

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD) No.10 of 2015

Judgment reserved on 23.01.2018	Judgment pronounced on 11.04.2018
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1.M/s.Quality Packs and Prints

2.Mr.Sapan Gupa

3.Mr.Prateek Gupta

...

Petitioners

Vs

Mrs.Prabhanath

...

Respondent

Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control Act) 1960 against the fair and decretal order dated 24.03.2014 of the Subordinate Judge, Poonamalle / Rent Control Appellate Authority made in RCA No.24 of 2012 modifying the fair and decretal order dated 24.11.2009 of the District Munsif / Rent Controller, Ambattur made in RCOP No.38 of 2006.

For Petitioners : Mr.Shah & Shah

For Respondent : Mr.P.Rathanavel

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 24.03.2014 of the Subordinate Judge, Poonamalle / Rent Control Appellate Authority made in RCA No.24 of 2012 modifying the fair and decreetal order dated 24.11.2009 of the District Munsif / Rent Controller, Ambattur made in RCOP No.38 of 2006.

2. The petitioners are the tenant and the respondent is the landlady in RCOP No.38 of 2006 filed before District Munsif Court, Ambattur. The respondent filed the above RCOP against the petitioner for fixation of fair rent at Rs.1,01,200/- per month in respect of petition premises. According to the respondent, she is the absolute owner of the petition premises. The Tamil Nadu Small Industries Development Corporation allotted the industrial shed to Ms.Kohinoor Engineering (P) Ltd. and on payment of their dues towards consideration of the site and the superstructure, conveyed the Industrial shed in favour of M/s.Kohinoor Engineering (P) Ltd. in and by a deed of sale dated 01.06.1990 registered as Document No.4216 of 1990. The petitioner was inducted as tenant by the said M/s.Kohinoor Engineering (P) Ltd. on a monthly rent of Rs.7500/- for a period of 11 months from September 1995 excluding

electricity consumption charges. The said license expired in the month of August 1996 automatically and was not renewed.

2(a) The respondent is carrying on business as manufacturers of corrugated boxes and is having a huge turnout and lucrative market for the products. The said Industrial shed was purchased by the respondent by way of deed of sale dated 11.07.2003. The petitioner, at the time of taking the premises on licence was represented by one Uday Ravishankar and subsequent to his retirement, the first petitioner firm was reconstituted with petitioners 2 and 3. The respondent subsequent to her acquiring the Industrial Shed made several requests to the petitioners to vacate and deliver the vacant possession as she required the same for the purpose of expanding her production and development of the business. The respondent finally issued a notice dated 12.03.2006 terminating the licence from the month ending 31.03.2006 calling upon the petitioner to vacate and deliver the vacant possession as on 01.04.2006.

2(b) According to the respondent, the petition premises is located at II Avenue, wherein popular industries like Ambattur clothing, Kun Hyundai, HCL computers and important landmarks like

Banks, Public offices, Clubs, Hospital, Restaurants and commercial complexes are located. The road on which the petition premises is located is a prime arterial road with more than 20 bus services and close to world famous industries such as TVS Group of companies and inner ring and outer ring road. The immediate interior area is full of residential houses occupied by cream of affluent citizens and public personalities. The petition premises is provided with basic amenities of High Tension Electricity, water supply, drainage and sewer connection. The superstructure has only a ground floor and the age of the superstructure is 32 years. Apart from the basic amenities, the petition premises has an overhead water tank and wash rooms. The present market value of the site is Rs.35,00,000/- per 2400 sq.ft. The petitioners, without any permission or authority from the respondent and without obtaining any planning permission had put up construction at the petition premises. Hence prayed for fixation of fair rent at Rs.1,01,200/- per month.

