

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **05.04.2017**

DELIVERED ON : **28.04.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(N.P.D.) Nos.1866 and 1935 of 2012

The New India Assurance company Ltd.,
Second & Third Floor,
Spencer Tower 1,
770A, Anna Salai,
Chennai 600 002
versus

: Petitioner in both CRPs

M/s.Dewa Properties Ltd.,
(formerly Spencer Estate Ltd.)
No.769, Anna Salai,
Chennai 600 002.

: Respondent in both CRPs

PRAYER: CRP No.1866 of 2012 filed against the Judgment and order of the learned VIII Court of Small Causes, Chennai (Appellate Authority) in RCA No.1432 of 2004 dated 12.11.2011.

CRP No.1935 of 2012 filed against the Judgment and order of the learned VIII Court of Small Causes, Chennai (Appellate Authority) in RCA No.609 of 2005 dated 12.11.2011.

For petitioner :: Mr.S.Vasudevan

For respondents :: Mr.Roshan Balasubramanian

COMMON ORDER**Introductory :-**

The Rent Controller, by way of a common judgment, fixed fair rent for the tenanted Office premises in the occupation of Indian Bank, Oriental Insurance Co. Ltd., New India Assurance Co. Ltd. and Export Credit Guarantee Corporation of India Ltd. The fair rent was enhanced by the Appellate Authority by way of a common judgment. The High Court modified the fair rent by setting aside the different fair rent fixed for different periods by the Appellate Authority, in the case of Indian Bank, Oriental Insurance Co. Ltd. and Export Credit Guarantee Corporation of India Ltd. Even though the premises covered in all the fair rent proceedings are adjacent premises, and part of a very same office complex situated on the side of the busy Mount Road at Chennai, New India Assurance Co. Ltd alone is contesting the matter, notwithstanding the finality attached to the connected judgments, fixing fair rent, which have got a direct bearing on the rent in respect of the premises in the possession of this public sector insurance company.

Summary of facts:-

2. The respondent constructed a non residential building complex at Door No.769, Anna Salai, Chennai. The petitioner took on lease an area of 12995 sq.ft. in the second and third floor of the building on an annual rent

of Rs.6,09,576/- with effect from 16 November 1987. The petitioner deposited a sum of Rs.60,39,275/- with the respondent. As per the agreement, the respondent is liable to pay interest @ 10% for the said amount. The interest would be deducted from the annual rent payable by the petitioner.

3. The respondent about 14 years after the commencement of lease filed RCOP No.1111 of 2001 before the IX Judge, Small Causes Court, Chennai, for fixation of fair rent. The learned Rent Controller taking into account the counter affidavit filed by the petitioner, fixed the fair rent @ Rs.80,746/- per month.

4. The landlord and the tenant challenged the judgment dated 20 August 2004 in R.C.O.P. No.1111 of 2001 before the Rent Control Appellate Authority.

5. The learned Rent Control Appellate Authority considered the appeal filed by the respondent in R.C.A.No.609 of 2005 along with the appeal preferred by the petitioner in R.C.A.No.1432 of 2004 and fixed the fair rent taking into account the guideline value. Feeling aggrieved by the judgment in R.C.A.Nos.1432 of 2004 and 609 of 2005, the petitioner has come up with these two revision petitions, invoking section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1961, as amended by Act

XXIII of 1973.

Submissions:-

6. The learned counsel for the petitioner raised the following contentions :-

(a) The High Court in a civil suit filed by the petitioner in C.S.No.982 of 1999, passed a decree for specific performance, directing the respondent to execute a lease agreement for 99 years. The judgment in C.S.No.982 of 1999 would prevail over the judgment in RCOP No.1111 of 2001 and the related appeals in R.C.A.Nos.1432 of 2004 and 609 of 2005.

(b) The Appellate Authority committed a jurisdictional error by fixing fair rent for different periods instead of a bulk period;

(c) The petitioner was not given a fair opportunity to oppose the appeal;

(d) There was no oral evidence adduced on the side of the respondent, except the evidence of the engineer to fix the fair rent.

7. The learned counsel for the respondent submitted that this Court fixed the fair rent for three other portions in the very same office complex. In case the rent fixed by the Rent Controller and the Appellate Authority, as upheld by the High Court in respect of adjacent premises, is taken note of, it would make the position very clear that the fair rent fixed by the Appellate Authority in the subject case was correct. It was contended that the petitioner has not produced any evidence before the Court below to fix the

land value and building. The Appellate Authority was therefore justified in taking the guideline value for fixing the market value of the property and valuation given by the engineer for the purpose of fixation of fair rent.

Analysis:-

8. The non residential building known as Spencer Towers at D.No.770 Anna Salai, Chennai, was developed by Spencer Estates Ltd., which was subsequently known as Music World Entertainment Ltd. The building was taken over by the respondent.

9. Spencer Towers is situated at Mount Road, which is an arterial road at Chennai. It is a very busy locality. The respondent is the present owner of the land measuring an extent of 27,131 sq.ft. together with the multi storied building constructed in the name and style of Spencer Towers.

