site on which the non-residential building is constructed ; and shall include such allowances as may be

made for consideration? of locality in which the non-residential building is situated, features of architectural interest, accessibility to market,

nearness to the railway station and such other amenities as may be prescribed and of the purpose for which the non-residential building is used:

Provided that such allowances shall not exceed twenty-five per cent of the cost of construction as calculated in the manner specified in Sub-clause

(i).

Pursuant to the provisions contained in the Act, the Government of Tamil Nadu had framed rules called the Madras Buildings (Lease and Rent

Control) Rules, 1961. As far as the fixation of fair rent is concerned, the same is dealt with in Rules 8 to 14 of those Rules. Rule 8 stated that the

residential building shall be classified into four different classes, depending upon the specifications and the materials used in the construction thereof

as specified in Schedule I. Rule 9 provided for the calculation of cost of

construction of residential buildings. Rule 10 enumerated the amenities in respect of which allowances should be made. Rule 11 classified the non-residential buildings into : (i) factories and godowns; and (ii) other non-residential buildings. Rule 12 dealt with the calculation of cost of construction of non-residential buildings. Rule 13 dealt with allowances to be made for amenities in respect of non-residential buildings. Rule 14 is as follows: The depreciation of buildings shall be calculated at the rates specified in Schedule II.

Schedule II to the Rules is as follows:

SCHEDULE II

STANDARD RATES OF DEPRECIATION.

Type of building Rate of depreciation
per annum.

(1) (2)

1. Buildings built in
lime mortar and in
which teak has been
used throughout 1 per cent.

2. Buildings built
partly of brick in
lime mortar and
partly of brick in
mud and in which
teak has been used. 1 1/2 per cent.

3. Buildings built in
brick in mud and in
which country wood
has been used. 2 per cent.

4. Buildings which are
inferior to those of class

3 with brick-in-mud
unplastered walls and
mud floors and in
which cheap country
wood has been used. 4 per cent.
it

Note: (1) The depreciation shall be calculated for each year on the net value arrived at after deducting the amount of depreciation for the previous year.

(2) The amount of depreciation shall in no case be less than 10 per cent, of the estimated present cost of the building.

Illustrations--(a) For a building of type 1, aged only 2 years the depreciation shall be 10 per cent. and not 2 per cent.

(b) for a building of type 1, 15 years old, it is 15 per cent.

(3) The actual depreciation of a building aged in years is calculated by using the formula:

$A (100 - rx)^n$

$P = \frac{A (100 - rx)^n}{100}$

100

Where A = present capital cost of the building

r = rate of depreciation per annum x = age of the building (i.e., the number of years)

P = the final depreciated value of the building.

The amount of depreciation will be equal to ("A"--"P") subject to a minimum of 10 per cent. of "A".

The meaning of the expression "" cost of construction"" occurring in Sub-section (3) (b) (1) of Section 4 was the subject-matter of the decision in W.

P. Nos. 220, 221 and 321 of 1964 on the file of this Court and the appeals arising therefrom. In that case, it was contended on behalf of the

petitioners-tenants that the expression, ""cost of construction"" occurring in Sub-section (3) (b) (i) of Section 4 meant only the actual cost of

construction of a particular building at the time when the building was put up, while on behalf of the Government and the landlords it was

contended that the expression ""cost of construction"" meant only the present cost of reproducing the building and it did not mean the original cost of

construction of the building in question. The argument advanced on behalf of the Government as well as the landlords in those cases was that the

section contemplated ascertainment of the present cost of putting up the building by application of the rates prescribed by the Government under

Rule 12, and deducting depreciation at the rates prescribed by Rule 14, read with Schedule II, backwards for the purpose of arriving at the figure

contemplated by Sub-section (3) (b) (i) of Section 4 of the Act. Veeraswami, J., (as he then was), who disposed of the writ petitions observed:

"Total cost" in Section 4 (2), (Section 4 (3) for the purposes of the present writ petitions) is a composite concept consisting of three components

mentioned and out of which the cost of construction for the purpose of arriving at the total cost is to be calculated according to the rates prescribed

for each class of building prescribed and not the initial expenditure incurred in the construction.

