

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2679 of 2012
and
Caveat No.4626 of 2011**

C.Karthikeyan

.. Petitioner

Vs.

1.Kausalya Padmanabhan

2.A.Rahuram

.. Respondents

(2nd Respondent impleaded vide order
of Court dated 21.09.2016 in
M.P.No.1 of 2015 in CRP.No.2679 of 2012)

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act, 23 of 1973), against the order and decretal order dated 27.09.2011 in RCA.No.114 of 2007, on the file of the learned VIII Judge, Small Causes Court, Chennai, confirming the order and decretal order dated 02.09.2006 in RCOP.No.2561 of 2005, on the file of the learned XIV Judge, Small Causes Court, Chennai.

For Petitioner : Mr.V.V.Sairam

For Respondents : Mr.C.T.Mohan

ORDER

The Landlord aggrieved over the quantum of Fair rent arrived by the Rent Controlling authority is before this Court as revision petitioner.

2.It is the case of the revision petitioner that the respondent was inducted as a tenant in the petition premises belonging to him. Tenant under the respondent herein with respect of the entire ground floor of the petition premises situated in D.No.2, 2nd street, Kilpauk garden road, Kilpauk at Chennai. The monthly rent for the petition premises was fixed at Rs.4500/-. The petition premise is a residential building.

3.According to the landlady/respondent herein, the Tenant/revision petitioner is occupying the entire ground floor of the petition premises along with portico for a monthly rent of Rs.4500/-. The petition premise is situated in prime locality, provided with all amenities. Surrounding the petition premises, schools, Banks, Parks, Commercial Shops, Post Office, Bus stand etc are situated. The building is 30 years old which consisted of ground floor and first floor. The monthly rent paid at present by the revision petitioner is very low,

on comparison to the guideline market value of the property. At present the value of the land would fetch more than Rs.23,00,000/- per ground and therefore the appropriate monthly rent for the petition premises is Rs.16,716/-. Hence the respondent herein filed RCOP.No.2561 of 2005 before the learned XIVth Court of Small Causes at Chennai for fixation of fair rent under Section 4 of the Tamilnadu Buildings (Lease and Rent Control) Act.

4.The Revision petitioner resisted the above RCOP contending that he is not in occupation of the portico area. The landlady has not provided water facilities to the petition premises and the same was equipped by him. The petition premises in actually situated in a lane near to Slums, it is more than 60 years old. The calculation adopted by the landlady is improper and the fair rent arrived at by the landlady at Rs.16,716/- per month is highly excessive.

5.Before the Learned Rent Controller, on the side of the landlady he was examined as PW-1 and Ex-P1 was marked and on the side of the Tenant/revision petitioner, he was examined as RW1 and Ex-R1 was marked. After considering the case of either side, the learned land controller was pleased to allow the RCOP by fixing the monthly rent at

Rs.11,650/- from the date of petition by an order dated 02.09.2006.

6. Aggrieved over the fixation of monthly rent, the Tenant filed RCA.No.114 of 2007 and the landlady filed separate appeal in RCA.No.1187 of 2006 before the VIII Court of Small Causes at Chennai. The learned Rent controller appellate authority upon considering the rival submission on either side was pleased to dismiss both the appeal by a common Judgment dated 27.09.2011.

7. The learned counsel for the revision petitioner would strenuously contented that the learned Rent Controller Appellate Authority has erred in mechanically confirming the order of the learned Rent Controller. The authorities below have accepted the age of the building as the landlady got personal knowledge about it. Finding of the authorities below is highly arbitrary and unsustainable in law. The Learned Counsel would further contend that the personal knowledge of the landlady cannot be a substantial proof to prove the age of the building. The Learned Rent Control Appellate authority having held that both parties have not produced any sample sale deed reflecting the previous sale transaction near by the petition premises, ought not to have come to the conclusion that the market value of the petition

premises at Rs. 20,00.000/- per ground.

