

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4180 of 2012
& M.P.No.1 of 2012

B.Parandhaman

.. Petitioner

Vs.

B.K.Nalini Jayanthi

.. Respondent

PRAYER: Civil Revision Petition is filed under Act 25 of Tamil Nadu Buildings (Lease & Rent Control) Act, 18 of 1960 as Amended by Act 23/1973, against the judgment and decree dated 17.08.2012 passed in R.C.A.No.241 of 2004 on the file of the learned VII Judge, Small Causes Court, Chennai, confirming the fair and decretal order dated 31.10.2003 passed in R.C.O.P.No.186 of 2002 on the file of the learned XII Small Causes Court, Chennai.

For Petitioner : Mr.P.B.Balaji

For Respondent : Ms.P.T.Asha for
Sarvabhauman Associates

ORDER

The Civil Revision Petition is filed against the judgment and decree dated 17.08.2012 passed in R.C.A.No.241 of 2004 on the file of the learned VII Judge, Small Causes Court, Chennai, confirming the fair and decretal order dated 31.10.2003 passed in R.C.O.P.No.186 of 2002 on the file of the learned XII Small Causes Court, Chennai.

2. The petitioner is the tenant and respondent is the landlord. The respondent filed R.C.O.P.No.186 of 2002 for fixation of fair rent. According to the respondent, the property is situate at the place joining between Royapettah high road and Luz church road and the same is in a busy and commercial area nearby the banks, offices, cinema theatres, post offices, bus stand etc. are situate. The famous Isabel Hospital is also situate near the petition premises. Market value of the land per ground is Rs.85,00,000/-. The petitioner is paying rent only a sum of Rs.3,500/- per month. The fair rent calculated by the respondent is Rs.21,396/- per month and prayed for fixation of fair rent.

3. The petitioner filed counter statement and admitted that he is the tenant on a monthly rent of Rs.3,500/-. He contended that the market value of the land is only Rs.5,50,000/- per ground and rent payable by him is reasonable one. The petitioner is claiming exorbitant sum as fair rent.

4. Before the learned Rent Controller, the respondent examined three witnesses as P.W.1 to P.W.3 and marked eight documents as Exs.P1 to P8. The petitioner examined one Engineer as R.W.1 and marked three documents as Exs.R1 to R3.

5. The learned Rent Controller, considering the pleadings, oral and documentary evidence, accepted the value of the land given by the respondent as per Ex.P3 and applying formula, fixed the fair rent at Rs.19,569/- per month. The petitioner being aggrieved by the said order of fixation of fair rent by the learned Rent Controller, filed R.C.A.No.241 of 2004.

6. The learned Appellate Authority, considering the pleadings, oral and documentary evidence and order of the learned Rent Controller, dismissed the R.C.A by Judgement and decree dated

17.08.2012, confirming the fair and decretal order dated 31.10.2003 passed in R.C.O.P.No.186 of 2002.

7. Against the order dated 31.10.2003 made in R.C.O.P.No.186 of 2002 on the file of the learned XII Small Causes Court, Chennai and judgment and decree dated 17.08.2012 made in R.C.A.No.241 of 2004 on the file of the learned VII Judge, Small Causes Court, Chennai, the present Civil Revision Petition is filed by the petitioner/tenant.

8. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

9. The learned counsel appearing for the petitioner submitted that the learned Appellate Authority did not independently consider the materials on record and did not give any opportunity to the counsel for the petitioner to argue the matter. As far as these contentions are concerned, the judgment of the learned Appellate Authority shows that the learned counsel for the petitioner argued the appeal and after hearing the arguments, the learned Appellate Authority elaborately considering the materials on record, passed the judgment.

10. The learned counsel for the petitioner further contended that the Courts below erred in taking entire 203 sq.ft. open to sky area into consideration by arriving at fair rent to be paid by the petitioner. The Courts below failed to see that the said extent of land is common to all the tenants. As far as this contention is concerned, the petitioner has not raised this issue before the learned Appellate Authority and has not disputed the report of the engineer examined by the respondent, who has stated that space open to sky is along with the portion under occupation of the petitioner. In view of the same, the contention of the learned counsel for the petitioner that the space open to sky is common to all is not substantiated by any evidence.

11. As far as value of the land is concerned, the respondent has marked Ex.P3/sale deed dated 30.08.2000 and the said property is at New No.26, Luz church road, Mylapore, Chennai – 4. R.C.O.P. was filed in the year 2002. The learned Rent Controller by adding 20% of the value mentioned in the said sale deed fixed the value of the property per ground is Rs.77,25,714/-.

