IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (NPD) Nos.2033, 2034 & 4887 of 2011

Kamala ... Petitioner in CRP (NPD) Nos.2033 & 2034/2011 and Respondent in CRP (NPD) No.4887 of 2011

Vs

Sashi Kala ... Respondent in CRP (NPD) Nos.2033 & 2034/2011 and petitioner in CRP (NPD) No.4887 of 2011

Common Prayer : Civil Revision Petitions filed under Section 25 of the Pondicherry Buildings (Lease and Rent Control) Act 1969 against the judgment and decree dated 15.03.2011 passed in RCA Nos.4 & 20 of 2007 on the file of the learned Second Additional District Judge at Pondicherry modifying the fair and final order dated 17.11.2007 passed in RCOP No.69 of 2000 on the file of the learned Rent Controller at Pondicherry.

For Petitioner in CRP (NPD) Nos. 2033 & 2034/2011 and Respondent in CRP (NPD) Nos. 4887/2011 } Mr.S.Kingston Jerald

For Respondent in }

CRP (NPD) Nos. }
2033 & 2034/2011 } Mr.Saikrishnan
and Petitioner in } for M/s.Sai, Bharath
CRP (NPD) Nos. } and Ilan
4887/2011 }

COMMON ORDER

These Civil Revision Petitions are filed against the judgment and decree dated 15.03.2011 passed in RCA Nos.4 & 20 of 2007 on the file of the learned Second Additional District Judge at Pondicherry modifying the fair and final order dated 17.11.2007 passed in RCOP No.69 of 2000 on the file of the learned Rent Controller at Pondicherry.

2. The petitioner is the tenant and the respondent is the landlady. The issue involved in both the CRPs are one and the same and therefore disposed of by this common order.

3. The respondent filed RCOP No.69 of 2000 on the file of Rent Controller, Pondicherry for fixation of fair rent at Rs.55,400/- per month. The respondent is the owner of the premises bearing No.60, Old No.44, Kalatheeswaran Koil Street, Pondicherry which consists of ground floor and first floor. The petitioner is a tenant in the said building except two rooms in the ground floor. The petition

premises is in a busy commercial locality. The respondent has furnished particulars of extent of the building in the ground floor and first floor and nature of construction. According to the respondent, the building was renovated in the year 1984 and therefore the age of the building is 15 years. As per the cost of construction and value of the land in that area, the value of the building is Rs.7,75,000/- and value of the land is R.44,33,500/-. The fair rent for the building is Rs.55,400/-. The petitioner is paying rent only at Rs.7,500/- per month.

4. The petitioner filed counter and denied the averments made by the respondent. She submitted that the age of the building is 50 years. She has spent Rs.1,50,000/- for re-modeling the petition premises and denied that the fair rent will be Rs.55,400/- and submitted that the rent Rs.7,500/- paid by him is the correct rent.

5. Before the learned Rent Controller, the respondent examined five witnesses as PW1 to 5 and marked 22 documents as Exs.P1 to P22. The petitioner examined RW1 & RW2 and marked three documents as Exs.R1 to R3. The learned Rent Controller, considering the pleadings, evidence of two engineers, one examined

by the petitioner and another examined by the respondent, fixed the age of the building as 30 years. The learned Rent Controller, accepted the report of the engineers with regard to the extent of the land mentioned in the report. The respondent marked Exs.P6 to P8 sale deeds and examined PWs3 to 5 to prove the sale.

6. The learned Rent Controller, considering the value mentioned in the sale deeds, arrived at the value of the land at Rs.325/- per sq.ft., applying the formula contemplated in the Act. The learned Rent Controller, arrived at cost of the building and land and added 15% for the basic amenities and deducted 1.5% per year as depreciation. Based on this calculation, the learned Rent Controller, fixed the fair rent at Rs.13,820/-.

7. Against the said order dated 17.11.2006 made in RCOP No.69 of 2000, the petitioner filed RCA No.4 of 2007 and the respondent filed RCA No.20 of 2007. The learned Appellate Authority, independently considering the materials and facts and order of the learned Rent Controller, by two separate judgments both dated 15.03.2011 dismissed the RCA No.4 of 2007 filed by the petitioner and allowed RCA No.20 of 2007 filed by the respondent modifying the fair rent fixed by the learned Rent Controller and

fixed the fair rent at Rs.16,000/- per month. The learned Appellate Authority, confirmed all the finding of the learned Rent Controller except with regard to the value of the land fixed by the learned Rent Controller. The learned Appellate Authority fixed the value of the land at Rs.425/- per sq.ft. and fixed the fair rent at Rs.16,000/- per month.

8. Against the judgments dated 15.03.2011 dismissing RCA No.4 of 2007 and allowing RCA No.20 of 2007, the present two Civil Revision Petitions are filed by the petitioner.

9. The learned counsel for the petitioner contended that -

(a) The courts below erred in fixing the age of the building at 30 years without there being any basis for the same.

(b) The respondent failed to file the sale deed by which the property was purchased by her.

(c) The age of the building is only 50 years and the rent Rs.7,500/- paid by the petitioner is the fair rent.

(d) the learned Rent Controller and Appellate Authority are not correct in fixing the value of the land at Rs.325/- per sq.ft. and Rs.425/- per sq.ft. respectively. They followed the guideline value to arrive at the value of the land which is not the correct method to arrive at market value of the land.

(e) The courts below are not correct in fixing the cost of the construction at Rs.227/- per sq.ft. for ground floor and at Rs.211/- per sq.ft and Rs.226/- per sq.ft respectively for the first floor portion without any basis.

(f) The respondent has not produced any document to show that the prevailing PWD rates for construction.

