



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2017
(Reserved on 10.03.2017)

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CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP(PD) (MD) No.292 of 2017
and
C.M.P(MD) No.1376 of 2017

K.Alagesan

... Petitioner/Appellant/Tenant

vs.

Mr.Senthilkumar represented through
his power of attorney R.Ramarajan, 66 yrs,
8/23, Irulappan Illam,
Sembiyan Kinatru Theru,
Ramayana Chavadi, North Masi Street,
Madurai-1.

... Respondent/Respondent/Landlord

Petitions filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, to call for the records relating to the order and decreetal order dated 05.04.2016 passed in R.C.A.No.38 of 2012 by the Rent Control Appellate Authority (Principal Sub Judge), Madurai modifying the order and decreetal order dated 28.08.2012 passed in R.C.O.P.No.48 of 2007 by the Rent Controller (Principal District Munsif Court), Madurai Town and set aside the same.

For Petitioners : Mr.D.Malaichamy

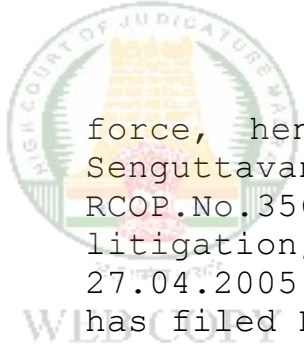
For Respondent/Caveator : Mr.V.Sitharanjandas

ORDER

The Respondent/Tenant is the petitioner herein. This revision petition is directed against the fixation of fair rent of Rs.3030/- per month by the Rent Control Appellate Authority, modifying the fair rent of Rs.6,411/-, fixed by the Rent Controller as against the claim of Rs. 10,000/- by the land lord/petitioner.

2.The facts leading to this revision petition are as under:-

The petition property is a commercial building located at Madurai City, North Marat Street, western portion of door No.143. The revision petitioner came as tenant under one Senguttavan in the year 1999. The rent was fixed as Rs.1000/-. In the year 2001, there was an attempt to evict the revision petitioner by



force, hence, suit for permanent injunction was filed against Senguttavan in O.S.No.555/2001 and for deposit of rent RCOP.No.356/2002 was filed. While so, pending these two litigation, the present respondent purchased the property on 27.04.2005. The rent of Rs.1000/- being inadequate, the respondent has filed RCOP.No.48/2007, for fixation of fair rent.

3.The plea of the landlord is that the property is about 240 sqft (8 x 30 ft) located in a busy locality. The market value in that locality is about Rs. 3000/- per sqft and the guideline value is Rs.2,500/-. The building is about 100 years old. The fair rent for the petition property will be about 10,000/-. The tenant is not paying even the admitted rent of Rs.1000/- ever since the date of his purchase of the property. Hence a separate petition for wilful default is initiated.

4.The tenant has admitted the extent of land and its locality and claims that he is depositing the rent of Rs.1000/- in RCOP.No.356/2002 account initially filed against the Senguttavan, the erstwhile landlord. After the alienation of the property, the present landlord is impleaded as respondent and petition is pending. The actual age of the building is only 40 years and not 100 years as claimed by the landlord. Therefore, the rent of Rs.1000/- is adequate and fair and no fixation of rent is required.

5.Before the rent controller, the landlord has examined 4 witnesses and had relied upon 5 documents marked as Ex P-1 to P-5. The respondent/tenant is the sole witness on his side and no documents were filed. The report of the Advocate commissioner and the report of the Engineer with sketch were marked as Ex C-1 to C-3. Third parties documents such as guideline value of the Government and PWD Buildings Maintenance Register were marked as X -1 to X-3.

6.After considering the report of the advocate commissioner and the Engineer, the rent controller has concluded that the extent of the petition property is 350 sqft. Taking note of the sale transactions in the neighbourhood through sale deeds marked as Exs.P-3 to P5, the rent controller considered Ex.P-4 transaction as more proximate in time and location and fixed the land value as Rs.3500/-. Based on the Engineer's Report and X-1, the rent controller had fixed the value of the building as Rs.70,704.60/- and fixing the age of the building as 60 years, giving depreciation of 1.5% per year, the rent controller had assessed the present value of the land as Rs.28,550.60. Following the guidelines laid down under Section 4 of the Tamil Nadu Buildings(Lease and Rent Control) Act, the rent controller had arrived Rs.6411/- as fair rent.



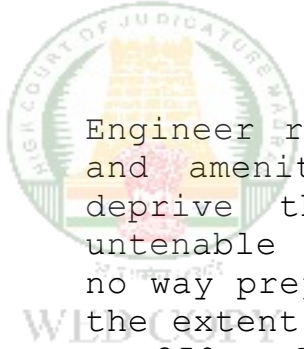
7. Aggrieved by the fixation of Rs.6,411/- as fair rent, the tenant has preferred appeal in RCA.No.38/2012 on the ground that, the rent controller had not assessed the age of the building properly, and the building being old, it has no value and the description of the petition property is not in consonance with the actual property in occupation of the tenant. Therefore, the order of the Rent Controller order is erroneous and to be set aside.