3. The petitioners filed counter and denied all the averments made by the respondent. According to the petitioners, the name of the companies mentioned in the petition do not have any relation to the petition premises. It is false to state that the petition premises

is close to Bank, Hospitals, etc. The arterial road, inner ring road and the outer ring road are alleged only to pose an exaggerated picture. The allegation that the interior area is full of residential houses occupied by cream of affluent citizens and public personalities is false. The allegation that petition premises is provided with basic amenities of High Tension Electricity, water supply, drainage and sewer connection is false. The respondent's own sale deed would reveal that there is no water supply, drainage and sewerage connection.

3(a) The annexure 1-A appended to the sale deed in favour of the respondent would speak of the area of construction and the absence of the water tank and wash rooms. The actual construction, if any, put up by the respondent or her predecessor would be seen on perusal of the sanctioned plan and also the municipal assessment tax paid in respect of the petition premises. The allegation that the cost of land is Rs.35,00,000/- per ground is denied as false and baseless. The SIDCO authorities if summoned will speak of the cost of the land. The superstructure is of mud and lime mortar and the type of structure as 'A' type as per PWD recommendation is nothing but assumption. Three phase electricity supply is obtained at the cost and deposit of the petitioners. The MMWSS board has not

given any connection. The age of the building is more than 40 years and it is only lite-roof. There is no wash room with ceramic tiles. The petition premises is submerged to the road level. The thickness of the walls are only 4 ½ inches unplastered. The build-up area is around 600 sq.ft. The cost worked at Rs.650/- does not apply to the petition premises. Electricity supply was provided by the petitioner and hence 5% towards amenities cannot be added. The depreciation should be 40% on different working. Addition of 5% for industrial flooring and construction cannot be applied. Hence, the petition is liable to be dismissed.

4. Before the learned Rent Controller, the respondent examined herself as PW1 and one Poornachandran was examined as PW2. Six documents were marked as Exs.P1 to P6. The second petitioner examined himself as RW1 and one document was marked as Ex.R1. The learned Rent Controller, considering the pleadings, oral and documentary evidence, type, age of the building, depreciation, amenities, plinth area, cost of construction, market value and schedule I amenities, fixed the fair rent at Rs.1,29,383/- per month.

5. Against the said order dated 24.11.2009 made in RCOP No.38 of 2006, the petitioners filed RCA No.24 of 2012 before the Subordinate Judge, Poonamallee. Before the learned Appellate Authority, the petitioners were permitted to examine further witness and mark further documents. The petitioners examined their Engineer as RW2 and marked documents. 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 plinth area and market value. Based on these modifications, the learned Appellate Authority fixed the fair rent at Rs.98,606/- per month.

6. Against the said fair and decretal order dated 24.03.2014 made in RCA No.24 of 2012 modifying the fair and decretal order dated 24.11.2009 of the Rent Controller made in RCOP No.38 of 2006, the present Civil Revision Petition is filed by the petitioners.

7. The learned counsel for the petitioners contended that the trial court erred in fixing the fair rent at Rs.1,29,383/- as against the contractual rent of Rs.7,500/-, almost 1.625% increase which is totally against principles of natural justice. Both the courts below erred in coming to the conclusion that the petition property is Type

– I building and overlooked the fact that the petition premises is a factory shed which is built up of ACC Sheet and as such it cannot be termed as Type I building. The Appellate Authority, as per Ex.R4 sale deed of the respondent rightly came to the conclusion that the building is partly mud motar and partly cement mortar and teak wood has not used in the said building. Having come to such a conclusion, the Appellate Authority erred in not modifying the type of the building and describing the same as Type II building. Both the courts below erred in calculating the depreciation at 1% as against 1.5% a prescribed under the Act for Type II building. Both the courts below erred in not correctly applying the PWD table while calculating the cost of the building. Both the courts below totally failed to take into consideration the fact that the respondent, while filing eviction petition on the ground of demolition and reconstruction has described the petition property as old and dilapidated and while filing fair rent petition, the very same building has been described as class I Type I building. In spite of marking of the order copies in RCOP and RCA as exhibits, the Appellate Authority ought to have taken judicial notice of the said fact supported under Section 74 of the Indian Evidence Act and ought to have taken the building as old and dilapidated. Both the courts below erred in taking the built-up plinth area as contended

by the engineer of the respondent.

