
(2004) 03 MAD CK 0019
In the Madras High Court
Case No : C.R.P. (NPD) No. 1908 of 2001

The Lakshmi Vilas Bank and Another	Vs	APPELLANT
S.G. Purushothaman		RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Pondicherry Buildings (Lease and Rent Control) Act, 1969 — Section 5

Citation : (2004) 4 CTC 301

Hon'ble Judges : M. Thanikachalam, J

Bench : Single Bench

Advocate : M.S. Sundararajan, for the Appellant; R. Subramanian, for the Respondent

Judgement

M. Thanikachalam, J.—The tenant bank aggrieved by the fixation of fair rent, fixing different amounts for different periods, by the Courts

below, are the revision petitioners.

2. The respondent herein is the landlord, for the building, which is in the occupation of the tenant bank. The contractual rate of rent per month,

appears to be Rs. 10,000. The landlord considering the commercial utility of the building, its location, felt that the existing rent is too low, for the

building, which is having all the advantage and in this view, he filed a petition, for fixation of fair rent, u/s 5 of the Pondichery Buildings (Lease and

Rent Control) Act, hereinafter called "the Act" at Rs. 19,400 up to 31.3.1996 and thereafter at Rs. 20,806 with effect from 1.4.1996.

3. The petition for fixation of fair rent was opposed by the tenant bank.

4. The Rent Controller, after considering the rival claims of the parties, as well as appreciating the materials placed before him, fixed the fair rent at

Rs. 17,276 from 1.2.1995 to 31.3.1996 and from 1.4.1996 onwards at Rs.

18,692 as per the order dated 24.12.1998. The tenant felt that the Rent Controller exceeded his limit, in fixing different fair rents, for different periods, against the provisions of the law and in this view, to set aside the same, he preferred R.C.A.No. 19/1999 before the Rent Control Appellate Authority viz., Principal District Judge at Pondichery. The Rent Control Appellate Authority, unable to differ from the view of the Rent Controller, dismissed the R.C.A., confirming the fixation of fair rent, as such, as per the order dated 8.2.2001, which is under challenge in this revision.

5. Heard the learned counsel for the petitioners, Mr. M.S. Sundararajan and the learned counsel for the respondent, Mr. R. Subramanian.

6. There is no dispute between the parties, regarding the total cost arrived at by the Courts below, for the fixation of fair rent. There is no dispute regarding the site value, construction value, etc. also. Because of this admitted position, it is not necessary, to go into details, regarding the total cost of the property fixed for the fixation of fair rent.

7. The learned counsel for the revision petitioners submits, that the fixation of fair rent from 1.2.1995 to 31.3.1996 at Rs. 17,276 and thereafter, another fixation of fair rent, for the same premises from 1.4.1996 at Rs. 18,692, is against the provisions of law, the fact being as per the provisions of the Act, fixation of fair rent has to be fixed only on the date of filing of the petition. According to the learned counsel, since there is no provision, to fix different fair rent, in the same petition, without any improvement, after the fixation of first fair rent, the fixation of fair rent from 1.4.1996 onwards at Rs. 18,692 is against the law and in this view, the fixation of fair rent from 1.4.1996 onwards at Rs. 18,692 is liable to be set aside. The rent control petition was filed only in the month of September 1995 i.e., 29.9.1995. According to the learned counsel for the revision petitioners, the fixation of fair rent must be only from the date of filing of the petition and dating back viz., from 1.2.1995, as concluded by the Courts below, is against law. On the above lines, the main thrust before me, is that the fair rent of Rs. 17,276 is to be fixed only from the date of the application through out, and there cannot be any variation or different amount for different period.

8. Per contra, the learned counsel for the respondent/landlord submits, that the Act itself does not say, from which date the fair rent has to be fixed,

though it says, on which date the total cost of the building has to be determined. He further submits that the general principle that fixation of fair rent

has to be fixed from the date of application may be changed under the facts and circumstances, in the absence of any specific date under the Act

and in this view, Courts below have fixed the fair rent from 1.2.1995 up to 31.1.1996 at Rs. 17,726 and thereafter at Rs. 18,692 which are

justifiable. By going through the provisions of the Act and the bar for enhancing the fair rent fixed; in the absence of improvement, I am unable to

subscribe my view to the above aid contention.

