Dr. K. C. Nambiar

Vs

Rent Controller, Madras and Others

Civil Appeal No. 2225 of 1966

(CJI J. C. Shah, V. Ramaswami-I, A. N. Grover JJ)

18.08.1969

JUDGMENT

SHAH, ACTING C.J. -

1. The Legislature of the State of Madras enacted the Madras Buildings (Lease and Rent Control) Act, 1960. Section 4 of the Act (in so far as it is relevant) provides :

> "(1) The Controller shall, on application by the tenant or the landlord of a building and after holding such inquiry as the Controller thinks fit fix the fair rent for such building in accordance with the principles set out in sub-section (2) or in sub-section (3), as the case may be, and such other principles as may be prescribed.
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> #(2) X X X X##
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> (3) (a) The fair rent for any non-residential building shall be at nine per cent. gross-return per annum on the total cost of such building.
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> (b) The total cost referred in clause (a) shall consist of -
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> (i) the cost of construction as calculated according to such rates for such classes of non-residential building as may be prescribed less the depreciation at such rates as may be prescribed;
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> (ii) the market value of that portion of the site on which the non-residential building is constructed :
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> and shall include such allowances as may be made for considerations of locality in which the non-residential building is situated, features of architectural interest, accessibility to market, nearness to the Railway Station and such other amenities as may be prescribed and of the purpose for which the non-residential building is used :
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> Provided that such allowances shall not exceed twenty-five per cent. of the cost of construction as calculated in the manner specified in sub-clause (1)."

Section 34 confers upon the State Government power to make rules to carry out the purposes of the Act. Pursuant to the authority conferred by the Act, the State Government has published rules. Rules 11 to 14 deal with classification of non-residential buildings, calculation of the cost of construction of the different classes of non-residential buildings; allowance for amenities in respect of non-

residential buildings and calculation of depreciation of non-residential buildings. Rule 11 provides :

Rule 11. - "(1) Non-residential buildings shall be classified into two categories, namely :-

(i) Factories and godowns; and

(ii) other non-residential buildings.

(2) The non-residential buildings belonging to the category specified in sub-rule (1)(ii) shall be classified into four different classes according to the classifications laid down in Rule 8 in respect of residential buildings."

Rule 12. - "(1) The cost of the construction of non-residential buildings belonging to the category specified in Rule 11(1)(i) shall be calculated at the rate of 62 Naye Paise per cubic foot of the cubical content of the building.

(2) The cost of construction of the different classes of non-residential buildings belonging to the category specified in Rule 11(1)(ii) shall be calculated at the rates specified below :

#Class I - Ground floor - Rs. 16 per square foot of plinth area. First floor - Rs. 13 per square foot of plinth area. Second floor - Rs. 12 per square foot of plinth area.Class II - Ground floor - Rs. 13 per square foot of plinth area. First floor - Rs. 10 per square foot of plinth area. Second floor - Rs. 9 per square foot of plinth area.Class III - Single-storeyed - Rs. 10 per square foot of plinth area.Class IV - Single-storeyed - Rs. 5 per square foot of plinth area.##

Note. - In case of every additional floor higher up, the rate per square foot shall be one rupee less than the rate per square foot for the floor immediately below."

Rule 13. - "When calculating the cost of construction of non-residential buildings, allowances shall be made for the following amenities in addition to those specified in Section 4(3) :

(1) air-conditioning;

(2) lifts;

(3) electric fans;

(4) tube-lights;

(5) number of electric points;

(6) fans;

(7) ventilators;

(8) electric pump for water;

(9) flush-outs;

(10) fixed wash-basins;

(11) stair-cases;

(12) out-houses;

(13) cattle-sheds;

(14) garden or vacant ground appurtenant to the building enjoyed by the tenant; and

(15) usufructs of trees, if any, enjoyed by the tenant."

Rule 14 - "The depreciation of buildings shall be calculated at the rates specified in Schedule II."

2. Dr. K. C. Nambiar is the tenant of 2/137, Purasawalkam High Road, Madras at a monthly rental of Rs. 187-50. He conducts a nursing home in the premises. The landlord of the premises applied to the Controller claiming that fair rent of the premises in the occupation of Dr. Nambiar be fixed at Rs. 2,575/- per month. Dr. Nambiar applied to the High Court of Madras for a writ of prohibition against the Controller from proceeding with the application for fixation of fair rent. He pleaded that the "rules framed by the State Government in exercise of the power vested in them by Section 4, were inconsistent with the intention and ambit of the Act" and were on that account invalid. The petition was heard by a single Judge with several other petitions in which the validity of the rules was challenged. The learned Judge passed an order dismissing the petition, and the order was confirmed in appeal by the High Court. Dr. Nambiar has appealed to this Court with certificate granted by the High Court.

