

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(NPD)Nos.1839 and 1840 of 2009
and
M.P.No.1 of 2009

B.R.Rajani
 Proprietrix
 M/s.New Ramya Iyengar Bakery,
 T.Nagar, Chennai-17. .. Petitioner in both the CRPs

Vs.

Rajalakshmi .. Respondent in both the CRPs

Prayer in CRP(NPD)No.1839 of 2009: Civil Revision Petition filed under Section 25 of Tamilnadu Buildings Lease & Rent Control Act-18/1960 as amended by Act-23/1973, against the Judgment and Decree dated 25.11.2008, passed in R.C.A.No.627 of 2008, on the file of the Rent Control Appellate Authority (VIII Small Causes Court), Chennai, modifying the Judgment and decree dated 27.03.2008, passed in RCOP.No.1168 of 2007, on the file of the X Court of Small Causes, (Rent Controller), Chennai, and to re-fix the Fair Rent, reasonably.

Prayer in CRP(NPD)No.1840 of 2009: Civil Revision Petition filed under Section 25 of Tamilnadu Buildings Lease & Rent Control Act-18/1960 as amended by Act-23/1973, to set aside the Judgment and Decree dated 25.11.2008, passed in R.C.A.No.588 of 2008, on the file of the Court of Small Causes VIIIth Judge, (Rent Control Appellate Authority), Chennai, filed against the Judgment and Decree, dated 27.03.2008, passed in R.C.O.P. No.1168 of 2007, on the file of the Court of X Small Causes Judge, (Rent Controller) Chennai, and re-fix the fair rent reasonably.

(In both the CRPs)

For Petitioner : Mr.A.Chidambaram

For Respondent : Mr.K.S.Sundar

COMMON ORDER

The tenant is the revision petitioner in both the Civil Revision Petitions and the respondent is the landlord. It is the case of the revision petitioner that he was inducted as a tenant under the respondent herein. The petition mentioned premises is a non residential building situated in the prime area of Chennai at North Usman Road, T.Nagar. The revision petitioner herein is running bakery

business in the petition mentioned property and the admitted rent at present is Rs.4,000/-. Whereas the respondent herein filed the above RCOP No.1168 of 2007 against the revision petitioner for fixation of fair rent under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960.

2. According to the respondent / landlord the petition premises was constructed 22 years back and the same possess all basic amenities such as water, electricity etc. Further the petition premise is situated in commercial area nearby Saravana Selvarathnam Stores, Pothys. The present rent for the petition premises remain Rs. 4,000/- which is very low, therefore the respondent herein has filed the above RCOP to fix a fair rent at Rs.36,229/- per month from the date of petition. The land lord has filed his Engineer valuation report along with RCOP petition claiming Rs. 36,229/- as the fair rent to be fixed. The petition property stands with plinth area of 481.508 Sq. feet and 41 Sq. feet as proportionate area for Toilet. According to the landlord, the guideline value of the land in that locality is not less than rupees three crore per around. Therefore the landlord has filed the above RCOP for fixation of fair rent.

3.The revision petitioner/ tenant filed counter and contended that the monthly rent of Rs.4,000/- is just and proper and he is doing bakery business in the petition premises. The building is more than 30 years old and not of 22 years as alleged by the landlord / respondent. The revision petitioner is not occupying the area of 552 Sq. feet. The Fair rent sought to the fixed by the landlord is highly excessive and the market value of the land is not Rupees Three Crore as stated by the respondent. The present petition is filed only with a view to evict the revision petitioner.

4.On the side of landlord, PW-1 an authorized civil engineer was examined and exhibit P1 to P6 were marked, on the side of the respondent RW-1 who is also an engineer was examined and exhibit R1 was marked. After considering the case on hand, the learned rent controller was pleased to fix fair rent of Rs.10,084/- per month for the petition premises by an order and decree dated 27.03.2008. Aggrieved over quantum of fair rent fixed, the respondent/landlord filed R.C.A.No.627 of 2008 and revision petitioner filed an appeal in R.C.A.No.588 of 2008, before the VIII Small Causes Court, Chennai. The learned Rent Control Appellate Authority on hearing upon the appeal was pleased to modify the order of fair rent by arriving at

Rs.21,924/- per month for the petition premises, thereby dismissing the appeal filed by the revision petitioner and allowing the respondent's appeal. Challenge the same, the tenant has come up with the present civil revision petitions challenging the order of modification made by the learned Rent Control Appellate Authority.

5.I heard Mr.A.Chidambaram, learned counsel appearing for the petitioner and Mr.K.S.Sundar, learned counsel appearing for the respondent in both the Civil Revision Petitions and perused the entire records.

6.Now the only point for consideration lie before this Court is as to whether the fixation of fair rent by the learned Rent Control Appellate Authority is just and proper?

7.The learned counsel for the revision petitioner advanced his arguments by relying upon the following decisions of this Court, so as to substantiate his claim that the rent fixed by learned Rent Control Appellate Authority is exorbitant.

- i. *1997(3)LW 193 (Srinivasa Gounder -Vs- K.Venkatesar)* wherein it was held that the market value of the property cannot be decided simply relying upon the valuation report

of engineer (or) any sale transaction in that locality.

