

(2009) 02 MAD CK 0094

In the Madras High Court

Case No : CRP (NPD) No's. 759, 1529 and 1530 of 2005

S.V. Ramasamy

APPELLANT

Vs

Rainbow Electric Supply Corporation
Rainbow Electric
Supply Corporation Vs S.V. Ramasamy

RESPONDENT

Date of Decision : 09-02-2009

Acts Referred:

Madras City Municipal Corporation Act, 1919 — Section 103
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 2(2), 4, 4(1),
4(16), 4(2)
Tamil Nadu District Municipalities Act, 1920 — Section 85
Transfer of Property Act, 1882 — Section 109

Citation : (2009) 2 LW 156

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

**Advocate : T.V. Ramanujun for P.V. Arul Pazhamnee, for the Appellant; T.R. Mani
for S. Venkateswaran, for the Respondent**

Judgement

V. Ramasubramanian, J.—While the revision petitions CRP Nos. 759 and 1529 of 2005 are by the landlord and tenant respectively, challenging the fair rent fixed by the Appellate Authority, the third revision viz., CRP No. 1530 of 2005 is by the tenant, challenging an order by which the Appellate Authority allowed additional evidence on the side of the landlord.

2. One Mr. S.V. Ramasamy, who is the petitioner in CRP No. 759 of 2005 and who is the respondent in the other two revision petitions, is the owner of the building, of which M/s. Rainbow Electric Supply Corporation, which is the respondent in CRP No. 759 of 2005 and the petitioner in the other two civil revisions, is the tenant. The landlord filed a petition for fixation of fair rent in RCOP No. 2945 of 1995 u/s 4 of The Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The Rent Controller fixed the fair rent at Rs. 22,872/- per month. But on appeal by the tenant in RCA No. 375 of 2000, the fair rent was reduced to Rs. 16,873/- per month. Therefore both the landlord as well as the tenant have challenged the

order of the Appellate Authority, by filing separate revision petitions.

3. Before the Appellate Authority, both parties filed miscellaneous petitions under Order 41, Rule 27, for adducing additional evidence. Both petitions were allowed by the Appellate Authority. But the tenant has come up with the revision in CRP No. 1530 of 2005, challenging the order allowing the application for additional evidence filed by the landlord.

4. I have heard Mr. T.R. Mani, learned Senior Counsel appearing for the landlord and Mr. T.V. Ramanujun, learned Senior Counsel appearing for the tenant.

5. Before taking me through the merits of the dispute, Mr. T.V. Ramanujun, learned Senior Counsel for the tenant, raised an objection with regard to the very maintainability of the petition for fixation of fair rent, filed by the landlord. The basis for the objection is that after the inception of the tenancy in the year 1956, the landlords as well as the tenant filed petitions for fixation of fair rent, in HRC Nos. 1191 of 1964 and 492 of 1965. A fair rent of Rs. 542/- was fixed and the appeal arising out of the said order was dismissed. But on revision, this Court fixed the fair rent at Rs. 539.45 by the order dated 15.2.1972, the decision in which is also reported in 85 L.W. 922.

6. Again a second round of litigation started with the landlords filing HRC No. 2164 of 1978, for fixation of fair rent. The fair rent was fixed at Rs. 1,347/- by the Rent Controller. Both parties filed appeals and the appeals were disposed of by an order dated 29.10.1980.

7. The third round of litigation for fixation of fair rent was initiated in RCOP No. 2945 of 1995, in which the Rent Controller fixed the fair rent at Rs. 22,872/- and the Appellate Authority reduced it to Rs. 16,873/-. These orders have culminated in the present revisions.

8. Therefore Mr. T.V. Ramanujun, learned Senior Counsel for the petitioner contended that the entire proceedings are not maintainable in view of the bar contained in Section 5 of the Act. Section 5 of the Act reads as follows:

5. Change in fair rent in what cases admissible.- (1) When the fair rent of a building has been fixed or refixed under this Act, no further increase in such fair rent shall be permissible except in cases where some addition, improvement or alteration has been carried out at the landlord's expense and if the building is then in the occupation of a tenant, at his request;

Provided that the fair rent as increased under this Sub-section shall not exceed the fair rent payable under this Act for a similar building in the same locality with such addition, improvement or alteration and it shall not be chargeable until such addition, improvement or alteration has been completed;

Provided further that any dispute between the landlord and the tenant in regard to any increase claimed under this Sub-section shall be decided by the Controller.

