Reserved on : 20.07.2016

Delivered on : 29.07.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

C.R.P.(NPD).Nos.2337 of 2010 & 3939 of 2011

C.R.P.(NPD).Nos.2337 of 2010:

1.M.Balasubramanian

2.Muthuvel Kumari ... Petitioners

Vs.

1.N.Ravindran

2.M.Kalandar Naina Mohammed

3.M.Mohammed Jabarullah

4.Ummul Maharifa

5.Mohammed Fathima ... Respondents

(R2 to R5 being given up by the revision petitioners as they have already sold the demised property to the revision petitioners and they have no subsisting interest)

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act 23 of 1973 against the order and decreetal order dated 04.03.2010 passed in R.C.A.No.503 of 2007 on the file of the VII Judge, Court of Small Causes, Chennai, varying the order fixing fair rent dated 26.06.2007 passed in R.C.O.P.No.1132 of 2006 on the file of the X Judge, Court of Small Causes, Chennai.

C.R.P.(NPD).Nos.3939 of 2011:
N.Ravindran ... Petitioner

Vs.

1.M.Kalandar Naina Mohammed
2.M.Mohammed Jabarullah
3.Ummul Maharifa
4.Mohammed Fathima
5.Balasubramanian
6.B.Muthuvel Kumari ... Respondents

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act 23 of 1973 against the order and decreetal order dated 04.03.2010 passed in R.C.A.No.503 of 2007 on the file of the VII Judge, Court of Small Causes, Chennai, partly allowing the fair and decreetal order dated 26.06.2007 passed in R.C.O.P.No.1132 of 2006 on the file of the X Judge, Court of Small Causes (Rent Controller), Chennai.

For Petitioners in C.R.P.(NPD).No.2337/2010
& Respondents 5 & 6 in C.R.P.(NPD).No.3939/2011 : Mr.P.B.Balaji

For 1st Respondent in C.R.P.(NPD).No.2337/2010
& Petitioner in C.R.P.(NPD).No.3939/2011 : Mr.Ashok Menon

C O M M O N O R D E R

Challenging the judgment and decree passed in R.C.A.No.503 of 2007 on the file of the VII Judge, Court of Small Causes, Chennai, modifying the order passed in R.C.O.P.No.1132 of 2006 on the file of the X Judge, Court of Small Causes, Chennai, the landlords have filed the Civil Revision Petition in C.R.P.(NPD).No.2337 of 2010 for enhancement of the fair rent and the tenant has filed the Civil Revision Petition in C.R.P.(NPD).No.3939 of 2011 for reducing the fair rent fixed by the Rent Control Appellate Authority.

2.The landlords filed the Original Petition in R.C.O.P.No.1132 of 2006 for fixation of fair rent.

3.The case of the landlords is that the petition premises was leased out for non-residential purpose on a monthly rent of Rs.12,500/-. The demised premises situate in Door No.109/110, Usman Road, T.Nagar, Chennai. The premises is situated in a famous business locality where business concerns are functioning. The premises is near Ranganathan Street, Dr.Doraisamy Bridge, several banks, jewellery shops, famous textile shops, etc. There are transport facilities like bus routes, bus terminus, electric train facilities. According to the landlords, the conservative value of the land is Rs.2.5 crores per ground. Further, according to the landlords, it is a well known fact that Usman Road is one of the busiest commercial localities, catering to the needs of the public. According to the landlords, the plinth area on the ground floor is 1155 sq.ft. and in the first floor is 171 sq.ft. In these circumstances, the landlords claim a sum of Rs.42,844/- per month as fair rent.

4.The tenant filed his counter disputing the averments stated by the landlords in the petition and according to the tenant, the constructed portion rented out to him would come to only 500 sq.ft. Further, he has stated that he has spent nearly Rs.50,00,000/- towards interior decorations. The building contains ground plus three floors. The 1st floor and 2nd floor have been let out for commercial purpose and nearly 20 tenants occupy the same. The 3rd floor has been let out for both commercial and residential purpose. The tenant contended that the claim of Rs.42,844/- towards fair rent is exorbitant.

