

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 23.08.2016

Pronounced on 25.11.2016

DATED: 25.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.1318 of 2012

Food Corporation of India,
Regional Office, Rep. By
Senior Regional Manager,
124, Greams Road, Chennai-6.

.. Petitioner

Vs.

1.P.S.Krishnamurthy
2.K.Vadivambal

..Respondents

Prayer: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control Act 18/1960 as amended by Act 23/1973 and Act 1 of 1980, against the Judgment and Decree dated 19.07.2011, passed in RCA.No.967 of 2004 passed by the leaqrned VIII Judge (Rent Control Appellate Authority) Court of Small Causes, Chennai, confirming the order dated 25.05.2004 passed by the learned XI Judge, Court of Small Causes, Madras in RCOP.No.1238 of 2003 by fixing the fair rent at a very high and exorbitant rate of Rs.37,396/- per month under Section 4 of the Act.

For Petitioner : Mr.M.Imthias
For Respondents : No Appearance

ORDER

The tenant in RCOP.No.1238 of 2003 is the revision petitioner before this Court, challenging the order passed in RCA.No.967 of 2004, on the file of the VIII Judge, Court of Small Causes, Chennai dated 19.07.2011 in RCOP.No.1238 of 2003, dated 25.05.2004 on the file of the XI Judge, Court of Small Causes, Chennai.

2.The case of the respondent/landlord is that the respondent/petitioner is the owner of the first floor portion of the premises bearing Door No.5/55, Greams Road, Chennai-6 and the petitioner/respondent is the tenant under the respondent/landlord paying monthly rent of Rs.24,052.50 and in the occupation of entire 1st floor along with 1/4th right in ground floor common portico, stair case with head room.

3.The respondent/landlord also come forward by saying that the construction is made of brick work in cement mortar and basic amenities and Schedule-I amenities are also available in the building. The said premises is used for non-residential purpose. Since the building is situated at commercial locality near Anna Salai, which is one of the posh locality in the city of Chennai, the construction is Type-1

construction and has so many locational advantages. Therefore, the present monthly rent is at the rate of Rs.24,052.50 payable by the petitioner/tenant is very low and hence the respondent/landlord prayed to fix the fair rent at the rate of Rs.74,156/- per month. He filed the above RCOP.No.1238 of 2003 before the learned XI Judge, Small Causes Court, Chennai, seeking the fair rent fix at the rate of Rs.74,156/- to be paid by the petitioner/tenant.

4.Denying the allegations made out in the petition, this petitioner/tenant has filed his counter stating that the respondent respondent/landlord has exaggerated the availability of Schedule-1 amenity. The tenant also states that there is no architectural elevations and availability of excess land in the premises. More over the petition property is situated 750 meters away from Greams Road where there is perennial scarcity of water and the building is more than 25 years old and the calculation made by the petitioner is excessive.

5.The petitioner/tenant also states that the above settlement of land has to be equally allotted to 4 floors. The value of the land may not exist more than 20 lakhs. Therefore, the present rent of Rs.24,052.50 itself is reasonable fair rent and hence he prayed for

dismissal of the petition.

6.Considering both side cases, the learned 11th Judge, Small Causes Court, Chennai was pleased to allowed the above RCOP.No.1238 of 2003, dated 25.06.2004 and fix the fair rent at the rate of Rs.37,396/- per month and directing the petitioner/tenant to pay the said fair rent at Rs.37,396/- per month from the date of filing of this petition to be paid to this respondent/landlord. Challenging the said order of the Rent Controller, passed in RCOP.No.1238 of 2003, dated 25.06.2004, this petitioner/tenant has filed an appeal in RCA.No.967 of 2004 before the learned VIII Judge, Court of Small Causes, Chennai.

7.This petitioner/tenant has raised various grounds in an appeal and he stated that the learned Rent Controller erred in by taking the Plinth area as 4604.95 sq. ft. As stated by the Respondents' Engineer which is quite contrary to the actual position and the details available under the Sale deed through which the respondents have purchased the petition property.

8.This petitioner/tenant also states that the learned Rent Controller has not properly considered the Report filed by the Engineer

on the side of the tenant and has not assigned any valid reason and also not accepting the report of the Engineer examined by the Appellant as R.W.1 and also failed to consider the report of the Engineer examined on the tenant side. He has also stated that the learned Rent Controller failed to consider the inconsistencies and discrepancies contained in the report of the Engineer examined on the side of the landlord and exposed at the time of cross examination of the Engineer PW1 in a proper perspective.

9.The petitioner/tenant also raised a ground stating that if the learned Rent Controller taking the full value of two ACC sheds being used as two wheeler shed by four occupants for the purpose of calculation for the cost of construction and also for apportionment of land while fixing the fair rent which is quite contrary to the actual position since the abovesaid two ACC sheds situates in the Ground Floor is commonly provided for the four floors existing in the multi-storeyed building in which the petition premises is in the first floor portion.

10.He also stated that the learned Rent Controller erred in taking the entire value of the cost of construction of two ACC sheds and entire value of the land for calculating the fair rent which is quite

contrary even to the respondents pleadings and the documents available before the rent controller as exhibits.

