(1987) 11 MAD CK 0037

In the Madras High Court

Case No : C.R.P. 2788 and 2789 of 1983 and C.R.P. 3505 and 3056 of 1983

The Collector of Madras, Accommodation Wing, Madras — APPELLANT

Vs

A.N. Gajendran — RESPONDENT

Date of Decision : 23-11-1987

Acts Referred:

Citation : (1987) 11 MAD CK 0037

Hon'ble Judges : M.N. Chandurkar, C.J

Bench : Single Bench

Advocate : K. Kumaraswami and H.N. Markandan, for the Respondent

Judgement

M.N. Chandurkar, C.J.—The only two questions which become relevant for the decision of these revision petitions, two filed by the landlord and two by the tenant, are whether the finding recorded by the Appellate Authority with regard to the cost of construction and the value of land need any interference. The premises No. 4, Rajagopal Naicken St., Chintadripet, Madras-2, consists of a rear portion situated at Chintadripet which is a locality adjacent to Metropolitan Courts, Police Commissioner Office, Egmore, Madras, Egmore Railway station and Central railway station. The premises in question was taken by the Accommodation Controller (Collector of Madras) and have been allotted to the tenant. The rent paid by the allottee was only Rs. 59-50 per month. The front portion was occupied by another tenant who paid Rs. 94-62 per month. We are not concerned with him. The landlord filed the petition claiming Rs. 601 per month as reasonable rent. The two main items which became relevant for determination of rent were cost of construction and the value of the site. The value of the site even according to the landlord was Rs. 60,000 per ground and he claimed the cost of construction at Rs. 100 per sq.ft. The Rent Controller fixed the fair rent of the rear portion at Rs. 338 per month. Against this order, both the Collector and the landlord filed appeals. The appellate authority confirmed the finding that the value of the site was properly determined at Rs. 60,000, per ground. With regard to the area, there was some dispute. The allottee claimed that the built up area in his occupation was 767 sq.ft. while according to the landlord, the area was 899 sq.ft. The appellate authority found that the Engineer R.W.2 examined on behalf of the Collector had not given any details as to how he arrived at figure 767-08. He accepted the detailed given by the Engineer P.W.2, examined on behalf of the landlord and came to the conclusion, finding that the built up area was correctly stated by the landlord to be 899 sq.ft. With regard to the age of the building both the authorities concurrently found it to be 40 years. This finding is not now challenged. The appellate authority confirmed the finding that the fair rent should be Rs. 338 per month. Since there were two appeals before the appellate authority both the tenant and the landlord have filed two separate revisions each challenging the order of the appellate authority. The learned counsel appearing on behalf of the landlord has filed a petition CMP. 4664 of 1985 for permitting additional evidence to be taken in the petitions filed by him because according to him, he has now come across a sale deed executed by the Official Trustee of Tamil Nadu for a sum of Rs. 3,55,000 per ground in respect of property which is in close proximity of the property in question. On the basis of this transaction, according to the learned counsel, the market value of the site should be determined at Rs. 1,00,000 per ground. The learned counsel then wanted to argue that if the market value is calculated at Rs. 1,00,000 per ground and the cost of construction is also calculated at Rs. 100 per sq.ft. there will be a substantial difference in the fair rent which would be payable by the tenant and the fair rent fixed by the appellate Authority. Now it is difficult to see how the landlord can at this stage urge that the market value of the site should be fixed at Rs. 1,00,000 per ground when he had himself valued the land at Rs. 60,000 per ground. When he came to court he must be presumed to have ascertained the correct market value of the land for the purposes of determining the fair rent. When even according to him. Rs. 60,000 per ground was the market value of the site, it is now open to him to urge that it should be taken at a higher figure especially when both the courts on the evidence before them have determined the value of the site at Rs. 60,000 per ground. Reliance was sought to be placed on a decision of this Court in Dova Tat Co. v. T.R. Ramanath 99 L.W. 269, in which the learned Judge observed that though the fair rent as determined by the Court is higher than what was claimed by the landlord, it was the duty of the Court to fix the rent at the figure determined by it irrespective of the fact that the claim of the landlord was much lower. There is nothing in the judgment which could be read as laying down that when the market value of the site has been claimed by the landlord on a particular figure, and he has not adduced any evidence to prove that the figure was mistaken before the lower Court, namely, the Rent Controller, he will still be at liberty on the basis of some additional evidence in the form of a private document to urge that the market value should be determined at a figure higher than the one claimed by the landlord himself. The document in question evidences an auction sale of property consisting of land and building described therein held in 1982. The document itself is dated 4-6-1983. Now it is not possible to straightaway accept this document and work out the price of the land. Allowing this document as evidence will mean fresh enquiry as to the nature of the building sold, the market value of the building and other circumstances so as to find out what would be the value of the site. Since a course would hardly be desirable when the value of the land has been determined at the figure given by the landlord in his petition. The application for additional evidence must, therefore be rejected.

