

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).Nos.247 & 248 of 2014

Date of Reserving the Judgment	Date of Pronouncing the Judgment
31.01.2017	02.02.2017

C.R.P.(NPD).No.247/2014

T.V.Sivasubramanian
S/o.Late T.Vajravelu Chettiar

.. Petitioner/Appellant/Petitioner/Landlord

-Vs.-

A.Sivapandian
S/o.P.Arumugha Nadar

.. Respondent/Respondent/Respondent/Tenant

Prayer:

Civil Revision Petition is filed under Section 25(1) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the fair and decreetal order made in R.C.A.No.364/2011, dated 26.09.2013 by the Appellate Authority VII Judge, Small Causes Court at Chennai, modifying the order and decreetal order in RCOP.No.1887/2009, dated 29.07.2010 on the file of the XII Small Causes Court, Chennai.

C.R.P.(NPD).No.248/2014

T.V.Sivasubramanian
S/o.Late T.Vajravelu Chettiar

.. Petitioner/Respondent/Petitioner/Landlord

-Vs.-

A.Sivapandian
S/o.P.Arumugha Nadar

.. Respondent/Appellant/Respondent/Tenant

Prayer:

Civil Revision Petition is filed under Section 25(1) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the fair and decreetal order made in R.C.A.No.151/2011, dated 26.09.2013 by the Appellate Authority VII Judge, Small Causes Court at Chennai, modifying the order and decreetal order in RCOP.No.1887/2009, dated 29.07.2010 on the file of the XII Small Causes Court, Chennai.

For Petitioner
in both the CRP's : Mr.V.Suryanarayana Reddy

For Respondent
in both the CRP's : Mr.T.Gandhi

COMMON ORDER

C.R.P.(NPD).No.247 of 2014 has been filed challenging the fair and decreetal order dated 26.09.2013 made in R.C.A.No.364/2011 on the file of the learned VII Judge, Small Causes Court at Chennai, modifying the order and

decreetal order in RCOP.No.1887/2009, dated 29.07.2010 on the file of the XII Small Causes Court, Chennai.

2. C.R.P.(NPD).No.248 of 2014 has been filed challenging the fair and decreetal order dated 26.09.2013 made in R.C.A.No.151/2011 on the file of the learned VII Judge, Small Causes Court at Chennai, modifying the order and decreetal order in RCOP.No.1887/2009, dated 29.07.2010 on the file of the learned XII Small Causes Court, Chennai.

3.The revision petitioner/landlord filed RCOP.No.1887/2009 for fixation of fair rent stating that the contractual rent for the demised building is Rs.1560/- per month and he sought for fixation of fair rent at Rs.7466/- per month. The learned Rent Controller, after considering the objections raised by the tenant fixed the fair rent at Rs.3065/- per month. As against the said order of the learned Rent Controller, the tenant preferred an appeal in R.C.A.No.151/2011 and the landlord preferred an appeal in R.C.A.No.364/2011. After considering the oral and documentary evidence, the learned Rent Control Appellate Authority by a common judgment dated 26.09.2013 had reduced the fair rent to Rs.2821/- from the date of filing of the RCOP. As against the said order passed by the Rent Control Appellate Authority, the landlord had preferred the present Civil Revision Petitions.

4. Heard the learned counsel appearing for the revision petitioner/landlord and the learned counsel appearing for the respondent/tenant.

5. The learned counsel appearing for the revision petitioner/landlord would submit that the demised building is situated in the Triplicane High Road. Even though the demised building is facing the Devaraja Mudali Street, the distance between the demised building and the Triplicane High Road is only 20 feet. However, both the Courts below had failed to consider the document filed by the revision petitioner/landlord in Ex.P.1/Copy of the sale deed pertaining to the property situated in the Triplicane High Road. Further, though both the Courts below had held that the documents filed by the respondent/tenant under Ex.R.1 and Ex.R.5 are not reliable, the learned Rent Controller had taken into account of the land value mentioned in Ex.R.1 and Ex.R.5 and on the basis of the same, doubled the market value and arrived at Rs.54.96 lakhs per ground. But the learned Rent Control Appellate Authority had reduced the amount fixed at Rs.54 lakhs per ground to Rs.50 lakhs per ground without basis. Hence, the learned counsel for the revision petitioner prayed for fixing the land value at Rs.1,44,00,000/- [Rupees One Crore and Forty Four Lakhs Only] as per Ex.P.1 and prayed for allowing of the Civil

Revision Petitions.