9. Section 5 of the Act which contemplates fixation of fair rent is similar to Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act,

1960. Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, reads :

The Controller shall on application made by the tenant or landlord of a building and after holding such enquiry as he thinks fit, fix the fair rent for

such building in accordance with the provisions set out in the following sub-Sections.

Sub-section 4 of Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, contemplates on which date the total cost of the building ha

to be fixed, which reads: -

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 any one or more of the amenities specified in Schedule I as on the date of

application for fixation of fair rent.

10. As submitted by the learned counsel for the landlord, though the Section contemplates, that the total cost of the building has to be determined

as on the date of application for fixation of fair rent, it does not say specifically that the fixation of fair rent has to be determined on the date of

application. This does not mean, a power is given to the Rent Controller to fix different date, for the application of the fixation of fair rent and it

cannot be also. Admittedly, fair rent has to be fixed on the total cost arrived at, on the date of application for fixation of fair rent and therefore, the

rent so fixed, must take effect only from the date of application and it cannot go back or it cannot be ante dated. If any previous date is to be fixed,

for the application of the fixation of fair rent, then it will not be in consonance

with the provisions of the Act. The Section says, fair rent for the building has to be fixed, in accordance with the principles set out in the following sub-sections. Sub-section 4 says, the total cost must be on the date of application, for fixation of fair rent. If we read these two Sections, harmoniously, the logical conclusion should be, the fixation of fair rent also must be only from the date of application, not prior to the date of application. Unfortunately, both the Courts below did not read the section properly, and in my considered opinion, they had committed an error, in directing the tenant bank, to pay the fair rent from 1.2.1995, the fact being application was filed only in the month of September 1995. In this view, the direction given by the Courts below that fair rent of Rs. 17,276 should be paid from 1.2.1995 has to be modified.

11. The learned counsel for the landlord submits that the contractual rate of rent, came to an end, in the month of January, and as per the agreement, the parties have agreed for the fixation of rent, by mutual consent and on that basis, the landlord is entitled to claim the fixation of fair rent also from 1.2.1995. The petition is not one, to enforce the contractual rate of rent, if any agreed mutually later on. After the expiry of the contractual lease, the tenant continues to be in possession and there was no mutual agreement between the parties, for the fixation of rent. Because of that reason alone, the landlord has filed the petition, for the fixation of fair rent and rent so fixed cannot be dated back, to the expiry of the agreement, for the payment of rent. For the subsequent period, after the expiry of contract, the landlord is entitled to claim the existing rent, at the rate of Rs. 10,000, till the date of filing of the petition and certainly he is not entitled to the enhanced rent, on the basis of the fixation of fair rent, since that fair rent should come into force, only from the date of application.

12. The learned counsel for the landlord submits, that the petition for fixation of fair rent was amended, fixing different period and the same was allowed, through opposed by the tenant bank, which was confirmed by this Court in C.R.P.No. 2223/98 and in this view, it is not open to the tenant, to contend that he is not liable to pay the fixation of fair rent, as ordered by the Courts below. I see no logic or any flavour of law in the above said submission. While confirming the amendment, this Court had observed that the petitioner therein viz., the tenant bank can raise their

objections in the R.C.O.P. proceedings. Therefore, the mere fact, amendment petition was allowed, permitting the petitioner/landlord, to claim

fixation of fair rent, for different dates, will not certainly preclude the tenant bank from questioning the same, when the petition comes for final

disposal. In this view of the matter, the tenant bank is entitled to question the fixation of fair rent, urging that the landlord is entitled to recover the

fixation of fair rent only from the date of application, which is well supported by the ruling of the Apex Court also, in addition to interpretation of

Sections, as aforementioned.

13. The landlord claimed different value, for the site, taking into consideration, that there was escalation of the site price, after the filing of the Rent

Control application. In this view alone, the total cost of the building was fixed differently, which may not be proper, to justify that different value

could be adopted, while deciding the total cost of the building for fixation of fair rent. Reliance is placed in Savani Transport (P) Limited Vs. M.

