

(1997) 10 MAD CK 0034
In the Madras High Court
Case No : C.R.P. No. 3794 of 1993

S.K. Rohini and Others

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 01-10-1997

Acts Referred:

Madras City Tenants Protection Act, 1922 — Section 9(1)

Citation : (1997) 2 CTC 481 : (1998) 2 LW 441

Hon'ble Judges : AR. Lakshmanan, J

Bench : Single Bench

Advocate : T.R. Rajagopalan, Counsel for T.R. Rajaraman, for the Appellant; R. Krishnamoorthy, Sr. Counsel for K. Kumar, Additional Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

AR. Lakshmanan, J.—The above revision has been directed against the order of the Sub-Court, Coimbatore made in CMA.No. 191 of

1990 dated 4.5.1993 and the order of the District Munsif Court, Coimbatore made in I.A.No. 695 of 1984 in O.S.No. 109 of 1984 dated

27.11.1989. The petitioner herein filed O.S.No. 109/84 for possession of the suit property against the respondent. In that suit the respondent filed

I.A.No. 695 of 1984 Under section 9 of the City Tenants' Protection Act. The learned District Munsif after enquiry, upheld the right and fixed

Rs. 10,88,000 as market price of the said land. The respondent herein deposited the said amount and that also has been invested in the bank.

Aggrieved against the order of the learned District Munsif, the petitioners preferred CMA.No. 191 of 1990 before the Sub-Court, Coimbatore.

The learned Sub- Judge enhanced the price payable by Rs. 1,28,000 and directed

the respondent to deposit the said amount. As the amount fixed by the learned Sub-Judge was very low according to the petitioners, they have come forward with the above revision against the order of the learned Sub-Judge, Coimbatore.

2. It is the case of the respondent (defendant in the suit) that they are the lessees of the vacant site and has put up valuable superstructure on the site and are running a petrol outlet station on the property and that they are entitled to the benefits and rights under the Tamil Nadu City Tenants

Protection Act as amended in 1980. Without prejudice to the contentions of the respondent in the written statement, the respondent is exercising

its option to purchase the suit site and pay the value thereof in accordance with the provisions of the Act. The petitioners themselves have

conceded in the plaint that the respondent is entitled to the benefits of the City Tenants Protection Act and u/s 3 of the Act have offered to pay

compensation of Rs. 5,000 for the superstructure belonging to the respondent corporation. The compensation offered is ridiculously low. The value

of the superstructure on the date of the suit will be atleast Rs. 85,000. u/s 9 of the City Tenants Protection Act any tenant who is entitled to

compensation u/s 3 and against whom a suit in ejectment has been instituted by the landlord may within one month after the service of summons

apply to the court for an order that the land lord shall be directed to sell for a price to be fixed by the court the whole or part of the land specified

in the application. Since the Corporation is entitled to compensation for the superstructure u/s 3 of the Act, the corporation is entitled to purchase

the site under the provisions of the Act. The corporation requires the entire extent of the land covered by the lease for running the petrol bunk. The

corporation is prepared to pay the average market value of the three years immediately preceding the date of the order. According to the

respondent corporation, therefore the petitioner should be directed to convey the land to the respondent corporation on payment of the price fixed

by the court.

4. The above application I.A.695/84 which was filed u/s 9 of the Tamil Nadu City Tenants Protection Act was resisted by the petitioners herein

stating that the entire land is not required by the corporation. They also raised other contentions.

5. Even though the petition was filed in the year 1984 u/s 9 of the Act, the same was getting adjourned from time to time. Thereafter, the petitioners herein/plaintiffs filed a memo to fix the compensation for the land at an early date. On 22.3.1988, the learned District Munsif appointed an advocate commissioner to inspect the petition property and to fix the market value of the same. The advocate commissioner inspected the property on 10.5.88 and 25.6.88 and filed his reports C1 and C2 and C3 plan on 2.12.88. In the course of the commissioner's enquiry, the respondent filed Ex. A1, a sale deed dated 25.5.1983 and examined the manager of the company branch as P.W.I. On behalf of the respondents/plaintiffs one Kumarasami was examined as R.W.1 and sale deeds Exs.B1 and B2 dated 17.2.1983 and 17.10.1983 were marked. The commissioner after considering all the above documents relied on only Ex.B2 sale deed which is dated 17.10.1988. The property referred to in Ex. B1 is situated at Ramnagar which is away from the petition mentioned property about 1 km. The property under Ex.B2 is situated in a residential area and the total area sold was 182.4 Sq.ft. of individual share which is a vacant site. R.W.I deposed that the value of the petition mentioned property is 3 times higher than the value referred in Ex.B2. Learned counsel for the plaintiff said that the vacant site of 182.4 sq.ft. is sold for the purpose of residential premises. He had stated that the petition mentioned property is situated at the main road of Coimbatore Town and all the three bus stands are situated very near to the petition mentioned property. He further stated that there are movie theatres, big hotels, the "Chinthamani Super Market Complex, banks etc., are situated very near to the petition mentioned property. According to the learned counsel for the plaintiff these are the important factors to be considered to fix the value of the petition mentioned property, which is being used for non-residential and commercial purpose. He also stated that the value for the commercial purpose would be three times higher than the value of the property referred in Ex.B2 which is a residential premises. On the other hand, learned counsel for the corporation contended that Ex.B2 should not be considered at all for fixing the value. However, the advocate commissioner was of the opinion that Ex.B2 is a sale deed dated 17.10.1988 which is a date within the 3 years period referred to by him earlier. He also stated that the petition mentioned property which is to be used for non-