7(a) Both the courts below failed to properly appreciate Ex.R2, purchase deed of the respondent in which the total constructed area is described as 2000 sq.ft. in Annexure 1A, that too as ACC Sheet roof and only in the ground floor. Both the courts below erred in coming to the conclusion that in the first floor there is a small room constructed about 250 sq.ft. The said reasoning of the courts below is contrary to Ex.R4 which clearly describes that property consists of only ground floor which was purchased by the respondent. The Appellate Authority also failed to take note of the fact that after eviction was ordered on the ground of demolition and reconstruction, the petitioner handed over the tenancy portion to the respondent. The learned counsel for the petitioner further submitted that both the courts below have totally adopted the landlord's engineer's report in toto without interference.

7(b) The learned counsel for the petitioners contended that open space is more than built up area and in view of the same, 50% of the built up area must be added to the built up area for arriving at the value of the building. 50% of the open space has to be treated as amenities. Court below erred in taking into consideration

Rs.750/- per sq.ft. without any basis as PWD table was not produced before the Court.

7(c) The learned counsel for the petitioners filed memo of calculation stating that fair rent will be Rs.15,374/- per month.

7(d) The learned counsel for the petitioners relied on the following judgments, in support of his contention -

(i) 2011 (4) CTC 8 [P.Arjunan v. Universal Fertilizer Corporation]

35. As per the Full Bench decision, if there is any vacant land appurtenant to such building, and its extent is in excess of the built up extent, carving out of it fifty percent of the built up extent, to be added to the built up extent for calculating the market value of the site, the residue of the vacant land has to be treated as amenity. But the authorities below have not followed the aforesaid procedure. The fixation of fair rent for the building is defined in the Act. Fair rent has to be determined as per the formula and procedure as prescribed under the Act. Since the formula and procedure adopted by the authorities below is not correct, it has to be refixed as per the formula and procedure as prescribed.

44. The total extent of the petition premises is 3940 sq.ft. and the area occupied by the building is 1091 sq.ft. and hence, the extent of the vacant site comes to 2849 sq.ft.

45. As per the proviso to Section 4(4) of the Act, if the vacant space is more than the built up area, then 50% of the built up area should be added with the built up area for arriving at the value of the site. Hence, the extent of the site over which the building stands has to be taken as 1091 sq.ft. + 545.5 sq.ft. = 1636.5 sq.ft. If the value of the land is taken as Rs.153 per sq.ft. then the value of the site comes to Rs.2,50,384.50. After deducting 50% of the area occupied by the building, i.e. 545.5 sq.ft. from the total vacant site, namely, 2849 sq.ft. the vacant space comes to 2303.5 sq.ft. and if it is valued at the rate of Rs.153 per sq.ft. it comes to Rs.3,52,435.50.

46. As per the proviso to Section 4(4) of the Act, remaining vacant space should be treated as schedule I amenity. If it is taken as schedule I amenity, 25% should be allowed for non-residential building. So, 25% of 3,52,435.50 comes to Rs.88,108/-.

(ii) 2012 (4) CTC 889 [V.S.Kanodia v. A.L.Muthu]

11. In this case, the main grievance of the appellant-tenant is that the valuation of land as was determined in respect of 1st property @ Rs.25/- lakhs per ground but same has not been taken into consideration for determination of the fair rent of the petition building.

15..... In the cases in hand, it was not open to the appellate authority to ignore the market value of the adjacent land already determined on the ground of pendency of an appeal. The High Court failed to appreciate the aforesaid fact though it was a fit case for the High Court to interfere under Article 227 of the Constitution of India.