11.The petitioner/tenant also come forward by saying that the learned Rent Controller has erred in awarding 15% for the basic amenities even after admission made by the landlord Engineer in his report that only two basic amenities are available in the petition premises and consequently awarding 15% for basic amenities is highly excessive and unjustifiable. Therefore, the petitioner/tenant has filed the above appeal stating that the Rent Controller has not properly appreciated the pleadings and the evidence available both on oral and on documents in a proper perspective and erred in fixing Rs.37,396/- as fair rent against the existing rent of Rs.24,052.50 is illegal and unsustainable in law and hence he prayed the appellate Court to allow the appeal in RCA.No.967 of 2004.

12.Considering both side cases, the learned Rent Controller/Appellate Authority stating that whether the learned Rent Controller is correct in fixing the fair rent at the rate of Rs.37,396/- per month for the petition premises?

13.To reply to the said point, the learned Rent Controller

Appellate Authority states that on the side of the landlord PW1 was examined and four exhibits were marked as Exs.P1 to P4 and on the side of the tenant, RW1 was examined and six exhibits were marked as Exs.R1 to R6.

14.The learned Rent Controller/Appellate Authority also states that both the Engineers examined on both sides stated in the report that the petition property is constructed by cement mortar and RCC cement roof with mosaic tiled flooring, the doors are made up of teak wood and glass and the construction of the building is Type-1 building and the age of the building is fixed at 25 years. Since the age of the building is fixed at 25 years, depreciation value for the building is 1% per year as per the schedule the depreciation is 0.778 sq. ft.

15.The learned Appellate Authority also states that in the schedule mentioned property the basic amenities such as drinking water, current facility and drainage facilities are available and 15% is fixed for basic amenities. Therefore, based on the engineers report, the total construction area was arrived at 1604.04 sq. ft. and the same was not repudiated by the petitioner/tenant. Therefore, in respect of the construction cost is concerned as per the PWD rates Rs.341/- is fixed for construction for ground floor in the year 2003.

16.The learned Rent Controller/Appellate Authority also states that the land value per ground in the area is Rs.57,40,128/- whereas the tenant engineers considering the advantages of the location has fixed as Rs.28,30,475/-. Therefore, the Appellate Authority considering the locational advantages and other disadvantages, the ground value is fixed by the trial Court is Rs.15,00,000/-. Therefore, the appellate Court stated that when the appellate Court looked into the various factors such as the locational advantages and come to the conclusion that the ground value in the area is fixed at Rs.15,00,000/- per ground.

17.The learned Appellate Authority stated that though the Rent Controller awarded 15% for basic amenities and awarded 2% for schedule-1 amenities. Therefore it is clearly states that there is no much dispute between the contesting parties with regard to other areas. Finally, the Rent Controller has fixed the fair rent at Rs.37,396/- per month. As far as fixation of concerned there is no hard an past to available in the Act and it is considered only in the matter of common sense required for the fixation of fair rent. Therefore, the learned Appellate Authority has followed the legal proceedings and has rightly enhanced the monthly fair rent payable at Rs.37,396/- per month and

therefore there is no reason to interfere with the reasoning and conclusion reached by the learned Rent controller and accordingly, he dismissed the application on 19.07.2011. Challenging both the orders, the petitioner/tenant has filed the civil revision petition before this Court on various grounds.

18.I heard Mr.M.Imthias, learned counsel appearing for the petitioner and there was no representation for the respondents.

19.When I gone through the entire judgments rendered by the Rent Controller as well as the Appellate Authority, it is made clear that the petition premises building was constructed and the age of the building is 25 years. There is no dispute by the tenant in the schedule mentioned property the basic amenities such as drinking water, current facility and drainage facilities are available and the Rent Controller has fixed 15% for basic amenities. Therefore, the appellate Authority also states that based on the report given by both side Engineers, the total construction area was arrived at 1604.04 sq. ft. in respect of the construction cost per square feet as per PWD rates Rs.341/- in the ground floor in the year 2003.

20.On the report given by the Landlord's Engineer, the land

value per ground in the area is Rs.57,40,128/- whereas the tenant Engineer considering the advantages of the location has fixed as Rs.28,30,475/-. Therefore, the Rent Controller was fixed the ground value is at Rs.15,00,000/- per ground, by fixing various locational advantages and the ground value fixed at Rs.15,00,000/- per ground. Therefore, there was no other dispute between the both parties in respect of other area.

21. Therefore, in my considered opinion that both the Rent Controller as well as the Appellate Authority has considered the fair rent in a proper manner by considering the various factors particularly locational advantages and the area construction and other things and passed the appropriate orders and fixing the fair rent at Rs.37,396/- per month, which is to be payable by the petitioner/tenant and there was no reason for interfering with the orders passed by the Rent Controller in RCOP.No.1238 of 2003 and RCA.No.967 of 2004 passed by the VIII Judge, Small Causes Court, Chennai and hence this Civil Revision Petition is dismissed as devoid of merits.

22.In the result:

(a)civil revision petition is dismissed, by confirming the order passed in RCOP.No.1238 of 2003 dated 25.06.2004, on the file of the XI Judge, Small Causes Court, Chennai, confirming the order passed in RCA.No.967 of 2004, dated 19.07.2011, is confirmed.

(b)the petitioner/tenant is hereby directed to pay the monthly fair rent at Rs.37,396/-, which is to be paid from the date of filing the RCOP.

23.Accordingly, the civil revision petition is dismissed. No costs.

25.11.2016

Index:Yes
Internet:Yes

vs

To

1.The XI Judge, Small Causes Court, Chennai.

2.The VIII Judge, Small Causes Court, Chennai.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(NPD)No.1318 of 2012**

25.11.2016