SUPREME COURT OF INDIA

Ml Yacob Sheriff (D) By Lrs.

Vs.

Rajrani Devi

(S. V. Patil and D.M. Dharmadhikari JJ.)

17.12.2003

JUDGMENT

D.M.Dharmadhikari, J.

1. These appeals are by the landlord and the question raised is on the method of valuation of the premises leased to the respondent tenant, in accordance with Section 4(4) of the *Tamil Nadu Buildings (Lease & Rent Control) Act, 1960* (hereinafter referred to as "the Act" for short) for fixation of 'fair rent.'

2. The question, neatly put is whether in valuation of land with the superstructure of landlord let out, the portion of the land which has been built upon by the tenant with the permission of the-landlord, has to be valued as a built up land or as vacant land under Section 4(4) of the Act for fixation of 'fair rent?' The Rent Controller, the Appellate Court and the High Court of Madras by the impugned order dated 14.9.2001 have concurrently held against the landlord that in valuation of the leased premises, for fixation of fair rent, the portion of the land on which the tenant had been allowed to construct by the landlord cannot be valued as a built up land.

3. The learned counsel appearing for the landlord after taking us through the provisions of the Act and the decision of the Madras High Court including one of the full bench, contended that the words used in Section 4(4) "market value of the site on which the building is constructed" include both the lands on which the building leased out of the landlord stands as also the building raised by the tenant.

4. After hearing learned counsel appearing for the parties we have come to the conclusion that the contention advanced on behalf of the landlord has to be answered against him on the plain language of Section 4(4) of the Act read with the definition of the word 'building' given in Section 2(2) of the Act.

5. Section 4 which provides the method of valuation of 'fixation of fair rent' reads as under:

Section 4(4): Fixation of fair rent:

(1) The Controller shall on application made by the tenant or the landlord of a building and after holding such enquiry as he thinks fit, fix the fair rent for such building in accordance with the principle as set out in the following sub-sections.

(2) The fair rent for any residential building shall be nine per cent gross return per annum on the total cost of such building.

(3) The fair rent for any non-residential building shall be twelve per cent gross return per annum on the total cost of such building.

(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 provisions of anyone or more of the-amenities specified in Schedule-l 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."

6. As seen from Section 4(4) above, in valuation of the property leased for fixation of fair rent three factors are to be considered (1) market-value of the site in which the building is constructed (2) the cost of construction of the building (3) cost of provision of any one or more of the amenities specified in Schedule-l.

7. The first proviso to the sub-section then provides that in calculating market-value of the site in which the building is constructed, the actual built up area covered by construction and the appurtenant vacant land maximum to the extent of 50% has to be included. The excess portion of the vacant land beyond 50% of the appurtenant land to the building is fictionally treated as amenity listed under Entry 15 of Schedule-l. The relevant part of Schedule-l reads:

"15-Amenities

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."

(Bold for adding emphasis)

8. The second proviso to Sub-section (4) provides slab for valuation of the amenities in Schedule-l which in the case of residential building shall not exceed 15% and non-residential building, 20% of the cost of construction of the building.

9. According to the learned counsel for the landlord, the expression 'building' used in Sub-section (4) with first and second proviso thereunder should include both the buildings let out by the landlord as well as building allowed to be constructed by the tenant.

10. The definition of 'building' provided in Section 2(2) clearly negatives such contention advanced on behalf of the landlord. Section 2(2) defines 'building' as under:

"Section 2(2) - In this Act, unless the context otherwise requires-

(1) xxx xxx xxx xxx

(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 hostel or boarding house".

(Bold to add emphasis)

11. From the definition clause in Section 2(2) it is abundantly clear that the word 'building' as mentioned in Section 4 is to be given the same meaning as contained in the definition clause. The word 'building,' therefore, wherever used in Sub-section (4) including in the first and second proviso has to be given the same meaning "as the building let or to be let." The word 'building' used in Sub-section (4) of Section 4 with two provisos therein cannot be differently understood to include with building let out, the building constructed by the tenant on the leased land. From the language of Sub-section (4) of Section 4, we do not find that the Legislature contemplates for the purpose of fixation of fair rent, valuation of building constructed by the tenant.

12. The learned counsel for the appellants then advanced an alternative argument that even though the building constructed by the tenant may be excluded for valuation with the building let put, but the land on which tenant has constructed, has to be treated as a built up area for the purpose of valuation of that land. The alternative submission made is also not supported by the clear language employed in Sub-section (4) of Section 4. As we have stated above wherever the word 'building' has been used, it has to be understood in accordance with the definition clause contained in Section 2(2) to mean only vacant land on which the 'building let or to be let' stands. For the purpose of valuation of the building and land let out, the construction put by the tenant on any portion of the vacant land leased, cannot be taken into account. Similarly the land built upon by the tenant can not be valued as built up portion of the leased land.

13. The view we are taking is consistent with the views expressed in various decisions of the High Court of Madras such as in *CS Rajavelan v. AN Parasurama Iyer*[1], *Sherwood Educational Society v. Hussainy Begum Namazie*[2].

14. The full bench decision of the Madras High Court in HC Lodha v. C. Ranganathan, of which some assistance is sought to be taken by the learned counsel for the tenant is a decision distinguishable which did not directly deal with the question of valuation of the land built upon by the tenant.

15. In our considered opinion, therefore, the Rent Controller, the Appellate Authority as well as High Court were right in holding that in fixation of fair rent, neither the value of the building raised by the tenant on the teased vacant land nor the vacant land, as a built up area

can be taken into consideration. Such land on which tenant has built upon with the permission of the landlord has to be treated for the purpose of valuation of the leased premises, as vacant land. Such land built upon by the tenant has to be valued only as a 'vacant land; or 'appurtenant land' or 'amenity, as the case may be, to the building and land included in the leased premises of the landlord.

16. Consequently, the appeals fail and are hereby dismissed but in the circumstances without any order as to costs.

[1]*Vol.83 Law Weekly 524*
[2]*1985(1)MLJ 205*