(2) Where, after the fair rent of a building has been fixed under this Act, there is

a decrease or diminution in the accommodation or amenities provided, the tenant may claim a reduction in the fair rent as so fixed.

Provided that any dispute between the landlord and the tenant in regard to any reduction so claimed shall be decided by the Controller.

(3) Where the fair rent of any building has been fixed before the date of the commencement of Tamil Nadu Buildings (Lease and Rent Control) Amendment Act, 1973, the landlord or the tenant may apply to the Controller to refix the fair rent in accordance with the provisions of Section 4 and on such application, the Controller may refix the fair rent.

9. Mr. T.V. Ramanujun, learned Senior Counsel for the petitioner submitted that in the absence of any pleading or proof that there was "some addition, improvement or alteration" carried out at the request of the tenant in occupation, the landlord was not entitled to seek further increase in the fair rent, after it is fixed once under the Act, in view of the express bar under Sub-section (1) of Section 5. A Division Bench of this Court has also upheld the validity of Sections 4 and 5 of the Act, in T.V. Angappan and T.V. Subramanian Vs. The State of Tamilnadu and Others, . Therefore the learned Senior Counsel contended that the petition for fixation of fair rent, filed by the respondent without even a formal averment that there was some addition, alteration or improvement in the building, made at the request of the tenant, was not maintainable at all.

10. However, Mr. T.R. Mani, learned Senior Counsel appearing for the respondent submitted that the building in question, was different from the building that was the subject matter of the previous petitions for fixation of fair rent and that therefore the bar u/s 5(1) was not applicable. The learned Senior Counsel for the respondent also submitted that the petitioner did not plead the issue of maintainability of the petition for fixation of fair rent, in their counter before the Rent Controller. In the absence of a pleading in this regard, before the Rent Controller, the attempt made by the petitioner to raise it before the Appellate Authority was bound to fail.

11. In support of his contention that the building, which is the subject matter of the present proceedings, is different from the building which was the subject matter of the earlier proceedings, Mr. T.R. Mani, learned Senior Counsel for the respondent, brought to my notice, the following facts:

(a) The entire property bearing Door No. 1/217, Govindappa Naicken Street, Chennai-1, measuring a constructed area of 2,207 sq. ft., in the ground floor and 950 sq. ft., in the first floor, was let out in the year 1956 by S.V. Chenchuramiah and S.V. Ramasamy, to Heerachand Shiyal, Proprietor of Rainbow Electric Supply Corporation. The fair rent proceedings initiated in the year 1964 and 1965, were by S.V. Chenchuramiah and S.V. Ramasamy against Rainbow Electric Supply Corporation, in respect of the aforesaid property in entirety.

(b) After the death of Heerachand Shiyal, fresh proceedings were initiated in the

year 1978 by S.V. Chenchuramiah and S.V. Ramasamy against Khemraj Shiyal and Kushal Chand Shiyal, sons of Heerachand Shiyal, in respect of the property at Door No. 108 (Old No. 217), Govindappa Naicken Street, Chennai-1.

(c) S.V. Chenchuramiah and S.V. Ramasamy partitioned the property between themselves by a registered deed of partition dated 29.8.1986 (filed as Ex.P-1). By the said partition, the Southern half of the property at Door No. 108 was allotted to S.V. Ramasamy. The Northern portion was allotted to the other brother and the property was subdivided and allotted Door Nos. 108/1 and 108/2.

(d) After the partition, the landlords made a request by a letter dated 6.12.1988 (filed as Ex.P-8), to surrender a portion measuring an extent of about 169 sq. ft., to enable the respondent herein to have access to his portion. Accordingly, the portion of an extent of 69 sq. ft., in the area allotted to the respondent under the partition deed and the portion of an extent of 110 sq. ft., in the area allotted to S.V. Chenchuramiah, under the partition deed, was surrendered by the petitioners to the landlords. Consequently, the rent payable was also proportionately reduced, from what was being paid at that time.

(e) Thereafter, the landlords had mutation effected in the records of the Corporation, got the property subdivided and got it assessed to tax separately, with separate Door Numbers.

