

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).Nos.4076, 2153 & 2154 of 2010
& M.P.Nos.1 & 2 of 2010

P.K.Srinivasa Herle .. Petitioner in
C.R.P(NPD).No.4076/2010

K.Purushothaman .. Petitioner in
C.R.P(NPD).Nos.2153 & 2154/2010

Vs.

K.Purushothaman .. Respondent in
C.R.P(NPD).No.4076/2010

P.K.Srinivasa Herle .. Respondent in
C.R.P(NPD).Nos.2153 & 2154/2010

COMMON PRAYER: Civil Revision Petitions filed Under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act 18 of 1960, against the fair and decretal orders dated 20.08.2009, made in R.C.A.Nos.329, 235 & 329 of 2005 respectively on the file of the VIII Judge, Court of Small Causes, Chennai (Appellate Authority) preferred and modified the fair and decretal order dated 12.01.2005 made in the R.C.O.P.No.451 of 2004 on the file of the X Judge, Court of Small Causes, Chennai and fix the fair rent as claimed.

(In C.R.P(NPD).No.4076/2010)

For Petitioner : Mr.T.P.Kathirraavan
for M/s.A.K.Rajeswari Associates

For Respondent : Mr.K.Bijai Sundar

(In C.R.P(NPD).Nos.2153 & 2154/2010)

For Petitioner : Mr.K.Bijai Sundar

For Respondent : Mr.T.P.Kathirraavan
for M/s.A.K.Rajeswari Associates

COMMON ORDER

These civil revision petitions are filed against the the fair and decretal orders dated 20.08.2009, made in R.C.A.Nos.329, 235 & 329 of 2005 respectively on the file of the VIII Judge, Court of Small Causes, Chennai (Appellate Authority) preferred and modified the fair and decretal order dated 12.01.2005 made in the R.C.O.P.No.451 of 2004 on the file of the X Judge, Court of Small Causes, Chennai and fix the fair rent as claimed.

2. The issues involved in all the civil revision petitions are one and the same. Therefore, disposed of by this common order.

3. In C.R.P(NPD)No.4076 of 2010, the petitioner is the landlord and respondent is the tenant. In C.R.P(NPD).Nos.2153 and

2154 of 2010, the petitioner is tenant and respondent is the landlord. The parties are referred to as landlord and tenant. The landlord filed R.C.O.P.No.451 of 2004 on the file of the X Judge, Court of Small Causes, Chennai, for fixation of fair rent at Rs.8,281/- per month.

4. According to the landlord, the tenant is occupying the 347 sq.ft Non-residential building which has ground floor construction only and forms North East Corner Shop in the property and abuts Arcot Road. The tenant is running a Cycle shop with name and style "Geetha Cycle & Electrical Mart". The building was constructed by Brick work and is built in cement mortar. The plastering and ceiling are in cement mortar. The teak wood joists are used for Madras Terrace. One Steel rolling shutter is fixed for safety at door opening. The building is a type-I building construction and the contractual rent is Rs.600/- per month. The property is situated in prime locality and fair rent for the portion occupied by the tenant would be Rs.8,281/- per month. The landlord prayed for fixing the fair rent of Rs.8,281/- per month from Rs.600/- per month paid by the tenant.

5. The tenant admitted that he is occupying the petition premises for Non-residential purpose and submitted that landlord

inflated the fair rent.

6. Before the learned Rent Controller, the landlord examined himself as PW1 and one Dheenadha Rao, Engineer was examined as PW2 and marked 3 documents as Exs.P1 to P3. The respondent examined himself as RW1 and one Ajees Moidheen, Engineer was examined as RW2 and marked 4 documents as Exs.R1 to R4. The assistant at Sub-registrar office, Virugambakkam was examined as CW1 and through him, guide line value of the suit property was marked as Ex.C1.

7. The learned Rent Controller considering the pleadings, oral and documentary evidence, fixed the fair rent at Rs.4,310/- per month. Not being satisfied with the fair rent fixed by the learned Rent Controller, the landlord filed R.C.A.No.329 of 2005. Aggrieved by the fair rent fixed by the learned Rent Controller, the tenant filed R.C.A.No.235 of 2005. Both the R.C.As' were filed on the file of the VIII Judge, Court of Small Causes, Chennai (Appellate Authority). The learned Appellate Authority, considering the evidence of the engineer - PW2 who was examined by landlord, engineer - RW2 who was examined by the tenant, the reports filed by PW2 and RW2 and sale deeds filed by the parties, EX.C1, the guide line value and order

of the learned Rent Controller, by judgment dated 20.08.2009, enhanced the fair rent to Rs.5,743/- from Rs.4,310/-, and partly allowed the R.C.A.No.329 of 2005 and dismissed the R.C.A.No.235 of 2005.

8. Against the said judgments dated 20.08.2009, made in R.C.A.Nos.235 & 329 of 2005, the tenant has filed two civil revision petitions viz., C.R.P(NPD).Nos.2153 & 2154 of 2010 and against the judgment in R.C.A.No.329 of 2005, the landlord has filed C.R.P(NPD).No.4076 of 2010.

9. The learned counsel appearing for the tenant has submitted that tenant is not disputing the type of the building, basic amenities provided, age of the building, plinth area of the building and extent of land. The learned counsel appearing for the tenant submitted that PW2 is only a Diploma holder and he is not a qualified engineer. Whereas, RW2 is a qualified engineer and his report must be taken into consideration. The Courts below have taken the sale deed subsequent to filing of the R.C.O.P and the same cannot be taken into consideration. The Appellate Authority, without discussing the documents, taking the location advantages, fixed the value of the land at Rs.35,00,000/-, which is not correct.

