

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).Nos.3679 & 3680 of 2015andM.P.Nos.1 & 1 of 2015

Date of Reserving the Judgment 02.01.2017	Date of Pronouncing the Judgment 04.01.2017
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C.R.P.(NPD).No.3679/2015

Smt.Komalavalli
W/o.Mr.Rajamani

.. Respondent (Tenant)/Appellant/Revision Petitioner

-Vs.-

Mrs.Veena Madhusudhan
W/o.Mr.Madhusudhan

.. Petitioner (Landlady)/Respondent/Respondent

Prayer:

Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the judgment and decree dated 17.07.2014 made in R.C.A.No.12 of 2012 on the file of the II Additional Subordinate Judge, Coimbatore confirming the fair and decreetal order dated 09.01.2012 in R.C.O.P.No.35 of 2007 on the file of the Rent Controller (Principal District Munsif), Coimbatore.

C.R.P.(NPD).No.3680/2015

Smt.Komalavalli
W/o.Mr.Rajamani

.. Respondent (Tenant)/Appellant/Revision Petitioner

-Vs.-

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W/o.Mr.Madhusudhan

.. Petitioner (Landlady)/Respondent/Respondent

Prayer:

Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the judgment and decree dated 17.07.2014 made in R.C.A.No.31 of 2012 on the file of the II Additional Subordinate Judge, Coimbatore reversing the fair and decreetal order dated 09.01.2012 in R.C.O.P.No.45 of 2007 on the file of the Rent Controller (Principal District Munsif), Coimbatore.

For Petitioner
in both the CRPs : Mr.J.Nandagopal

For Respondent
in both the CRPs : Mr.K.S.Karthik Raja

COMMON ORDER

C.R.P.(NPD).No.3679 of 2015 has been filed challenging the judgment and decree dated 17.07.2014 made in R.C.A.No.12 of 2012 on the file of the II

Additional Subordinate Judge, Coimbatore confirming the fair and decreetal order dated 09.01.2012 in R.C.O.P.No.35 of 2007 on the file of the Rent Controller (Principal District Munsif), Coimbatore, wherein the fair rent has been fixed as Rs.7830/- per month, against the contractual rent of Rs.300/- per month.

2.C.R.P.(NPD).No.3680 of 2015 has been filed challenging the judgment and decree dated 17.07.2014 made in R.C.A.No.31 of 2012 on the file of the II Additional Subordinate Judge, Coimbatore reversing the fair and decreetal order dated 09.01.2012 in R.C.O.P.No.45 of 2007 on the file of the Rent Controller (Principal District Munsif), Coimbatore, wherein eviction was ordered on the ground of willful default.

3.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

4.The respondent herein who is the landlady has filed R.C.O.P.No.35 of 2007 under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 [hereinafter called as the 'Act'] for fixing the fair rent at Rs.5000/- as against the contractual rent of Rs.300/-. The landlady has also filed

R.C.O.P.No.45 of 2007 for eviction on the ground of willful default stating that the petitioner herein who is the tenant has not paid the contractual rent of Rs.300/- per month. Both the Rent Control Proceedings were tried together. After considering the oral and documentary evidence and hearing the argument advanced by both sides, the learned Rent Controller fixed the fair rent at Rs.7830/- per month, however dismissed the application for eviction on the ground of willful default.

5.As against the order passed in R.C.O.P.No.35/2007 fixing the fair rent at Rs.7830/- per month, the tenant preferred an appeal in R.C.A.No.12/2012 and as against the order passed in R.C.O.P.No.45/2007 dismissing the application for eviction, the landlady preferred an appeal in R.C.A.No.31/2012. The learned Rent Control Appellate Authority by its common judgment and decree dated 17.07.2014 had confirmed the fair rent fixed by the learned Rent Controller at Rs.7830/- per month and also ordered eviction by setting aside the order passed by the learned Rent Controller. Against the said order passed by the learned Rent Control Appellate Authority, the present Civil Revision Petitions have been preferred by the tenant.

6.In respect of C.R.P.(NPD).No.3679 of 2015 is concerned, the learned

counsel appearing for the revision petitioner/tenant would submit that the Trial Court has fixed the fair rent by taking into account of the guideline value instead of the market value of the property. He would submit that the market value of the property alone has to be taken into consideration while fixing the land value for fixation of fair rent. To substantiate the said contention, the learned counsel relied upon the decision of the full bench of this Court reported in **2006 (2) CTC 433, Sakthi and Co., through its partner Veeranan v. Shree Employees State Insurance Corporation Zachary**, wherein it was held while fixing the fair rent the market value of the land alone should be taken into account and the guideline value is fixed only for the purpose of calculating the stamp duty and it has no statutory base or force. Hence, the learned counsel for the revision petitioner prayed for setting aside the fair rent fixed by the Rent Control Appellate Authority.

7. In respect of C.R.P.(NPD).No.3680 of 2015 is concerned, the learned counsel appearing for the revision petitioner/tenant would submit that the tenant had paid the rent by way of depositing the same before the Court and hence, there is no question of default and that too willful default. Hence, the learned counsel prayed for setting aside the fair and decretal order dated 17.07.2014 passed by the learned Rent Control Appellate Authority in

R.C.A.No.31/2012.