12. Therefore in the light of the above facts, Mr. T.R. Mani, learned Senior Counsel for the respondent contended that the building now in question is different from the building which was the subject matter of the earlier proceedings. He also contended that if a property is partitioned, the parties are independently entitled to proceed against the tenant. In support of the said contention, the learned Senior Counsel relied upon the decision of a learned Judge of the Allahabad High Court in Ram Chandra Singh and Others Vs. Ram Saran and Others, , wherein it was held that one of the co-owners, after partition, can sue for ejectment of the tenant. The learned Senior Counsel also relied upon a decision of the Supreme Court in Mohar Singh (Dead) by Lrs. Vs. Devi Charan and Others, , to point out that Section 109 of the Transfer of Property Act, provides a statutory exception to the general Rule that a landlord cannot split the unity and integrity of the tenancy and recover possession of a part of the demised premises. Therefore the learned Senior Counsel contended that after the partition, a new tenancy came into existence and that therefore the bar u/s 5(1) will not apply.

13. However Mr. T.V. Ramanujun, learned Senior Counsel for the petitioner submitted that the fair rent fixed u/s 4 of the Act, is not with reference to the landlord or the tenant, but is with reference to the building. Therefore, the mere fact that there was a partition and the tenancy was split for the purpose of apportionment of the rent between the co-owners, would not make the building a new one, so as to entitle the landlord to file a fresh petition for fixation of fair rent. In this connection, the learned Senior Counsel relied upon the decision of

the Supreme Court in Raval and Co. Vs. K.G. Ramachandran and Others, . In paragraph-19 of the said decision, the Supreme Court held as follows:

A close reading of the Act shows that the fair rent is fixed for the building and it is payable by whoever is the tenant whether a contractual tenant or statutory tenant. What is fixed is not the fair rent payable by the tenant or to the landlord who applies for fixation of fair rent but fair rent for the building, something like an incident of the tenure regarding the building.

The learned Senior Counsel also relied upon the observation made in paragraph-28 of the said decision that the fair rent, when fixed, becomes an attribute or incidence of the building and that there can be no change in it except in the circumstances set out in Section 5. This paragraph-28 forms part of the minority view in Raval's case, though on this issue, it is in conformity with the majority view.

14. I have carefully considered the rival submissions. It is true that the scheme of Sections 4, 5 and 6 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, respectively provide for (i) fixation of fair rent (ii) increase or reduction in the fair rent so fixed and (iii) an additional amount over and above the fair rent fixed. Section 4 of the Act has no bearing upon the issue on hand, Section 5 has already been extracted and Section 6 of the Act, reads as follows:

6. Increase over rent in certain cases.- (1) Where the amount of the taxes and cesses payable (including any new tax or cess which has become payable) by the landlord in respect of any building to a local authority for any half-year commencing on the 1st April, 1950, or on any later date exceeds the amount of the taxes and cesses payable in respect thereof the same or any other local authority for the half-year ending on the 30th day of September 1946, or for the first complete half-year after the date on which the building was first let, whichever is later, the landlord shall be entitled to claim such excess from the tenant in addition to the rent payable for the building under this Act.

Provided that such excess shall not be recoverable in so far as it has resulted from an increase of rent in respect of the building.

(2) Any dispute between the landlord and the tenant in regard to any increase claimed under Sub-section (1) shall be decided by the Controller.

15. Section 5(1) places an embargo upon an increase to a fair rent already fixed, except in cases where some addition, improvement or alteration has been carried out at the landlord's expense. The Section also imposes a further condition that if the building is in the occupation of a tenant, such addition, improvement or alternation should have been carried out at the request of the tenant. The entitlement to increase in the fair rent, under Sub-section (1) of Section 5 is also circumscribed by the First proviso to Section 5(1), which prescribes a cap for the increased fair rent.

16. Sub-section (2) of Section 5 enables a tenant to claim a reduction in the fair

rent already fixed, if there is a decrease or diminution in the accommodation or amenities provided. Thus, a fair rent once fixed, (i) can be increased if there is any addition, improvement or alteration, carried out at the expense of the landlord and at the request of the tenant, subject to a ceiling limit and (ii) can be reduced, if there is a decrease or diminution in the accommodation or amenities provided.

17. However, Section 6(1) entitles a landlord to claim from the tenant, in addition to the rent payable under the Act, any excess amount of taxes or cesses charged by a local authority in respect of the building. But the proviso u/s 6(1) disentitles a landlord to make a claim for such excess amount, if the excess demand for taxes and cesses has resulted from an increase of rent in respect of the building.

18. Thus Sections 5 and 6 have made a claim for fair rent, almost a once-in-a-life-time affair for the building (and not for the landlord or the tenant). The provisions are so water tight that the Division Bench, even while upholding Sections 5 and 6, in T.V. Angappan's case 2006 (3) MLJ 1073, observed in the last few paragraphs of its decision that there is a need to fine tune the provisions of the Act to match the changes in time.

