
(2010) 06 MAD CK 0322

In the Madras High Court

Case No : A.S. No. 7 of 2001 and Cross Objection No. 55 of 2001

The State of Tamil Nadu

APPELLANT

Vs

R.J. Amarnath

RESPONDENT

Date of Decision : 23-06-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Tamil Nadu Buildings (Lease and Rent Control) Act, 1946 — Section 3, 3(1), 3(2), 3(3), 3(5)

Citation : (2010) 06 MAD CK 0322

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : V. Ravi, Additional Govt. Pleader AS in A.S. 7/2001, for the Appellant; V. Ravi, Additional Govt. Pleader (AS) in Cross Obj. 55/2001 and A. Abdul Ravoof, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Appellant/Defendant has filed this Appeal as against the Judgment and Decree dated 10.12.1997 passed in O.S. No. 8976 of 1996 (originally filed on 30.12.1991 and numbered as C.S. No. 990 of 1992 on the file of the High Court, Madras) by the Learned V Additional Judge, City Civil Court, Chennai.

2. The Respondent/Plaintiff has filed the present Cross Objection before this Court as against the Judgment and Decree dated 10.12.1997 in O.S. No. 8976 of 1996 passed by the Learned V Additional Judge, City Civil Court, Chennai.

3. The short resume of the Respondent/Plaintiff's case:

The Plaintiff, his Mother (Sulochana Devi), his brothers (R.J. Ravindranath and R.J. Surendranath) and sisters (R.J. Rathnamala, R.J. Madhumala, R.J. Nalini Devi) are the joined owners of twin properties structurally one block bearing Municipal Door Nos. 135 and 136, Anna Salai (Mt. Road), Chennai-2. A Non-

residential portion comprising of a big hall in the first floor of the property covered by Door No. 136, Anna Salai, Chennai-2 fell vacant by the end of December 1946, necessitating a vacancy Report to the Defendant u/s 3 of the T.N. Buildings (Lease and Rent Control) Act 1946 (later Act 18 of 1960) and amended by Act 23 of 1973). In pursuance of the same, the then Accommodation Controller notified taking over of the said portion under the provision of the said Act, for the purpose of allotting it to the Government Employee or Offices, fixing a provisional rent of Rs. 200/- subject to fixation of Fair Rent. Later, the said portion was allotted to the Senior Superintendent of Post Offices, Madras City, Central Division to accommodate the Mount Road/Sount/Post Office, which has been in occupation from then till date. Considering the extent of accommodation, the amenities and other factors, the petition HRC 2307/1981 was filed on 29.04.1981 u/s 4 of the Act against the Appellant/Defendant and the Fair Rent was determined on 02.11.1982 at Rs. 1,114 per month. The Appeal filed by the Respondent/Plaintiff RCA No. 1002/1983 was dismissed. The Appeal filed by the Appellant/Defendant R.C.A. 851 of 1993 was allowed and the Fair Rent was reduced to Rs. 1,111/-.

4. However, the Appellate Authority limited the period of retrospective operation from the date of filing of the Fair Rent petition before the Learned Rent Controller even though he had no jurisdiction to do so. Being dissatisfied with the order of the Appellate Authority limiting the period of retrospective operation and also the quantum of Fair Rent fixed, the Respondent/Plaintiff filed C.R.P. No. 2110 of 1985 and the Appellant/Defendant filed C.R.P. No. 1286 of 1985. The Appellant/Defendant's Revision Petition was dismissed and the Respondent/Plaintiff's Revision Petition was allowed in part, by expunging the stipulation of the date of retrospective operation and in regard to the claim for enhancement of Fair Rent, the same was dismissed. Thus, the Respondent/Plaintiff is entitled to claim the Fair Rent from 01.01.1947, which is the date of commencement of the Government tenancy as per Section 3 of the Act.

5. Later, the Respondent/Plaintiff with the consent of the co-owners and after filing of the partition suit C.S.212/1987 was appointed as a Court Receiver and was permitted to continue in Management and he functions as such.