8. The appellate authority, after considering the grounds of appeal in the light of the documentary and ocular evidence held that, Ex P-3 sale deed is dated 03.05.2006, whereas, the sale deed Ex P-4 is dated 14.12.2007. The property which is the subject matter of Ex P-3 sale deed is located at Vakil New Street, which is the extension of North Marat Street. Since the petition for fixation of fair rent was filed after issuance of notice Ex.P-1 dated 27.12.2006, taking the sale transaction in Ex P-3, which is immediately before filing of the RCOP, as more proximate and appropriate to fix the value of the land, the appellate authority held that the value of the land in the locality is Rs.1568/- instead of Rs.3,500/- and taking into consideration the extent of the property as 350 sqft as mentioned in the Engineer's report, modified the fair rent to Rs.3030/- per month from Rs.6411/- per month.

9. Unsatisfied with the order of the appellate authority, the tenant is before this court by way of revision on the ground that the actual extent of the property even according to the landlord is only 240 sqft whereas the Advocate commissioner has found the extent of property on local inspection as 265 sq.ft and the Engineer in his report says the extent is 350 sq.ft, which is larger than the claim of the landlord. Since there is discrepancy in the actual extent of the building in occupation of the tenant, the rent fixed for larger extent is not fair.

10. The learned counsel for the revision petitioner referring the comparative chart annexed to the typed set of papers filed in the revision petition submitted that the exact extent of the land in occupation by the revision petitioner itself is in dispute, and therefore no rent could be fixed without first ascertaining the extent. Further, addition of 7.5% towards electrical allowance is baseless as there is no evidence to electrical fitments in the demised premises. Also, he submitted that taking note of the material used for construction of the building, depreciation at the rate of 2% ought to have been made instead of 1.5%.

11. The learned counsel for the respondent, per contra submitted that, there is no error whatsoever in the finding of the appellate authority in fixing the fair rent taking into consideration of the report of the advocate commissioner and the



Engineer regarding the extent of property, market value, its age and amenities. The revision petitioner, with an intention to deprive the landlord his lawful claim, making fanciful and untenable submission. The lesser extent mentioned in the petition no way prejudice the case of the revision petitioner, when on fact the extent in his occupation was physically inspected and reported as 350 sqft by a qualified Engineer. It is not the case of the revision petitioner that he is occupying area less than 350 sqft and has not adduced any evidence contrary to the Engineer's Report in respect of the extent in occupation. Being in occupation of the property without proper tender of the rent, the revision petitioner is abusing the process of court and protracting the litigation by filing groundless revision petition.

12.Extent:

In the petition, the property for which fair rent sought to be fixed is described with extent, measurement and four boundaries. In the counter filed by the revision petitioner, it is admitted that the property under dispute is commercial building. He has not disputed the four boundaries. The parties have litigated under the presumption that the extent is about 240 sqft. Only after the report of PW-4, Mr. Vanniayarajan, a Chartered Engineer and approved valuer, the actual extent of property is known to be 350 sqft and not 240 sqft. He has given his report with sketch and measurement on all four sides. The sketch and report are exhibited as Exs.C-2 and C-3. In his report, PW-4 has measured the building to scale and had furnished the details of the building containing the measurement, extent and nature of the construction. He being the expert, his evidence is comparatively more precise than the report of the Advocate commissioner, who has given only a rough sketch of the demised premises without providing the plinth area of the building. If the revision petitioner was really aggrieved by the measurement and extent furnished by the qualified engineer, he should have objected at the earliest point of time and should have let in evidence to disprove the content of the Engineer report.

13.The Engineer's report is more precise and specific with extent and measurement. Whereas, the Advocate Commissioner's report is very vague. This Court put a hypothetical question to itself that if the facts are in converse and if the landlord has claimed the extent of enjoyment by the tenant more than what really is in enjoyment and if the Engineer has given a report, stating that the actual extent in enjoyment by the tenant is lesser than what the landlord claims, will this Court not take the Engineer's report and fix a lesser rent? If the Answer is Yes, why should the Court disbelieve the report of the Engineer given based on the physical examination of the property just because it is adverse to the tenant.



14. It is now well settled in law, that when there is discrepancy in the extent or measurement, then the boundary will prevail. In this case, the boundary is not in dispute. The measurement and the extent furnished by the Engineer are not disproved by the revision petitioner except referring vague measurements furnished by the Advocate Commissioner in his report. On comparison, the Engineer report is more specific in measurement and description than the Advocate Commissioner report and sketch. While the Engineer's report is holistic and specific, the Advocate commissioner report is vague and lack specific details. The comparison of the Advocate commissioner report and the Engineer's Report reveals there are cupboards and pillars in property. The Learned counsel for the revision petitioner contents that, the area of cupboard and pillars ought to be excluded and if so excluded, the actual area in occupation will only be 265 sqft and not 350 sqft.