(iii) 2011 (1) TNLJ (CIVIL) 20 [New Era Engineering Company Ghayaz Hashim v. New Era Engg. Company]

16. In a judgment of Hon'ble Apex court reported in (2002) 3 SCC 688 in between *Special Land Acquisition*

Officer vs. Mohd. Hanif Sahib Bawa Sahib, it has been categorically held as follows:

"After due deliberations on the contentions raised by the counsel for the parties, we are of the opinion that on the given facts and circumstances of the present case the appreciation of 10% per annum given for the subsequent years is neither excessive nor unreasonable so as to call for our interference. Counsel for the parties did not dispute that after the submersion of the old township area of Bagalkot in water, a new township was being built up. For this lot of developmental activities are taking place.

This is evident from the fact that number of acquisitions have been made for the development of the new township of Bagalkot. In this order, reference has been made to the earlier acquisition of 1979. In Civil Appeal Nos. 1552- 54 of 2000 as well, acquisition of the land was made for formation of a link road to the new town. We agree with the counsel for the appellant that the reference Court wrongly valued the land at Rs.6.85 per sq.ft for the year 1985 taking the base price of the land at Rs.3/- per sq.ft for the year 1979 on an appreciation of 10% per annum for every subsequent year. The appreciation of value of land at 10% on the base price of Rs. 3/- per sq.ft would increase the value of the land @ 0.30 paise per year. 0.30 paise multiplied by 7 would come to Rs.2.10 paise. If the appreciation in value of the land for the next seven years is taken at Rs.2.10 paise and added to the base value of Rs.3/-, the market value of the land under acquisition in the year 1985 would come to Rs.5.10 paise. We agree with the counsel for the respondents that deduction on account of development charges from the price fixed cannot be made as the base price of Rs.3/- had been determined in the earlier cases after taking into account the development charges."

According to the dictum laid down by the Honb'le Apex court, whenever there is no current document to show the market value of any property lying with the municipal area and if earlier document is available to show such a value adding 10% of appreciation to the said value annum will not be

harmful. This property is admittedly situated within the corporation area and in a prime locality near Madras High Court. Therefore, there cannot be any hesitation to apply the said ratio as enunciated in the judgment of Hon'ble Apex court. When we calculate the years passed from the date of the said sale deed till the date of filing of the petition, it is 5= years. Therefore, a appreciation of 55% has to be added to the value so as to find the value of the said suit property as on 2001. When it is applied on the value of with Rs.45,60,000/- the ascertained total value of the property as on 2001 would be at Rs.70,68,000/-. But the case of the petitioner is that the value of the vacant site would be at Rs.70,00,000/- only. Therefore, the said market value Rs.70,00,000/- which is lesser than the ascertained value can be adopted for calculating the fair rent .

(iv) 2007 (3) CTC 668 [A.V.Gopalakrishnan v. O.L.V.R. Paramanandam]

6. I have considered the rival contentions made by the learned counsel for the petitioner as well as the learned counsel for the respondent and also perused the materials available on record. At the outset, I have to state that the Judgment of a Full Bench of this Court reported in 2006 (2) CTC 433 (cited supra), wherein, in paragraph 18 this Court has held as follows:-

"Therefore the conclusions are as follows:

(1) The guideline value, contained in the Basic Valuation Register, maintained by the Revenue Department or the Municipality for the purpose of collecting stamp duty, has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for registration.

(2) 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 the market value. In this case, the guideline value alone has been considered, which, in our view, is illegal.

(3) The Rent Controller and the Rent Control Appellate Authority, in the present case, are not right in relying upon the guideline value, maintained by the Revenue Department, for arriving at a fair rent, to be fixed under Section 4 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960."

9. The learned counsel for the respondent has further contended that there is enough oral evidence on the side of the landlord to prove the actual market value of the property and there is also the report of the Engineer wherein, he has fixed the market value. I have perused the report of the Engineer wherein he has stated that the value of the building is Rs.61,468/- and the value of the site is Rs.2,07,600/-. To make his opinion of the expert admissible in evidence, first of all he should brought under the definition of an expert as required under Section 45 of the Indian Evidence Act. Being an Engineer, of course, he is an expert to value the cost of building and to offer his opinion, which is admissible under Section 45 of the Indian Evidence Act. But, he cannot be called as an expert to offer his opinion in respect of the market value of the site and therefore, his opinion contained in the report cannot be considered for any purpose as an evidence and it is not admissible under Section 45 of the Evidence Act.

