



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.05.2017
(Reserved on 26.04.2017)

WEB COPY

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP(NPD) (MD)No.885 of 2017

and

CMP(MD)No.3907 of 2017

1.V.G.Manoharan
2.M/s.Jeya Bharathi Corporation
a Partnership Firm
Rep. by its Partner V.G.Manoharan ... Petitioners / Petitioners
/ 1st & 6th Respondents

vs.

1.Uma alias Umavathi
Rep. by her Power Agent
S.Durairaj ... 1st Respondent/ 1st Respondent/
Petitioner
2.M.Savithiri
3.M.Murugesan
4.M.Saravanan
5.M.Thiagarajan ... Respondents/ Respondents/
Respondents 2 to 5

Prayer : This Civil Revision Petition is filed under Section 25(1) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 to set aside the Fair and Executable order dated 11.01.2017 passed by the Principal Sub-ordinate Judge cum Rent Control Appellate Authority, Madurai in R.C.A.No.36/2015 against R.C.O.P.No.2/2007 on the file of the Principal District Munsif cum Rent Controller, Madurai dated 08.12.2014.

For Petitioners : Mr.S.Chandrasekaran
For Respondent No.1 : Mr.T.R.Subramanian

ORDER

This revision petition is preferred by the tenant aggrieved by the fixation of fair rent by the Rent Controller to the demised premises which was confirmed by the Rent Control Appellate Authority.



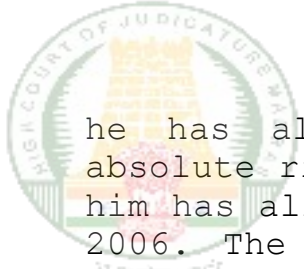
2.The brief facts leading to this revision are as under:-

The demised premises was originally owned by one Boopathi Vijaya Raghavan Chettiar. The revision petitioner herein is in occupation of the 1st and 2nd items of the petition premises which are the portions of the ground floor and the entire first floor portion with a Madras terrace room with appurtenant open space. After the demise of Boopathi Vijaya Raghavan Chettiar, the tenancy was attorned in favour of the 1st respondent herein and her sister Saraswathy @ Saratha.

3.The case of the first respondent/landlady is that her father Boopathi Vijaya Raghavan Chettiar and mother Andal Ammal purchased the petition property on 17.05.1962 and they have jointly executed a Will dated 22.04.1985 in favour of their daughters namely, the first respondent and her sister Saraswathi @ Saratha. On the demise of her father on 08.06.1985, his undivided half interest devolved on his two daughters viz., the first respondent and her sister Saraswathi @ Saratha. The undivided interest of Andal Ammal was later settled by way of a Gift deed in favour her daughters namely, the first respondent and Saraswathi @ Saratha. Saraswathi @ Saratha in turn settled her right in the property in favour of the first respondent making her absolute owner of the property.

4.The revision petitioner as tenant been paying rent to the first respondent and receipts were issued therefor. Later, when he stopped paying the rent, the 1st respondent / landlady has filed RCOP.No.168/04 for vacant possession on the ground of demolition and re-construction. The landlady has also filed RCOP.No.248/06 against the revision petitioner for eviction on the ground of wilful default and act of waste. While these proceedings were pending, she has filed RCOP.No.2/07 for fixation of fair rent on the ground that the rent of Rs.1,000/- per month is very low and disproportionate to the building in occupation by the tenant. The revision petitioner/tenant has filed his objection stating that the 1st respondent is not the absolute owner of the property and she has very miniscule title only to an extent of 1/8 share. Whereas the major share holder is her brother B.V.Mohanram who holds 5/8 share and he had been collecting the rent from the revision petitioner regularly and after his demise, his legal heirs were collecting the monthly rent of Rs.1000/-. No rent was paid by the revision petitioner to the first respondent nor receipt was issued to that effect.

5.Further, it was contended by the revision petitioner/tenant that the said B.V.Mohanram has entered into an agreement for sale with him in respect of the entire property and failed to perform the contract and therefore, the revision petitioner has instituted a suit in O.S.No.370 of 2003 for specific performance. Further,



he has also contended that the first respondent who has no absolute right over the property with mala fide intention to evict him has already filed R.C.O.P.No.166 of 2004 and R.C.O.P.No.248 of 2006. The worthiness of the building as stated in the eviction petition is not correct. The petition building which was constructed in the year 1920 is nearly 90 years old, and it has no value at all. The claim of the first respondent that the building is situated within the vicinity of the Bus Stand, Railway Station, Temple is incorrect and the value of the site as mentioned in the petition is exaggerated one.

6.The Rent Controller after appreciating the evidence let in by the respective parties, has held that the site value under the occupation of the revision petitioner is Rs.9,01,000/-, the value of the building is Rs.65,586/-. Fixing the annual rent at Rs.1,15,990/-, the Rent Controller has arrived at the monthly fair rent as Rs.9,665/-.