19. While the Tamil Nadu Rent Control Act had made these provisions relating to fixation of fair rent very stringent, some other States appear to have adopted a very pragmatic approach. The Rent Control Legislations of Andhra Pradesh, Bihar, Goa, Daman and Diu, Himachal Pradesh, Jammu and Kashmir, Kerala, Madhya Pradesh, Orissa, Pondicherry, Tripura and Uttar Pradesh are similar to the Tamil Nadu Act. But the Assam Act provides for an increase in rent, once in five years, if the market value of the land and the estimated cost of construction increases by more than 25% on the value prevailing at the time of inception of the tenancy or the previous revision. The Delhi Act provides for an increase in the standard rent once in three years. The Gujarat Act enables a landlord to seek an increase under certain circumstances. The Haryana Act prohibits an increase within 5 years of fixation of fair rent. But the Act permits an increase after 5 years, if there is improvement or if the amount of taxes or cesses is increased. The Karnataka Act appears to resolve the issue in a different manner. The Act enables the landlord to collect, apart from the standard rent, charges for the amenities, maintenance charges at a particular rate, the pro rata property tax, the charges for electricity, water etc., and the cost of improvement, addition and alteration. The Maharashtra Act permits an increase of 4% per annum, apart from an increase towards any improvement carried out at the request of the tenant or towards enhancement of taxes and cesses. The Meghalaya Act and Mizoram Act are similar to Assam Act and they provide for an increase once in five years. The Rajasthan Act provides for a periodical revision of the agreed rent at a particular rate. The Sikkim Act provides for an increase if the ground rent payable is increased or if there is any addition, alteration or improvement. The West Bengal Act provides for an increase of fair rent once in three years by 5%. Thus, various States have approached the issue in different perspectives.

20. While the position with regard to fixation of fair rent or standard rent, appears to be statutorily static, the position with regard to assessment of buildings to property tax and the entitlement of the local bodies to periodical revision, has always been maintained dynamic. Almost all States have separate enactments relating to Corporations, Municipalities and Panchayats, which contain provisions for assessment of buildings to tax and other cesses. All the enactments also provide for periodical revision of the annual rental value of the buildings and consequently the taxes payable.

21. When questions arose about the method of assessment of annual rental value of buildings, for the purpose of determining the property tax payable, the Hon'ble Supreme Court indicated in a catena of decisions that the local bodies could look upto the provisions of the relevant Rent Control Acts, relating to fixation of fair rent and adopt the same formulae. Useful reference may be made in this connection, to the decisions of the Apex Court in *The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc.*, , *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, , *Morvi Municipality Vs. State of Gujarat and others*, and *East India Commercial Co. Pvt. Ltd. Vs. Corporation of Calcutta*, .

22. Section 103 of The Madras City Municipal Corporation Act, 1919, reads as follows:

103. General revision of property tax.- The general revision of the assessment of property tax in relation to the building and land situated within the City limit shall be made from such date as the State Government may by notification prescribe. The Commissioner may revise the property tax in accordance with the provisions of this Act and the rules made thereunder:

Provided that there shall be an interval of five years between one general revision and another general revision.

23. Section 85 of The Tamil Nadu District Municipalities Act, 1920 reads as follows:

85. General revision of property tax: The general revision of the assessment of property tax in relation to the building and land situated within the Municipal limit shall be made from such date as the State Government may, by notification, appoint. The Executive Authority may revise the property tax in accordance with the provision of this Act and the rules made thereunder:

Provided that there shall be an interval of five years between one general revision and another general revision.

24. Thus the Corporations and Municipalities are empowered to revise the property tax periodically, subject to the restriction that there shall be at least an interval of five years in between two successive revisions. By virtue of the law laid down by the Apex Court in various decisions cited supra, the revision of property tax may be made on the basis of the annual rental value fixed by

adopting the formulae prescribed under the Rent Control Act for fixation of fair rent.

25. As a result, while the fair rent once fixed, can never undergo a change (except where there is any addition, alteration or improvement), the property tax is liable to get revised at periodical intervals, on the basis of the very same formulae prescribed by the Rent Control Act, for fixation of fair rent. The impact of this disparity is sought to be reduced, if not eradicated, by Section 6 of the Rent Control Act, entitling a landlord to recover from the tenant, such excess amount of tax, in addition to the fair rent. But in an ideal situation, the removal of the disparity is to be preferred than the mere reduction of its impact.