3. It was urged on behalf of Dr. Nambiar before the High Court that the expression "cost of production" in sub-section (3) of Section 4 means the cost of the original construction and the landlord was not entitled to claim that the fair rent be fixed on the basis of cost which may be estimated to be incurred for reproducing a similar building at the date of the application or the date on which the Act was brought into force. The learned Single Judge rejected the contention. He observed that "the statutory sense in which the word 'cost' or the phrase 'total cost' is used in sub-section (2)(a) is not the original cost or the original expenditure incurred for the construction of the building. 'Total cost' in Section 4(2) is a composite concept consisting of three components out of which the cost of construction for the purpose of arriving at the total cost is to be calculated according to the rates prescribed for each class of building prescribed and not the initial expenditure incurred in the construction". The learned Judge proceeded then to observe :

> "Normally, the notion of depreciation is a subsequent fall in value or reduction of worth due to deterioration arising from age, use and other causes and it is deducted from the last value of the building as reduced by previous depreciation. But the depreciation calculated at the prescribed rates is under Section 4(2)(b) to be deducted from the cost of the construction as calculated according the rates prescribed. When the costs of construction is arrived at on such basis, the depreciation at the prescribed rate is to be deducted therefrom backwards. This mode of deduction of depreciation is no doubt a reverse process. But there seems to be nothing strange in such a manner of arriving at the cost of construction

X X X".##

The High Court in appeal observed :

> "In the first place we are of the opinion that the language of Section 4, itself is clear that what the Legislature has in mind on the question of the cost of construction, is what has been specified under the rules and Schedule I. The very fact that Section 4(2)(b)(i) provides that the cost of construction is to be according to such rates for such class of residential buildings as may be prescribed shows that it is not actual cost of construction, but it is the cost of construction which can be determined on the basis of rates as may be specified. The words "such rates for such classes of residential buildings as may be prescribed" clearly carry with it the conception of the fixing of a statutory rate which may or may not have any relation to or connection with the actual investment. Again the provisions of allowance with regard to considerations of locality, features of architectural interest and such other matters for which allowance is made at a percentage not exceeding 10 % of the cost of construction is to be determined as on the date when the Act came into force and not the actual original investment. X X X We see no warrant to hold that the Legislature intended to make a vital difference between the valuation of the site, which is the market value, and the cost of construction of the building which is the original cost of construction or investment as contended for by Mr. Nambiar."

These observations interpreting sub-section (2) of Section 4 apply also to the interpretation of sub-section (3) of Section 4, because the relevant provisions in regard to determination of the cost of construction of non-residential buildings ares identical.

4. By sub-section (1) of Section 4, the Controller is invested with authority to fix fair rent of buildings in respect of which an application is made in accordance with the principles set out in sub-sections (2) and (3) and such other principles as may be prescribed. Under sub-section (3) fair rent of any non-residential building is to be computed at nine per cent. of the gross return per annum on the total cost of such building and the total cost of the building is to consist of three components - (i) the cost of construction; (ii) the market value of the portion of the site on which the non-residential building is constructed; and (iii) such allowances not exceeding 25% of the cost of construction as may be made for locality, features of architectural interest, accessibility to market, nearness of a Railway Station and other amenities as may be prescribed.

5. On behalf of Dr. Nambiar it is urged that the "cost of construction" only means cost incurred for constructing the building when it was put up, and the cost of such additions as may have been subsequently made. On behalf of the landlord and the State of Madras it is urged that the expression "Cost of Construction" means the cost of reproducing a similar building at the date on which the Act was brought into force and therefore in determining fair rent the Controller must determine for the purpose of Section 4(3)(b)(i) the cost of such reproduced building according to rules in that behalf and deduct therefrom the depreciation at the prescribed rate. In other words, it is intended to determine under sub-section (3)(b)(i) the market value of the structure at the date of the enactment of the Act.

6. The Legislature has used in sub-section (3)(b)(i) the expression "cost of construction" and in sub-section (3)(b)(ii) "market value". It is difficult to accept that the Legislature has used two different expressions for providing that the market value of the building and market value of the site shall