7.Agrieved by this fixation, both the landlady and the tenant have preferred appeals. The appeal preferred by the first respondent / landlady was numbered as R.C.A.No.11 of 2015 and the appeal preferred by the tenant was numbered as R.C.A.No.36 of 2015. The first respondent / landlady in her appeal contended that the site value is nearly Rs.8,000/- per sq.ft, whereas the Rent Controller has fixed the very low value for the site at the rate of Rs.2,000/- per sq.ft. Whereas the revision petitioner contended that even according to the sale deed relied by the landlady / first respondent, the value of the site in that locality is only Rs.1,040/- and the Rent Controller has fixed Rs.2,000/- per sq.ft as value of the site which is exorbitant. The Appellate Authority after re-appreciation of the evidence has confirmed the order of the Rent Controller and dismissed both the appeals.

8.Agrieved by the dismissal of his appeal, the tenant has preferred the present revision petition on the ground that the very title of the first respondent itself is under dispute. While so the Rent Controller ought not to have entertained the petition for eviction. Further, it is contended by the revision petitioner that the Rent Controller has relied upon the documents Exhibit P6 to arrive at the value of the site though it is a third party document and without examining the party to the document, the Courts below have given credence to Exhibit P6. The other ground raised in the revision petition is that the falsehood of the worthiness of the building, contending that Teak wood is used has been disproved in the earlier proceedings and the landlady has admitted that only Country wood is used in the building. While so, taking note of the age of the building and the material used for its construction, the Rent Controller ought not to have given any value for the building.



9. Yet another point submitted by the revision petitioner is that, even according to the sale deeds Exhibits P5 and P6, the site value can be only less than Rs.800/- per sq.foot and not Rs.2,000/- as determined by the Rent Controller. Pointing out the value of the land and building as shown in Exhibit P6, it is contended that the Courts below have taken the value of the entire building with land and thereby arrived at the value of the site.

10. The learned counsel for the first respondent / landlady submitted that the revision petitioner who has come into occupation of the premises as a tenant is refusing to pay the fair rent, despite facing petition for eviction on the ground of wilful default, demolition and re-construction. The property which is let out for non residential purpose is within the vicinity of the prime location in the heart of Madurai City very near to Meenakshi Amman Temple, Railway Station and Central Bus Stand. The total extent of the area in occupation of the revision petitioners is 900 sq.ft in the ground floor and 421 sq.ft in the first floor. The total area of the building is situated in 900 sq.ft of the land.

11. It is further contended by the counsel for the first respondent that the Engineer who has inspected the demised building and filed report along with valuation, has valued the cost of the site under petitioner's occupation at Rs.4,80,713.80/- and the value of the building has been assessed at Rs.1,77,429.95/-. The Courts below after due consideration of the valuation report as well as the evidence let in by the respective parties has fixed the value of the building in occupation of the revision petitioner as low as Rs.9,01,000/-. The revision petitioner who is not ready to pay even the fair rent has preferred appeal and lost the same.

12. It is also contended that the Appellate Court in fact failed to consider the escalation of land price, proximity of the building and the actual prevailing market value in the vicinity, and confirmed the order of the Rent Controller without even considering the appeal preferred by the landlord for enhancing the rent. In any event, to avoid further litigation, the landlord accepts atleast payment of rent fixed by the Courts below. But, unfortunately, the person in occupation of the premises is not paying even the admitted rent of Rs.1,000/- claiming that he is depositing the same in the proceedings pending before the Revenue Divisional Officer, thereby he has been squatting over the property without paying rent to the landlady, ever since 2004 on one premise or another. Since the tenant has not paid the rent as fixed by the Rent Controller, he is liable to be evicted.



13. In support of his submission, the learned counsel for the first respondent referred to the judgement of this Court reported in **2017-1-L.W.127** in the case of **Deepa Prasad & others vs Hafsa Zainuddin & others**, wherein, it has been held as follows:-

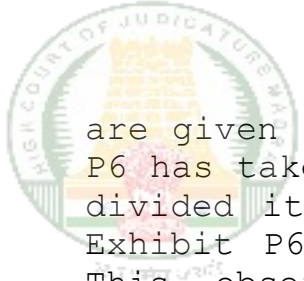
12. It is a settled position that the tenants are bound to pay the monthly rents to the landlords without any default. In the absence of any proof that Aisha Zainuddin is the landlady in respect of the petition premises, the tenants are liable to pay the rents to the respondents. Since the order passed by the Rent Controller is under challenge before the Rent Control Appellate Authority in Rent Control Appeals, filed by the tenants, I am not giving any finding with regard to the issues decided by the Courts below, since the said finding may affect the case of the tenants before the Rent Control Appellate Authority.''