6. The Appellant/Defendant paid the difference between the provisional rent and the Fair Rent from 29.04.1981 (the date of Fair Rent Petition) until 28.04.1991 (the Appellate Authorities' order). The Appellant/Defendant paid the Fair Rent at Rs. 1,111/- per month as per the order of the Appellate Authority till November 1991. In respect of the period from 01.01.1947 to 28.04.1981, only the provisional rent was paid. Consequent to the final order in Revision, the Appellant/Defendant was constrained to pay the difference of the provisional rent and the Fair Rent at the rate of Rs. 911/- every month (for the period from 01.01.1947 to 28.04.1991 which comes to Rs. 3,75,271.27p) rounded off to Rs. 3,75,270/-. But the Appellant/Defendant failed to pay the said amount inspite of repeated demands and the issuance of Notice of Demand dated 24.10.1991 as

per Section 80 of the Civil Procedure Code, addressed to the Appellant/Defendant with copies being marked to the Authorities concerned.

7. Under these circumstances, the Respondent/Plaintiff has laid the present suit for recovery of a sum of Rs. 3,75,270/- with interest thereon at reasonable low market rate at the rate of 18%p.a. From the date of plaint till date of decree and thereafter, at the Court rate of 9% p.a. from the date of decree till realisation and for costs.

Written Statement Pleas:

8. In the Written Statement, the Appellant/Defendant has among things stated that the premises No. 136, Anna Salai, Chennai was under Government Tenancy for a long period and the same was occupied by the Senior Superintendent to Post Offices, Madras City Central Division, Chennai-17 from 28.03.1952 for Rs. 200/- per month being the contractual rent. The order passed in C.R.P. No. 1286 of 1985 dated 16.08.1991 has become final. Hence, the Appellant/defendant has to pay the Fair Rent in respect of the premises at Rs. 1,111/- from 3 years prior to the filing of HRC 2307/1981 i.e., 29.04.1978, since the said case was filed on 29.04.1981.

9. The Appellant/Defendant has paid Rs. 200/- per month as Rent for the premises regularly and promptly. After fixation of the Fair Rent, the Appellant/Defendant has to pay a balance of Rs. 911/- every month from 29.04.1978 to 29.04.1991 i.e., for 156 months. So, the Appellant/Defendant has to pay only Rs. 1,42,116/- as Arrears of Rent.

10. In CRP No. 1286/1995, the Fair Rent of Rs. 1,111/- determined by the Appellate Authority was confirmed from the date of tenancy subject to the period of Limitation. Therefore, the Arrears of Rent payable is only Rs. 1,42,116/-. As such, the amount claimed by the Respondent/Plaintiff is not legally correct.

11. The trial Court while passing the Judgment in O.S. No. 8976 of 1996 has among other things held that "the Respondent/Plaintiff is entitled to a sum of Rs. 1,42,116/- only towards Arrears of Rent and that the Respondent/Plaintiff is not entitled to a sum of Rs. 3,75,270/- with interest at 18% p.a. as prayed for and resultantly, decreed the suit in part holding that the Respondent/Plaintiff is entitled to a sum of Rs. 1,42,116/- only with interest at 9% p.a. From the date of suit till the date of decree and further awarded an interest at 6% p.a. from the date of decree till the date of realisation with proportionate costs.

12. Before the trial Court, three issues were framed for adjudication. On the side of the Respondent/Plaintiff, Witness P.W.1 was examined and Exs.A1 to A4 were marked. On the side of the Appellant/Defendant, no one was examined and Ex.B1 Document was marked.

13. The point that arises for consideration in this appeal is:

Whether the trial Court is correct in partly decreeing the suit O.S. No. 8976 of

1996 in favour of the Respondent/Plaintiff?

CONTENTIONS:

14. According to the Learned Additional Government Pleader appearing for the Appellant/Defendant, the trial Court has confirmed an amount of Rs. 1,42,116/- in the absence of any representation and mere impleading the Accommodation Controller/District Collector, Chennai is not sufficient and that the Senior Superintendent of the Post Offices ought to have been arrayed as a necessary party to the suit but these aspects of the matter have not been adverted to by the trial Court in a proper perspective.

15. It is the further contention of the Learned Additional Government Pleader for the Appellant that the claim of the Respondent/Plaintiff was barred by Limitation and the suit should have been dismissed by the trial Court.

16. Expatiating his arguments, the Learned Additional Government Pleader appearing for the Appellant/Defendant submits that the Allottee, viz., the Senior Superintendent of Post Offices, Madras City has to pay the difference of rent at Rs. 911/- per month for 36 months and indeed, the Postal Department is the real user and they have to take legal action directly to avoid financial loss or otherwise they have to face the recovery act from the Collector of Chennai under the Revenue Recovery Act but these factual aspects have not been appreciated by the trial Court in a proper perspective which has resulted in the miscarriage of justice and therefore, prays for allowing the appeal in furtherance of substantial cause of justice.