5.Before the Rent Controller, on the side of the landlords, P.W.1 was examined and 6 documents, Exs.P1 to P6 were marked. On the side of the tenant, R.W.1 was examined and 2 documents, Exs.R1 & R2 were marked.

6.The Rent Controller, taking into consideration the case of both parties, fixed the fair rent at Rs.38,732/-. Aggrieved over the fair rent fixed by the Rent Controller, the tenant preferred an appeal in R.C.A.No.503 of 2007 and the Rent Control Appellate Authority reduced the fair rent to

Rs.30,438/- per month. Aggrieved over the fair rent fixed by the Rent Control Appellate Authority, the landlords as well as the tenant have filed the above Civil Revision Petitions.

7.Heard Mr.P.B.Balaji, learned counsel appearing for the landlords - petitioners in C.R.P.(NPD).No.2337 of 2010/respondents 5 & 6 in C.R.P.(NPD).No.3939 of 2011 and Mr.Ashok Menon, learned counsel appearing for the tenant - 1st respondent in C.R.P.(NPD).No.2337 of 2010/ petitioner in C.R.P.(NPD).No.3939 of 2011.

8.Mr.P.B.Balaji, learned counsel appearing for the landlords submitted that the Rent Control Appellate Authority erred in reducing the fair rent fixed by the Rent Controller, when the landlords have proved their case before the Rent Controller by oral and documentary evidences. The learned counsel submitted that the Rent Control Appellate Authority had reduced the value of the land without any basis whatsoever. That apart, the learned counsel also submitted that the tenant had not produced any document in support of his case. However, inspite of the same, the Rent Control Appellate Authority had reduced the value of the land without any evidence.

9.In support of his contentions, the learned counsel relied upon the following judgments:

(i)(2004) 2 Supreme Court Cases 283 [Krishi Utpadan Mandi Samiti, Sahaswan, District Badaun through its Secretary Vs. Bipin Kumar and another] wherein the Hon'ble Supreme Court held as follows:

> "8.However, there is evidence of high potentiality. The increase of 15% given by the High Court cannot, therefore, be said to be unreasonable. Of course, the 15% increase has to be on Rs.15.40 which is the figure shown in the sale deed. It cannot be on Rs 120 as wrongly taken by the High Court. The High Court also erred in considering only three years' increase whereas in fact there is four years' difference between the respondent's sale deed and the acquisition proceedings. Thus taking an increase of 60% over the price of Rs.15.40 per sq yard, the value comes to Rs 24.64 per sq yard. We, accordingly, set aside the orders of the Reference Court and the High Court and fix the value at the rate of Rs 24.64 per sq yard. The respondent will also be entitled to solatium and other statutory benefits under the Land Acquisition Act, 1894."

(ii)2011 (1) TLNJ 20 (Civil) [New Era Engineering Company represented by its Partner J.S.Desai, No.172, Thambu Chetty Street, Ch-1 and others Vs. 1.Ghyaz Hashim and others] wherein this Court held as follows:

"16.In a judgment of Hon'ble Apex Court reported in (2002) 3 SCC 688 in between Special Land Acquisition Officer Vs. Mohd. Hanif Sahib Bawa Sahib, it has been categorically held as follows:

"After due deliberations on the contentions raised by the counsel for the parties, we are of the opinion that on the given facts and circumstances of the present case the appreciation of 10% per annum given for the subsequent years is neither excessive nor unreasonable so as to call for our interference. Counsel for the parties did not dispute that after the submersion of the old township area of Bagalkot in water, a new township was being built up. For this lot of developmental activities are taking place.

