

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.1700, 1701 and 2416 of 2014
& M.P.Nos.1,1,1 of 2014

A.Kalimuthu (died)

- 1.Chellakanni
- 2.Minor Venkatesh
- 3.Minor Kumara Guru
- 4.Minor Balaji

(Petitioners 2 to 4 are represented
by their mother Chellakanni)

.. Petitioners in
C.R.P.No.1700 of 2014

K.Narayanaswamy

.. Petitioner in
C.R.P.No.1701 of 2014

E.Govindan (died)

- 1.G.Sakunthala
- 2.Kalaialagan
- 3.Kalaivani
- 4.Valarmathi
- 5.Devaraj
- 6.Kalaichelvi

(cause title accepted vide order
of Court dated 30.06.2014 made
in M.P.No.1 of 2004 in CRP.SR.No.
1003 of 2014)

.. Petitioners in
C.R.P.No.2416 of 2014

Vs.

1.A.P.Govindhaswamy Nathan
2.A.P.Arun Kumar

.. Respondents
in all the three CRPs.

PRAYER: Civil Revision Petitions are filed under Section 25 of Tamil Nadu Buildings (Lease & Rent Control) Act, 18 of 1960 as Amended by Act 23/1973, against the judgment and decree dated 16.04.2013 made in R.C.A.Nos.1725, 1724 and 1723 of 2004 on the file of the VII Small Causes Court, Chennai, confirming the fair and decretal order dated 27.02.2004 passed in R.C.O.P.Nos.1981, 1980 and 1979 of 2002 on the file of the XI Small Causes Court, Chennai.

For Petitioners : Mr.K.V.Sundararajan

For Respondents : Mr.S.William

COMMON ORDER

The Civil Revision Petitions are filed against the judgment and decree dated 16.04.2013 made in R.C.A.Nos.1725, 1724 and 1723 of 2002 on the file of the VII Small Causes Court, Chennai, confirming the fair and decretal order dated 27.02.2004 passed in R.C.O.P.Nos.1981, 1980 and 1979 of 2002 on the file of the XI Small Causes Court, Chennai.

2. The petitioners are the tenants and respondents are the landlords. The respondents filed R.C.O.P.Nos.1725, 1724 and 1723 of 2002 for fixation of fair rent. According to the respondents, the shops bearing Nos.5, 6 and 7 are situated in Venkatnarayana road, T.Nagar, which is the prime business locality in the City of Chennai nearby T.Nagar bus stand and Mambalam railway station. The famous Usman road, T.T.D.Devasthanam temple and Sringeri Mutt are also very close to the suit property. Panagal Park, Natesan Park, Banks, schools, hospitals, hotels, restaurants, textile shops and jewellery shops are also situated near the suit property. Market value of the land in the schedule mentioned properties is more than Rs.60,00,000/-. Each of the petitioners in C.R.P.Nos.1700, 1701 and 2416 of 2014 are paying rent only Rs.1,250/-, Rs.2,000/- and Rs.1,000/- per month, respectively. The petition premises are provided with all basic amenities like water, electricity, sanitary etc. For the above reason, the respondent filed R.C.O.Ps. for fixation of fair rent at Rs.7,853.75 per month.

3. The petitioners filed counter statements and denied the averments that petitioners are paying only low rent and also denied that the petition property is in prime business locality in the city of

Chennai with all locational facilities like bus stop, railway station and near to Pondy bazaar and Usman road. They admitted that they are tenants under the respondents. They submitted that plinth area of the petition portions is measuring about 245 sq.ft. each. The petitioners denied that all basic amenities are provided in the petition premises. The petition premises have only electricity supply in the name of the petitioners. The petitioners denied the market value of the land is more than Rs.60,00,000/- per ground. The rent now being paid by the petitioners is reasonable and hence, the contractual rent is to be fixed as fair rent for the petition portions.

4. The R.C.O.Ps. filed by the respondents were taken up together along with other R.C.O.Ps. filed by the landlords against the other tenants.

5. Before the learned Rent Controller, the second respondent examined himself as P.W.1 and Engineer as P.W.2 and marked ten documents as Exs.P1 to P10. On behalf of the petitioners and other tenants, six witnesses were examined as R.W.1 to R.W.6 and marked sixteen documents as Exs.R1 to R16.