form components of the total cost of a building. In Black's Law Dictionary, 4th Edn. at p. 415 - "Cost" it is stated "means the amount originally expended in performing a particular act or operation, or for production or construction, as of a building". There is, not infrequently great difference between the cost of an article and the value of an article. Cost of an article in terms of money is what the owner has expended to obtain it; the value of the article is ordinarily its market value in a market actual or hypothetical. It may be conceded that the expression "cost" is sometimes used as meaning the value of an article. But the expression "cost of construction" in sub-section 3(b)(i) for determining the first component when used in juxta-position with the expression "market value" in sub-section 3(b)(ii), is, in our judgment, used to denote not the market value but the cost of the original construction. There are inherent indications in clauses (i), (ii) and (iii) of sub-section (3)(b) which go to prove that the expression "cost of construction" was not intended to mean the market value. The expression "cost of building" includes not only the expenses incurred for constructing the building, but also the value of advantages which the site of the building offers, such as accessibility to markets, nearness to Railway Station, special amenities, and features of architectural interest. If the expression "cost of construction" is equated with the "market value", it would necessarily include the special advantages of its situation, amenities and its architectural features. But the Legislature has provided for including in the cost of the building apart from the cost of construction, the value of allowances for favourable situation, amenities and architectural features. That is a ground for holding that the value of allowances is not included in the cost of building.

7. Amenities such as air-conditioning, lifts, electric fans, tube-lights, number of electric points, fans, ventilators, electric pump for water, flushouts, fixed wash-basins, stair-cases, out-houses, cattle-sheds, garden or vacant ground appurtenant to the building enjoyed by the tenant and usufructs of trees, if any, enjoyed by the tenant will also be included in the cost of building as allowances. But many of these amenities would be taken into account in determining the market value of the building. The learned Advocate-General appearing on behalf of the State of Madras was unable to explain why the Legislature in the determination of the cost of building for arriving at the fair rent, if the view expressed by the High Court is correct, enacted that these allowances should be included twice, once as part of component (i) and again as part of component (iii).

8. The learned Trial Judge has rightly pointed out that in determining the cost of construction, if the contention of the State be accepted in determining the first component, of the cost of building will be the cost of reproducing the building at a given time reduced by the depreciation computed on the life of the building - a process which reverses the normal method of making allowances for depreciation. Again, if the meaning of the expression "cost of construction" were "market value" it would mean that the market value having regard to the market conditions of real property which may go on changing year after year. But the State has accepted by Rule 12 the cost of construction is a fixed quantity related to the date on which the Act was brought into force. Therefore by prescribing the rate at which the cost of construction is to be determined under Rule 12, the expression "cost of construction" is neither the original cost, nor the value of the building at a given time during the life of the Act, but an artificial value related to the assumed cost of construction on the date on which the Act was enacted.

9. The Advocate-General, however, submitted that in respect of old buildings it may not be possible to ascertain what the cost of construction of a particular building was. But that argument cannot support and interpretation which the plain words used by the statute do not warrant. Counsel for the appellant pointed out, that P.W.D. rates in respect of different classes of buildings for many years are available, and it should not be difficult for the Controller, having regard to the P.W.D. rates

which would form a fairly reliable basis for determining, what the cost of construction of a particular type of building was. The argument that the "cost of construction" of a building is to be such cost as may be prescribed, invites the answer that a provision which, without any guidance, leaves it to the executive authority to fix whatever that authority thinks is the cost of construction, is invalid on the ground of excessive delegation. If the Legislature has sought to confer authority upon the executive to fix the rates and to call them cost of construction, the Legislature has abdicated its authority in favour of the executive which in law is not permissible. This however was not the argument which was advanced before the High Court, for it was the case of the State that the rates specified in the rules were rates which were actually prevailing in 1961 in respect of different classes of buildings.

10. It was also urged that allowing depreciation at the rates prescribed in Schedule II to the rules might unduly depreciate the value of the properties and the landlord may not get a fair return. But it has been a common feature of rent restriction legislation all over India that the landlord is not allowed the benefit of unearned increment on the value of his construction. That is why in practically every statute relating to rent restriction legislation rent is pegged down to either a fixed period or to standard rent which is generally related to the cost of construction originally incurred.

11. We are accordingly unable to agree with the High Court that the Legislature intended by the use of the expression "cost of construction" and "market value" used in clauses (i) and (ii) of sub-section (3) the same concept of determining the value of a building reproduced at the date when the Act came into force and reduced by depreciation at the prescribed rates.

12. Some argument about the true meaning of Note (2) to Schedule II which provides for the standard rates of depreciation was raised before us. The language used in that Note, even as explained by the illustrations, is obscure.

13. We are in this case not called upon to determine the meaning of that clause. If the expression "cost of construction" in sub-section (3)(b)(i) means the cost of construction of the building as originally erected with such additions as may be required to be made for subsequent improvements, Rule 12 which prescribes the rates at which the cost of construction is to be computed plainly goes beyond the terms of the section.

14. The appeal is allowed. The order dismissing the petition is discharged. The Controller will determine the fair rent according to the provisions of the Act uninfluenced by Rule 12. The appellant will be entitled to his costs in this Court and the High Court.

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