17. Per Contra, the Learned Counsel for the Respondent/Plaintiff submits that the trial Court ought to have decreed the suit claim in full in respect of the entire arrears of rent amounting to Rs. 3,75,271.20p instead of decreeing the suit partially for a sum of Rs. 1,42,116/- and further, the Respondent/Plaintiff is entitled to claim the Fair Rent from the inception of tenancy and that the Cross Objection No. 55 of 2001 filed by the Respondent/Plaintiff may be allowed by this Court and decreed the suit in entirety .

18. The Learned Counsel for the Respondent cites the decision *The State of Tamil Nadu v. M. Kazim Khaleeli* TNLJ 1993 156 at page 161, wherein it is observed as follows:

The Learned Single Judge has followed the ratio laid down by M.M. Ismail, J, (as he then was) in S.A. No. 1615 of 1969 in the case of *Dr. S.S. Davis v. State of Madras*, and a Division Bench of this Court in the case reported in *State of Tamil Nadu v. K.N. Dhanasekaran* 93 LW 207 and has held that the Fair Rent fixed for the building taken over by the Government operates retrospectively from the date of tenancy and the recovery of the excess rent is subject to the law of limitation.

Findings on Point:

19. In the Lawyer's Notice Ex. A2 dated 24.10.1991 issued on behalf of the Respondent/Plaintiff addressed to the Collector of Madras (Accommodation Controller) Chepauk, Madras-2, it is mentioned among other things that "...It appears that the Allotment was made in 1947, and my client does not remember the correct date. It is open to say correctly when the Government became Statutory Tenant. The Allottee paid the old rent of Rs. 200/- until the end of March 1981 and paid the Fair Rent fixed by the Appellate Authority at Rs. 1,111/- from the date of filing of the Fair Rent Petition upto the end of September 1991. There is now due and payable by the Authorities, the sum of Rs. 911/- as the difference between the provisional rent of Rs. 200/- and the Fair Rent of Rs. 1,111/- from 01.01.1947 upto 30.03.1981 amounting to Rs. 3,64,421/-, etc.,

20. In Ex.A4, Letter dated 29.11.1991, the Chief Postmaster, Anna Road, HPO, Madras-2 addressed to the Senior Superintendent of Post Offices, Madras City Central Division, Madras-17 has stated that he has enclosed the xerox copies of the Lawyer's Notice addressed to the Collector of Madras-5 and endorsed to this office is forwarded for favour of disposal as Anna Road South S.O. is under your administrative control of the Senior Superintendent of Post Office, Madras City Central Division, Chennai.

21. Also in Ex.A4 Letter, the Learned Counsel for the Respondent/Plaintiff has been marked a copy of Ex.A4 with a request being made to him to kindly address all communications in this regard to the Senior Superintendent of Post Office, Madras City Central Division, Madras-17. A perusal of Ex.B1 Order passed by this Court in CRP No. 1286 of 1985 dated 16.08.1991 indicates that this Court has among other things observed that "...Tenancy being one with Government, it is subject to fixation of Fair Rent. Therefore, unless there are other compelling circumstances, the benefit should not be denied to the Landlords. Except to this limited extent, there is no other case for interference. Accordingly, the Fair Rent fixed by the Appellate Authority will have to be paid by the Respondent from the date of tenancy, subject to Limitation."

22. The Government's power to requisition the premises and to allot it to the Government Servant/Government stems from Section 3 of the Act. If a house is requisitioned by the Government as per Section 3(3) of the Act, it is the Government which become the Statutory Tenant.

23. A Landlord is entitled to project an Application praying for fixation of Fair Rent, if he feels that the Rent paid by a Tenant is not a Fair Rent, as opined by this Court. No wonder, the Fair Rent fixed by the learned Rent Controller pursuant to the proviso to Section 3(5) of the Act will come into operative play from the date of commencement of the tenancy and is not effective only from the date of Application. This is because from the language employed in Section 3 of the T.N. Buildings (Lease and Rent Control) Act itself and especially, from the meaning gathered of the term "subject to". As a matter of fact, when a Fair Rent is fixed as per Section 4 of the Act it should be relayed back to the date of Tenancy which as per Section 3(5) of the Act will be the date when the

Authorised Officer received Notice of Tenancy as per Section 3(1) or (2).