residential commercial purpose is definitely higher than the value referred in Ex.B2 which is a residential purpose. The advocate commissioner also stated that there is no other sale of property in and around the petition mentioned property within the specified three year period and he was of the opinion that the value of the petition mentioned property can be calculated as follows:

The value referred in Ex.B2 for 182.4 sq.ft. at Rs. 43,776.00.

The value for 1 sq.ft. comes to Rs. 240.00.

Value as per my opinion 1 sq.ft. for the petition mentioned property comes to Rs. 420.00 i.e. 3/4th higher than the price in Ex. B2.

Therefore, the value for 6,400 sq.ft. will be Rs. 26,88,000.00

According to the advocate commissioner, the above conclusion is reasonable and he also stated that the property mentioned in Ex.B2 would

definitely fetch higher price. The commissioner was also of the opinion that the market value of the petition mentioned property can be fixed at Rs.

26,00,000 and the value of the superstructure alone can be fixed at Rs. 64,450. It is also worthy to mention that the petitioners/plaintiffs filed a

memo for having no objection for the sale of the property of about 6400 sq.ft. approximately and to fix the value of the same.

6. To the commissioner's report dated 2.12.88 objections were filed by the petitioners/plaintiffs and also by the other side. According to the

petitioners, the commissioner ought to have valued the suit property at Rs. 420 per square feet. As already noticed, witnesses were also examined

on the side of both the sides. The Commissioner, after considering the respective contentions of the parties, relying upon the decision reported in

M. Arasan Chettiar and Others Vs. S.P. Narasimhalu Naidu's Estate Trust, Coimbatore and Others, held that the relevant date will be 2.12.88

the date on which he submits the report and that for the purpose of fixing the price the period is taken three years prior from the date of order i.e.

2.12.86 to 2.12.1988. Therefore, on the basis of the document Ex.B2 which is dated 17.10.88, the advocate commissioner fixed the value of the

property in question at Rs. 26,88,000 The advocate commissioner did not consider the documents Exs.A1 and B1 since they are the sale deeds of

the years 1983 and 1985 i.e., before the relevant period.

7. Learned District Munsif heard the application along with the suit, the same set

of witnesses examined before the commissioner were examined and also the same set of documents marked before the commissioner were marked before the court below. It was contended on behalf of the learned counsel for the petitioners herein that the court will have to fix the minimum extent of the land necessary for the corporation and also to fix the market value of the property. It is also contended by them that average market value has to be fixed by taking into account the three years value prior to the relevant date and according to them, the relevant date would be 2.12.88 which the date of the report of the advocate commissioner whereas it was contended by the respondents that the date of filing of the application u/s 9 of the Act, i.e., 27.2.84 should be taken into account as the relevant date for fixation.

8. The trial court rejected the contentions of the petitioners herein and fixed 6.10.1987 as the relevant date (the date of filing of memo by the petitioners herein that the entire extent can be sold to the corporation) for fixing the minimum extent of land.

9. I have gone through the order of the learned District Munsif. The learned District Munsif after finding that the suit property is situated in a busy commercial locality surrounded by various commercial establishments, fixed the value at Rs. 170 per sq.ft. Thus, rejecting the evidence of the petitioners herein both oral and documentary, the learned District Munsif fixed the total compensation at Rs. 10,88,000.

