

**M.A.A. Mahab and anr. Vs. Jayams Engineering and Co. Ltd.**

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**Court :** Chennai

**Decided On :** Sep-09-1992

**Reported in :** (1993)1MLJ232

**Appellant :** M.A.A. Mahab and anr.

**Respondent :** Jayams Engineering and Co. Ltd.

**Judgement :**

ORDER

**Srinivasan, J.**

1. This revision petition arises out of an application for fixation of fair rent filed by the landlord/petitioner herein. According to the petitioner, the ground floor of the building in No. 138, Thambu Chetty Street, comprises of an area of 2,547 sq.ft. and it has been let out to the respondent for non-residential purposes. The agreed rent is Rs. 1,200 per mensem. The landlord claimed Rs. 16,516 as fair rent. The Rent Controller held that the area of the ground floor in the occupation of the respondent is only 2,356 sq.ft. He fixed the fair rent at Rs. 2,861 per mensem. On appeal, the Appellate Authority increased it to Rs. 4,055 per mensem. A revision was filed by the respondent in this Court in C.R.P. No. 2355 of 1991. It was dismissed in limine on 27.9.1991.

2. The landlord has challenged the same order of the Appellate Authority in this revision petition. The main objection raised by the petitioner is that in the matter of

calculating the cost of construction of the building and also the market value of the site, the Appellate Authority has clearly erred by not considering the relevant evidence on record and fixing the value unconnected with the evidence produced before the court. As regards cost of construction, the Appellate Authority has fixed it at Rs. 85 per sq.ft. It is the contention of the petitioner that he has produced the Min-Technical Hand Book published by the Association of Engineers and Assistant Engineer's Association of the Tamil Nadu Public Works Department. That is published in the year 1990. That is marked as Ex.P-19. The petitioner contends that the Appellate Authority is in error in completely ignoring the said document on the ground that the petition having been filed in 1987, the rates mentioned in the hand book are not relevant. It is stated by learned Counsel for the petitioner that evidence has been let in as to how the calculation should be made on the basis of Ex.P-19 for the relevant year 1987. No reference has been made by the Appellate Authority to any such evidence.

3. It is also contended that the worksheet filed by P.W.4, the Engineer examined by the landlord is based upon the figures contained in Ex.P-19 as calculated for the year 1987. There is no reference by the Appellate Authority to the evidence of P.W.4 or the work sheet filed by him.

4. Similarly with regard to the market value of the site, the Appellate Authority has stated that the relevant documents are Exs.P-26, P-27 and P-29 and the market value shall be fixed only with the help of the said documents. The Appellate Authority has rejected the documents filed by the tenant and also refused to accept the finding of the Rent Controller that the value of the site is Rs. 4,50,000, per ground. But, unfortunately, the Appellate Authority has not considered the documents on record properly. There is no document marked as Ex.P-29. The total number of documents filed on the side of the landlord is only 28. Ex.P-26 is a photograph of a building. That does not in any way help the Court in fixing the market value of the land. Thus, the Appellate Authority is in error in referring to Exs.P-26 and P-29 for fixing the market value of the land. However, Ex.P-27 is a relevant document which has been filed by the landlord. Similarly, Ex.P-17 is another document which is a said deed of the year 1985 filed by the landlord. While referring to Ex.P-17 at an earlier stage in the course of discussion, the

Appellate Authority has stated that the value of the land is mentioned as Rs. 9,00,000. That is clearly erroneous. The value mentioned in the document is Rs. 19,00,000 and not Rs. 9,00,000. It is based on that erroneous impression the Appellate Authority has ultimately fixed the value of the land at Rs. 9,00,000 per ground. Hence, the order of the Appellate Authority is clearly vitiated.

5. It is argued by learned for the respondent that the landlord has himself mentioned the market value of the site is Rs. 10,000 in the petition for fixation of fair rent. It is contended by learned Counsel for the petitioner that the value mentioned in the petition is not conclusive and it is the duty of the Court which fixes the fair rent to take into account the evidence on record and arrive at the fair rent. He places reliance on the judgments of this Court in *Dovo Tax Company v. T.R. Ramnath* 99 L.W. 269, *Krishnaswamy Mudaliar v. The Controller and Authorised Officer of Buildings* 99 L.W. 705 and *The Collector of Madras, Accommodation Wing, Madras v. A.R. Gajendran* (1988) 2 L.W. 49. Learned Counsel for the respondent contends that the statement in the petition for fixing of fair rent would amount to an admission and it is not open to the landlord to go behind the same. But, it is settled law that admissions made by parties can be explained. The rulings referred to above and cited by learned Counsel for the petitioner show that it is open to the fair rent court to fix the rent at a value higher than what is stated by landlord and therefore, the contention of learned Counsel for the respondent cannot be accepted. But, the Court has to consider what is the market value of the site on the basis of the entire evidence on record. As the Appellate Authority has not considered the evidence on record properly, the matter has to go back and he has to decide the question in accordance with law.

6. With regard to P.W. 1 it is for the Appellate Authority to take into account the entire documentary evidence including Ex.P-19 and the oral evidence of the parties and ascertain what the cost of construction is. It has been held by this Court in *A. Emberumanar v. K. Raghavan* (1988)1 L.W. 568 and *Savani Transports (P) Ltd. v. Jamal Mohammed* (1989)1 L.W. 172. that P.W.D. rates, are relevant for the purpose of fixing the cost of construction. The Appellate Authority shall bear in mind the principles laid down in the decisions of this Court and proceed to fix the fair rent in accordance with law.

7. In the result, the C.R.P. is allowed, the order of the Appellate Authority in R.C.A. No. 1152 of 1990 is set aside and the matter is remanded to the Appellate Authority, viz. the VIII Judge, Court of Small Causes, Madras, for fresh disposal according to law and in the light of the observations contained in this order and in accordance with the principles laid down in the various decisions of this Court. If the parties want to adduce any further evidence, they may file applications in that regard and the Appellate Authority may consider and dispose of the same in accordance with law. It is represented that the Court of VIII Judge in the Court of Small Causes, Madras, is now vacant. The Chief Judge, Court of Small Causes may assign the appeal to any other Judge who is empowered to deal with appeals under the Tamil Nadu Buildings (Lease and Rent Control) Act. There will be no order as to costs.

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