2. The learned counsel for the Collector did not challenge the finding with regard to the value of the land at Rs. 60,000. There is, therefore, no reason to interfere with the finding with regard to the value of the land.

3. So far as the cost of construction, however, is concerned, it dots appear that there is some substance in the grievance that the cost of construction determined at the rate of Rs. 49 per sq.ft., is wholly inadequate. On what basis this has been determined is not possible to be ascertained. The learned counsel has produced a publication called the Tamil Nadu Public Works Department Mini Technical Handbook. I had occasion to refer to the figures given in the bank book in another matter and if according to this publication in 1981-1982, the cost of construction of the Type ''A'' building like the one in question was estimated at Rs. 820 per sq. metre which comes approximately to Rs. 76 per sq.ft., excluding electricity and sanitary fittings, it is difficult to see how unrealistic the figure of Rs. 49 per sq.ft., can be taken to be the cost of construction for the purposes of fixing the fair rent. It is common knowledge that no construction of any standard quality could be made by any owner of property at the rate of Rs. 49 per sq.ft. The learned counsel appearing on behalf of the landlord is entitled especially in a case where the Government is a tenant to rely on the figures given in the mini handbook and claim the cost of construction at Rs. 76 per sq.ft. To this must he added the cost of electrical installation and sanitary fitting. It is common knowledge that these costs have also been escalating from time to time and 15 per cent of the total cost must be the minimum which must be added to the bare cost of construction to arrive at the cost of construction as contemplated by the Act.

4. So far as the area is concerned, it is not possible to interfere with that finding notwithstanding the argument advanced on behalf of the Collector-tenant that the Engineer had given a plan. I have seen the plan but that plan hardly gives any detail. The failure to give the necessary details made the authorities below accept the plan given by the landlord, on whose behalf P.W.2 the Engineer has given the details. Strictly speaking, the finding with regard to the built up area must be treated as a finding of fact. The result, therefore, is, the cost of construction to be calculated at the rate of Rs. 76 per sp.ft. plus 15 per cent for the costs of electrical installation and sanitary fittings will be the cost which will have to be taken into account for the built up area of 899 sq.ft.

5. Accordingly, the total cost of construction comes to Rs. 78,572. The value of the site at the rate of Rs. 60,000 per ground comes to Rs. 11,238. The cost of construction after allowing depreciation prescribed under the Act will work out to Rs. 52,400. On this amount, the landlord will be entitled to a return at the rate of

nine per cent per annum.

6. Accordingly, the fair rent for the rear portion of the premises in the occupation of tenant is fixed at Rs. 477 per month. To the extent indicated above, the revision petitions of the landlord are allowed and the revision petitions filed by the tenant-Collector are dismissed. There will be no order as to costs. In view of the decision of this court in The State of Tamil Nadu v. K.N. Dhanasekaran 93 L.W. 207 = 1979 T.L.N.J. 542, the fair rent will be payable from the date of allotment subject to law of limitation.