REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 5218-22 OF 2012
(ARISING OUT OF SLP(C) NO.20550-20554 OF 2008)

V.S. KANODIA ETC. ETC. … APPELLANTS

VERSUS

A.L.MUTHU (D) THR. LRS. & ANR. … RESPONDENTS

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA,J.

1. Leave granted. These appeals have been preferred against a common order dated 28th April, 2008 passed by High Court of Judicature at Madras whereby Revision Petition Nos. 323, 324, 615, 616 and 3347 of 2007 preferred by appellant were dismissed.

2. The appellants are tenant whereas respondents are the landlord of tenanted building. Initially, the dispute related to non-residential premises situated in Chennai, namely, (i) 2nd and

3rd floors of the building at D.No.23, TTK Road, (Mowbray's Road), Chennai, (hereinafter referred to as 1st property) (ii) 2nd floor of the front and rear building at 22, TTK Road, (Mowbray's Road), Chennai-18 (hereinafter referred to as the 2nd property) and (iii) ground floor of the front and rear and 1st floor rear of the building at 22, TTK Road, (Mowbray's Road), Chennai-18 (hereinafter referred to as the 3rd property) but in these appeals, we are concerned with the rent fixed in respect to 2nd and 3rd property situated at 22, TTK Road, (Mowbray's Road), Chennai-18

3. In respect of 1st property at D.No.23, TTK Road, Chennai, the contractual rent was Rs. 6210/- per month, which was increased to Rs. 18,847/- by an order passed by Small Causes Court, Chennai on 28.6.1996 in RCOP NO.; 1046 of 1994 in a petition filed by respondent-landlord under Section 4 of the Tamil Nadu Buildings Lease and Rent (Control) Act, 1960 (hereinafter referred to as the Act). In the said case, for determination of fair rent, market

value of the land was assessed @ Rs.25 lakhs per ground. The appellant-tenant has preferred an appeal against the said order in RCA No. 557/2004 and another appeal has been preferred by respondent-landlord in RCA No. 1196/1996 before the Rent Control Appellate Authority (Small Causes Court) Chennai.

4. In respect of 2nd and 3rd property situated at 22, TTK Road, Chennai-18, the respondent-landlord filed two separate petitions under Section 4 of the Act for fixing the monthly rent of respective portions, registered as RCOP No. 1176 and 1177/1997. After hearing the parties, those petitions were determined by Rent Controller by a common judgment and decree dated 28.9.2004 whereby fair monthly rent of the properties were fixed at Rs. 46,422/- and Rs.95,220/- respectively, after taking into consideration the market value of land @ Rs.50 lakhs per ground.

5. Against the aforesaid common judgment, both the respondent-landlord and appellant-tenant

preferred appeals in RCA No. 1393, 1394, 1404 and 1405 of 2004. After taking into consideration the relevant evidence and submission of parties, by a common order and judgment dated 14.10.2006 the appellate authority, (8th Judge) Small Causes Court, Chennai fixed the monthly rent at Rs. 58,329/- and Rs. 1,21,877/- respectively, allowing the appeal preferred by landlord and dismissing the appeals preferred by tenant. The rent was fixed on the basis of valuation of land @ Rs.65 lakhs per ground. Against the aforesaid order, the Revision petitions preferred by appellant-tenant were dismissed by the impugned common judgment dated 28.4. 2008.

6. Before the Courts below, the respondent-landlord took plea that the appellant-tenant had been on the front portion of the ground floor for 43 years and in the rear side portion of the ground floor and also at the rear side portion of the 1st floor and rear side portion of the 2nd floor for the past 17 years and in the front

portion for the past 16 years. The petition building comes under Class I building with R.C.C. roofing and all the three basic amenities are available. The plinth area of the front portion of the ground floor is 1719 sq. ft., and the rear portion is 1766 sq. ft. and the lumber portion is 341 sq. ft., latrine portion is 136 sq.ft., G.I. Sheet portion is 300 sq. ft. and on the 1st floor rear side portion is 1766 sq. ft., Latrine portion is 121 sq. ft. and on the 2nd floor the front portion is 1800 sq. ft. and the rear portion is 1766 sq. ft. and that the plinth area of the latrine portion is 121 sq. ft.. Furthermore, the petition building is situated at a very important and busy business area being Mylapore and, therefore, the value of the ground site per ground will be Rs.75 lakhs. Hence, prayer was made to fix the monthly fair rent of the petition building at Rs.77,706 and Rs.1,54,126 respectively.