(v) 2007 LW (1) 700 [Central Bank of India v. A.Koteeswaran, K.Kala]

9. Firstly, it is necessary to point out the serious error committed by the Courts below. The Respondents purchased the premises under Ex. P-3 and P-4, each Sale Deed [dated 03.04.1991] for Rs. 3,47,000/- each making a total of Rs. 6,94,000/-. Land value = Rs. 1,76,778/-, building value = Rs. 1,47,164/- with a lane valued at Rs. 23,058/-. The value of the site - 3,864 sq. ft. was Rs. 3,53,556/-. After the purchase, the Respondents accepted Ex. R-4 lease deed under Notarized affidavits executed by them. Value of the site is Rs. 3,53,556/-.

15. The subject matter of the controversy narrows down to the value of the site alone. As noted earlier, under Exs. P-3 and P-4 [dated 3.4.1991], Sale Deeds, 46' x 84' = 3,684 sq. ft., was purchased by the Respondents under Exs. P-3 and P-4 [dated 3.4.1991] for Rs. 3,53,556/-. In 1991, the Petitioners have thus purchased the property at sq. ft. valued at Rs. 91.50/-.

25. As noted earlier, the Respondents themselves purchased the site in 1991, per sq. ft. at Rs. 91.50. Admittedly, in November 1995, the Respondents/landlords issued Ex. R-3 - Notice demanding a rent of Rs. 16,800/-. The Courts below committed serious error in overlooking these aspects. Taking into consideration the location of the demised premises and that it is connected to MG Road through a narrow lane, Rs. 724 per sq. ft., which is mainly based on the guideline value, cannot form basis for calculation of the market value. In consideration of the location of the site and the value for which the Respondents have purchased the property in 1991, it would be appropriate to fix the value of the site at Rs. 300 per sq. ft. and the total value of the site is thus fixed at Rs. 11,59,200/- [Rs. 300 x 3684]

(vi) 2004 (2) SCC 283 [Krishi utpadan Mandi Samiti, Sahaswan v. Bipin Kumar]

7. It has been held by this Court in the case of *Jawajee Nagnatham vs. Revenue Divisional Officer, Adilabad, A. P. and Ors.* [1994 (4) SCC 595] that market value under *Section 23* of the Land Acquisition Act, 1894 cannot be fixed on the basis of a basic valuation register maintained by the registering authority for collection of stamp duty. Therefore, the reliance by the Reference Court on the values of land fixed by the District Magistrate for stamp duty purposes is clearly erroneous. For the purposes of *Land Acquisition Act* the market value must be determined on the basis of sale deeds of comparable lands. In this case the Land Acquisition Officer had taken note of one such sale deed where the price was Rs.15.37 per sq. yard. The Reference Court also had before it the sale deed by which the respondent purchased a portion of the acquired land. As stated above the sale deed was for Rs.15.40 per sq. yard. *Section 92* of the Evidence Act precludes a party from leading evidence contrary to the

terms of a written document. It was, therefore, not open to the respondent to urge that, even though his sale deed showed a price Rs. 15.40 per sq. yard the real market value was Rs.120 per sq. yard. To permit a party to so urge would be to give a premium to dishonesty. Parties who undervalue their documents, for purpose of payment of stamp duty, cannot be allowed to then claim that their own documents does not reflect the correct market value. Therefore as per sale instances of the comparable lands the market value, on dates of sales, were in the region of Rs.15.37 to Rs.15.40 per sq. yard.