15. The above submission is ex facie fallacious. The cupboards embedded on the wall in fact amounts to additional amenity available in the petition property. The pillar is hardly 1 feet 8 inches at the 15.9" point in the length running South to North. The cupboard and the pillar form part of the plinth area. The Engineer being expert in the field after due inspection of the property, has clearly marked in his sketch the existence cupboards and pillar and given the exact measurement and extent.

16. The reading of Section 4(4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, the principle set out for fixation of fair rent is the market value of the site in which the building is constructed. The proviso to this subsection mandates the controller to take into account only that portion of the site on which the building is constructed.

17. Provision Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, is meant for fixation of fair rent (emphasis added). It should be fair both for tenant as well as the landlord. Therefore, there is no error in the judgment of the court below, accepting the report of the Engineer regarding the extent of land in use and enjoyment of the tenant.

18. Therefore, when the actual extent of property enjoyed by the revision petitioner is 350 sqft, the tenant cannot take advantage of the error in the extent mentioned in the petition, when evidently 350 sq.ft of land is in his use and occupation. Further in law, always the boundary prevail extent and measurement in case of discrepancies. The revision petitioner has not disputed regarding the boundary described in the fair rent petition. While so, the alleged discrepancy in measurement is an illusory discrepancy and not a real discrepancy.

19.Amenities:

One of the contentions of the revision petitioner raised in the grounds of revision is that the courts below erred in giving electrical allowance of 7.5%, when there is no evidence of electrical fitments.

20.This averment is factually wrong. The Engineer's report reveals that the building is provided with electricity amenity. Open wiring is done and separate energy meter is also provided. The Advocate commissioner also in his report has mentioned about the electrical meter board on the Western wall.

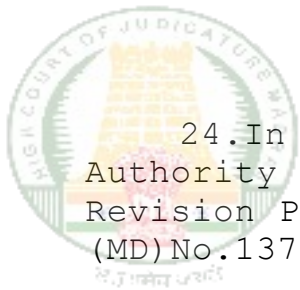
So, this court finds that the above contention is not only false but misleading.

21.Age:

It is contented by the petitioner that the building is 100 years old. Whereas the revision petitioner has contented in his counter that the actual age is only 40 years. The Engineer has assessed the age of the building as more than 70 years and restricted to 60 years for calculation of depreciation. The age of the building is assessed from the construction materials. It is found to be strong enough to accommodate the tenant who is carrying on wholesale fruits trade in it. Just to increase the percentage of depreciation, the revision petitioner contents that the material used to construct the building ought to have been taken into account by the Engineer and given 2% depreciation each year instead of 1.5% per year.

22.It is a fact borne on record that, even the admitted rent of Rs.1000/- is not paid to the landlord and been deposited in RCOP.No.356 of 2002, originally filed against the erstwhile owner. If really the revision petitioner is a genuine and a fair tenant, he ought to have tendered the rent to the respondent subsequent to his purchase of the property. It is palpably evident from the contention of the revision petitioner that he has resorted to dilatory tactics to delay the proceedings of fixation of fair rent in order to enjoy the property without paying fair rent to the landlord.

23.For the aforesaid reasons, this court finds no merit in the revision petition except a veil attempt on the part of the revision petitioner to drag the fair rent proceedings as long as possible harping on untenable plea. Fair rent proceedings is meant to provide equitable opportunity to both the landlord and tenant. The tenant cannot misuse the procedure and deprive the lawful rent a landlord is legally entitled. In short, the tenant can make use of this provision against a greedy landlord, but not a tool to deprive the lawful right of a needy landlord.



24. In the result, the order of the Rent Control Appellate Authority passed in RCA.No.38/2012 is confirmed. The Civil Revision Petition is dismissed without costs. Consequently, C.M.P (MD)No.1376 of 2017 is closed.

Sd/-
14.03.2017

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This Civil Revision Petition having been Posted today Under the Caption for Being mentioned and in the presence of the M/S.D.Malaichamy, Counsel for the Petitioner and of M/S.V.Sitharanjan Counsel for the Caveator, and the

Court made the following order,

This matter has been listed today under the caption 'for being mentioned' at the instance of the counsel for the petitioner.

2. It is stated by the counsel for the revision petitioner that, a sum of Rs.1,000/- (Rupees One Thousand only) towards rent is deposited to the credit of R.C.O.P.No. 48 of 2007 and if the landlord files an application for withdrawal of the amount, the revision petitioner has no objection for the same.

3. It is further submitted that the revision petitioner may be permitted to pay the differential fair rent in installments.

4. The learned counsel for the respondent has conceded to the above submission of the counsel for the petitioner.

5. Recording the submission on either side, the revision petitioner is directed to pay the differential fair rent to the respondent/landlord within a period of eight weeks in three installments.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

- 1) The Principal Sub Judge, Madurai.
 - 2) The Principal District Munsif, Madurai Town.
- +1cc to M/S.D.MALAICHAMY, ADVOCATE SR.No. 52569

**Pre-Delivery order made in
CRP(PD) (MD)No.292 of 2017
14.03.2017**