6. The learned Rent Controller, considering the pleadings, oral and documentary evidence, fixed the market value of the land per ground at Rs.40,00,000/-, age of the building as 50 years and awarded 15% towards basic amenities and applying formula, fixed the fair rent at Rs.5,083/- per month in all the three petitions.

7. The petitioners being aggrieved by the said order of fixation of fair rent by the learned Rent Controller, filed R.C.A.Nos.1725, 1724 and 1723 of 2004. The learned Appellate Authority, considering the pleadings, oral and documentary evidence and the order of the learned Rent Controller, dismissed the R.C.As. by common judgement and decree dated 12.02.2013, confirming the fair and decretal order dated 27.02.2004 passed in R.C.O.P.Nos.1981, 1980 and 1979 of 2002.

8. Challenging the judgment and decree dated 12.02.2013 made in R.C.A.Nos.1725, 1724 and 1723 of 2004, confirming the order of the learned Rent Controller dated 27.02.2004 made in R.C.O.P.Nos.1981, 1980 and 1979 of 2002, the present three Civil Revision Petitions are filed by the petitioners/tenants.

9. The learned counsel appearing for the petitioners submitted that the petition premises is 70 years old. The petitioners are carrying on business in the portions of the petition premises for more than 50 years. R.W.6/Engineer of the petitioners stated that the age of the building is 70 years and filed his report Ex.R7. The Courts below erred in rejecting the report filed by the petitioners' engineer and held that no document was filed to prove that the building is 70 years old. Petitioners put up certain extent of construction under RCC roof and the same was not considered by the learned Rent Controller. The Courts below erred in awarding 15% towards basic amenities, when basic amenities were not provided by the respondents/landlords in respect of the petition premises. There is no toilet facility and the same has been used by the respondents/landlords for storing waste materials. According to the petitioners, the Courts below have to award only 5% towards basic amenities. R.W.6/Engineer of the petitioners in his report stated that the petition premises are not situated in the business area and that the market value of the land is only Rs.23,89,950/-. But the valuation of the land taken by the Courts below is exorbitant.

10. The learned counsel for the respondents submitted that the market value of the land is Rs.56,00,000/- and the Courts below have fixed only Rs.40,00,000/-. P.W.2/engineer of the respondents calculated the age of the building as 40 years. Whereas the Courts below fixed the age of the building as 50 years. The petition portions are situated in Venkatnarayana road, T.Nagar, which is a prime locality and therefore, fair rent fixed by the Courts below has to be enhanced.

11. Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

12. As far as the age of the building is concerned, P.W.2/engineer of the respondents fixed the age of the building as 40 years, whereas R.W.6/engineer of the petitioners fixed the age of the building as 70 years. The Courts below in the absence of documentary evidence, fixed the age of the building as 50 years, which is reasonable and the same needs no interference.

13. As far as basic amenities are concerned, the petitioners/tenants admitted the electricity service connection in the

petition portions, whereas the dispute is regarding the water and drainage facilities. The respondents filed Exs.P8 to P10 to prove that water and drainage facilities are in the petition portions. Just because the petitioners deposed that the toilet is not in usable condition, it does not amount that toilet facilities are not available in the petition portions. The learned Rent Controller held that the landlords can only provide the facilities and it is the duty of the tenants to maintain the same. Hence, the Courts below rightly awarded 15% towards basic amenities. All the petitioners deposed that the front structure of the petition portions are built up by them. They also admitted that no document is available to prove that the constructions were made by them. In the absence of evidence regarding the constructions allegedly made by the petitioners, the learned Rent Controller correctly observed that the front portions are also to be included in calculating the built up area.

