IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.NPD No.59 of 2006

Judgment reserved on 28.08.2017	**Judgment pronounced on 20.09.2017**

1.R.Muthusamy
2.R.Subramanian (deceased)
3.R.Chinnadurai
4.S.Balasubramanian
[4th petitioner brought on record as LR of deceased 2nd petitioner vide order of court dt.18.06.2014 made in MP Nos.1 to 3 of 2014 in CRP (NPD) No.59 of 2006] ... Petitioners

Vs

1. The Secretary
Government of India,
(Mines and Petroleum)
Union of India, New Delhi

2.M/s.Hindustan Petroleum Corporation Ltd.,
Bombay

3.The Regional Mangaer
Hindustan Petroleum Corporation Ltd.,
Cochin Office,
18/3, Big Bazaar Veethi
Coimbatore – 1.

4.M/s.Rengasamy Naidu & Sons
No.100, Palladam Road,
Pollachi. ... Respondents

Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act) 196 against the order passed in RCA No.2 of 2000 dated 29.06.2004 on the file of Sub Court, Pollachi in RCOP No.26 of 1996 dated 26.08.1999 on the file of the Rent Controller cum District Munsif Court, Pollachi.

For Petitioners : Mr.C.Prakasam

For Respondents : R1 dispensed with vide court order dt.21/01/2013

Mr.M.Vijayan for M/s.King & Patridge for R2 & R3

Mr.N.Umapathi for R4

ORDER

This Civil Revision Petition is filed against the order passed in RCA No.2 of 2000 dated 29.06.2004 on the file of Sub Court, Pollachi in RCOP No.26 of 1996 dated 26.08.1999 on the file of the Rent Controller cum District Munsif Court, Pollachi.

2. The petitioners are landlords and the respondents are the tenants. The petitioners filed RCOP No.26 of 1996 on the file of Rent Controller cum District Munsif Court, Pollachi for fixation of fair rent. According to the petitioners, their father Ramasamy Gounder originally leased out the property to EASSO Standard Eastern Inc. for a period of 10 years from 01.07.1968 on a monthly rent of Rs.250/-. Subsequently, the said company was taken over by Central Government and the second respondent was formed and lease was transferred to the second respondent. The third respondent is a person who is in Management and the 4th respondent is dealer of second respondent. Originally, the monthly rent was fixed at Rs.250/- and subsequently, it was increased to Rs.400/- per month from 01.12.1992. After the death of petitioner's father, the petitioners issued notice dated 23.12.1992 objecting to the rent on the ground that rent fixed is very low. According to the petitioners, the petition premises is in busy commercial locality and it is situated near marriage hall, school, workshop, bus stop, etc. The petitioners furnished the details of the building and stated that value of the property will be Rs.285/- per sq.ft. The respondents 1 & 4 are only formal parties and the respondents 2 & 3 may be ordered to pay the fair rent fixed by the Court from the date of notice.

3. The third respondent filed counter statement and the second respondent adopted the same. They submitted that the petition filed by the petitioners for fixation of fair rent is not maintainable. It is not correct to state that the monthly rent of Rs.400/- is not a fair rent and that the petitioners denied that the rent is Rs.400/- in the notice dated 23.12.1992. There is lot of vehicular traffic in the said area due to business reasons and that there is only a small building in the petition premises. Only 50% of the extent of the building must be taken for fixing the fair rent. The petitioners have not taken into consideration the age of the building. The details given about the property and the amenities are not correct. It is not correct to state that the value of the property will be around Rs.285/- per sq.ft. The respondents further stated that the rent paid by them is fair rent and prayed for dismissal of the RCOP.

4. Before the learned Rent Controller, second petitioner and four others were examined as PWs1 to 5 and marked 18 documents as Exs.P1 to P18. The respondents examined one T.C.R Yuvaraj as RW1 and did not mark any document. The learned Rent Controller, considering the pleadings, judgments relied on by the parties and

both oral and documentary evidence, fixed the value of the ground at Rs.282/- per sq.ft and fixed the cost of the construction at Rs.250/- per sq.ft. In respect of the open space, the learned Rent Controller, took into consideration 50% of the extent of the building. Applying the formula contemplated under the Act, the learned Rent Controller fixed the fair rent at Rs.2560/- per month.

5. Not being satisfied with the fair rent fixed by the learned Rent Controller, the petitioners filed RCA No.2 of 2000 before Sub Court, Pollachi. The learned Appellate Authority independently, considering the order of the learned Rent Controller, judgments relied on by the learned counsel for the parties and arguments, dismissed RCA No.2 of 2000, by judgment dated 29.06.2004 confirming the order of Rent Controller dated 26.08.1999 passed in RCOP No.26 of 1996.

