

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.3115 of 2012

M.K.Thangavelu .. Petitioner

Vs.

R.Baskaran .. Respondent

Prayer: Civil Revision Petition filed under Section 25(1) of Tamil Nadu Building Lease and Rent Control Act, against the order made by the learned Appellate Authority in R.C.A.No.494 of 2009 on the file of the learned VIII Judge, Small Causes Court, Chennai, dated 09.08.2011 and confirming the order of fixing the fair rent made by the learned XIII Judge, Small Causes Court, Chennai in RCOP.No.2004 of 2008, dated 10.08.2009.

For Petitioner : Mr.T.P.Kathiravan

For Respondent : M/s.S.L.Kalavathi

O R D E R

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/Landlord that the respondent was inducted as a tenant in the year 1991 in the petition premises. The petition premise was rented for non-residential building at Rs.1800/- per month. The petition premise is a Type I building 19 year old and the same is provided with all basic amenities. The petition premise is situated in prime area nearby Ashok Nagar Police station and the market value of the petition premise is more than Rs.55 lakhs per ground. The present rent paid by the respondent/tenant is very low. Hence he filed a petition in RCOP.No.2561 of 2005 before the learned XVIII Judge, Small Causes Court (Rent Controller), Chennai for fixation of fair rent under Section 4 of the Tamilnadu Buildings (Lease and Rent Control) Act seeking rent at the rate of Rs.8,564/- per month.

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3.The Respondent/tenant resisted the above RCOP contending that the revision petitioner is neither the owner nor the landlord of the petition premise. The petition premise is 24 years old and not 19

years. The petition premise site is a slum clearance Board allotment and hence the demand of monthly rent by the petitioner at Rs.8,564/- per month is excessive and imaginary.

4.Before the Learned Rent Controller, on the side of the landlord/ revision petitioner, he was examined as PW-1 and Ex-P1 to P3 were marked and on the side of the Tenant/ respondent, he was examined as RW1 and Ex-R1 & R2 was marked. After considering the case of either side, the Learned Rent Controller was pleased to allow the RCOP by fixing the monthly rent at Rs.2,988/- from the date of petition by an order dated 10.09.2008.

5.Aggrieved over the fixation of monthly rent, the landlord filed an appeal in RCA.No.494 of 2009 before the learned VIII Court of Small Causes at Chennai. The Learned Rent Control Appellant Authority upon considering the rival submission on either side was pleased to dismiss the said appeal by an order dated 09.08.2011 and thereby confirmed the order of the Learned XVIII Judge, Small Causes Court (Rent Controller), Chennai. Aggrieved over the same, the present Civil Revision Petition is filed.

6.I heard Mr.T.P.Kathiravan, learned counsel for the petitioner and M/s.S.L.Kalavathi, learned counsel for the respondent and perused the entire records.

7.The learned counsel for the revision petitioner would strenuously contend that the learned Rent Controller Appellant Authority has erred in mechanically confirming the order of the learned Rent Controller. The authorities below have rightly accepted the age of the building as the landlord got personal knowledge over it and in the absence of any contra evidence the age of the building is fixed as 19 years. The authorities below have not fixed the market value of the land on the basis of Exhibit P3 sale deed dated 23.10.2007, despite the factum that the property sold under Exhibit P3 is situated in the petition premise street. As per the said sale deed 90.5 Sq.mt was sold for Rs.16 Lakhs and when such market value is equated to the petition premise area, the same would arrive at Rs.39,42,504/- per ground in the year 2007. Whereas the authorities below without accepting Ex-P3, have erroneously fixed the market value at Rs.1,00,000/- per ground on assumption and presumption baselessly.

8.As per the dictum laid down by this Court in the matter of **The**

South India Corporation Agencies Ltd, rep. by its Secretary Vs Chandragant C. Bandani & 3 Others reported in 1998 (1) CTC 674, wherein it was held that the market value of the land for fixation of fair rent cannot be determined based on concession and the market value of the property has to be determined on the basis of documents and evidence.

9.As stated above, the authorities below has not fixed the market value on the basis of Document i.e. Ex-P3 Sale deed and therefore the finding of the authorities on the point of market value is improper and the same require interference.

10.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) CTC 433** wherein by referring to a decision of the Judgment of the Hon'ble Apex Court reported in **2005 (4) CTC 645** it was 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.”

11.Per contra, the learned counsel appearing for the respondent/tenant would submit that under Ex-R1 sale deed pertains to the year 2002, wherein the value of the property sold under therein reflected only Rs.16,731/- per ground. Further the age of the building is 24 years and not 19 years. The land approximate value of the petition premise would be only Rs.5,00,000/- as the said area was allotted by the Slum Clearance Board. Hence the demand of the revision petitioner to fix the fair rent at Rs.8,564/- per month is unfair and such claim is arbitrary and unsustainable. Therefore he prays to confirm the fair rent arrived in the impugned order by dismissing the Civil Revision Petition.

12.The records reveal that the petition premise is a non-residential one and it is located in a prime area of Ashok Nagar, Chennai. It further reveal that Ex-P3 is a sale deed of the year 2007 relied by the petitioner for fixation of fair rent to be paid by the respondent. It is needless to say that as held above in the decisions relied by the Revision petitioner, aid is to be taken from the sale transactions between

willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features and the same would furnish basis to determine the market value. Even the guideline value has no statutory base or force to form a foundation to fix the market value and correspondingly to fix the fair rent. Admittedly in the case on hand the petitioner has produced Ex-P3 which is credible to substantiate his claim of Fair Rent. Thus this Court is of the view that the finding of the Authorities below is incorrect and unsound. The order impugned hence found to suffer out of procedural illegality over the mode of fixation of Fair rent.

13.As a result this Court is able to see that approximate value of the petition premise land would be Rs.55,00,000/- on corresponding equation drawn from Ex-P3 at Rs.39,42,504 per ground, pertaining to a nearby piece of property situated in the very same street. Therefore this Court find fit to rely upon the petitioner's valuation report submitted by the PW1 and further find that the Fair rent of the petition premise is to be fixed at Rs.8,564/- as claimed by the petitioner considering the amenities thereon.

14.In the result:

(a) this Civil Revision Petition is allowed by setting aside the order in R.C.A.No.494 of 2009 on the file of the learned VIII Judge, Small Causes Court, Chennai, dated 09.08.2011, confirming the order of fixing the fair rent made by the learned XIII Judge, Small Causes Court, Chennai in RCOP.No.2004 of 2008, dated 10.08.2009;

(b) the fair rent is fixed at the rate of Rs.8,564/- p.m. to the petition premises from the date of filing of the petition.

18.04.2017

Note:Issue order copy on 20.04.2018
vs

Internet:Yes
Index:Yes

To

- 1.The VIII Judge,
Small Causes Court, Chennai.
- 2.The XIII Judge,
Small Causes Court, Chennai.

M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(NPD)No.3115 of 2012**

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