8.Per contra, the learned counsel appearing for the respondent/land lady would submit that the authorities below, after carefully considering the case of the parties have rightly fixed the fair rent which does not require interference by this Hon'ble Court. The Learned Counsel would further submit that the scope of revisional Jurisdiction of the high Court is very limited in rent control proceedings and in support of her contention, she relied upon a Judgment of the Hon'ble Supreme Court reported in 1980 (4) SCC 259 & in the matter of RAJA LAKSHMI DYEING WORKS Vs RANGASWAMY CHETTIAR , 1980 AIR(SC) 0 1253 wherein it was held as following that

"the power conferred on the High Court under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act may not be as narrow as the revisional power of the High Court under section 115 of the Code of Civil Procedure. But in the words of Untwalia, J. in Dattonpant gopalarao vs Vithalrao Maruthirao AIR1975 SC 1111 , (1975)2 scc246 , [1975]suppscr67 , 1975 (7)UJ381 (SC) it is not wide enough to make the High court a second Court of first appeal."

9. Further reliance was made by the Learned Counsel of the respondent over the decision reported in 2014 (5) CTC (SC) 217 in the case of Hindustan Petroleum Corporation Ltd vs. Dilbahar Singh, 2014(9) SCC 78, wherein the Hon'ble Supreme Court has observed as follows:-

"We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to

law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

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10.Hence the learned counsel for the respondent submitted that the concurrent finding arrived at by the authorities below need not be disturbed by this Hon'ble Court and he prays for dismissal of the above

Civil Revision Petition.

11. Whereas the learned counsel for the revision petitioner would submit that mere submission and calculation of petitioner as to the Rent cannot form a foundation to determine the market value or Fair rent. The fair rent arrived by the authorities is improper and is highly excessive. Only on adducing of 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.

12. In support of his contention the Learned counsel drew the attention of this Court to the decision of a Full Bench of this Court reported in 2006(2) CTC 433 made in the matter of M/s. Sakthi and Co., through its Partner Veeranan – Vs Shree Desigachary wherein it is held as follows:

“20. Therefore, it would be appropriate to remand the matter to the Rent Controller, after setting aside the orders impugned, and to allow the parties to adduce evidence, to help the Rent Controller in arriving at the market value, on the basis of the evidence of bona fide sales between the

vendor and the vendee of the lands situated near about that land possessing same or similar advantageous features during the relevant point of time; which is, accordingly, ordered.”

13.Further reliance was made by the Learned Counsel of the Petitioner over the decision reported in 1988-1-L.W 568 A. Emberumanar Vs. K. Raghavan, wherein this Court held that it is the duty of the landlord to produce the plan or map/sanctioned plan, etc., when there is a dispute with regard to the area, age of the building and failure to produce the same would result in adverse inference being drawn on the landlord, unless the non-production is explained.

14.I heard Mr.V.V.Sairam, learned counsel for the petitioner and Mr.C.T.Mohan, learned counsel for the respondents and perused the entire materials available on record.

15.This Court has carefully considered the rival submission. Now the point for consideration arrives in this CRP is as to whether the rent fixed by the authorities below are fair or do it warrant interference.

16.The records reveal that the respondent has not produced base or credible materials with regard to the area, age of the building and to substantiate her claim of Fair Rent. It is further seen that the Learned Rent Controller Appellate Authorities has arrived at the finding with regards to market value of the petition premises baselessly. In actual the Engineer of the landlady has fixed the market value at the rate of Rs.23, 68,800/- per ground based on the guideline value and per contra the engineer of the Tenant has fixed the market value of the petition premises at Rs. 12,00,000/- per ground.

17.In the said circumstance, without fundamental or credible materials with regard to the area, age of the building and to substantiate claim for Fair Rent, the authorities below without any documentary proof or any independent opinion have arrived at a conclusion that the market value per ground in that areas is Rs.20,00,000/- per ground an assumption and presumption.