- ii. 1996 (2) LW 637 (T.H.S.Rahmath Fathima –Vs- T.K. Kader Mohideen) wherein it was held that the market value has to be proved by evidence and not by mere making of a sale deed.
- iii. 2007 (4) MLJ 189 (A.V.Gopalakrishnan –Vs- Olvr Paramanantham) wherein it was held that it is not a proper approach for rent control courts to determine fair rent on basis of a guideline value.

8. On hearing upon the rival submissions and perusal of case records and reports of PW1 and RW1, it is not in dispute that the petition premise is a Type-I premise possessing all the basic amenities, with regard to the type of the petition premise the Courts below have rightly rendered its findings.

9. In so far as the age of the building the learned Rent Controller has concluded the age as 25 years and the same is endorsed by the Rent Control Appellate Authority. The plinth area of the petition mentioned premise is found as 382 sq. feets in actual, which is also right in my opinion on appraisal of the evidence and reports of PW1 and RW1.

10. The learned Rent Control Appellate Authority chose to fix the

fair rent at Rs.21,924/- per month for the petition premises on having reliance upon the two sale deeds dated 11.10.2004 in Exhibits P3 and P5, which quote Rs.25,57,31,600/- per ground as the value of the property.

11.At this juncture this Court finds that the facts and circumstances of the above referred decisions cited by the learned counsel for the revision petitioner are different from that of the case of the revision petitioner and hence are found inapplicable. In the case on hand, the Courts below have not fixed the fair rent on the basis of guide line value. The fair rent was fixed on the basis of sale deeds adjacent to the petition mentioned premises. Hence the above decisions relied on by the revision petitioner are not applicable to the facts on hand.

12.On careful consideration of the case records and from exhibits in Ex P3 and P5 it is disclosed that the value of the property is Rs.25,57,31,600/- per ground. Further as discussed above the petition premise is a Type-I premise possessing all the basic amenities being located in prime area of North Usman Road, which is a busy commercial area.

13. Therefore this Court is of considered opinion that the rent fixed by learned Rent Control Appellate Authority at Rs.21,924/- per month for the petition premises is just and reasonable and the same does not call for any interference by this Court.

14. In the result, both the Civil Revision Petitions are dismissed, by confirming the Order and Decree passed by the learned Rent Control Appellate Authority. No cost. Consequently, connected miscellaneous petition is closed.

14.11.2017

vs

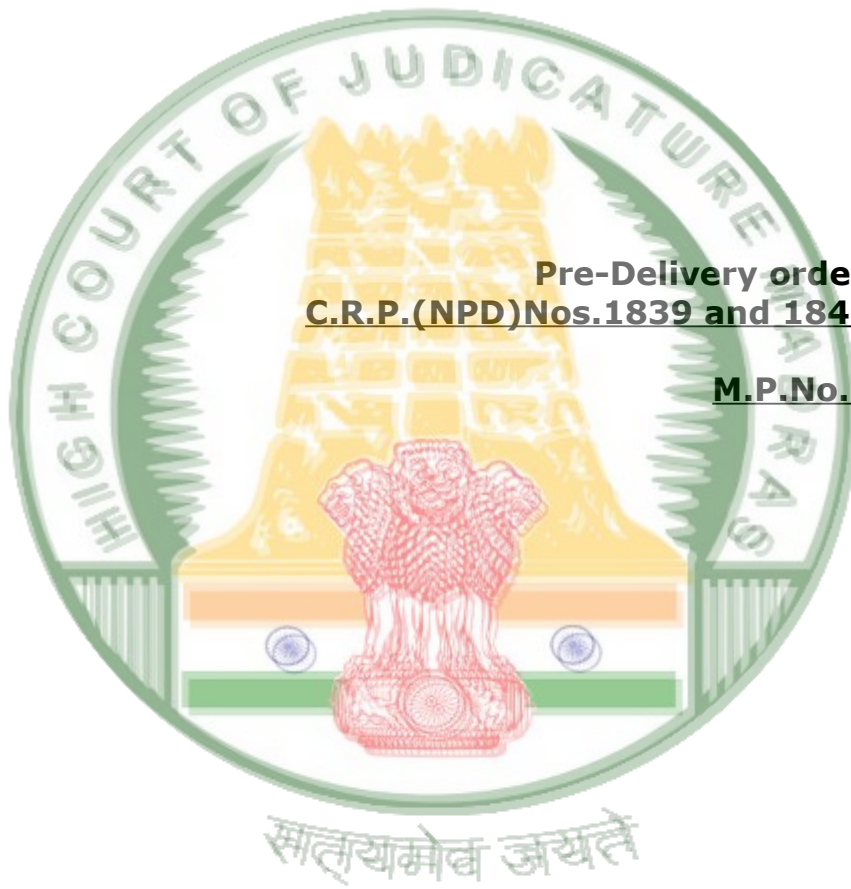
Index: Yes
Speaking order

To

1. The Rent Control Appellate Authority
(VIII Small Causes Court), Chennai.
2. The X Court of Small Causes,
(Rent Controller), Chennai.

M.V.MURALIDARAN.J.,

VS



**Pre-Delivery order made in
C.R.P.(NPD)Nos.1839 and 1840 of 2009
and
M.P.No.1 of 2009**

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