24. As far as the present case is concerned, it is candidly clear from the observation of this Court in Ex.B1 order dated 16.08.1991 passed in CRP No. 1286/1985 between the parties that the Fair Rent fixed by the Appellate Authority will have to be paid by the Government from the date of Tenancy, subject to Limitation. In the case on hand, the Tenant/Allottee has been the Senior Superintendent of Post Office, Madras City Central Division and in respect of the premises which the Government is the Tenant, the Fair Rent is payable from the date of taking over the portion under the Provisions of the Act, for the purpose of allotting it to the Government Employee or Offices fixing a Transitory Rent of Rs. 200/- subject to the fixation of the Fair Rent. Even though the Fair Rent Petition u/s 4 of the Act has been filed on 29.04.1981 in HRC 2307/1981 against the Appellant/Government, the Fair Rent is payable only from the date of allotment, of course subject to the plea of Limitation.

25. It is to be pointed out that the Respondent/Plaintiff has filed the present suit before the Hon'ble High Court on 30.12.1991 and the same was numbered as C.S. No. 990 of 1992. The Plaint was admitted by this Court on 18.08.1992. Later, on the point of jurisdiction, C.S. No. 990 of 1992 filed by the Respondent/Plaintiff has been transferred to the City Civil Court, Chennai and the same was received by the City Civil Court, Chennai on 18.06.1996 and later, the suit was renumbered as O.S. No. 8976 of 1996.

26. Admittedly, the proceedings in CRP No. 1286 of 1985 have become final on 16.08.1991. From the date of final order in CRP No. 1286 of 1985 on 16.08.1991, within three years the Respondent/Plaintiff has to file a suit. In the instant case on hand, the Respondent/Plaintiff has filed the suit before this Court on 30.12.1991 claiming difference between the Provisional Rent and the Fair Rent from 01.01.1947 to 28.04.1991 amounting to Rs. 3,75,270/- with interest at 18% p.a., etc., Therefore, it is clear that the Respondent/Plaintiff has filed the suit within three years from the date of finalisation of the orders passed in CRP No. 1286 of 1985 dated 16.08.1991. Hence, the suit filed by the Respondent/Plaintiff is maintainable.

27. Though on the side of the Appellant/Defendant, a plea is taken that the Postal Department has paid a sum of Rs. 32,796/- yet there is no supporting evidence for the purported payments and in fact, the Appellant/Government has not proved to the satisfaction of this Court that the Postal Department has paid the amounts and therefore, the claim of the Appellant/Government is negated by this Court. Viewed in that perspective, the claim of the Respondent/Plaintiff praying for a sum of Rs. 3,75,270/- for the period from 01.01.1947 to 28.04.1981 at the difference in the Fair Rent of Rs. 911/- every month though the Fair Rent fixed at Rs. 911/- (Rs.1,111/- - Rs. 200/- Agreed Rent/Contractual Rent Rs. 911/- being difference) is quite correct and the same is perfectly valid in Law but the Respondent/Plaintiff is not entitled to claim the said amount at the rate of 18% interest per annum from the date of plaint till the date of decree but

he is only entitled to claim interest at the rate of 9% p.a. from the date of plaint till date of decree and thereafter he is only entitled to claim interest at the rate of 6%p.a. from the date of decree till the date of realisation and the contra view taken by the trial Court that the Plaintiff is only entitled to get a sum of Rs. 1,42,116/- towards Arrears of Rent is not a valid one in the eye of Law, in the considered opinion of this Court and accordingly, the Appeal filed by the Appellant/Defendant is dismissed without costs.

28. In view of the fact that this Court has dismissed the Appeal A.S.7 of 2001 filed by the Appellant/Defendant and allowed the Cross Objection 55 of 2001 filed by the Respondent/Plaintiff is allotted only to the extent that he is entitled to claim a sum of Rs. 3,75,270/- together with interest at the rate of 9%p.a. from the date of plaint till the date of decree and thereafter at the rate of 6%p.a. from the date of decree till the date of realisation, without costs.

29. Before parting with the case, this Court opines that this Court has dismissed the Appeal and allowed the Cross Objection in Part. Even if subsequently the Appellant/Government proves through the Postal Authorities (the Allottee) by sufficient documentary evidence that they have paid an amount of Rs. 32,796/-, then the Respondent/Plaintiff is directed to give credit to the said amount and to take such action as it deems fit and proper in the circumstances of the case.