18.While considering the said aspect of the matter, aid has to be taken on the Full Bench Judgment of our High Court reported in 2006 (2) CTC433 cited supra wherein by referring to a decision of the Judgment of the Hon'ble Apex Court reported in 2005 (4) CTC 645

held that the best method of valuation for ascertaining the market value as suggested are as follows:

"14. The methods of valuation for ascertaining the market value, as suggested in the above decisions, are as follows:

(1) Opinion of experts

(2) The price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages. 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 market value.

(3) A number of years purchase of the actual or immediately prospective profits of the lands acquired.

15. It is a settled law, as laid down in the judgments referred to above, that in determining the market value, the Court has to take into account either one or the other three methods to determine market value of the lands appropriate on the facts of a given case. According to the Supreme Court, generally, the second method of valuation is accepted, as the best. This method would furnish the 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, which would enable the Court to determine the market value correctly.

16. In view of the above ratio decidendi fixed by the Supreme Court, the fixation of market value on the basis of guideline value or valuation register, summoned from Sub-Registrar's Office and the Engineer, is illegal and unsustainable.

17. The view expressed by Justice S.S.Subramani, in our view, is correct, as it is in consonance with the principles laid down by the Supreme Court. The other view expressed by Justice Srinivasan is not correct, as the methods suggested by the Supreme Court for fixing the market value would not include the consideration of guideline value and valuation register. So, in our opinion, the said view is wrong.

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.

19. In view of the above settled position of law and conclusions, both the counsel for the parties would now agree for setting aside the orders impugned and for remanding the matter for fixing the fair rent in respect of the property during the relevant point of time to follow the methods as mentioned above, after allowing the parties to adduce evidence.

20. Therefore, it would be appropriate to remand the matter to the Rent Controller, after setting aside the orders impugned, and to allow the parties to adduce evidence, to help the Rent Controller in arriving at the market value, on the basis of the evidence of bona fide sales between the vendor and the vendee of the lands situated near about that land possessing same or similar advantageous features during the relevant point of time; which is, accordingly, ordered."

19. Therefore, at cost of repetition it is needless to say that as held above only on adducing of 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 and even

the guideline value has no statutory base or force and the same cannot form a foundation to fix the market value and correspondingly to fix the fair rent. Admittedly in the case on hand the respondent failed to produce credible materials to substantiate her claim of Fair Rent. Thus the finding of the Learned Rent Controller Authorities is incorrect and unsound.

20. In so far as the decisions relied by the Learned Counsel for the petitioner, this Court finds that the decisions relied upon by the petitioner is inapplicable to the case on hand, since on appraisal of the available records and the order impugned is found to suffer out of procedural illegality over the mode of fixation of Fair rent.

21. In the result:

(a) this Civil Revision petition is allowed and the order in RCA.No.114 of 2007, dated 27.09.2001, on the file of the learned VIIIth Judge, Small causes Court, Chennai and RCOP.No.2561 of 2005, dated 02.09.2006, on the file of the learned XIVth Judge, Small Causes Court, Chennai, are set aside;

(b) the matter is remand back to the Rent Controller to decide the fair rent afresh after giving sufficient opportunity to both the parties to produce further evidence in respect of value of the land with documentary evidence;

(c) the learned Rent Controller viz., the learned XVth Judge, Small Causes Court, Chennai, is herein directed to dispose of the RCOP.No.2561 of 2005, within a period of two months, since the RCOP is for the year of 2005, without giving any adjournment to either parties. Both the parties are herein directed to give their fullest co-operation for early disposal. No costs. Consequently, connected Caveat No.4626 of 2011 is closed.

17.07.2017

Note: Issue order copy on 16.04.2018
vs

Internet: Yes
Index: Yes

To

1. The VIII Judge,
Small Causes Court, Chennai.
2. The XIV Judge,
Small Causes Court, Chennai.

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M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(NPD)No.2679 of 2012
and
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