26. Coming to the case on hand, it is an admitted fact that the building in entirety was owned by two brothers. It is also admitted that they partitioned the property and thereafter there was some realignment or readjustment of the portion in the occupation of the tenant. At least an extent of about 169 sq. ft., was surrendered, partly to one brother and partly to another, by the tenant. Therefore the "building" occupied by the tenant, after such realignment, is not the "same building" occupied by him earlier. The word "building" is defined in Section 2(2) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, as follows:

Section 2(2): "building" means any building or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes and includes-

(a) the garden, grounds and out-houses, if any, appurtenant to such building, hut or part of such building or hut and let or to be let along with such building or hut,

(b) any furniture supplied by the landlord for use in such building or hut or part of a building or hut, but does not include a room in a hotel or boarding house;

27. While interpreting the word "building", this Court has taken the view that even a part of a building is a building, but the portion in the occupation of the landlord, is not a building. A building may be in the occupation of several tenants, each occupying separate portions. Each of such portions, will be a "building" within the meaning of the provisions of the Act, when proceedings are initiated against the individual tenants either for eviction or for fair rent. Suppose, a building has three residential portions and three non-residential portions each in the occupation of a different person and a landlord got fair rents fixed for each of those six portions separately, such fair rent may remain static, by virtue of the provisions of Section 5, in respect of those individual portions, on account of the fact that each such portion is a building. But it will be futile to contend that the fair rent for the whole of the building (comprising of all six portions) would just be equivalent to the sum total of all the fair rents fixed in respect of all six portions arrived at by adding the fair rents of each of those six portions. To do so, would amount to converting the statutory provisions into a mere exercise in elementary arithmetic. Suppose we take a hypothetical

situation, where one of the six tenants vacate the portion in his occupation (residential or non-residential) and that portion is annexed to an adjoining portion (whether residential or non-residential) and taken by the tenant of that adjoining portion, it may not be possible to contend that the two units (tenements) merged into one, is nothing more than a mere arithmetical addition. Therefore it may not also be correct to say that the fair rent for the newly formed portion (by fusing two portions together) should just be the arithmetic total of the fair rents fixed earlier for both the portions. This is in view of the fact that the word "building" is defined in Section 2(2) of the Act to mean a specific earmarked portion of a building in the occupation of a tenant against whom the proceedings are initiated.

28. Once there is realignment of different portions of a building, it results in a change in the extent of land occupied by such realigned portions (which is a building within the meaning of the Act) and may also result in a change in the amenities that actually go with the realigned portion. Therefore the "building", after realignment, may not be the same "building" in respect of which fair rent was fixed before realignment. That building may even have the same Corporation Door Number and the same overall peripheral features, for an outsider. But it would cease to be the same building for which fair rent was fixed earlier.

29. Therefore I hold that the petition for fixation of fair rent filed by the landlord in the present case was maintainable, since the building in respect of which such fixation is sought, is not the same building for which a fair rent was fixed about 30 years ago. This is in view of the fact that after partition of the whole of the property between the landlords, there was a realignment of the portion in the occupation of the tenant and the portion in the occupation of the landlord. The tenant surrendered 110 sq. ft., to one of the landlords and 69 sq. ft., to the other landlord, thereby splitting the tenancy into two and becoming a tenant in respect of two smaller portions under two different tenants. Consequently, the "building" in the occupation of the tenant, after such realignment, is not the same as was in his occupation before such realignment. Therefore the fair rent fixed in 1978 in respect of a building which has undergone a realignment, cannot be a bar u/s 5, in the light of the definition of the word "building" under the Act.

30. Coming to the merits of the case, it is seen that before the Rent Controller, the landlord examined his Engineer as PW.2 and the Engineer's report was filed as Ex.P.2. The tenant did not examine any Engineer nor did he let in any expert evidence. Apart from examining an Engineer, to speak about the extent of land, the extent of constructed area, the type of building, the amenities available, the cost of construction and the market value of the land, the landlord also filed a letter received from the Office of the Sub Registrar, Sowcarpet, as Ex.P.4 to show the guideline value of the property.

31. On the basis of the pleadings and the expert evidence, the construction was found by the Rent Controller to be of Type-I and the age of the building to be 85 years. The tenant did not come up with any specific plea with regard to the type

of construction or the age of the building, in his counter. The tenant nearly made a general and bald denial of the claim of the landlord on these aspects. Therefore the finding that the building is of Type-I construction and that the age of the building was 85 years, cannot be interfered with, in this revision.