6. Against the said order of dismissal dated 29.06.2004 made in RCA No.2 of 2000 confirming the order of the learned Rent Controller dated 26.08.1999 made in RCOP No.26 of 1996, the present Civil Revision Petition is filed.

7. The learned counsel for the petitioners contended that the courts below erred in fixing the market value of the land at Rs.282/- per sq.ft. instead of fixing the same at Rs.685/-. The courts below erred in accepting the evidence of PW5 and rejecting the documentary evidence produced by the petitioners. The courts below failed to consider the value mentioned in the sale deed of neighbouring lands where the value given by the willing purchasers and willing sellers alone must be taken as market value and not the guideline value for fixing the fair rent. The courts below erred in taking into consideration 50% of the extent of building instead of 50% of vacant land appurtenant to the building for arriving at fair rent. The courts below did not follow the procedures contemplated under law for arriving at a fair rent and deduction of depreciation is not correct.

8. The learned counsel appearing for the respondents 2, 3 and 4th respondent separately contended that the courts below, considering the documentary evidence as well as oral evidence, have rightly fixed the market value of the land at Rs.282/- per sq.ft. The petitioners have not substantiated their case that market value is Rs.685/- per sq.ft. As far as the value of the vacant land is concerned, the courts below have taken into consideration 50% of

the extent of the building, while arriving at value of the vacant land. which is valid and legal and prayed for dismissal of the Civil Revision Petition.

9. Heard the learned counsel appearing for the petitioners as well as respondents and perused the materials available on record.

10. From the materials available on record, order of the learned Rent Controller and the judgment of the learned Appellate Authority, it is seen that both the courts below have fixed the market value of the land at Rs.282/- per sq.ft. The learned Rent Controller, considering the oral and documentary evidence, especially evidence of P.W.5, who is the official from Sub Registrar Office, fixed the market value of the land at Rs.282/- per sq.ft. The learned Rent Controller and the Appellate Authority have not considered the sale deeds Exs.P10 to P13 filed by the petitioners and had not given any reason for not accepting the same. The learned counsel for the petitioners during arguments submitted that if CRP NPD No.60 of 2006 filed by the petitioners for eviction of the tenant is ordered, the petitioners are giving up their claim with regard to value of the property at Rs.685/- per sq.ft. for fixation of fair rent.

11. Today, CRP NPD No.60 of 2006 is allowed ordering eviction of the respondents from the petition premises. In view of the said order, the only issue to be decided in this Civil Revision Petition, in view of the above submission of the learned counsel for the petitioners is, whether the courts below are right in taking into consideration only 50% of the extent of the building to arrive at value of the vacant land.

12. The fixation of fair rent is dealt with in Section 4 of the Tamil Nadu Buildings (Lease & Rent Control) Act 1960. Proviso to Section 4 (iv) deals with fixation of value of the vacant land. Section 4 of the Act reads as follows -

> ***4. Fixation of fair rent*** *– (1) The Controller shall on application made by the tenant or the landlord of a building and after holding such enquiry as he thinks fit, fix the fair rent for such building in accordance with the principles set out in the following sub-sections.*
>
> *(2) The fair rent for any residential building shall be nine per cent gross return per annum on the total cost of such building.*
>
> *(3) The fair rent for any non-residential building shall be twelve per cent gross return per annum on the total cost of such building.*

(4) The total cost referred to in sub-section (2) and sub-section (3) shall consist of the market value of the site in which the building is constructed, the cost of construction of the building and the cost of provision of anyone or more of the amenities specified in Schedule I as on the date of application for fixation of fair rent :

Provided that while calculating the market value of the site in which the building is constructed, the Controller shall take into account only that portion of the site on which the building is constructed and of a portion up to fifty percent, thereof the vacant land, if any, appurtenant to such building the excess portion of the vacant land, being treated as amenity;

Provided further that the cost of provision of amenities specified in Schedule I shall not exceed -

(i) in the case of any residential building, fifteen per cent; and

(ii) in the case of any non-residential building, twenty-five per cent of the cost of site in which the building is constructed, and the cost of construction of the building as determined under this section.

5(a) The costs of construction of the building including cost of internal water-supply, sanitary and electrical installations shall be determined with the due regard to the rates adopted for the purpose of estimation by the Public Works Department of the Government for the area concerned. The Controller may, in appropriate *cases, allow or disallow an amount not exceeding thirty per cent of construction having regard to the nature of construction of the building.*

(b) The Controller shall deduct from the cost of construction determined in the manner specified in clause (a), depreciation, calculated at the rates specified in Schedule II).