Normally, the notion of depreciation is a subsequent fall in value or reduction of worth due to deterioration arising from age, use and other causes

and it is deducted from the last value of the building as reduced by previous, depreciation. But the depreciation calculated at the prescribed rates is

u/s 4 (2) (b) (Section 4 (3) (b) for the purposes of the present cases) to be deducted from the cost of the construction as calculated according to

the rates prescribed. When the cost of construction is arrived at on such basis, the depreciation at the prescribed rate is to be deducted therefrom

backwards. This mode of deduction of depreciation is no doubt a reverse process.

On the above reasoning, this Court dismissed those writ petitions holding that the meaning of the expression "cost of construction" was not the

original cost of the building, but the present cost of reproducing the building and the actual amount referred to by Sub-section (3) (b) (1) of Section

4 has to be arrived at by ascertaining the present cost at the rates prescribed by the Government in Rule 12 and allowing for depreciation from that

amount backwards at the rates prescribed in Rule 14, read with Schedule II. The above decision was taken up in appeal to a Bench of this Court

and the Bench confirmed that conclusion in *Dr. K.C. Nambiar and Ors. v. The Rent Controller, Madras* and Ors. ILR (1966) 2 Mad. 334. The

matter was taken up further in appeal to the Supreme Court and the Supreme Court in Dr. K.C. Nambiar Vs. Rent Controller, Madras and

Others, , reversed the conclusion of this Court and held that the expression, ""cost of construction"" in Sub-section (3) (b) (i) of Section 4 for

determining the first component, when used in juxtaposition with the expression ""market value"" in Sub-section (3) (b) (ii) is used to denote not the

market value, but the cost of original construction. In this view, the Supreme Court has held that Rule 12, which prescribed the rates at which the

cost of construction is to be computed plainly goes beyond the terms of the section.

3. Thereafter, the Tamil Nadu Buildings (Lease and Rent Control), Act was amended by the Tamil Nadu Buildings (Lease and Rent Control)

Amendment Act, 1973, that is, Tamil Nadu Act XXIII of 1973. By this amendment, Section 4 of the Principal Act dealing with the fixation of fair

rent was completely recast. Notwithstanding this, Section 27 of the Amendment Act provided that every proceeding relating to the fixation of fair

rent pending before the Controller or any authority on the date of the coming into force of that Act, shall be decided in accordance with the

provisions of the Principal Act, that is, the Act. Thus, with regard to the proceedings pending before the Rent Controller which are the subject-

matter of the present writ petitions, by virtue of Section 27 of the Tamil Nadu Act XXIII of 1973, they have to be disposed of only in accordance

with the provisions contained in the Principal Act, that is, the Act, and without reference to the Amendment Act, namely, Tamil Nadu Act XXIII of

1973. Consequently, the question for consideration in these writ petitions is, whether in the light of the Judgment of the Supreme Court referred to

above, the Rent Controller can proceed to dispose of the petitions before him and fix the fair rent in accordance with Section 4 of the Act.

4. The contention of the learned Counsel for the petitioners is this. The Supreme Court in the decision referred to above has held that Rule 12 is

plainly beyond the scope of the statute and therefore is not valid. Consequently once Rule 12 is out of the picture, the cost of construction cannot

be arrived at by the Rent Controller. The basis of this argument is that the statutory provision contemplates the cost of construction being

ascertained only by applying the rates for such classes of non-residential buildings as may be prescribed and once such provision has been held to

be ultra vires, there is no prescription of rates and consequently the cost of construction cannot be calculated, as provided for in the statute. The

second limb of the argument is that even assuming that the cost of construction can be ascertained, in view of the decision of the Supreme Court, it

means only the original cost of construction, still the cost as contemplated by Sub-section (3) (b) (i) cannot be ascertained, because the cost of

construction must be reduced by the depreciation at such rates as may be prescribed and the depreciation to be deducted has been prescribed

only in Rule 14 and Schedule II and those rates of depreciation cannot be applied. I shall now consider the validity of these submissions.

5. As far as the first submission is concerned, in my opinion, the same is without force. Since the Supreme Court has held that the expression, "cost

of construction" occurring in Sub-section 3 (b) (i) of Section 4 means only the original cost of construction, the question of arriving at the said cost

of construction by applying any rate prescribed by the Government cannot possibly arise. Therefore, the expression, "as calculated according to

such rates for such classes of non-residential buildings as may be prescribed" occurring in Sub-section 3 (b) (i) of Section 4 must be deemed to be

surplus or otiose having no meaning whatever. The expression, "cost of construction" itself means only the original cost of construction.