32. The built up area was found by the Engineer (PW.2) to be 1346 sq. ft., in the ground floor and 781 sq. ft., in the first floor. There was no contra evidence from the tenant. As a matter of fact, even in the petition for fixation of fair rent, the landlord furnished a memo of calculation indicating the built up area in the ground floor and the first floor to be 1346 sq. ft., and 781 sq. ft., respectively. There was no specific denial of these facts in the counter filed by the tenant before the Rent Controller. Therefore the finding of the Rent Controller regarding the built up area, cannot also be interfered with, in the absence of specific pleadings and a contra evidence on the side of the tenant.

33. The cost of construction was taken by the Rent Controller at Rs. 198/- per sq. ft., for the ground floor and Rs. 184/- per sq. ft., for the first floor, on the basis of the PWD rate of construction in the year 1995, for a Madras Roof Building. The landlord had claimed Rs. 260/- per sq. ft., for the ground floor and Rs. 250/- per sq. ft., for the first floor towards cost of construction, but the Rent Controller chose to adopt the Public Works Department rate of construction. The Appellate Authority accepted the rate of construction adopted by the Rent Controller and both parties have not specifically assailed such an adoption. Therefore the adoption of the rate of construction by both the Courts below also does not warrant interference.

34. The Rent Controller added 20% on the cost of construction, towards basic amenities on the ground that the building had electricity, water and drainage facilities. The Appellate Authority recorded a finding that those basic amenities continue to exist in the building. But the Appellate Authority allowed only 15% on the cost of construction, towards amenities.

35. Serious objections were raised on both sides with regard to the allowance of 15% by the Appellate Authority towards amenities. Mr. T.R. Mani, learned Senior Counsel for the landlord relied upon Clause (ii) of the Second proviso to Sub-section (4) of Section 4, to contend that in the case of non-residential buildings, the Rent Controller is entitled to allow upto 25% of the cost of the site and the cost of construction towards amenities. But Mr. T.V. Ramanujun, learned Senior Counsel for the tenant contended that even admittedly, there were no amenities specified in Schedule-I to the Act. Since the objections on both sides are fairly well founded, they shall be dealt with at present.

36. Sub-section (1) of Section 4 obliges the Rent Controller to fix the fair rent of a building, in accordance with the principles set out in the following sub sections. Sub-sections (2) and (3) indicate that the fair rent for residential and non-residential buildings are to be fixed respectively at 9% and 12% gross return per annum on the total cost of such building. Sub-section (4) prescribes that the

total cost of the building would consist of three components viz., (i) the market value of the site in which the building is constructed (ii) the cost of construction of the building and (iii) the cost of provision of any one or more of the amenities specified in Schedule-I to the Act. The First proviso to Sub-section (4) stipulates that while arriving at the market value of the site, the Controller should take into account only that portion of the site on which the building is constructed. Out of the remaining portion of the vacant land, 50% is to be treated as amenity under Schedule-I. The Second proviso to Sub-section (4) fixes a ceiling limit of 15% and 25% respectively for residential and non-residential buildings on the cost of site and construction, towards the cost of provision of amenities specified in Schedule I. Sub-section (5)(a) indicates that the cost of construction of the building is to be determined with due regard to the rates adopted by the Public Works Department. Sub-section (5)(b) mandates the Rent Controller to allow depreciation on the cost of construction, at the rates specified in Schedule-II.

37. Sub-sections (4) and (5) of Section 4 read as follows:

(4) The total cost referred to in Sub-section (2) and Sub-section (3) shall consist of 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.

Provided that while calculating the market value of the site in which the building is constructed, the Controller shall take into account only that portion of the site on which the building is constructed and of a portion upto fifty per cent, thereof of the vacant land, if any, appurtenant to such building the excess portion of the vacant land, being treated as amenity.

Provided further that the cost of provision of amenities specified in Schedule-I shall not exceed-

(i) in the case of any residential building, fifteen per cent; and

(ii) in the case of any non-residential building, twenty-five per cent of the cost of site in which the building is constructed, and the cost of construction of the building as determined under this Section.

(5)(a) The cost of construction of the building including cost of internal water-supply, sanitary and electrical installations shall be determined with due regard to the rates adopted for the purpose of estimation by the Public Works Department of the Government for the area concerned. The Controller may, in appropriate cases, allow or disallow an amount not exceeding thirty per cent, of construction having regard to the nature of construction of the building.