12. According to the respondent, the petitioner has marked Ex.R4/sale deed dated 11.04.2002 and the property is situate at No.39/4, Luz church road, Mylapore. The value of the said property has been mentioned as Rs.10,00,000/- for the extent of 1067 sq.ft. The learned counsel for the petitioner submitted that the market value of the land per ground is only Rs.22,49,000/-. The Courts below rejected Ex.R4 on the ground that the said sale deed is under valued and 60% of additional stamp duty was paid by the purchaser in excess of stamp duty already paid. The Courts below have given valid reason for rejecting Ex.R4 and for accepting Ex.P3.

13. The Courts below held that the extent of the petition premises is 366.5 sq.ft. and took Rs.367/- per sq.ft., which comes to Rs.1,34,505/- as value of the building and awarded 5% for basic amenities and arrived at Rs.6,725/-. The total value of the building comes to Rs.1,41,230/- and deducted the depreciated cost of construction. The Courts below took plinth area as 366.5 sq.ft. and open to sky area as 203 sq.ft. and the total area under the occupation of the petitioner is 569.5 sq.ft. and fixed market value at Rs.77,25,000/- per ground. Then awarded 2% towards schedule I

amenities and finally fixed fair rent of Rs.19,568.92 at 12% for non residential use, by applying formula and guidelines stated in the judgments of this Court reported in 1983 MLJ 252 and 2006 (2) CTC 433 (Veeranan v. Desigachary).

14. The Courts below have considered all the materials on record and Ex.P1/report given by the respondent's engineer/P.W.1 and rightly fixed fair rent. There is no reason to modify or set aside the order and judgments of Courts below.

15. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.09.2017

Index : Yes/No

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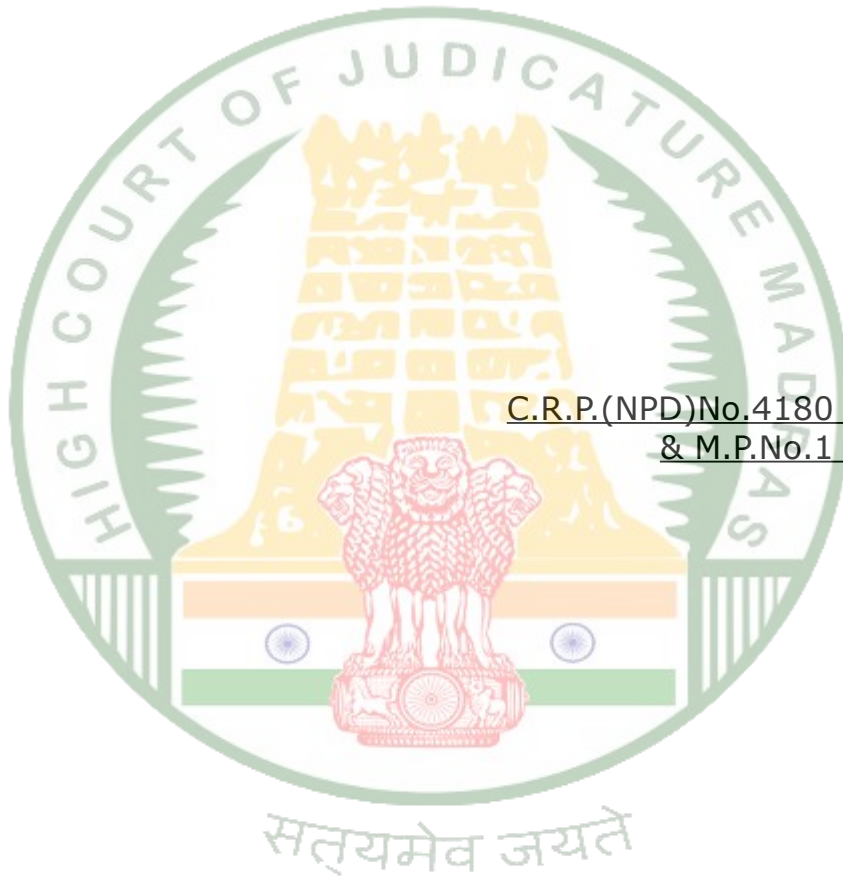
1.The VII Judge,
Small Causes Court, Chennai.

2.The XII Small Causes Court,
Chennai.

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V.M.VELUMANI, J.

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