7. The appellant-tenant on appearance, denied that the petition building is a Class I building and

also denied the age of the building as mentioned by the respondent-landlord. According to them, age of the petition building as per their engineer was more than 55 years; and the measurement of basic amenities as shown in the petition were also incorrect. They alleged that basic amenities were not available in the petition building as was claimed by the landlord. The value of the ground site mentioned in the petition was also disputed as excessive. According to them, the petition building is situated in Bishop Wallers Avenue, therefore, the value of the ground site cannot exceed Rs.10 lakh per ground. Hence, it was submitted that the monthly fair calculated in the petition was very excessive and, therefore, the petition under Section 4 of the Act be dismissed.

8. The Rent Controller as well as Appellate Authority after hearing the parties decided the disputes relating to 'Classification of building', 'Plinth area', 'Construction charges', 'Value of the ground site' and 'Basic amenities'. There is a concurrent findings that the petition building is a Class-I building and the age of the petition building being 16,17 and 45 years respectively, therefore, the

depreciation was calculated at 1 per cent for 16, 17 and 45 years. The plinth area was accepted as mentioned by the engineers on behalf of the landlord for the purpose of determination of fair rent. Similarly, there is a concurrent findings with regard to construction charges and basic amenities. The engineers of both the parties had admitted that all three basic amenities were available in the petition building and accordingly the engineers for the landlord had fixed at 20 per cent and the engineers for the tenant had allotted 10 per cent but the trial court and the Appellate Authority accepted 15 per cent for determination of basic amenities.

9. So far as “value of the ground site” is concerned, parties exhibited their respective evidence which were noticed by Rent Controller and the Appellate Authority. The respondent-landlord produced the evidence to claim the value of the ground site at more than 1 crore per ground and in support of which a sale deed No. 99/88 dated 9.12.97 pertaining to door no. 241/1, T.T.K. Road Extention, Ambujammal Street, Alwarpet, Chennai-18

was filed as Exhibit A4. It was also brought to the notice of the Authority that an extent of 470 sq. ft. of land had been sold for Rs. 14,00,000/- and on that basis the value per ground is Rs.71,48,936/- and that the petition mentioned building is situated very near to Radhakrishnan Road but the property pertaining to Exhibit A4 is situated at a distance of 2 and ½ furlong from the petition mentioned building and, therefore, in the classification report Exhibit A9, the ground site per ground had been calculated at Rs.1 crore. The R.W.2, engineer on behalf of the tenant in his Examination in Chief had mentioned that the ground site where the petition mentioned building is situated is not owned by the Petitioner as conveyed by the tenant and, therefore, for the calculation of the monthly fair rent the value of the ground site had not been taken into account, no sale document had been filed on behalf of the tenant. The R.W.2, in his cross examination had mentioned that the petition mentioned building is situated on the TTK Road and near the junction of Cathedral Road and Radhakrishnan Road. There is a Church near the petition mentioned building and

'Woodland Hotel' is situated at a distance of 1 and ½ furlongs from the petition mentioned building and opposite to it there is a hotel known as 'Mowbrays Inn'. Further, on the opposite site of the 'Woodland Hotel', St. Abbas School is situated. The Nilgiris Supermarket is situated at a little distance from it and a Music Academy is also there near the petition mentioned property. It was further mentioned that no document had been perused for the valuation of the ground site. Hence, the argument advanced that the petition mentioned building is situated on the T.T.K. main road but the entrance pertaining to the tenant is through the Biship lane was not accepted both by the Rent Controller and the Appellate Authority.