Consequently, I am unable to accept the argument that, by virtue of the decision of the Supreme Court, it has-become impossible to find out the

cost of construction" as interpreted by the Supreme Court. As a matter of fact, from what I have pointed out already, it will be clear that once the

expression, "cost of construction" denotes the original "cost of construction", the expression following that expression occurring in Sub-section 3

(6) (i), as extracted by me above, will be meaningless and therefore it cannot be contended that there being no prescription of the rates, the cost of

construction cannot be arrived at. Hence, I reject the first submission.

6. As far as the second submission is concerned, I am clearly of the opinion that the same is well founded. I have already referred to Rules 12 and

14. Rule 12 deals with the rates for arriving at the present cost of construction, while Rule 14 read with Schedule II deals with the rate of

depreciation applicable to-such cost of construction so arrived at. Once the Supreme Court has held that Rule 12 is void as being ultra vires and

going beyond the terms of the section, Rule 14 also will have to go, for the simple reason that Rule 12 as well as Rule 14 form an integral part of a single and definite scheme, that scheme being to find out the present cost of reproducing the building and from that value deducting the depreciation backwards for the purpose of arriving at the cost of construction. Once, Rule 12 is held to be void, Rule 14 cannot have an independent existence, because Rule 14 is intended to operate on the figure arrived at by the application of Rule 12. In other words, Rule 14 is inextricably bound up with Rule 12 and once Rule 12 is held to be void, Rule 14 cannot stand independently and cannot be worked. This is apparent from the judgment of Veeraswami, J. (as he then was),, an extract from which I have given in the earlier portion of this judgment. The scheme of Rules 12 and 14 contemplates arriving at the present cost of reproducing a building by applying the rates prescribed in Rule 12 and from the figure so arrived at, deducting depreciation backwards, as provided in Rule 14. If the expression, "" cost of construction "" occurring in Sub-section (3) (b) (i) of Section 4 denotes the original cost of construction, the question of arriving at the net value after deducting depreciation backwards will not arise and the depreciation will have to be deducted forwards from that figure. Since the scheme of the rules framed by the Government contemplated deducting depreciation backwards on the basis of the validity of Rule 12, and since that rule is held to be void, Rule 14 cannot be applied. This is apparent even from the terms of Schedule II itself, which is referred to in Rule 14. It will be seen that there are three "Notes" to Schedule II. With reference to the second Note, the Supreme Court in the decision referred to already, has stated that the language used in that Note, even as explained by the illustrations, is obscure. As far as Note 3 is concerned, it deals with finding out the actual depreciation of a building aged in years and the method of calculation, clearly contemplates that the formula will apply only when the cost of construction is held to be, "" present capital cost of the building."" Once the meaning of the expression, "" cost of construction "" is held to refer to the original cost of construction, the formula becomes incapable of application for arriving at the depreciation and therefore that itself is an internal evidence to show that Rule 14 read with Schedule II was intended to apply only to the cost of construction arrived at by the application of Rule 12 and not to the original cost of construction.

Consequently, in view of the decision of the Supreme Court referred to already holding that Rule 12 is beyond the terms of the statute, I hold that

Rule 14 also is incapable of application, since it is dependent upon the application of Rule 12.

7. Once Rules 12 and 14 are out of the way, the statute does not prescribe any other method of arriving at the cost of construction contemplated

by Sub-section (3) (b) (i) of Section 4. As I have pointed out already, Sub-section (1) of Section 4 imposes an obligation on the Rent Controller

to fix fair rent in accordance with the principles set out in Sub-section (2) or in Sub-section (3). There is no power or jurisdiction in the Rent

Controller to fix fair rent independent of the provisions contained in Sub-section (2) or Sub-section (3). Even Sub-section (3) (a) of Section 4

clearly states that the fair rent for any non-residential building shall be at nine per cent, on the total cost of such building. Once the total cost of such

a building cannot be arrived at as contemplated by Sub-section (3) (b) (i) of Section 4, Sub-section (3) (a) itself cannot be applied and the fair rent

cannot be arrived at as contemplated by the statute. The result is, the Rent Controller will not be in a position to dispose of the petitions pending

before him in accordance with the requirements of Sub-section (3) of Section 4.

8. Consequently, a writ of prohibition will issue in each of these cases restraining the Rent Controller from proceeding with the petitions for fixation

of fair rent pending before him and involved in these three writ petitions. Accordingly, these writ petitions are allowed. There will be no order as to

costs.