This is evident from the fact that number of acquisitions have been made for the development of the new township of Bagalkot. In this order, reference has been made to the earlier acquisition of 1979. In Civil Appeal Nos.1552-54 of 2000 as well, acquisition of the land was made for formation of a link road to the new town. We agree with the counsel for the appellant that the reference court wrongly valued the land at Rs.6.85 per sq.ft for the year 1985 taking the base price of the land at Rs.3/- per sq.ft for the year 1979 on an appreciation of 10% per annum for every subsequent year. The appreciation of value of land at 10% on the base price of Rs.3/- per sq.ft would increase the value of the land @ 0.30 paise per year. 0.30 paise multiplied by 7 would come to Rs.2.10 paise. If the

> appreciation in value of the land for the next seven years is taken at Rs.2.10 paise and added to the base value of Rs.3/-, the market value of the land under acquisition in the year 1985 would come to Rs.5.10 paise. We agree with the counsel for the respondents that deduction on account of development charges from the price fixed cannot be made as the base price of Rs.3/- had been determined in the earlier cases after taking into account the development charges."

According to the dictum laid down by the Hon'ble Apex Court, whenever there is no current document to show the market value of any property lying in the municipal area and if earlier document is available to show such a value adding 10% of appreciation to the said value annum will not be harmful. The property is admittedly situated within the Corporation area and in a prime locality near Madras High Court. Therefore, there cannot be any hesitation to apply the said ratio as enunciated in the judgment of Hon'ble Apex Court. When we calculate the years passed from the date of the said sale deed, the date of filing of the petition, it is 5 ½ years. Therefore, a appreciation of 55% has to be added to the value so as to find the value of the said property as on 2001. When it is applied on the value of with Rs.45,60,000/-, the ascertained total value of the property as on 2001 would be Rs.70,68,000/-. But the case of the petitioner is that the value of the vacant site would be at Rs.70,00,000/- only. Therefore, the said market value of Rs.70,00,000/- which is lesser than the ascertained value can be adopted calculating the fair rent."

(iii)(2001) 3 M.L.J. 396 [Susainathan and another Vs. T.Vijayan] wherein this Court held that the certified copies of Sale Deed can be accepted for computing market value and the Court can act on such document after considering the transactions recorded in the documents.

10.Countering the submissions made by the learned counsel appearing for the landlords, Mr.Ashok Menon, learned counsel appearing for the tenant submitted that the fixation of fair rent by the Rent Control Appellate Authority at Rs.30,438/- is very much on the higher side when the value of the land is much less. The learned counsel submitted that the value of the land fixed by the Rent Control Appellate Authority at Rs.1,75,00,000/- is very much on the higher side.

11.In support of his contentions, the learned counsel relied upon the following judgments:

(i)2006 (2) CTC 433 [Sakthi & Co., through its Partner, Veeranan Vs. Shree Desigachary] wherein this Court held as follows:

> “14.The methods of valuation for ascertaining the market value, as suggested in the above decisions, are as follows:
>
> (1) Opinion of experts.

(2) The price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages. Evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features would furnish basis to determine market value.

(3) A number of years purchase of the actual or immediately prospective profits of the lands acquired."

(ii)2006 (4) CTC 322 [N.Kuberan Vs. Indian Bank, Tindivanam Branch, rep by its Branch Manager, Tindivanam] wherein this Court held as follows:

"14.In the above judgment, the landlord who sold the property on 11.9.1992 filed the Eviction Petition on 21.10.1992. Therefore, the learned Single Judge held that the landlord cannot maintain the Eviction Petition as he ceased to be the landlord as early as on 11.9.1992. But in the present case, admittedly fair rent Petition was filed in the year 2002 itself. Even according to the respondent herein the property was sold on 5.6.2002 and 12.7.2002 only and in such circumstances, as rightly contended by the learned counsel for the Revision Petitioner, the landlord is entitled to fair rent from 1.4.1999 upto the date of sale. Therefore, I am constrained to reject the argument advanced by the learned counsel for the respondent/tenant in this regard."

(iii)1988-1-L.W. 568 [A.Emberumanar Vs. K.Raghavan, Sole Proprietor: Pratap Art Productions] wherein this Court held that it is the duty of the landlord to produce the plan or map/sanctioned plan, etc., when there is a dispute with regard to the area of the building and failure to produce the same would result in adverse inference being drawn on the landlord, unless the non-production is explained.