10. On behalf of the appellant-tenant, it was brought to the notice of both the Rent Controller and the Appellate Authority that another petition under Section 4 was filed by respondent-landlord against the appellant-tenant for fixation of monthly fair rent pertaining to 1st property situated adjacent to the disputed 2nd and 3rd property. In the said case, the rent has been fixed taking into consideration the

valuation of rent @ Rs.25 lakhs per ground. Therefore, it was pleaded that same valuation should be taken for determination of the present cases. The Appellate Authority refused to notice the valuation as determined in respect of 1st property with following observation:

> "Since it had been admitted by both the parties that the appeal filed against the aforesaid order is still pending and in such a circumstance since it cannot be considered that the aforesaid order had reached the final stage and, therefore, the trial court having decided that it will not be justifiable to take into account the aforesaid valuation seems to be correct and decided accordingly."

11. In this case, the main grievance of the appellant-tenant is that the valuation of land as was determined in respect of 1st property @ Rs.25/- lakhs per ground but same has not been taken into consideration for determination of the fair rent of the petition building.

12. Per contra, according to learned counsel for the respondent-landlord, the Appellate Authority has determined the market value of the land @ Rs.65 lakhs per ground taking into consideration the

classification report, Exhibit A-9, Exhibit A-4, etc., which are the recent market value and, therefore, the High Court rightly refused to sit in appeal over a finding of fact.

13. We have heard learned counsel for the parties and perused the record.

14. Section 4 of the Act reads as under:

> "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 principles 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 provision of anyone or more of the amenities specified in schedule 1 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 1 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."

From the principles set out in sub-Sections (2) to (4) of Section 4 it is apparent that market value of the site on which the building is constructed is an important factor to be taken into consideration for fixing the fair rent of the building.

15. Reverting to the facts of this case, we find that the appellants are tenant of three premises of which the respondents are the landlords. Out of the three premises, the first premises is a non-residential building constructed on land bearing D.No.23, T.T.K. Road, Chennai relating to which fair

rent has already been determined by the Rent Controller in RCOP NO. 1046 of 1994. In the said case, the Rent Controller (Small Causes Court), Chennai by judgment dated 28.6.1996 determined the market fair rent on accepting the market value of the land at Rs.25 lakhs per ground. Against the said judgment, appeals have been preferred by both the appellant-tenants and the respondent-landlords but no order of stay has been passed by the appellate authority; matter is still pending. With regard to rest two rented premises, the building are situated on the adjacent land bearing D.No. 22, TTK Road, Chennai which are the subject matter of dispute. The mere fact that the appeal filed by appellants and respondents remain pending for disposal for more than 8 years and during the pendency the respondent-landlord filed two petitions under Section 4 of the Act before the Rent Controller, cannot be made a ground to deprive the appellants-tenants of their legitimate right to rely on a market value of adjacent land (D.No. 23, TTK Road, Chennai) already determined by the Rent Controller. Even if the appeals are dismissed by the appellate authority, the market value of the adjacent land as determined will remain Rs. 25 lakhs per ground. In the cases in hand, it was not open to the appellate authority to ignore the market value of the adjacent land already determined on the ground of pendency of an appeal. The High Court failed to appreciate the aforesaid fact though it was a fit case for the High Court to interfere under Article 227 of the Constitution of India.

16. In the result, the appeals are allowed in part; the impugned judgments of the Appellate Authority dated 14.10.2006 as affirmed by the High Court, so far as it relates to "market value of the land" is concerned, are set aside; Appeals, RCOP No. 1393, 1394, 1404 and 1405 of 2004 are remitted to the appellate authority (learned VIIIth Judge, Court of 'Small Causes Court', Chennai) for determination of limited issue relating to the market value of the land on which the building premises is situated (D.No. 22, TTK Road, Chennai-18) taking into consideration the evidence on record including Exh.A-4, Exh.A-9 and the market value of the adjacent land

as was determined by the Rent Controller in RCOP No. 1046 of 1994, etc., preferably within six months.

17. So far as the findings of the appellate authority with respect to 'classification of building', 'depreciation', 'plinth area', 'construction charges' and of basic amenities of the petition building as affirmed by the High Court are not interfered with by this Court and they are upheld. There shall be no order as to costs.

……………………………………………….J.
(G.S. SINGHVI)

……………………………………………….J.
(SUDHANSU JYOTI MUKHOPADHAYA)

NEW DELHI,
JULY 16, 2012.