10. The learned counsel appearing for the landlord submitted that tenant himself has admitted that the fair rent can be fixed at Rs.4058/- for the petition premises and in the report of the RW2 also the same has been mentioned. Ex.R3 dated 02.01.2004 is 3 furlongs away from the petition premises and the same cannot be taken into consideration.

11. Heard the learned counsel appearing for the landlord and tenant in all the civil revision petitions and perused the materials available on record.

12. The learned Rent Controller, considering the materials on record, fixed the fair rent at Rs.4,310/- per month. The learned Appellate Authority, enhanced the fair rent from Rs.4,310/- to Rs.5,743/- . As per the evidence of engineer, RW2, the tenant is in occupation of 327 sq.ft for Non-residential purpose. The engineer of the landlord, PW2 fixed the age of the building as 50 years; while the engineer of the tenant, RW2 fixed the age of the building to be between 78 and 80 years. The learned Appellate Authority, considering the report of the engineers, fixed the age at 60 years. Both the counsel appearing for the landlord and tenant submitted

that they have not disputed the facts regarding the type of the building, basic amenities provided, age of the building, plinth area of the building and extent of land. Both the engineers have given a report that building is a Type-1 Class A-1. The Courts below have fixed the depreciation as 1%. The landlord fixed the value of the land to be Rs.50,00,000/- per ground and relied on Ex.P2, sale deed dated 16.09.2004, bearing document No.5196 of 2004 dated 06.09.2004. The tenant contended that value of the land is only Rs.24,96,231/- per ground and relied on the Ex.R3, sale deed dated 02.01.2004. The learned Judge, rejected the guide line value, Ex.C1 as it does not reflect the market value of the land. The learned Appellate authority, considering the location of the petition premises fixed the value of the land as Rs.35,00,000/- per ground. Both the engineers in the report stated only the electricity was provided as basic amenities and 5% is awarded for basic amenities. The PWD rate for the building was Rs.349 per sq.ft. Applying these particulars, the basic Appellate Authority calculated the fair rent as per the procedure contemplated in the act and fixed the fair rent at Rs.5743/-. The fixation of the land value, the rate for the building, 5% for specific amenities and 1% for depreciation per year are properly awarded by the learned Appellate Authority based on the materials available on record and location of the petition premises

which is in prime commercial locality. There is no illegality or irregularity in the said judgment warranting interference by this Court.

13. In the circumstances, all the civil revision petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

22.08.2017

Index: Yes/No

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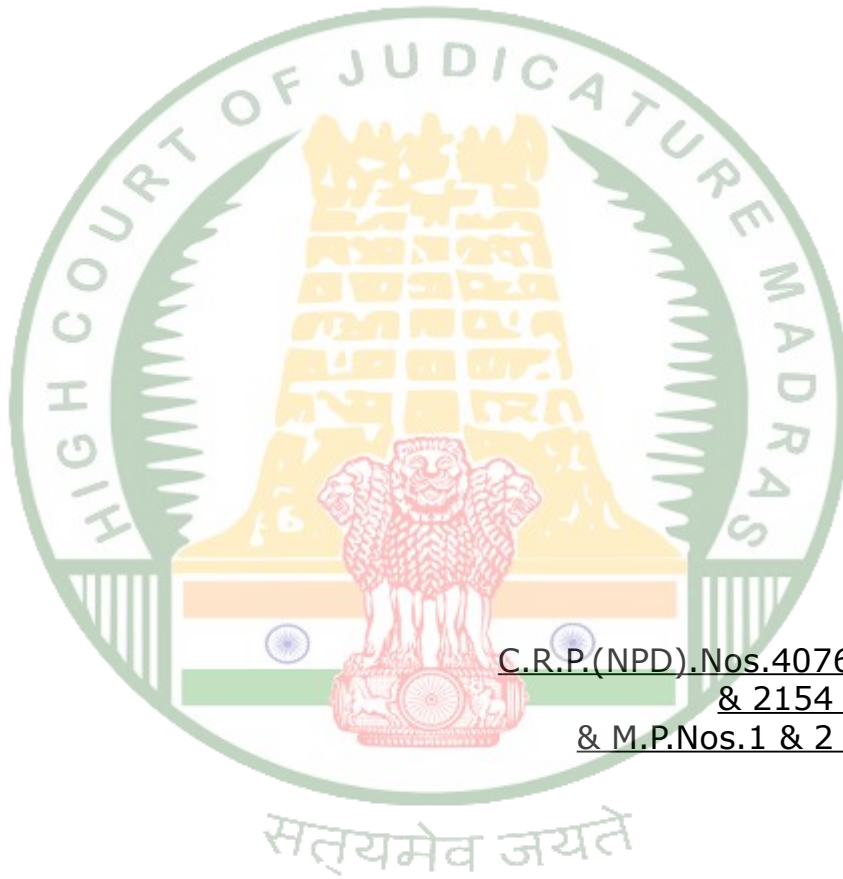
To

1. The X Judge,
Court of Small Causes, Chennai
2. The VIII Judge,
Court of Small Causes, Chennai

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V.M.VELUMANI, J.

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