

A MISS LIZA ARULANANDAM  
v.  
SMT. A.S. SULOCHANA

SEPTEMBER 11, 1990

B [M.H. KANIA, K.N. SAIKIA AND K. RAMASWAMY, JJ.]

*Constitution of India, 1950: Article 136—Special leave—Findings of facts—Based on consideration of evidence—Not to be interfered with.*

C *Tamil Nadu Buildings (Lease and Rent Control) Act, 1960: Section 4—Fixation of fair rent—Cost of construction—Market value—Determination of—As on which date.*

The appellant-tenant was in occupation of a double storeyed building on a monthly rent of Rs.170. The respondent-landlady filed an application under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 for fixation of fair rent. The Rent Controller took note of the fact that 1/3rd portion of the building was being used for residential purpose and the rest of the building for non-residential purpose, namely, for running a school. He also appointed an Engineer as Commissioner to evaluate the total cost of the building. The Commissioner adopted the rates prevalent in the Public Works Department and submitted his report. On the basis of the Commissioner's report, the Rent Controller worked out the cost at Rs.1,51,820. Accordingly, the fair rent for the said premises was arrived at Rs.1518 per month at 12 per cent gross return. Since the respondent-landlady had confined her claim for the enhancement of fair rent to Rs.1,000 only, the Rent Controller fixed the fair rent at Rs.1,000. On appeal, the order of Rent Controller was affirmed by the Court of Small Causes.

G On a revision being preferred, the High Court agreed with the valuation adopted and determined the fair rent on the basis that 1/3rd of the premises was used for residential purpose and 2/3rd for non-residential purpose, and, as per sub-sections (2) and (3) of Section 4 of the Act, worked out the rent at 9 per cent and 12 per cent respectively on the cost of construction arrived at. The High Court fixed the fair rent at Rs.1391.67 per month. It confirmed the fair rent of Rs.1,000 as was fixed by the Rent Controller and as confined to by the Respondent-landlady.

H This appeal, by special leave, is against the High Court's order. It

was contended that the cost of the building and its market value as worked out was illegal, fallacious and untenable. A

Dismissing the appeal,

HELD: 1. Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 prescribes the principles on the basis of which the fair rent is to be fixed. In the light of those principles, the evidence adduced by the parties was considered by the Rent Controller, the appellate court and the High Court and they found that the fixation of the fair rent was much in excess of the claim made by the Respondent-landlady. Since she confined her claim to Rs.1,000 per month, the courts below have fixed the fair rent at Rs.1,000. Therefore, on the findings of facts based on consideration of the evidence, this court cannot interfere and come to its own conclusion. The finding is neither vitiated nor illegal warranting interference. [210B-C] B C

2.1 Sub-section 4 of Section 4 of the Act, clearly indicates that the total cost of construction referred to in sub-sections (2) and (3) shall consist of the market value as on the date of application for fixation of the fair rent. [209C] D

2.2 It is obvious that at the time when this Court rendered its decision in *Nambiar's* case there was no provision in Section 4 as to the date on which the cost of construction was to be determined, and Rule 12 provided the manner in which the fixation of the fair rent has to be made. The subsequent amendment brought on the statute in 1973, by the Amending Act 23 of 1973, has incorporated sub-section (4) in Section 4 which amplified the date of application as the starting point to fix market value. As such the fair rent has been rightly determined by the courts below. [209D-E; H] E F

*K.C. Nambiar v. The IV Judge of the Court of Small Causes, Madras & Ors.*, [1970] 1 SCR 906, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2228 of 1982. G

From the Judgment and Order dated the 25.7.1980 of the Madras High Court in C.R.P. No. 1150 of 1979.

Anant Palli and E.C. Agarwala for the Appellant. H

A V. Balachandran and K. Vijay Kumar for the Respondent.