(iv)1993-1-L.W. 344 [M.Radhakrishna Rao Vs. A.B.Ahmed Basha and another] wherein this Court held that while fixing the fair rent for a building, the site value of the building having more than one floor should be fixed proportionately by distributing the same in accordance with number of storeys in the building.

(v)1972-2-MLJ 446 [Rainbow Electric Supply Corporation by its Proprietor Heerachand Shiyal Vs. S.V.Chenchuramiah and another] wherein this Court held as follows:

> "16.The extent of the ground floor is 2207 sq. feet while in the first floor, the built up area, is 950 sq. feet. Though the building in question is partly residential and partly non-residential, the Courts below have found that it is predominantly non-residential and we will have to proceed on

this basis. Ramaprasada Rao, J., in *S.Attendrooloo Chetty's Charities by its President and Trustee S.Venkatarangam and others V. Messrs Saddana Aushadhalaya by its Proprietor Naresh Chandra Ghosh [(1968) 81 L.W. 196]* held that fixation of fair rent for the site value in an application under Section 4 of the Madras Buildings (Lease and Rent Control) Act, 1961, in the case of buildings having more than one floor, ought to be one of apportionment in accordance with the number of storeys. The learned Judge held that if there are more than two storeys the site value has to be proportionately distributed in accordance with the number of storeys in the buildings. The question in the present case is whether there is a second storey in the building in question. The learned counsel for the tenant urges that in the second floor a structure with asbestos cement roofing is in existence and the landlord is deriving rent therefrom and the contention is that the Court has to apportion the site value amongst the ground floor, first floor and the second floor. The landlord's reply to this contention is that the structure in the second floor does not belong to him. The Courts below have accepted the landlord's case and held that the second floor construction should not be taken into account in arriving at the site value. I accept the finding of the appellate Judge and hold that the apportionment of the site value should be only confined only to the ground floor and the first floor."

(vi)1968 2 MLJ 406 [S.Attendrooloo Chetty's Charities by its President and Trustees S.Venkatarangam and others V. M/s.Sadhana Aushadhalaya by its Proprietor Naresh Chandra Ghose] wherein this Court held that in the case of buildings having more than one floor, the principle ought to be one of apportionment in accordance with the number of storeys and if there are two storeys, the market value of the land for the 1st floor will be half. If there are more than two storeys, it will be proportionately distributed in accordance with the number of storeys in the building.

12.On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side and also the judgments relied upon by the learned counsel on either side, it is not in dispute that the petition premises was leased out to the tenant for non-residential purpose. It cannot be disputed that the petition premises situate in a busy locality viz., Usman Road, Chennai. There are several commercial establishments functioning in the area. In Ex.P1, report of the Engineer, he has stated that the age of the building would be around 80 years. Ex.P2 is the plan marked on the side of the landlords. Exs.P3 & P5 are the Sale Deeds dated 26.01.2005 pertaining to the petition premises. The Engineer, who was examined as P.W.1, had deposed that the value of the land would be Rs.2,50,00,000/- per ground. However, the Engineer, who was examined on the side of the tenant as R.W1, has deposed that the value of the land would be Rs.1,00,00,000/- per ground. P.W.1 also deposed that there are famous textile shops, jewellery shops, banks, bus stand, school very near to the petition premises. Relying upon Exs.P3 & P5 Sale Deeds, the Engineer, who was examined as P.W.1, has stated that the value of the land would be Rs.2,50,00,000/- per ground. In Ex.P6 Analyst report, in the year 2005, the value was stated as Rs.2,16,00,000/- and in June 2006, the value was fixed at Rs.2,59,20,000/- per ground. As per Ex.P3 Sale Deed, an extent of 1024 sq.ft. of vacant land was sold at Rs.92,16,000/-. P.W.1 also in his report has stated that the tenant is occupying an extent of 1155 sq.ft on the ground floor and an extent of 171 sq.ft. on the 1st floor and also taking into consideration the common passage used by the tenant while arriving at the total extent of superstructure in occupation of the tenant.