13. The Rent Controller has fixed the value of the site in which the building is constructed, by taking into consideration only the portion of the site on which building is constructed and 50% of the land upon which stands such building for arriving at the value of vacant land for fixing fair rent. The other extent of vacant land is treated as amenities. Both the courts below erred in interpreting proviso to Sec.4 (iv) to mean that 50% of the building alone has to be taken into consideration to arrive at value of open space to appurtenant to the building. From the reading of the proviso, it is clear that 50% of the vacant land appurtenant to the building must be taken as a market value of land alongwith the value of the building to arrive at fair rent. It is not correct to state that only 50% of the extent of land on which the building stands has to be taken into account for fixing the fair rent. In view of the above reason, the order of the learned Rent Controller in RCOP and

judgment of the Appellate Authority in RCA are set aside with regard to value of the open space.

14. It is admitted that total area of the petition premises is 21504 sq.ft., the building standing thereon in 373 sq.ft. and the remaining vacant land after deducting the land on which the building stands the vacant land appurtenant to the building is 21271 sq.ft. 50% of the same is 10635.50 sq.ft. The value of the said vacant land is Rs.282 x 10635.50 = Rs.29,99,211/-. The site in which the building is constructed is 373 sq.ft. 373 + 10635.50 = 11,008.85 x 282 = 31,04,397/-.

Fair rent calculation :-

Total area of the petition premises	...	21,504 sq.ft.
Site in which building is constructed		373 sq.ft.
Remaining vacant land		21,271 sq.ft ==========
Market value of the site	...	Rs.282/- per sq.ft.
Cost of construction	...	Rs.250/- per sq.ft.
Rate of depreciation	...	2%
Age of the building	...	34 years

50% of the vacant land [21271 / 2]	...	10,635.50 sq.ft.
Site in which building is constructed		373.00 sq.ft.
Total site area	...	11,008.50 sq.ft.

Market value for 11008.50 sq.ft. [11,008.50 x 282] ... Rs.31,04,397/- **(A)**

Formula $P = A \left[\frac{100 - r}{100} \right]^{34}$

A = Total cost of construction of the building ... Rs.250 x 373 sq.ft. = Rs.93,250/-

r = Rate of depreciation per annum ... 2%

n = Age of the building ... 34 years

p = final depreciated value ... $\left\{ \frac{Rs.93,250 \times (100 - 2)}{100} \right\}^{34}$

... $93,250 \times (.98)^{34}$

The final depreciated value of the building ... Rs.46,914/- **(B)**

Cost of provision of amenities = 25% (maximum) of the cost of site (A) + cost of building (B)

i.e. 25% of (Rs.31,04,397 + Rs.46,914)

25% of Rs.31,51,311/- = Rs.7,87,827.75 **(C)**

Market value for 11008.50 sq.ft.	... Rs.31,04,397/-	**(A)**
Cost of the building	... Rs. 46,914/-	**(B)**
Cost of provision of amenities	... Rs. 7,87,828/-	**(C)**

Total (A) + (B) + ©	... Rs.39,39,139/-	
	===========	

Fair rent for non-residential building @ 12% per annum	...	Rs.39,39,139 x (12/100)
Fair rent for one year	...	Rs.4,72,697/-
Fair rent per month	...	Rs.39,391/-

Rounded off to Rs.39,390/-

15. It is an admitted fact that the respondents are using the entire land for parking their lorries as well as path way. It is also an admitted fact that the respondents have not produced any document with regard to market value and they have not challenged the fair rent fixed by the courts below. In view of the above, they are not disputing the market value of the land fixed at Rs.282/- per sq.ft. by the courts below. Hence, the order of the learned Appellate Authority dated 29.06.2004 made in RCA No.2 of 2000 confirming the order of the learned Rent Controller dated 26.08.1999 made in RCOP No.26 of 1996 is liable to be modified

and it is accordingly modified. Thus, the fair rent is fixed at Rs.39,390/- modifying the fair rent fixed by the courts below.

16. In the result, this Civil Revision Petition is allowed fixing the fair rent at Rs.39,390/- payable from the date of filing of the petition, i.e. 09.07.1996. No costs.

20.09.2017

rgr
Index : Yes/No

Note: Issue order copy by 21.09.2017

To

1.The Subordinate Judge,
Pollachi.

2.The District Munsif Court,
Pollachi.