The Judgment of the Court was delivered by

B K. RAMASWAMY, J. The appellant/tenant is in occupation of a double storeyed building bearing No. 100, Aiya Mudali Street, Chintadripet, Mount Road, Madras on a monthly rent of Rs. 170. The respondent landlady filed an application under Sec. 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960 as amended by Act, 23 of 1973, for short 'the Act'. The Rent Controller fixed the fair rent at Rs. 1,000 per month. On appeal, the Court of Small Causes, Madras and on further Revision under Sec. 25, the Madras High Court  
C confirmed the order. This appeal by special leave has been at the behest of the tenant. The admitted facts are that  $\frac{1}{3}$ rd portion of the building is being used for residential and the rest for non-residential purpose namely, for running a school. It is of 50 years' old. Section 4 of the Act provides the procedure for fixation of the fair rent, which  
D reads thus:

E “*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.

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

G (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.

H (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 any one or more of the amenities specified in Schedule I as on the date of application for fixation of fair rent;

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

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(ii) in the case of non-residential building, twentyfive 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.”

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“5.(a) The cost of construction of the building including cost of internal water-supply, sanitary and electrical installations shall be determined with due regard to the rates adopted for the purpose of estimation by the Public Works Department of the Government for the area concerned. The Controller may, in appropriate cases, allow or disallow an amount not exceeding thirty per cent of construction having regard to the nature of the building:

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(b) The Controller shall deduct from the cost of construction determined in the manner specified in clause (a) depreciation, calculated at the rates specified in Schedule II.”

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A bird's eye view of Sec. 4 indicates that the Controller shall hold an enquiry before fixing the fair rent preceded by an application made in that behalf either by the tenant or the landlord, in accordance with the principles set out in sub-sections 2 to 5 of Sec. 4. In case of a residential building the fair rent shall be 9 per cent and for non-residential building 12 per cent gross return per annum on the total cost of the building in question. The total cost shall consist of (a) market value of the site on which the building is constructed; (b) the cost of the construction of the building; and (c) the cost of provision of any one or more of the amenities specified in Schedule I which shall not exceed: (1) in the case of residential building 15 per cent; and (2) in case of any non-residential building 25 per cent of the cost of the site in which the building was constructed as determined under Sec. 4 of the Act. The cost of the construction of the building would also include internal water supply, sanitary and electrical installations. The estimation of its ratio thereof shall be as is done by the Public Works Department of the Government for the area concerned. In addition to the above, having regard to the nature of the building, the Controller may, in appropriate cases, allow or disallow an amount not exceeding 30% of construction. The Controller shall also deduct from the cost of construction determined in the manner specified in clause (a) of sub-

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A section 5 of Sec. (4) the depreciation calculated at the rates specified in Schedule II. 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.

B Section 5 of the Act provides the right for refixation of the fair rent under the Act for the reasons adumbrated therein with which we are presently not concerned. An Engineer was appointed as a Commissioner to evaluate the total cost of the building, who adopted the rates of the Public Works Department and submitted his report which is Exhibit P-2. He was also examined as a witness. The rates of the construction for terraced building were (a) for the ground floor at Rs.345 per sq. metre and (b) for first floor at Rs.320 per sq. metre. As regards the tiled portion, the cost of construction is Rs.300 per sq. metre. The parties also adduced oral evidence. The Rent Controller after consideration thereof fixed the rates as afore-stated and he worked out the fair rent on that basis.

D The entire ground floor consists of 2927.25 sq. ft. the area of two shops wherein consists of 238.00 sq. ft. The built up area of the first floor is 3330.75 sq. ft., the tiled portion consists of 237 sq. ft. The cost of construction was estimated at Rs.1,99,300. The depreciation @ 1 per cent, as is first class building, was given. He added the market value of the open site at Rs.20,000 and also annuity on the vacant portion @ 1 per cent was added. Accordingly the Rent Controller worked out the cost at Rs.1,51,820. The fair rent as non-residential premises, at 12 per cent gross return, was fixed at Rs. 1518 per month. Since the respondent, landlady confined to the enhancement of the fair rent at Rs.1,000, it was accordingly fixed. On appeal it was affirmed. In the revision, the High Court while agreeing with the valuation adopted, determined fair rent on the basis that  $\frac{1}{3}$ rd as being used for residential purpose and  $\frac{2}{3}$ rd for non-residential purpose. On that basis the learned Judge worked out at the rate of 9 per cent and 12% as adumbrated in Sec. 4(2) and (3) and fixed the fair rent Rs.1391.67 per month, but affirmed the fair rent at Rs.1,000 per month as was confined to, by the landlady. From this material matrix