Jamal Mohammed, . This decision has not laid down any ratio, to fix different total cost for different period. In the case involved in the above

decision, to fix the site value, it seems, a document prior to the date of the filing of the Rent Control petition was relied on. In that context, it is

observed, that there has got to be a proportionate enhancement, taking note of the passage of time. But in this case, the cost of the site has been

fixed, on the date of filing of the petition, and a different cost of the building is arrived at on 1.4.1996, which is not permissible under law. In this

view of the matter, this ruling is not helpful.

14. In Miran devi v. Birbal Dass, AIR 1997 SC 2191, the Apex Court had observed, having regard to the facts and circumstances of that case, as

follows:

Although, in terms, fourth Section of the Act does not say as to from which date the fair rent fixed has to come into force, ordinarily and generally,

it is to be from the date of application. But there may be circumstances justifying the fixation of another date.

This justification is not available in thus case, because of the fact, the Courts below were able to ascertain the total cost of the building, on the date

of filing of the application and there cannot be any different total cost from 1.4.1996.

15. The Act provides change in fair rent, in certain cases which says, when the fair rent of a building has been fixed, under the Act, no further increase on such fair rent shall be permissible, except in cases where some additional improvement or alteration has been carried out at the landlord's expenses. On this basis, fixation of fair is not sought for, from 1.4.1996. No allegation in the petition, such as, at least whether it is permissible or not, pending fixation of fair rent, the landlord had improved the building or put up any additional structure and in this view, from that date onwards, a different fair rent has to be fixed. Thus, it is seen in the absence of any improvement or alteration in the demised premises, once the fair rent is fixed, then the landlord is not entitled to seek refixation of the fair rent, that too in the same petition. Both the Courts below, without taking into consideration, the subsequent section also, committed error, in my opinion, in fixing the fair rent from 1.4.1996 at different rate.

16. The learned counsel for the revision petitioners submits, that considering the provisions of Section 5 of the Act, which is similar to Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, the Rent Controller or the Rent Control Appellate Authority has no power, to fix the fair rent, for different dates and in support of the above contention, aid is sought from *Miss Lisa Arulanandam v. Smt. Sulochana*, 1991 (1) L.W. 94. The Hon^{ble} Supreme Court, considering the effect of Section 4 and Sub-section 4, had concluded :

The determination of the fair rent of the building shall be fixed as on the date of the application filed for fixation of the fair rent.

The Apex Court, taking into consideration the date, on which the total cost of the building has to be determined, has ruled further, that the fair rent

of the building shall be fixed as on the date of application filed, for fixation of fair rent, which is in conformity with the Section also. Therefore, for

the foregoing reasons, I am of the considered opinion, under any circumstances, there cannot be two fixations of fair rent, fixing different period

and the fixation of the fair rent shall be only on the date of application, though the Section is not so specific, but it is so specific otherwise, because

of the fact, the total cost has to be fixed, as on date of the application, for fixation of fair rent.

17. If different date is to be adopted, considering the fluctuation of site value, then there cannot be a full stop, for the fixation of fair rent. It is

common that the Courts are consuming at least 10 years to decide a case finally, as we see in this case. From the date of filing of Rent Control petition, till the case reaches the finality, certainly there will be escalation of price, regarding the site, though there may be depreciation, as far as the building is concerned. If the increase in the site is to be taken into consideration always, a finality cannot be reached at all. That is why Section says, the total cost of the building should be as on the date of application of fixation of fair rent, which includes the market value of the site, in which the building is constructed and that market value also should be, as on the date of application for fixation of fair rent and it cannot be different date, considering the pendency of the proceedings. Thus, taking into consideration Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, not only provides the procedure, but also gives guidelines, on which basis the fair rent is to be fixed, violating the Section, considering the fact that the market value of the site is increased, pending proceedings, different value for the total cost of the building cannot be adopted, except the date on which the application was filed. Therefore, the learned counsel for the revision petitioners is legally justified, in urging that different fair rent fixed, for different period has to be set aside. He fairly concedes, that the tenant is liable to pay the fair rent fixed at Rs. 17,276 from the date of application, which is to be accepted by this Court.

In this view, the revision is to be allowed to the above said extent. Accordingly, the revision is allowed and the orders of the Courts below are modified, fixing the fair rent at Rs. 17,276 which is payable by the tenant to the landlord only from the date of application. No order as to costs,