(b) The Controller shall deduct from the cost of construction determined in the manner specified in Clause (a), depreciation, calculated at the rates specified in Schedule-II.

38. Therefore Mr. T.R. Mani, learned Senior Counsel appearing for the landlord is right in contending that if there are amenities specified in Schedule-I available in the building in question, then the cost of provision of those amenities may be allowed upto 15% in the case of residential buildings and upto 25% in the case of non-residential buildings, calculated both on the cost of the site and the cost of construction. In this case, the Rent Controller allowed 20% only on the cost of construction and the Appellate Authority reduced it to 15% again on the cost of construction alone. This is not in tune with Clause (2) of the Second proviso of Sub-section (4) of Section 4.

39. But as rightly pointed out by Mr. T.V. Ramanujun, learned Senior Counsel for the tenant, Sub-section (4) of Section 4 gives allowance only for the amenities specified in Schedule-I and hence the Rent Controller cannot allow any amount towards any amenities other than those specified in Schedule-I. Schedule-I of the Act lists out only 17 items as amenities, in respect of which special allowance is permissible. They are (1) Air-conditioner (2) Lift (3) Water-cooler (4) Electrical heater (5) Frigidaire (6) Mosaic flooring (7) Side dadoos (8) Compound walls (9) Garden (10) Over-head tank for water-supply (11) Electric pump and motor for water-supply (12) Playground (13) Badminton and Tennis Courts (14) Sum-breakers (15) Amenity referred to in the first proviso the Sub-section (4) of Section 4 (16) Usufructs, if any, enjoyed by the tenant (17) Features of special architectural interest. The amenities of Electricity, Water and Drainage are not included in Schedule-I, but they are directed to be taken into account for arriving at the cost of construction, by virtue of Sub-section (5)(a) of Section 4. The said Sub-section entitles the Rent Controller to allow or disallow an amount not exceeding 30% of the cost of construction, having regard to the nature of the construction. In other words, no allowance is contemplated separately u/s 4(4) for water supply, sanitary and electricity connection, as they are basic and essential for any type of accommodation.

40. But unfortunately, the Rent Controller and the Appellate Authority have granted an allowance, at the rate of 20% and 15% respectively, not for any Schedule-I amenity, but for the amenities of electricity, water and drainage. There is no finding either by the Rent Controller or by the Appellate Authority regarding the availability of any one or more of Schedule-I amenities in the petition-building. Therefore both the Authorities committed an error in granting an allowance for those amenities, which do not fall under Schedule-I.

41. Mr. T.R. Mani, learned Senior Counsel for the landlord relied upon the decision of this Court in the earliest round of litigation between the parties, reported in 85 LW 822 and contended that the issue was already clinched between the parties and that therefore the fixation of 20% for amenities cannot now be altered. But I do not think that the decision between the parties in the previous round, can ever be relied upon by the landlord. Once it is concluded that the building in respect of which fair rent was fixed in the earlier rounds of litigation is different from the building in respect of which the present

proceedings relate to, neither of the parties can rely upon the findings or the decision in the previous petitions. Therefore the reliance placed on 85 LW 822 cannot be accepted.

42. The last contentious issue between the parties relates to the market value of the land. Before the Rent Controller, both parties did not file any sale deed of any other property, in the locality. The landlord examined the Engineer as PW.2 and filed his report as Ex.P-2. According to the evidence of the landlord's Engineer, the market value of the land at the relevant point of time, was Rs. 70 lakhs per ground. The guideline value of land, obtained from the Office of the Sub Registrar and filed as Ex.P-4, showed that the market value of land in the area was Rs. 1,250/- per sq. ft., which would work out to Rs. 30 lakhs per ground. But since the guideline value cannot be taken to be the market value, the Rent Controller accepted the report of the landlord's Engineer and fixed the market value of land at Rs. 70 lakhs per ground, in the absence of any evidence on the side of the tenant.

43. Before the Appellate Authority, the landlord filed M.P. No. 42 of 2003 for filing a sale deed document No. 275/1987, as an additional document. Similarly, the tenant also filed M.P. No. 283 of 2004 for filing a sale deed document No. 1415/1995, as additional evidence. Both the miscellaneous petitions were allowed. While the document filed by the landlord was taken as Ex.P-10, the document filed by the tenant was taken as Ex.R-12.