8.Resisting the same, learned counsel appearing for the respondent/landlady would submit that an advocate commissioner was appointed to determine the value of the demised premises. The said commissioner was examined as P.W.2. Further, the engineer who assisted the commissioner in fixing the market value and fair rent was examined as P.W.3. They had categorically stated that market value of the property alone is taken into consideration and not the guideline value. Merely because the learned Rent Controller in its judgment has mentioned as guideline value, the same cannot be a reason for setting aside the judgment. Further, the Rent Control Appellate Authority in its judgment has clearly mentioned as market value and not the guideline value. Hence, the present revisions have been filed only with a view to drag on the proceedings, without handing over the possession. The learned counsel would further submit that the revision petitioner/tenant has committed willful default after filing of the petition for eviction and the same has been considered by the learned Rent Control Appellate Authority in its order. Even when the tenant was examined before the Trial Court, he had stated that he has to pay rent for five months. The learned Rent Control Appellate Authority had considered all those aspects in proper perspective and

ordered for eviction on the ground of willful default. Hence, the learned counsel for the respondent/landlady prayed for dismissal of these Civil Revision Petitions.

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

10. In respect of C.R.P.(NPD).No.3679 of 2015 is concerned, this Court has to decide whether the fair rent fixed at Rs.7830/- per month is fair and proper. The only argument put forth by the learned counsel for the petitioner in this regard is that the Trial Court has failed to consider the market value and it has considered only the guideline value which is against the ratio decidendi laid down by this Court in the decision reported in **2006 (2) CTC 433, Sakthi and Co., through its partner Veeranan v. Shree Employees State Insurance Corporation Zachary**. At this juncture, it would be appropriate to incorporate paragraph 18 of the said decision;

“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 situation 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 and Rent Control) Act, 1960.”

11. There is no quarrel over the said proposition. In the instant case, the Trial Court had appointed a Commissioner to determine the value of the property for fixation of fair rent and the Commissioner was assisted by an engineer. The Commissioner was examined as P.W.2 and the Engineer was examined as P.W.3. In the evidence, P.W.3/Engineer has stated that he has fixed the price at Rs.12 lakhs per cent on the basis of the market value for land. However, the learned Rent Controller has stated that he has not filed an document to prove the same and hence, he has taken into consideration of the guideline value. Even as per Ex.P.1/Settlement Deed executed in favour of the landlady, the value of the property is Rs.580/- per sq.ft. Further, the learned

Rent Control Appellate Authority in its order has specifically mentioned the value of the building as Rs.1,09,600/- and after deducting the depreciation of Rs.67,941/-, the value of the building is arrived at Rs.41,659/-. However, there is no quarrel over the same and only the fixation of land value is disputed. The land value was fixed as Rs.7,31,200/- and on the basis, the price was arrived as Rs.7,828/- sq.ft and the rent was calculated as Rs.7830/-. In that it was specifically mentioned that it is only the market value and not the guideline value. So, the above citation will not be applicable to the facts of the present case. Hence, I am of the considered view that the land value fixed by both the Courts below is fair and the same has been fixed only on the basis of the market value. So, the fair rent fixed by both the Courts below is fair and proper and the same does not warrant interference by this Court and it is hereby confirmed. Consequently, C.R.P.(NPD).No.3679 of 2015 is dismissed with costs.

12.In respect of C.R.P.(NPD).No.3680 of 2015 is concerned, this Court has to decide whether the order of eviction passed by the learned Rent Control Appellate Authority on the ground of willful default is sustainable?

It is pertinent note that the contractual rent is fixed at Rs.300/- per month and the tenant has not been paying the rent regularly. Hence, the

landlady was forced to file an application for eviction on the ground of willful default. After filing of the application, the revision petitioner/tenant has become more irregular in payment of the rent. It is pertinent to note that in his cross-examination, the tenant has fairly conceded that the rent has to be paid in the first week of every succeeding month. He has also conceded that for the past 20 years, he is paying the rent at Rs.300/- per month. Further, the husband of the tenant, who is examined as P.W.1, in his cross-examination had deposed that he has to pay five months rent on the date of his examination viz., 15.07.2011. Thus, it would clearly reveal that the tenant is irregular in payment of the rent, which would amount to willful default in payment of rent as he knew the consequences for non-payment of rent. The learned Rent Control Appellate Authority has considered Ex.R.9 and came to the conclusion that he has not paid the monthly rent periodically and he has deposited the rent once in 2 months, 3 months, 4 months and at times even once in a year, which would show that there is default in payment of rent. The term 'willful default' indicates that default in order to be willful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. In the instant case, a petition has been filed for eviction on the ground of willful default and during the pendency of the proceedings, the tenant has not paid the rent which would prove that inspite of

knowing the legal consequences, the tenant has not paid the rent regularly. Hence, it would amount to 'willful default'.

13. In these circumstances, applying the ratio decidendi laid down by this Court in several judgments, the learned Rent Control Appellate Authority has come to a correct conclusion that after filing of RCOP for eviction on the ground of willful default, the tenant has not paid the rent regularly and passed an order of eviction.

14. Hence, I am of the considered view that there is no reason to interfere with the finding of the learned Rent Control Appellate Authority and the fair and decretal order dated 17.07.2014 made in R.C.A.No.31 of 2012 is hereby confirmed and consequently, C.R.P.(NPD).No.3680 of 2015 is hereby dismissed with costs.

15. In fine, both these Civil Revision Petitions are dismissed with costs. Consequently, connected miscellaneous petitions are closed. The revision petitioner/tenant is granted three months time for handing over vacant possession of the property.

04.01.2017

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R.MALA, J.

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Pre-Delivery order made in

C.R.P.(NPD).Nos.3679 &
3680 of 2015

Dated : 04.01.2017