

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2017

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.NPD No.4311 of 2013

J.Leelavathy

...

Petitioner

Vs

R.Palani

...

Respondent

Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act) 1960 r/w Sec. 115 of CPC against the decree and judgment passed in RCA No.577 of 2009, VII Judge, Small Causes Court, Chennai on 15.03.2013 in RCOP No.1332 of 2006 on the file of the XI Judge, Small Causes Court, Chennai on 10.07.2009.

For Petitioner : Mr.S.Sivashanmugam

For Respondent : Mr.M.Kamalanthan

ORDER

This Civil Revision Petition is filed against the decree and judgment passed in RCA No.577 of 2009, VII Judge, Small Causes Court, Chennai on 15.03.2013 modifying the order of the learned Rent Controller dated 10.07.2009 made in RCOP No.1332 of 2006

on the file of the XI Judge, Small Causes Court, Chennai on 10.07.2009.

2. The petitioner is the tenant and the respondent is the landlord in RCOP No.1332 of 2006 filed before XI Judge, Small Causes Court, Chennai. The respondent filed the above RCOP against the petitioner for fixation of fair rent at Rs.46,000/- per month in respect of petition premises. According to the respondent, the petition premises is situate in a commercial area in George Town. Several banks, Beach Railway station, Broadway Bus stand are within one kilometer radius of the petition property. Both Central and Egmore Railway Stations are very close to the petition premises. Important temples like Kalikambal temple, Churches and Mosques are situate within one kilometer. There are multi-storeyed buildings in the same street. The value of the land is Rs.80,00,000/- lakhs per ground, the building is Type- I building constructed with RCC terrace roof and RCC column footings, RCC posts, Plinth Beam, T.Beam, Lintals, etc. Plastering and ceiling are in cement mortar. Major portion of the rent received from the petitioner is paid towards property tax. Taking into account, cost of land, construction and amenities provided in the petition premises, he prayed for fixation of fair rent at Rs.46,000/- per month.

3. The petitioner filed counter and denied all the averments made by the respondent. According to the petitioner, the petition premises rented out to her is not for office use but it was leased out to the petitioner for putting up additional construction to facilitate leasing it out in smaller portions. The petitioner has spent Rs.4,00,000/- for partition of the first floor portion with the permission of the respondent. The petitioner paid a sum of Rs.60,000/- as advance amount and a sum of Rs.1,00,000/- was also paid for goodwill. The value of the land is not Rs.80,00,000/- per ground as alleged by the respondent. The building suffered damages for want of weather proofing on the terrace portion . Without providing amenities, the respondent is claiming exorbitant rent.

4. Before the learned Rent Controller, the respondent examined his Engineer as PW1 and marked six documents as Exs.P1 to P6. The petitioner's husband was examined as RW1 and her engineer was examined as RW2 and marked seven documents as Exs.R1 to R7. The learned Rent Controller, considering the pleadings, oral and documentary evidence, type, age of the building, amenities, cost of construction, plinth area, land value and schedule I amenities, fixed the fair rent at Rs.24,055/- per month.

5. Against the said order dated 10.07.2009 made in RCOP No.1332 of 2006, the petitioner filed RCA No.577 of 2009 before the VII Judge, Small Causes Court, Chennai. The learned Appellate Authority, independently considering the materials on record and the order of the learned Rent Controller, modified the order of the Rent Controller with regard to the age of the building and basic amenities and fixed the age of the building at 35 years and fixed basic amenities at 15%. Based on these modifications, the learned Appellate Authority fixed the fair rent at Rs.23,321/- per month.

6. Against the decree and judgment dated 15.03.2013 made in RCA No.577 of 2009 modifying the order dated 10.07.2009 made in RCOP No.1332 of 2006, the present Civil Revision Petition is filed.

7. From the materials on record, it is seen that both the Courts below have fixed the market value of land at Rs.60,00,000/- per ground and calculated the land value of the petition premises taking into consideration the extent of the petition premises as 660/- sq.ft and fixed the land value of the petition premises at Rs.16,50,000/-. The respondent has produced two sale deeds, marked as Exs.P3 & P4 whereas the petitioner has produced one sale deed marked as Ex.R5. The learned Rent Controller rejected all

the three sale deeds and fixed the market value of the land at Rs.60,00,000/- per ground, based on the locational advantages, value of the petition premises as well as the market value in the surrounding locality and over all consideration of the sale deeds filed on the side of the petitioner and respondent.

8. The learned Rent Controller and Appellate Authority rejected Ex.R5, sale deed filed by the petitioner on the ground that the said property is far away from the petition premises. The property sold under Ex.R5 is bearing No.184 (New No.298) (Old Nos.35 & 36) situate on the western row of Thambu Chetty Street, Muthialpet George Town, Madras – 600 001. The Engineer RW2 has stated that the property covered under Ex.R5 is 50 meters away from the petition premises. The property under Ex.R5 and the petition property are in the same street and distance between both the property is 50 meters. In the said circumstances, courts below erred in rejecting the said sale deed. As per Ex.R5, the value of the land is Rs.15,85,000/-. The said sale deed is of the year 2001. RCOP was filed in the year 2006. RW2 Engineer, in Ex.R2 analysis report has given enhancement of 15% and arrived at market value at Rs.20,00,000/- per ground in the year 2006. The enhancement of 15% is too low.