44. But the Appellate Authority did not accept the value indicated either in Ex.P-10 or in Ex.R-12. The value indicated in Ex.P-10 was not accepted on the ground that it related to a property in NSC Bose Road, which is a main road. The value indicated in Ex.R-12 was not accepted, since it was a conveyance of 1/16 undivided share of land, subject to certain litigations including probate proceedings and a civil suit C.S.No.389 of 1993. Moreover, the Appellate Authority found that the document was referred for adjudication on the ground that the property was undervalued.

45. Thus both the additional documents, one filed by the tenant and one filed by the landlord, were allowed as additional exhibits, but the Appellate Authority did not go by both of them. After rejecting the value indicated in both documents, the Appellate Authority fixed the market value of land at Rs. 50 lakhs per ground by taking into account the fact that the guideline value was Rs. 30 lakhs per ground and the value claimed by the landlord's Engineer was Rs. 70 lakhs per ground. Such an approach cannot be found fault with, since there were no other materials available for the Appellate Authority. The Rent Controller simply accepted the value suggested by the landlord's Engineer, but the Appellate Authority took into account all available materials to arrive at the market value. Having omitted to lead any evidence before the Rent Controller, the tenant is not entitled to find fault with the Appellate Authority for fixing such a value, especially when Ex.R-12 filed by him indicated the value of a property under litigation, apart from being a property conveying only an undivided 1/16 share.

Therefore I do not think that a case is made out for interference with the finding of the Appellate Authority regarding the market value of the land.

46. In conclusion, I find that the concurrent findings of the Rent Controller and the Appellate Authority with regard to (i) the extent of land (ii) the total constructed area, (iii) the type of construction, (iv) the age of the building and depreciation, (v) the cost of construction adopted at PWD rates, cannot be interfered with. The market value of land fixed at Rs. 50 lakhs per ground cannot also be said to be erroneous, in view of the vast disparity between the guideline value of Rs. 30 lakhs per ground and the value suggested by the landlord's Engineer at Rs. 70 lakhs per ground. However, the allowance of 20% and 15% by the Rent Controller and the Appellate Authority respectively, for basic amenities, is not contemplated by the Act and hence the same has to be deducted. If this is done, the fair rent for the building would be as follows:

Cost of construction

Ground floor 1346 sq. ft. @ Rs. 197/- per sq. ft. = Rs. 2,65,162/- First floor 781 sq. ft. @ Rs. 184/- per sq. ft. = Rs. 1,43,704/- ----- Total = Rs. 4,08,866/- -----

Depreciated value of building (Rs. 4,08,866/- x 0.447) = Rs. 1,82,763/-

Value of land as per Appellate Authorities order (2127/3 x Rs. 50,00,000/2400) = Rs. 14,77,083/- ----- Rs. 16,59,846/- -----

47. Since the petition-building is non-residential, the fair rent shall be 12% gross return per annum, as per Section 4(3). Applying the same, the fair rent per month would be 1% of the total cost of the building arrived at as above. Therefore the fair rent for the petition-building would be Rs. 16,598/-, which can be rounded off to Rs. 16,600/- per month and the same shall be payable with effect from the date on which the petition for fixation of fair rent was filed viz., 11.12.1995.

48. In the result, the Civil Revision Petitions, CRP No. 759 of 2005 filed by the landlord and CRP No. 1529 of 2005 filed by the tenant, challenging the order of the Appellate Authority, passed in RCA No. 375 of 2000, are disposed of, modifying the order of the Appellate Authority and fixing the fair rent for the petition-building at Rs. 16,600/- per month, payable with effect from 11.12.1995. There shall be no order as to costs.

49. CRP No. 1530 of 2005 is filed by the tenant against the order passed by the Appellate Authority in M.P. No. 42 of 2003, allowing the application of the landlord for receipt of additional evidence. But I do not find any merit in the challenge, since the tenant himself filed a similar application in M.P. No. 283 of 2004 and the same was also allowed by the Appellate Authority. The additional document sought to be filed by the landlord and the additional document sought to be filed by the tenant, were only certified copies of sale deeds and hence there was nothing wrong in the Appellate Authority allowing both the applications. In

any case, the additional documents filed on both sides, were not accepted by the Appellate Authority for arriving at the market value of the land and hence the challenge to the petition for filing additional evidence, is only an exercise in futility. Therefore CRP No. 1530 of 2005 is also dismissed. No costs.