G the question at issue is whether the fixation of the fair rent by the Rent Controller, ultimately affirmed by the High Court, is illegal. The contention of the learned counsel for the appellant/tenant that the cost of the building and its market value are illegal, is fallacious and untenable. Section 4 not only provides the procedure but also the principles and method on the basis of which the fair rent is to be determined. The

H fixation of fair rent, therefore, is in consonance with Section 4. We

accordingly affirm its legality. Realising this stark reality the counsel laid emphasis that the valuation of the cost of construction should be as on the date of the construction of the building and placed strong reliance on *K.C. Nambiar v. The IV Judge of the Court of Small Causes, Madras & Ors.*, [1970] 1 SCR 906. Therein this Court held that the expression 'cost of construction' 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 rate at which the cost of construction is to be computed plainly goes beyond the terms of the section. Accordingly this Court allowed the appeal and determined the fair rent as on the basis of the cost of construction. On that premise the learned counsel for the appellant contended that calculation of the cost of construction to the residential as well as non-residential building should be with reference to the date of application. We find no substance in the contention. It is already seen that sub-section 4 of Sec. 4 of the Act, clearly indicates that the total cost of construction referred to in sub-section 2 and sub-section 3 shall consist of the market value as on the date of application for fixation of the fair rent. It is obvious that at the time when this court rendered the decision in *Nambiar's* case there was no provision in Sec. 4 as to the date on which the cost of construction was to be determined, and Rule 12 provided in the manner in which the fixation of the fair rent has to be made. But subsequently it was amended by Amending Act 23 of 1973 incorporating in sub-section (4) of Sec. 4 of the Act as the date of making an application. This is also apparent when we see Sec. 5 of the Act. Sub-section (3) of Sec. 5 clearly mentions that:

“Where the fair rent of any building has been fixed before the date of the commencement of the Tamil Nadu Building (Lease and Rent Control) Amendment Act, 1973 the Landlord or the tenant may apply to the Controller to refix the fair rent in accordance with the provisions of Section 4 and on such application, the Controller may refix the fair rent.”

Thus we are clearly of the view that the ratio in *Nambiar's* case no longer would apply. The subsequent amendment brought on the statute in 1973, amplified the date of application as the starting point to fix market value. On the basis of the valuation of the building estimated by the commissioner as per P.W.D. rates prevailing in the area and evidence produced by the parties, the Rent controller as modified by the High Court rightly determined the fair rent.

- A** It is next contended that the method adopted by the Controller and ultimately upheld by the High Court in fixing the fair rent is not correct. It is contended that the value of the building has been changing from time to time as is reflected from the evidence on record and the courts below committed the gravest error in not considering the evidence in proper perspective. It is already seen that Sec. 4 prescribed the principles on the basis of which the fair rent is to be fixed. In the light of those principles the evidence adduced by the parties was considered by the Controller, the appellate court and the High Court, found that the fixation of the fair rent is much in excess to the claim made by the landlady. Since the landlady confined the claim for Rs.1,000 per month, the courts below have fixed the fair rent at
- B** Rs.1,000. Therefore, on the findings of facts based on consideration of the evidence, this Court cannot interfere and come to its conclusion. Thereby the finding is not vitiated nor illegal warranting interference.
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The appeal is accordingly dismissed with costs, fixed at Rs.5,000.

G.N.

Appeal dismissed.