9. It has been held that the enhancement upto 20% per year can be granted by the court to arrive at market value of the property on the date of filing of the petition for fixation of fair rent. The court below have fixed the market value of the petition premises at Rs.60,00,000/- per ground taking into consideration the locality advantages. This is on the higher side. Taking into consideration the locality advantage and increase in the cost of the land, by many folds and value of land in Ex.R5, it will be proper and reasonable to fix Rs.45,00,000/- per ground as the proper market value on the date of filing of RCOP.

10. The learned Rent Controller fixed the age of the building at 20 years was modified by the Appellate Authority as 35 years. The reasoning of the learned Rent Controller for fixing the age of the building as 20 years is correct and hence the same is confirmed. The age of the building fixed by the Appellate Authority as 35 years is liable to be set aside is it is hereby set aside. However, the basic amenities of 15% as fixed by the Appellate Authority is hereby confirmed.

11. Based on the above modifications, the fair rent is fixed as follows -

First Floor RCC terraced area 2022 sq.ft @ Rs.375/- per sq.ft.	...	Rs.7,58,250/-
Ground Floor Common passage 53 sq.ft. @ Rs.375/- per sq.ft.	...	Rs. 20,488/-
Staircase 22.50 sq.ft. @ Rs.375/- per sq.ft.	...	Rs. 8,437/-

		Rs.7,87,175/-
Basic Amenities @ 15%	...	Rs.1,18,077/-

		Rs.9,05,252/-
		=====
Depreciation for 20 years @ 1% [9,05,251 x 0.818]	...	Rs. 7,40,496/-
Land value :		
<u>Rs.45,00,000/-</u> 2400	x 660	...
		Rs.12,37,500/-

		Rs.19,77,996/-
Schedule-I amenities @ 2%	...	Rs. 39,560/-
		=====
		Rs.20,17,556/-
		=====
Fair rent for non-residential building @ 12% per annum	...	Rs.20,17,556 x (12/100)
Fair rent for one year	...	Rs.2,42,107/-
Fair rent per month [2,42,107/12]	...	Rs.20,176/-

Thus, the fair rent is fixed at Rs.20,176/- modifying the fair rent fixed by the courts below.

12. In the result, this Civil Revision Petition is partly allowed fixing the fair rent at Rs.20,176/- payable from the date of filing of the petition. No costs.

15.12.2017

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To

1.The VII Judge,
Small Causes Court,
Chennai.

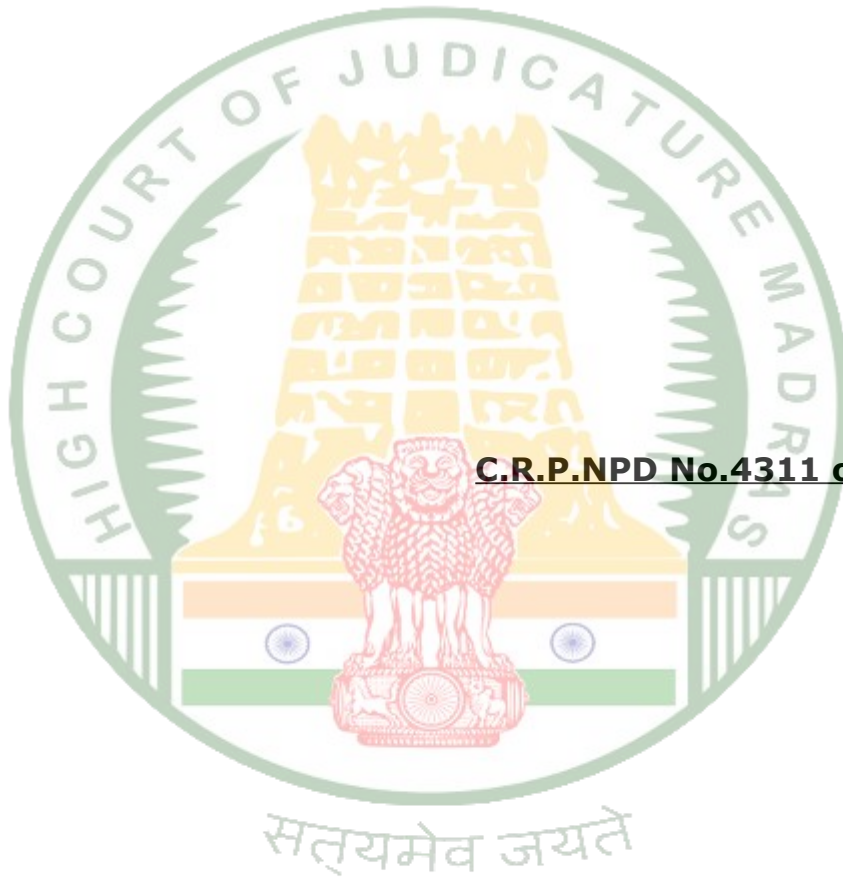
2.The XI Judge,
Small Causes Court,
Chennai.



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V.M.VELUMANI, J.

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