14. As far as fixation of market value of the land is concerned, on the side of the respondents, Ex.P4/sale deed is filed, which is of the year 2002. The property related to Ex.P4 sale deed is situated in Venkatnarayana road, T.Nagar and the land value is calculated at Rs.55,56,000/- per ground and analysis report was marked as

Ex.P5. On the side of the petitioners, Ex.R2/sale deed is filed, which is of the year 2001. The property related to Ex.R2 is situated in Soundarajan street, T.Nagar and the land value is calculated at Rs.23,89,950/- per ground and analysis report was marked as Ex.R8. The R.C.O.Ps. are filed in the year 2002. The petition portions are situated in Venkatnarayana road, T.Nagar, whereas the property in Ex.R2 sale deed is situated in Soundarajan street. Hence, the learned Rent Controller rightly rejected the value found in Ex.R2/sale deed and Ex.R8/analysis report. But the property in Ex.P4 is situated in the same road, where the petition premises are situated. Though the value of the land arrived in Ex.P5 is Rs.55,56,000/- per ground, the learned Rent Controller fixed market value of the land only at Rs.40,00,000/- per ground, which needs no interference and the same is reasonable.

15. The Courts below have considered all the materials on record and rightly fixed fair rent at Rs.5,083/- in all the three R.C.O.Ps. The Courts below have considered all the facts and materials on record in proper perspective. There is no perversity in the findings of the facts by the Courts below. There is no reason to modify or set aside the order and judgments of the Courts below.

16. At this juncture, the learned counsel for the respondents submitted that the petitioners have deposited the arrears of rent into the credit of R.C.O.P.Nos.1981, 1980 and 1979 of 2002 and seeks permission of this Court to withdraw the said amount. The respondents are permitted to withdraw the said amount by filing application before the learned Rent Controller.

17. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

19.12.2017

Index : Yes/No

kj

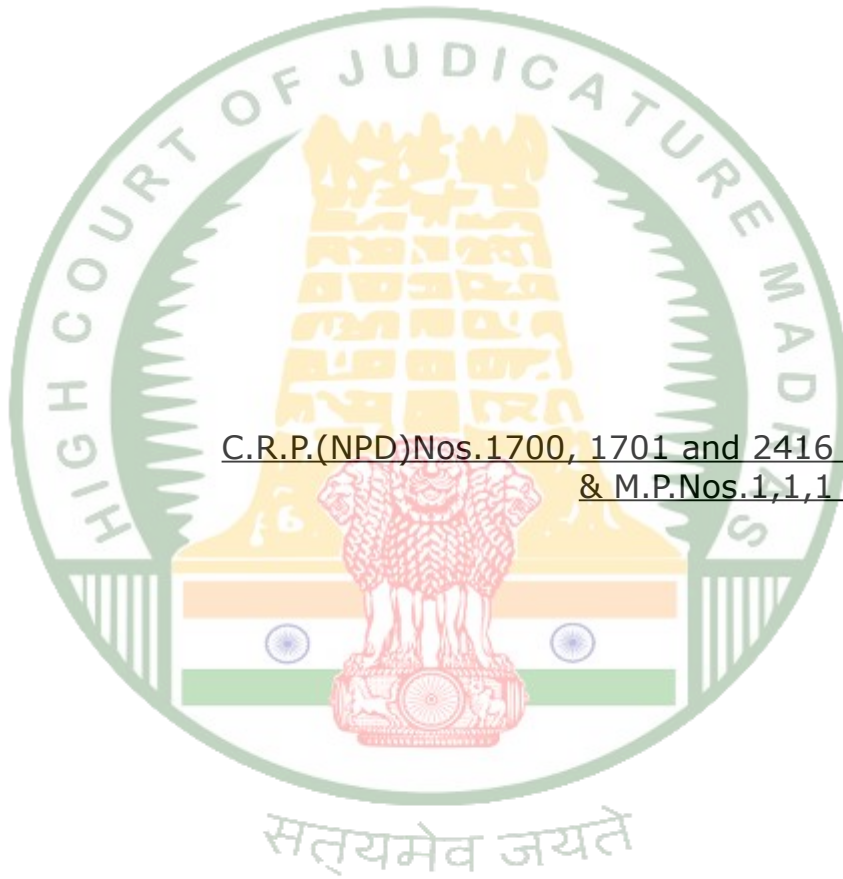
To

1.The VII Judge
Small Causes Court, Chennai.

2.The XI Judge
Small Causes Court
Chennai.

V.M.VELUMANI, J.

kj



C.R.P.(NPD)Nos.1700, 1701 and 2416 of 2014
& M.P.Nos.1,1,1 of 2014

WEB COPY 19.12.2017