10. The petitioner took 12995 Sq.ft. of built up area in the second and third floor of the office complex, agreeing to pay a sum of Rs.6,09,576/- as annual rent. The petitioner deposited a sum of Rs.60,39,225/- which would carry interest @ 10% p.a.

11. The lease deed prepared by the petitioner was forwarded to the respondent. The respondent approved the draft lease deed. However, follow up action was not taken to register the lease deed. The petitioner

therefore filed a civil suit in C.S.No.982 of 1999 and obtained a decree for specific performance on 13 February 2015.

12. The respondent initiated action for fixation of fair rent by filing RCOP No.1111 of 2001 before the Rent Controller. The petitioner, in the counter filed before the Rent Controller, challenged the maintainability of the petition under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, (hereinafter referred to as, "the Act"). Such a contention was taken on the premise that there was no landlord/ tenant relationship between the parties.

13. The learned Rent Controller overruled the objections filed by the petitioner and fixed the monthly rent @ Rs.80,746/-.

14. The petitioner filed R.C.A.No.1432 of 2004 challenging the judgment in RCOP No.1111 of 2001. The respondent, on the other hand, filed RCA No.609 of 2005, challenging the fixation of fair rent by the Appellate Authority. The appeals were taken by the learned Appellate Authority together.

15. The Appellate Authority placed reliance on the documents marked before the Rent Controller to arrive at the market value which is a mandatory requirement for fixation of fair rent under Section 4 of the Act.

16. The Appellate Authority placed reliance on Exs.P-10 and P-11 to fix the market value. Ex.P-10 is a sale deed relating to 434 sq.ft. of land, which was sold for a sum of Rs.18,91,804/-. The market value per ground would come to Rs.1,04,44,982/-. The sale was on 2 February 2001. The land described in Ex.P-4 was sold on 12 April 2001. The sale was in respect of 175 sq.ft. of undivided share. The value per ground would come to Rs.1,38,79,188/-. Similarly, the property covered by Ex.P-14 and Ex.P-16 were also referred to by the Appellate Authority to fix the value of the property.

17. The petitioner opposed the fixation of fair rent not for the reason that there are no documents produced to prove the market value. It was more on technical grounds rather than on merits. The Appellate Authority in the absence of other documents, placed reliance on the guideline value fixed by the Government. It was found that the guideline rate was Rs.4167/- from April 2002 to March 2003 and Rs.5123/- per sq.ft. from April 2003 to July 2007. It was enhanced to Rs.5587/- per sq.ft. from August 2007 and thereafter it was fixed at Rs.10,100/-. The Appellate Authority calculated the proportionate share of land, taking into account the plinth area occupied by the petitioner. The Appellate Authority fixed the fair rent for four different periods.

18. The learned counsel for the petitioner contended that the judgment in RCOP No.1111 of 2001 would merge with the judgment in C.S.No.982 of 1999. There is no merit in the said contention. The rent control original petition was allowed by judgment dated 20 August 2004. The related appeals were disposed of by the Appellate Authority by judgment dated 12 November 2001. The civil suit in C.S.No.982 of 1999 was pending before this Court at that point of time. The pendency of the civil suit was not disclosed by the petitioner either before the Rent Controller or before the Appellate Authority. The Rent Controller is the Competent Authority to fix the fair rent under Section 4 of the Act. The decree in C.S.No.982 of 1999 would not nullify the judgment passed by the Competent Authority under the Rent Control Act. There was no issue framed in the civil suit in C.S.No.982 of 1999 with regard to the judgment in the rent control original petition and the related judgment in the appellate proceedings. The decree passed by this Court in C.S.No.982 of 1999 has to be read in its entirety along with the judgment in RCA Nos.1432 of 2004 and 609 of 2005, fixing fair rent to the premises in question. In any case, the decree passed by the Competent Authority under the Rent Control Act would not merge with the decree passed by the Court in a suit for specific performance.

19. The other question is whether the learned Appellate Authority

was correct in fixing the fair rent for four different periods. Section 4 of the Act permits the rent controller for fixation of fair rent on an application. There is no indication in the said provision that it is open to the Rent controller or the Appellate Authority to fix different fair rent for different periods. It is true that even the Rent Controller is entitled to take note of the subsequent events. The subsequent events should be for the purpose of fixing the fair rent. The Appellate Authority taking into account the revision of guideline rate, fixed different rates for different period. There is no provision in the Act to fix rent on slab basis. I am therefore of the view that the Appellate Authority was not correct in fixing different rate of fair rent for different periods for the very same building.

20. The learned Rent Controller fixed the fair rent @ Rs.80,746/- per month. The fair rent was enhanced to Rs.2,55,756/- by the Appellate Authority for the period from June 2001 to March 2002. The period appears to be the correct period taking into account the initiation of rent control original petition.

21. The Supreme Court in ***Ramesh Kumar vs. Kesho Ram, (1992 Supp (2) SCC 623)***, observed that the Rent Control Court can mould the relief, taking into account the subsequent events.

22. The further question is as to whether the Appellate Authority was

correct in fixing the fair rent at Rs.2,55,756/- per month.