10. Aggrieved, the petitioners have filed CMA.No. 191 of 1990 before the Sub-Court, Coimbatore. It was contended before the Sub-Court that the procedure adopted by the learned District Munsif in fixing the market value of the site without passing an order fixing the minimum extent of land required by the tenant is contrary to the law laid down in M. Arasan Chettiar and Others Vs. S.P. Narasimhalu Naidu's Estate Trust, Coimbatore and Others, . The petitioners herein filed a memo dated 6.10.1987 in the application mentioning interalia that the entire site under lease hold may be fixed as the minimum extent of land required by the tenant. In the said memo, a formal order becomes necessary and that instead of passing any order, the court below appointed a commissioner by order dated 22.3.88 to fix the market value, even though the memo was filed on 6.10.1987. It was submitted before the learned Sub- Judge, by the learned

counsel for the petitioners herein that the price of Rs. 10,88,000 fixed for the suit property at Rs. 170 per sq.ft. is grossly inadequate and disproportionate to the prevailing market value. The filing of the memo cannot be taken as relevant date since the lower court ought to have considered the fact that the petitioners filed the memo only to expedite the disposal of the matter, i.e., the application filed u/s 9.

11. The learned sub judge did not agree with the findings of the learned District Munsif with reference to the relevant date fixed for deciding the minimum extent and set aside the said finding. He held that the date on which the commissioner was appointed viz., 22.3.88 is the relevant date for fixing the minimum extent. The learned sub-judge also rejected the document Ex.B2 filed by the petitioners herein and placed reliance on Ex.B3 and fixed the compensation at Rs. 190 per sq.ft. and arrived at a total compensation of Rs. 12,16,000. The other documents were rejected by the said court. As far as Ex.B2 is concerned, the same was rejected by the court on the ground that the said property is not comparable to the suit property. Aggrieved by the orders of the courts below, the petitioners have come forward with the above revision.

12. I have heard the arguments of Mr. T.R. Rajagopalan, learned senior counsel for the petitioners and Mr. R. Krishnamoorthy, learned senior counsel for the respondent. Mr. T.R. Rajagopalan submitted that the relevant date for fixation should be the date on which the court passed the order i.e., on 27.11.89. In support of his above contention, he relied on the decisions reported in M. Arasan Chettiar and Others Vs. S.P.

Narasimhalu Naidu's Estate Trust, Coimbatore and Others, , Husainy Trust v. Habibunnissa Begum, 1992 2 L.W.567 and a judgment of K.M.

Natarajan, J., in CRP.No. 972/89. In the decision reported in M. Arasan Chettiar and Others Vs. S.P. Narasimhalu Naidu's Estate Trust, Coimbatore and Others, , the scope of Section 9 of the Act was considered in detail by the learned Judges. Sec. 9 reads thus:

(1)(a). Any tenant who is entitled to compensation u/s 3 and against whom a suit in ejectment has been instituted or proceedings u/s 41 of the

Presidency Small Cause Courts Act, 1882 (Central Act XV of 1882) taken by the landlord, may, within one month of the date of the Madras City

Tenants' Protection (Amendment) Act, 1955 (Madras Act XIX of 1955) coming

into force or of the date with effect from which this act is

extended to the municipal town or village in which the land is situate, or within one month after the service on him of summons, apply to the Court

for an order that the landlord shall be directed to sell for a price to be fixed by the Court, the whole or part of, the extent of land specified in the

application, (b) On such application, the Court shall first decide the minimum extent of the land which may be necessary for the convenient

enjoyment by the tenant. The Court shall then fix the price of the minimum extent of the land decided as aforesaid, or of the extent of the land

specified in the application under Clause (a), whichever is less. The price aforesaid shall be the average market value of the three years immediately

preceding the date of the order. The court shall order that within a period to be determined by the Court, not being less than three months and not

more than three years from the date of the order, the tenant shall pay into court or otherwise as directed the price so fixed in one or more

installments with or without interest.

(2) In default of payment by the tenant of any one instalment, the application under Clause(a) of Sub-Section (1) shall stand dismissed, provided

that on sufficient cause being shown, the court may excuse the delay and pass such orders as it may think fit, but not so as to extend the time for

payment beyond the three years above mentioned. On the application being dismissed, the court shall order the amount of the instalment or

instalments, if any, paid by the tenant to be repaid to him without any interest.

(3)(a) On payment of the price fixed under Clause (b) of Sub-Section (1), the Court shall pass an order directing the conveyance by the landlord

to the tenant of the extent of land for which the said price was fixed. The Court shall by the same order direct the tenant to put the landlord into

possession of the remaining extent of the land, if any. The stamp duty and registration fee in respect of such conveyance shall be borne by the

tenant, (b) On the order referred to in Clause (a) being made, the suit or proceedings shall stand dismissed, and any decree or order in ejectment

that may have been passed therein but which has not been executed shall be vacated.

There is an explanation to this section mentioning what the expression ""land"" meand, and for the purpose of these cases, it is not necessary to refer

to this explanation.

The Division Bench considered as to the meaning to be attributed to the expression ""the date of the order"" occurring in the third sentence in Section

9(1)(b) viz.,

The price aforesaid shall be the average market value of the three years immediately preceding the date of the order.