6. Resisting the same, the learned counsel appearing for the respondent/tenant would submit that the learned Rent Control Appellate Authority had rightly held that the land value is Rs.50 lakhs as per Ex.R.5 and hence, there is no necessity to set aside the same. The learned counsel also relied upon the decision reported in **2009 (2) CTC 577, S.V.Ramasamy v. Rainbow Electric Supply Corporation** and submitted that even though the demised building is situated in the Triplicane High Road, after partition among the family, the portion of the property facing the Triplicane High Road was allotted to one of the brother of the landlord and the other portion facing the Devaraja Mudali Street was allotted to the petitioner/landlord hence, it cannot be considered that the property in possession of the landlord is situated in the Triplicane High Road. Thus, the learned counsel for the respondent prayed for dismissal of the Civil Revision Petitions.

7. Considered the rival submissions made by both sides and perused the typed set of papers.

8. The petitioner herein as landlord has filed the Rent Control Proceedings under Section 4 of the Tamil Nadu Buildings (Lease and Rent

Control) Act, 1960 for fixation of fair rent for the demised building measuring an extent of 126 sq.ft., at Rs.7466/- per month. But the dispute arose between the parties in respect of the land value. The revision petitioner would contend that the demised building is situated in the Triplicane High Road and per contra, the respondent would contend that the demised building is facing the Devaraja Mudali Street.

9.The only point to be decided by this Court is whether the fair rent fixed by the learned Rent Control Appellate Authority at Rs.2821/- per month is proper and genuine.

10.At this juncture, it is pertinent to note that instead of filing a single revision petition challenging the orders passed in both the R.C.A's which were arising out of the single RCOP, the landlord has filed two Civil Revision Petitions which is unnecessary.

11.Before considering the land value, it would be appropriate to consider the decision relied on by the learned counsel for the respondent reported in **2009 (2) CTC 577, S.V.Ramasamy v. Rainbow Electric Supply Corporation**. But the above decision pertains to the maintainability of the second fair rent petition, wherein it was held that after partition amongst the

family members there being a realignment of portion under the tenant's occupation, the building is not the same even though it may have the same Corporation door number and over all peripheral features. In such circumstances, I am of the view that the above citation is not applicable to the facts of the present case.

12. Before the learned Rent Controller, the landlord had filed Ex.P.1/Copy of the sale deed dated 20.07.2009 pertaining to the property situated in the Triplicane High Road and the tenant had filed two documents viz., Ex.R.1/Copy of the sale deed dated 26.05.2008 and Ex.R.5/Copy of the sale deed dated 26.02.2009. On perusal of the order passed by the learned Rent Controller, it has been clearly indicated that Ex.P.1 filed by the landlord cannot be taken into consideration as the demised premises is facing the Devaraja Mudali Street and not the Triplicane High Road. Further, it has also been clearly stated in the schedule of the petition that the demised building is facing the Devaraja Mudali Street, Triplicane. In such circumstances, the learned Rent Controller had rightly denied to rely on Ex.P.1/Copy of the sale deed produced by the landlord, wherein the land value has been mentioned as Rs.1,44,00,000/-. At the same time, the learned Rent Controller had clearly observed that the Ex.R.1 and Ex.R.5 pertains to the properties that are not situated in the Devaraja Mudali Street but only in a 35 feet long lane leading

from the Devaraja Mudali Street and hence, while taking into account of the land value mentioned in Ex.R.1 and Ex.R.5, the learned Rent Controller had doubled the market value of the rate per ground, considering the fact that the demised building is situated just 20 feet away from the Triplicane High Road. Further, as regards the area of the property, the learned Rent Controller had accepted the report filed on behalf of the tenant, wherein it was stated that the area of the property is 118 sq.ft.,

13.Considering the aforesaid facts and circumstances of the case, I am of the view that instead of taking into account, double the market value of the property, 2.5 times of the market value of the property can be taken into account which is arrived at Rs.27,48,000/- * 2.5 = Rs.68,70,000/-. Thus, the fair rent is calculated as follows:

<i>Fair Rent Calculations</i>	
Cost of Construction	
Ground Floor RCC rood portion 118 @ 386/ per sq.ft	Rs.45,548/-
10% for basic amenities	Rs.4,554.80/-
Total	Rs.50,102.80/-
Depreciated Value	
(1% depreciation for 32 years	Rs.36,274.42/-

<i>Fair Rent Calculations</i>	
0.724 * 50,102.80)	
<i>Land Value</i>	
Site extent - 118 sq.ft	
The land value fixed at Rs.68,70,000/- per ground	Rs.3,37,775/-
118 x 68,70,000 / 2400	
Total	Rs.3,74,049.42/-

Since the petition premises is being used for non residential purpose, the fair rent is calculated is at 12% which comes to Rs.3740.49 rounded off to Rs.3750/-

14.In fine,

(a) The present Civil Revision Petitions stand partly allowed and the fair rent is fixed at Rs.3750/- per month instead of Rs.2821/- per month, from the date of filing of the petition.

(b) Both the parties are directed to bear their own costs.

02.02.2017

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R.MALA, J.

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Pre-Delivery order made in
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