

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.1198 and 1199 of 2013
& M.P.Nos.1,1 of 2013

1.V.Karthikeyan
2.V.Delhi
3.V.Thirunavukarasu

.. Petitioners
in both CRPs

Vs.

Santha

.. Respondent
in both CRPs

COMMON PRAYER: Civil Revision Petitions are filed under Section 25 of the Tamil Nadu Buildings Lease and Rent Control Act 1960, against the common judgment and decree dated 19.07.2012 made in R.C.A.Nos.10 and 11 of 2008 on the file of the Subordinate Court, Vellore in modifying the order and decree dated 27.11.2007 made in R.C.O.P.No.42 of 1999 on the file of the Rent Controller cum Principal District Munsif Court, Vellore.

For Petitioners : Mr.G.Rajan

For Respondent : M/s.T.R.Gayathri
for M/s.Sarvabhauman Associates

COMMON ORDER

These Civil Revision Petitions are filed against the common judgment and decree dated 19.07.2012 made in R.C.A.Nos.10 and 11 of 2008 on the file of the Subordinate Court, Vellore, in modifying the order and decree dated 27.11.2007 made in R.C.O.P.No.42 of 1999 on the file of the Rent Controller cum Principal District Munsif Court, Vellore.

2. The petitioners in both the CRPs are the tenants and respondent is the landlady in R.C.O.P.No.42 of 1999 on the file of the Rent Controller cum Principal District Munsif Court, Vellore. The respondent/landlady filed the said R.C.O.P. for fixation of fair rent at Rs.38,765/- per month for the schedule mentioned building. According to the respondent, she is absolute owner of petition premises and petitioners are in occupation of the petition premises for non-residential purpose on monthly rent of Rs.659/- according to English calendar month. The petition premises is measuring about 1705 Sq.ft., situate in the heart of town, in a busy market place very near to Central Bus Stand, Christian Medical College Hospital, Nationalised Banks, Hostels, Lodging houses, Jewellery

market, Post office and other important places. The rent paid by the petitioners is very meagre amount. The fair rent would be Rs.38,765/-. The respondent is relying on sale deed dated 13.03.1996 bearing document No.1275/1996 and the schedule of property mentioned in the sale deed is situated in Katpadi Road, very near to the petition property. The Public Works Department fixed rates for the year 1999-2000 and the same is being adopted for fixing the fair rent. The respondent has also stated that the value of the site is Rs.38,01,559/- at Rs.2,229/- per Sq.ft. The value of the building is Rs.75,000/- after depreciation as the building is aged about 60 years and prayed for fixation of fair rent of Rs.38,765/-.

3. The petitioners have filed counter statement and denied all the averments made in the rent control petition. According to the petitioners, the petition premises is situated in Mundy Street, Vellore. There are about 100 mundies (shops) being run in that Mundy Street. There are rice merchants, sirian merchants, Jaggery merchants, tamarind merchants etc. They are paying rent only at Rs.1500/- to Rs.2000/- per month. The petitioners denied that the petition premises is measuring about 1705.50 per sq.ft. It is not

correct that the market value of the site is Rs.2229 per sq.ft., but it will be only Rs.300/- per sq.ft as per guide line value. The age of the building is 100 years and the major portion of the superstructure was rebuilt by the father of the respondent 20 years ago. The value of the land will be only Rs.2,25,000/- and not Rs.38,01,559/-.

4. Before the learned Rent Controller, the respondent examined her husband as P.W.1 and engineer as P.W.2 and marked two documents as Exs.A1 and A2. The third petitioner examined herself as R.W.1 and engineer as R.W.2 and marked seven documents as Exs.B1 to B7.

5. The learned Rent Controller, considering the pleadings, oral and documentary evidence of P.W.2 and R.W.2, the engineers examined by the respondent and petitioners, held that the property is Class III type property. The learned Rent Controller fixed the building age at 60 years, rejecting the report of the R.W.2. fixing the age at 80 on the ground that he did not inspect the building in the year 2004 and did not dig out foundation for ascertaining the age of the building. As far as the extent of the petition premises is

concerned, the learned Rent Controller considering the report of P.W.2-the engineer of the respondent, which is marked as Ex.A1 held that the petition premises is measuring 1705.50 sq.ft. The petitioners contended that P.W.D value for the year 1998-1999 must be taken into consideration for arriving at the fair rent and not the rate for the year 1999-2000. The learned Rent Controller, in view of the fact that the R.C.O.P. was filed in the month of August 1999, the P.W.D rate for the year 1999-2000 is applicable.

6. The petition premises is having only electricity and service connection. P.W.2 has stated that amenity charges will be Rs.15,333/- and R.W.2 has stated that it will be Rs.2,000/-. The learned Rent Controller fixed at Rs.10,000/- towards amenity charges. Both the engineers P.W.2 and R.W.2 have stated that depreciation allowable for the petition premises is 2%. The learned Rent Controller has accepted the same.