13. In this case, the landlord filed a memo on 6.10.1987 stating that the entire extent can be given to the tenant. So, on 6.10.1987 itself, the

minimum extent of the land that is required for the convenient enjoyment of the tenant has been decided. It is the duty of the Court after deciding

the minimum extent of the land required, to fix the price of such minimum extent. The third stage is to pass an order directing the tenant to pay the

price so fixed before the period to be determined by the Court. In this case, as already noticed, on 6.10.1987 itself, the landlord filed a memo

stating that the entire extent can be taken by the tenant. The court has not passed any order in this regard. However, the court appointed an

advocate commissioner on 22.3.88 and he after local inspection filed his report on 2.12.88. Based upon the documents filed by the parties to the

proceedings and on the report of the advocate commissioner, the court passed final orders only on 27.11.1989 directing the tenant to deposit a

sum of Rs. 10,88,000 within six months. Therefore, in my opinion, both the courts below have wrongly fixed the date and directed the tenant to

pay the price so fixed within a period determined by them. The trial court has taken into consideration 6.10.1987 as the date for directing the

tenant to pay the price. As already noticed that date cannot be taken for fixing the price since on that date the landlord has filed a memo by stating

that the entire entire extent can be given to the tenant. The appellate court has taken into consideration 22.3.88 the date on which the commissioner

was appointed to value the property. The decision of the appellate court in taking 22.3.88 for fixing the minimum extent is incorrect. As could be

seen from the decision cited above, the relevant date would be the date on which the court passed the order, viz., 27.11.89 and no other date. The

Division Bench in the aforesaid judgment held that the use of the expression ""first"" in the first sentence and the use of the word ""then"" in the second

sentence certainly fix and prescribe the sequence of events of the decision to be

reached by the court. Under the said circumstances, it is only the date on which the court decided the application in the present case will be the date the minimum extent is decided. In any event, the date 2.12.88 cannot be taken as the relevant date in relation to the market value of the property and fix the said date as the relevant date for fixing the minimum extent. The advocate commissioner was appointed only for the limited purpose of inspecting the land and submitting his report in regard to its location, advantage and other attendant circumstances in order to enable the court to fix the minimum extent of the land required by the tenant for his beneficial enjoyment and also to fix the price for the said minimum extent required. According to the Division Bench, the court will have to first fix the minimum extent of the land which will be necessary for the convenient enjoyment of the tenant. Therefore, the date on which the price is fixed on such minimum extent is the crucial and relevant date. In this case the decision was made by the lower court on 27.11.89 and therefore, that is the crucial and relevant date for fixing the minimum extent required and the price to be fixed for such minimum extent. Learned counsel for the petitioners submitted that by reason of the decision of the Division Bench, the date on which the court below decided the matter has to be taken as the relevant date for fixing the market value.

14. Mr. R. Krishnamoorthy, learned senior counsel for the respondent would submit that 6.10.1987 i.e., the date on which the landlord filed a memo mentioning that the entire extent can be taken by the tenant, should be fixed as the relevant date. I am unable to accept the said contention.

Even assuming for the sake of argument without admitting 6.10.1987 cannot at all be taken as the relevant date for fixing the price, 6.10.87 itself could be taken only as the relevant date for fixing the minimum extent required.

15. In this case, Ex.B2 would state that the said property situates within a short distance from the suit property. In view of the admitted fact that

Dr. Nanjappa Road is a commercial locality and surrounded by hotels hospitals etc., according to the petitioners the advocate commissioner had

fixed the value at Rs. 480 per sq:ft and therefore the same is reasonable. They therefore submit that the court below was not justified in rejecting

Ex.B2 and fixing the relevant date as 22.3.88 for fixing the land value. In this case, the appellate court fixed the market value on the basis of Ex.B3

which is of the year 1988. The property sold under this document is only an undivided share of 473 sq.ft. Actually the price fetched by a property

in a non-residential locality will be more than that of a property in a residential locality. Further Ex.B2 refers to only a property which is residential

in nature and fetching Rs. 240 per sq.ft. It is also submitted that the property covered by Ex.B2 is in a residential area. It is further submitted that

for the property covered under Ex.B2, the Government guideline value itself is Rs. 240 per sq.ft. Taking into consideration of the totality of the

circumstances, the location of the property, and also it being a non-residential complex, I fix the market value of the property in question at Rs.

240 per sq.ft. for 6400 sq.ft. and the said price is fixed with reference to the date of the order viz., 27.11.89.

16. For all the foregoing reasons, the CRP is allowed, the order of the courts below are modified to the above extent. The respondent corporation

is directed to pay the difference in the price fixed within three months from today. No costs.