13.Though as per Ex.P6 and as per the evidence of P.W.1, the value of the land is Rs.2,50,00,000/-, the Rent Controller had fixed the value of the land at Rs.2,25,00,000/- per ground. The Rent Controller has also awarded 2% towards Schedule-1 amenities. The Rent Controller also deducted depreciation for 81 years. Ultimately, the Rent Controller fixed the fair rent at Rs.38,732/-. The Rent Control Appellate Authority found that the value of the land per ground has to be apportioned amongst the number of floors in the building and if the value of Rs.2,16,00,000/- is divided by two, since the tenant is in occupation of two floors out of three floors in the building, the value will be Rs.1,08,00,000/-. However, the Rent Control Appellate Authority has stated that the said sum of Rs.1,08,00,000/- is very very meagre when the land value in Chennai is considered. Therefore, the Rent Control Appellate Authority fixed the value of the land per ground at Rs.1,75,00,000/-. In the petition filed by the landlords, they have stated that the value of the land is Rs.2,50,00,000/-.

14.According to P.W.1 and Exs.P3 & P5, the cost of the land per ground is Rs.2,50,00,000/-. Exs.P3 & P5 relates to sale transactions in which the landlords herein are the purchasers. Merely because the landlords are the purchasers under Exs.P3 & P5, that cannot be put against them for fixing the value of the petition premises. No prudent man will purchase a property at a higher rate for the purpose of fixing the fair rent in respect of the leased out premises. The Rent Controller had fixed the value of the land only at Rs.2,25,00,000/- per ground. When P.W.1 and Exs.P3 & P5 Sale Deeds are in favour of the landlords and when there is no other evidence produced by the tenant to establish that the value of the land was less than Rs.2,25,00,000/-, the Rent Control Appellate Authority ought not to have reduced the value to Rs.1,75,00,000/-. The value of the land fixed by the Rent Control Appellate Authority at Rs.1,75,00,000/- is very low when compared to the value of the land in Chennai. The Rent Controller had rightly fixed the value at Rs.2,25,00,000/-.

15.Though there is no dispute with regard to the ratios laid down in the judgments relied upon by the learned counsel for the tenant, since the facts and circumstances are different, the said judgments are not applicable to the present case.

16.The value of the land has been fixed by the Rent Controller based on the oral and documentary evidences produced by the parties. Considering the evidence of P.W.1 and Exs.P3 & P5, the Rent Controller had rightly fixed the value of the land at Rs.2,25,00,000/-. The Rent Control Appellate Authority had fixed the value at Rs.1,75,00,000/- per ground without any basis. The fair rent fixed by the Rent Controller at Rs.38,732/- per month is just and proper. The Courts below also apportioned the value of the land taking into consideration the area occupied by the tenant.

17.In these circumstances, the judgment and decree passed by the Rent Control Appellate Authority in R.C.A.No.503 of 2007 are liable to be set aside. Accordingly, the same are set aside. The order passed by the Rent Controller in R.C.O.P.No.1132 of 2006 is restored. The fair rent in respect of the petition premises is fixed at Rs.38,732/- per month from the date of filing of R.C.O.P.No.1132 of 2006.

18.The Civil Revision Petition filed by the landlords in C.R.P.(NPD).No.2337 of 2010 stands allowed. The Civil Revision Petition filed by the tenant in C.R.P.(NPD).No.3939 of 2011 stands dismissed. No costs.

Index : No 29**.07.2016**
Internet : Yes
va

To

1.The VII Judge,
Court of Small Causes,
Chennai.

2.The X Judge,
Court of Small Causes,
Chennai.

M.DURAISWAMY,J.
va

Order on
C.R.P.(NPD).Nos.2337 of 2010
& 3939 of 2011

29.07.2016