7. As far as the value of the site is concerned, the respondent relied on Ex.A.1 sale deed dated 13.03.1996 registered as Document No.1275/1996 and the sale consideration was Rs.26,00,000/- and by adding 10% towards increase in the market

value, P.W.2 has arrived value of the site at Rs.2,229/- per sq.ft.

8. According to the petitioner, the Christian Medical College Hospital, Vellore, purchased the said property which is two furlong away from the petition premises and a fancy price was paid by the Christian Medical College Hospital, Vellore under Ex.A2. The learned Rent Controller, considering the averments made in Ex.A2 held that Christian Medical College Hospital, Vellore, has paid several times higher than the guideline value and rejected the said document.

9. The learned counsel for the petitioners argued that only rice merchants, sirian merchants, Jaggery merchants, tamarind merchants etc., are located in the locality and rent paid in the locality is Rs.600/- to 1,200/- per month. He also marked Ex.B1 to Ex.B4, which are the certified copies of judgments relating to R.C.O.P.No.111 of 1996 and R.C.A.Nos.4 and 5 of 2001. In the said pleadings, the fair rent was fixed at only Rs.5,692/-.

10. The learned counsel appearing for the petitioners also relied on Exs.B5 and B6 sale deeds dated 09.02.1998 and 12.02.1996 respectively and submitted that R.W.2 the engineer of the petitioners in his report stated that value of the site at Rs.358/-

per sq.ft is correct.

11. The learned Rent Controller, considering Exs.B5 and B6 and locality of the petition premises, fixed the value of the site at Rs.500/- per sq.ft. Based on the above calculation, the learned Rent Controller fixed the rent at Rs.9,256/- per month. Being aggrieved by the said amount, the petitioners filed R.C.A.No.10 of 2008 and the respondent filed R.C.A.No.11 of 2008.

12. Before the learned Appellate Authority, the learned counsel for the petitioners and respondent made submissions on the value of the site and no other serious arguments were made.

13. In view of the same the learned Appellate Authority considering all the materials available on record and the order of the Rent Controller, confirmed the findings of the Rent Controller except the value of the site.

14. As far as the value of the site is concerned, the learned Appellate Authority did not accept the value mentioned in Ex.A2. The learned Appellate Authority considered Exs.B5 and B6 and came to the conclusion that the value of the site is Rs.661 per sq.ft.

during 12.02.1996. The R.C.O.P. was filed on 12.07.1999. The learned Appellate Authority ordered to increase 10% per year which is Rs.198/- for three years, added the same to Rs.661/- per sq.ft. and fixed the site value at Rs.859/- per sq.ft. The learned Appellate Authority also considered Exs.B1 to B4 and concluded that in the year 1996, in Mundy Street, the value of the site is Rs.727/- per sq.ft. and fixing the value at Rs.859/- per sq.ft., the learned Appellate Authority calculated the fair rent as per the guideline value of the land and arrived fair rent at Rs.15,378/- per month. On such fixing of the rent, the learned Appellate Authority dismissed the R.C.A.No.10 of 2008 filed by the petitioners and partly allowed the R.C.A.No.11 of 2008 filed by the respondent/landlady.

15. Against the said two judgments dated 19.07.2012 made in R.C.A.Nos.10 and 11 of 2008, the present two Civil Revision Petitions are filed by the petitioners.

16. The learned counsel appearing for the petitioners reiterated the averments made in the counter statement filed in R.C.O.P., contentions raised in the grounds of appeal and present revision and contended that the Courts below failed to note that the

market value of site is only Rs.300/- per sq.ft. For the 50 shops situated in the Mundi street, all are paying the monthly rent between Rs.1500-2000/-. The Courts below ought to have taken the age of the building is 100 years and erred in holding that the age of the petition premises is only 60 years. The Courts below erred in relying upon Ex.A2, the sale deed to find out the market value of the petition premises. The learned Rent Controller failed to note that as per Exs.B5 and B6, the market value of the site is only Rs.358/- per sq.ft. The learned Appellate Authority ought to have adopted the market value of the price mentioned in Ex.B5 instead of discussing a fair rent in Ex.B5. The respondent has claimed monthly rent of Rs.38,765/- per month, only with an intention to some how or other vacate the petitioners from the petition premises.

17. The learned counsel for the respondent submitted that the respondent has proved the age of the building, extent of the land and location advantages of the petition premises. The Courts below did not accept Ex.A2 sale deed relied on by the respondent. The learned Rent Controller considering the documents filed by the petitioners and respondent, fixed the value of the site at Rs.500/- per sq.ft. Not being satisfied with the said finding, the respondent

filed R.C.A.No.11 of 2008. The learned Appellate Authority accepted Exs.B5 and B6 which are filed by the petitioners fixing the market value of the site at Rs.859/- per sq.ft. The said finding of the learned Appellate Authority is based on available records and there is no error in such finding for fixing the rent. Hence, he prayed for dismissal of both the Civil Revision Petitions.

18. Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

19. The contention of the learned counsel appearing for the petitioners is that age of the building is 100 years and the Courts below erred in holding that age of the building is 60 years. The learned Rent Controller has given reasons for fixing the age of the building at 60 years. The learned Appellate Authority in his judgment has stated that the petitioners have not seriously disputed the age of the building. Therefore, the contention of the learned counsel for the petitioner that the Courts below ought to have fixed the age of the building at 100 years has no merits.

20. As far as the value of the site is concerned, the

respondent relied on Ex.A2 sale deed by which Christian Medical College Hospital, Vellore, has purchased the property situated in Katpadi Road. Both the Courts below did not accept the value mentioned in the said sale deed to arrive at site value of the petition premises. The learned Appellate Authority considering Exs.B1 to B6 especially Exs.B5 and B6, the two sale deeds relied on by the petitioners, extent of the land and value of the building mentioned in two sale deeds, arrived at value of the site Rs.859/- per sq.ft., after adding 10% enhancement for each year. The contention of the learned counsel for the petitioners that the Courts below ought not to have relied on Ex.A2 sale deed is without merits and both the learned Rent Controller and Appellate Authority did not rely on Ex.A2. The value fixed by the learned Appellate Authority is only based on Exs.B5 and B6. The learned Appellate Authority has properly appreciated averments in Exs.B5 and B6 and has fixed market value of the site at Rs.859/- per sq.ft. There is no error in the reasoning of the learned Appellate Authority.

21. The power of the Court in the revision is very limited. The Court cannot interfere with the finding of the facts except when the said finding is not based on the evidence available on record or mis-

interpretation of evidence by Courts below. The first Appellate Court is final Court in respect of finding of facts. In the present case, the learned Appellate Authority has not committed any irregularity in fixing the value of the site at Rs.859/- per sq.ft., based on the available facts.

22. In the result, both the Civil Revision Petitions are liable to be dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petitions are closed.

10.11.2017

Index : Yes/No

dm

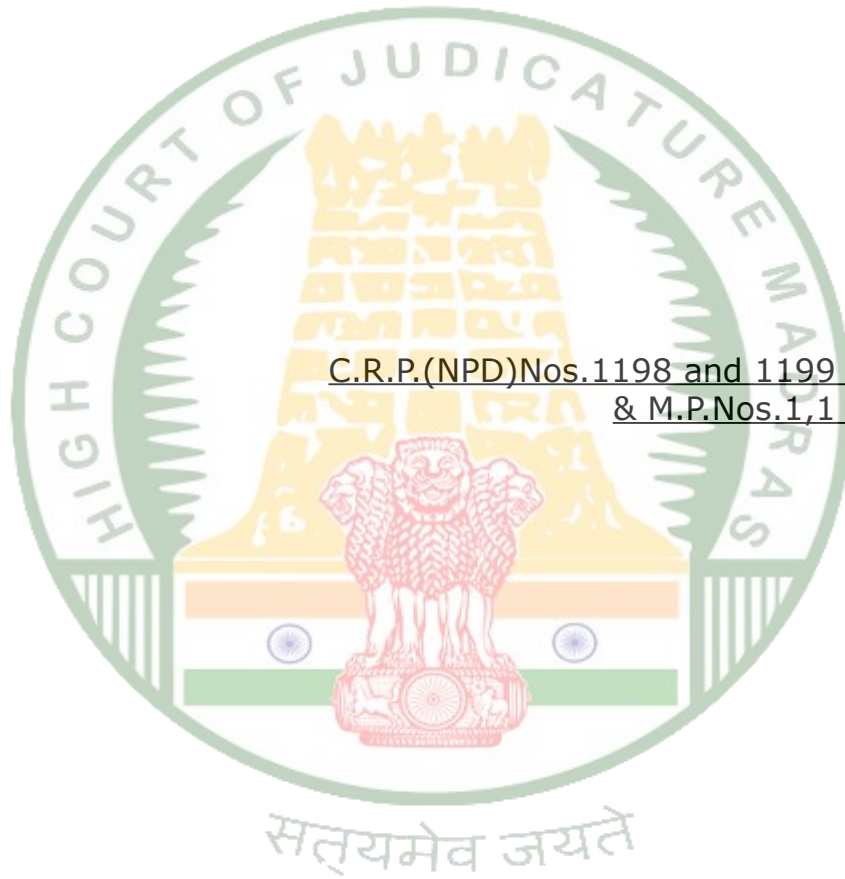
To

1.The Subordinate Judge,
Vellore.

2.The Rent Controller cum
Principal District Munsif,
Vellore.

V.M.VELUMANI, J.

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