Connected proceedings:-

23. (a) It is a matter of record that there were altogether four original petitions before the Rent Controller filed by the landlord for fixation of fair rent. The premises shown in the schedule to the respective original petitions were part of the same building situated just adjacent to Spencer Plaza, the first Shopping mall in Chennai. The office complex is abutting Spencer Plaza and Hotel Taj Connemara. The learned Rent Controller determined the fair rent for all the four premises by way of a common judgment.

(b) The adjacent premises in the possession of the Oriental Insurance company was the subject matter in RCOP No.1110 of 2001. The Oriental Insurance Company is in possession of 2726 sq.ft. Office space. The Rent Controller fixed the fair rent at Rs.23,820/-. The Appellate Authority on appeal, re-fixed the rent at Rs.53,625/- for the period from the filing of petition till March 2002, Rs.63,688/- from April 2002 to March 2003, Rs.68,248/- from April 2003 to July 2007 and Rs.1,16,111/- from August 2007 onwards. The High Court in a revision filed by the tenant fixed the fair rent at Rs.53,625/-, taking into account the submission made on behalf of the landlord. The rate per sq.ft. would come to Rs.19.67.

(c) The respondent filed RCOP No.1108 of 2001 against Indian Bank

for fixation of fair rent. The Bank is in possession of 18434 sq.ft. in the very same building. The Rent Controller fixed Rs.99,729/- per month as the fair rent. The Appellate Authority on appeal in RCA Nos.607 of 2005 and 1290 of 2004, re-fixed the fair rent under four slabs. The rent from the date of filing RCOP No.1108 of 2001 to March 2002 was fixed at Rs.3,61,596. Similarly, rent was fixed at Rs.4,29,662 for the period from April 2002 to March 2003, Rs.4,60,538/- for the period from April 2003 to July 2007 and Rs.7,84,206 per month from August 2007 onwards. The judgment was taken on revision by the Bank. The High Court observed that it was not permissible to fix fair rent on slab basis. The High Court in CRP Nos.2147 of 204 and 2148 of 2014, by common order dated 30 November 2016, fixed the rent uniformly at Rs.3,61,596 per month. The rent per sq.ft. would come to Rs.19.61.

(d) The respondent filed RCOP No.1112 of 2001 for fixation of rent in respect of the premises taken on rent by Export Credit Guarantee Corporation of India Ltd. The Corporation was in possession of 7063 sq.ft. which is part of the premises in the possession of the petitioner. The Rent Controller fixed the monthly rent @ Rs.61,386/-. The tenant as well as the respondent filed appeals in RCA Nos.610 of 2005 and 1372 of 2004. The Appellate Authority re-fixed the fair rent on a slab basis. The judgment was taken up in revision before this Court by the Export Credit Guarantee Corporation of India Ltd., in CRP Nos.1469 and 1470 of 2012. This Court

opined that the Rent Control Appellate Authority was not correct in fixing fair rent on slab basis and ultimately fixed the fair rent at 1,38,568/- taking into account the consent given by the respondent. The rent per sq.ft. would come to Rs.19.61.

(e) Since all the four fair rent fixation proceedings were decided on the basis of very same common evidence and by a common judgment, there is no question of taking a different view in this matter.

24. The Hon'ble Supreme Court in ***V.S.Kanodia and others vs. A.L.Muthu (Dead) through Lrs., 2012(11) SCC 269***, indicated that the market value of the adjacent land fixed in rent control proceedings could be used to ascertain the market value of the adjacent premises.

25. The fair rent fixed by the Appellate Authority has to be seen in the light of similar judgments upheld by this Court. There is no question of fixation of fair rent on slab basis. The Appellate Authority fixed the fair rent for the period from the initiation of RCP No.1111/2001 to March 2002 at Rs.2,55,756.31 per month. The fair rent so fixed was in accordance with the rent fixed in the connected matters, relating to Indian Bank, Oriental Insurance Company and Export Credit Guarantee Corporation of India Ltd.

26. The rent fixed by the Appellate Authority for the premises in

question would come to Rs.19.74 per sq.ft. The very same yardstick was adopted by the Appellate Authority in the subject case for fixation of rent. I am therefore of the view that the Appellate Authority was correct in fixing the fair rent at Rs.2,55,756 per month.

27. In the result, the decree dated 12 November 2011 in RCA No.1432 of 2004 and 609 of 2005 is modified by fixing the fair rent at Rs.2,55,756/- per month from the date of initiation of the petition in RCOP No.1111/ 2001 under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act. The decree fixing fair rent at the rate of Rs.3,03,731/-, Rs.3,25,463/- and Rs.5,53,624/- per month for the period April 2002 to March 2003, from April 2003 to July 2007 and from August 2007 onwards respectively is set aside. The direction to pay rent at different rate on slab basis is set aside.

28. The civil revision petitions are allowed to the extent indicated above. No costs. Consequently, M.P.Nos.1 and 1 of 2012 are closed.

28.04.2017

Index:Yes/no
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To
The VIII Court of Small Causes, Chennai

K.K.SASIDHARAN, J.

(tar)

P.D. Order in
C.R.P.(N.P.D.) Nos.1866 & 1935/2012

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