(g) The courts below failed to see that the petitioner has spent more than Rs,1,50,000/- for re-modeling the premises.

10. The learned counsel for the petitioner relied on the following judgments -

(i) 2006 (2) CTC 433 [Sakthi & co. v. Shree Desigachary]

18. Therefore, our conclusions are as follows :

(1) The guideline value, contained in the Basic Valuation Register, maintained by the Revenue Department or the Municipality for the purpose of collecting stamp duty, has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for registration.

(2) 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 the market value. In this case, the guideline value alone has been considered, which, in our view, is illegal.

(3) The Rent Controller and the Rent Control Appellate Authority, in the present case, are not right in relying upon the guideline value, maintained by the Revenue Department, for arriving at a fair rent, to be fixed under Section 4 of the Tamil Nadu Buildings (Lease & Rent Control) Act,1960.

(ii) 2007 (3) CTC 668 [A.V.Gopalakrishnan v. O.L.V.R.Paramanandam]

7. As per the judgment of the Full Bench it is very clear that the guideline value cannot form the foundation to determine the market value mentioned thereunder in instrument brought for registration. In the case on hand, a thorough perusal of the orders of both Courts below would clearly establish that the Courts below have determined the market value keeping the guideline value as a foundation for fixing the fair rent, which according to the Full Bench is not a correct approach. On this score alone, the orders of the both Courts below require to be set aside as unsustainable under law.

11. The learned counsel for petitioner in C.R.P.No.4887 of 2011 and respondents in C.R.P.Nos.2033 and 2034 of 2011 contended that :

(i) The Courts below erred in fixing the age of the building at 30 years. The landlady renovated the building 15 years earlier to filing the R.C.O.P and the Courts below ought to have fixed the age at 15 years.

(ii) The depreciation is only 1% per year as age of the building is only 15 years.

(iii) The value of the land is Rs.1500/- per sq. ft. The landlady has produced the sale deeds which clearly show that value of land is Rs.1500/- per sq. ft. The Courts below is not correct in fixing the value of the land at Rs.425/- per sq. ft.

(iv) The Courts below ought to have awarded 25% cost of site and building as amenities.

(v) The Courts below without properly appreciating the evidence of engineers, ought to have fixed the value of building at Rs.7,75,000/- and cost of construction adopted by Appellate Authority is not correct.

12. Heard the learned counsel for the petitioner as well as respondent and perused the materials available on record.

13. From the materials available on record, it is seen that both the courts below have considered the evidence of Engineers PW3 & RW2 and fixed the age of the building at 30 years. Both the Engineers, after inspection of the property have stated that the age of the building is 30 years. The petitioner has not produced any contra evidence. The landlady has failed to prove that she renovated the building in the year 1984 and that the age of the building is 15 years. Similarly, the courts below have adopted PWD rates for construction of the building to arrive at the value of the building. Even though the petitioner has contended that the courts below erred in adopting the said rates without there being any basis, she has not produced any material to disprove the same and not produced any document to show the PWD rates prevailing at that time. The landlady has contended that courts below have not properly valued the building, but has not pointed out as to how the said valuation is not correct. The courts below adopted 1.5% per year for depreciation and awarded 15% for basic amenities. The courts below have not committed any irregularity in arriving at a finding with regard to age, extent of construction, amenities of 15%

and depreciation of 1.5% per year. Hence, there is no reason to interfere with the said finding of courts below.

14. As far as the value of the land is concerned, the learned Rent Controller has fixed the value at Rs.325/- per sq.ft. The learned Rent Controller has arrived at this amount considering the sale deeds Exs.P6 to P8. As per the said sale deeds, the prevailing market rate as per the sale by willing vendors to willing purchasers is Rs.325/- per sq.ft. This amount was arrived at by the learned Rent Controller by calculating the price mentioned in the sale deeds for the land and building. The learned Appellate Authority, considering the very same documents has fixed the value of the land at Rs.425/- per sq.ft. The three sale deeds produced as Exs.P6 to P8 are of the year 1996 and 1997. RCOP is filed in the year 2000. The courts can take into account the passage of time and increase in the value of land and grant upto 20% more than the market value mentioned in the sale deeds. The Appellate Authority, considering the location of petition premises being situated in a busy commercial locality, fixed the market value at Rs.425/- per sq.ft. In view of the well settled judicial pronouncement, enhancement can be granted, I hold that there is no error in the said calculation arrived at by the learned Appellate Authority in fixing the market

value at Rs.425/- per sq.ft. The Appellate Authority has fixed the value of the land only based on the value mentioned in the three sale deeds produced by landlady. She has not produced any document to show that the value of the land is Rs.1500/- per sq.ft.

15. In view of the finding of the courts below fixing the market value of the land as per the sale deeds Exs.P6 to P8 and failure on the part of the petitioner to produce any documentary evidence to show the prevailing market value, the judgments relied on by the learned counsel for the petitioner are not applicable to the facts of the present case.

16. In the result, all the three Civil Revision Petitions are dismissed confirming the judgment and decree dated 15.03.2011 passed in RCA Nos.4 & 20 of 2007 on the file of the learned Second Additional District Judge at Pondicherry modifying the fair and final order dated 17.11.2007 passed in RCOP No.69 of 2000 on the file of the learned Rent Controller at Pondicherry. No costs.

04.10.2017

rgr
Index : Yes/No

V.M.VELUMANI, J.
rgr

To

1. The II Additional District Judge,
Pondicherry.

2. The Rent Controller,
Pondicherry.

Pre-delivery Common Order in
C.R.P. (NPD) Nos.2033, 2034 & 4887 of 2011

04.10.2017