14. Heard the learned counsel for the parties. The order of the Rent Controller and the Rent Control Appellate Authority perused.

15. From the cumulative assessment of the pleadings and the findings of the Court below, it is crystal clear that the revision petitioner has first questioned the title of the first respondent / landlady alleging that the brother of the first respondent is the prime share holder of the property and he has executed a sale agreement in his favour and a suit for specific performance is pending. But, this contention has been failed and held against him and in fact, the legal heirs of B.V.Mohanram have filed counter in RCOP stating that their father B.V.Mohanram has no right in the demised premises. Further, even according to the revision petitioner, the rent of Rs.1,000/- is not paid to the landlady, but he is depositing the same in the proceedings pending before the Revenue Divisional Officer.

16. From the perusal of the order passed by the Courts below, this Court finds that no documentary evidence has been produced by the revision petitioner to substantiate his plea of depositing the rent in the proceedings pending before the Revenue Divisional Officer. It is also not made clear by the learned counsel for the revision petitioner that under what provision of law, the revision petitioner is depositing the rent in the said proceedings. Since there is no evidence for such a plea, it is very clear that there is no tender of rent or attempt to tender the rent to the landlady / first respondent by the revision petitioner.

17. So far as the fixation of fair rent is concerned, it is contended by the revision petitioner that there is an error in calculating the value of the site and fixation of rent by the Courts below, for which he relies upon Exhibit P6, wherein in Annexure 1-A, the value of the site and the value of the building



are given separately. The Rent Controller while discussing Exhibit P6 has taken the cumulative value of the land and the building and divided it by the area of the site and has observed that as per Exhibit P6 - sale deed, the site value is Rs.1,040/- per sq.ft. This observation is made while appreciating the documentary evidence namely Exhibit P6. The Rent Controller as well as the Appellate Authority have independently applied their mind to all the particulars relating to the valuation of the site including the sale deed marked as Exhibit P6 which is of the year 2005. It is to be borne in mind that the value shown in the sale deed is one of the factors to be taken note of for fixation of fair rent, but it is not the only factor. In this case, the Rent Controller though while arriving at the value of the site under Exhibit P6 has erred, it is not the only material taken into consideration by the Court.

18. First of all, the Court itself has pointed out that the sale deed is of the year 2005 and the present petition for fixation of fair rent has been filed in the year 2007. Exhibits C1 and C2 namely, the Commissioner's report and Engineer's report, the ocular evidence of PW1 to PW4 have been taken note of by the Courts below and for the total plinth area of 900 sq.ft in the ground floor and 421 sq.ft in the first floor, the Valuer has fixed the site value as Rs.726/- per sq.ft. The other space appurtenant to the first floor has not been mentioned in the Engineer's report. The Courts below have taken all these aspects and has fixed Rs.9,01,000/- as value of the building. Though the first respondent / landlady has filed appeal for enhancing the rent, since she has not filed any revision petition against the dismissal of her appeal, this Court is not inclined to interfere in the rent fixed by the Courts below.

19. Section 4 of the Tamil Nadu Buildings (Lease & Rent Control) Act has clearly stated the factors to be taken note of in fixation of the fair rent. One of the important factors to be taken note of while fixing the fair rent is the market value prevailing on the date of petition and while calculating the fair rent, not only the area on which the building is constructed, but also the land appurtenant to it subject to the limit prescribed in statute and other structures appurtenant to the building have to be taken note of. The revision petitioner herein citing reasons which are ex facie untenable, has successfully avoiding the payment of any rent leave alone the fair rent.

20. This Court finds that for the total plinth area of nearly 1,321 sq.ft of commercial space in the heart of Madurai city, the rent fixed at the rate of Rs.9,665/- per month is fair and in consonance with Exhibit P6 as well as Exhibit C2.



21. Therefore, this Court finds no error in the orders passed by the Rent Controller as well as the Rent Control Appellate Authority. Hence, this Civil Revision Petition deserves no merit for consideration. Accordingly, it is dismissed as devoid of merits. No costs. The revision petitioner is directed to tender the entire rental arrears at the rate of Rs.9,665/- per month within a period of three months, failing which, the first respondent / landlady is entitled to resort to the legal remedy for evicting the revision petitioner. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

1) The Principal Sub-ordinate Judge,
cum Rent Control Appellate Authority,
Sub-ordinate Judge,
Madurai.

2) The Principal District Munsif cum Rent Controller,
Madurai.

+1 CC to Mr.T.R.SUBRAMANIAN, Advocate, SR No. 55888

+1 CC to MR.P.V.SURENDRAN, Advocate, SR No. 55887

NBI

PSM/MMS/19.05.2017/7P/5C

order made in
CRP (NPD) (MD) No.885 of 2017
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