8. However there is evidence of high potentiality. The increase of 15% given by the High Court cannot therefore be said to be unreasonable. Of course, the 15% increase has to be on Rs.15.40 which is the figure shown in the sale deed. It cannot be on Rs.120 as wrongly taken by the High Court. The High Court also erred in considering only three years increase whereas in fact there is four years difference between the respondent's sale deed and the acquisition proceedings. Thus taking an increase of 60% over the price of Rs.15.40 per sq. yard the value comes to Rs.24.64 per sq. yard. We accordingly set aside the order of the Reference Court and the High Court and fix value at the rate of Rs.24.64 per sq. yard. The respondent will also to be entitled to solatium and other statutory benefits under the [Land Acquisition Act, 1894](#). The Appeal stands disposed of accordingly. There will be no order as to cost.

(vii) 1984 AIR SC 1570 [Chhotelal Pyarelal v. Shikharchand]

2. Now, there can be no doubt that since the Code of Civil Procedure does not apply to proceedings under the HRC Order, no application for eviction can be maintained against a firm in the firm name. The firm is merely a compendious name for the partners constituting it and it is only by virtue of the provisions of Order 30 of the Code of Civil Procedure that a firm can sue and be sued in its own name without the partners being impleaded co-nominee. It is therefore clear that the firm of M/s, Chhotelal Pyarelal could not be sued in the firm name by the respondent in so far as the application for eviction under the HRC Order was concerned. But we agree

with the Division Bench of the High Court that this cannot by itself result in the dismissal of the application. It would be merely a case of misdescription of the respondents to the application and this misdescription can be corrected at any stage of the proceedings. There can be no doubt that the partners of the firm are before the Court though in a wrong name.

8. Per contra, the learned counsel for the respondent contended that originally, the Trial Court fixed the market value as Rs.30 lakhs by relying upon a document dated 23.03.2007 but the Appellate Authority, considering the fact that the said document is one year subsequent to the filing of the RCOP, reduced the same to Rs.25 lakhs which is reasonable. Similarly, the plinth area according to the respondent is 8453 sq.ft. Ex.P3, engineer's report reveals that the constructed plinth area in the ground floor is 2045 sq.ft. and the constructed plinth area in the first floor is 265 sq.ft. No engineer has been examined on the side of the petitioners so as to disprove the said Ex.P3. The learned counsel for the respondent filed memo of calculation stating that the fair rent will be Rs.98,606/- per month, as fixed by the learned Appellate Authority.

8(a) The learned counsel for the respondent relied on the following judgments, in support of his contention -

(i) 2006 (2) MLJ 295 (FB) [M/s.Sakthi and Company thro'. Its Partner Veeranan v. Shree Desigachary]

18. Therefore, our conclusions are as follows :

(1) The guideline value, contained in the Basic Valuation Register, maintained by the Revenue Department or the Municipality for the purpose of collecting stamp duty, has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for registration.

(2) 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 the market value. In this case, the guideline value alone has been considered, which, in our view, is illegal.

(3) The Rent Controller and the Rent Control Appellate Authority, in the present case, are not right in relying upon the guideline value, maintained by the Revenue Department, for arriving at a fair rent, to be fixed under Section 4 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960.

(ii) 1998 (1) CTC 674 [The South India Corporation Agencies Limited v. Chandrakanth]

6. The further submission of the learned counsel appearing for the petitioner is that the landlords have filed petition to evict the tenant on the ground that the building in question is in, dilapidated condition and it require demolition and reconstruction, and so the building has no value, and thereby the question of fixing the value for the building in question would not arise. But, there is no material available before this Court to accept the case of the learned counsel appearing for the petitioner that the building in question is in a dilapidated condition. In the present

case, the authorities below fixed the cost of construction on the basis of the rate prescribed by the P.W.D. Section 4 of the Act does not restrict the fixation of fair rent, on the basis of the condition of the building. Only in appropriate cases, taking into consideration of the nature of the construction of the building, the authorities can allow, the amount not exceeding 30% for the construction; otherwise, as contemplated under Sections 4 and 5 of the Act, the cost of construction of the building shall be determined with due regard to the rates adopted by the P.W.D. for the constructed area concerned. In the absence of any restriction in the Statute regarding the fixation of fair rent on the basis of condition of the building, the authorities below are correct in arriving at the cost of construction, adopting the rates of P.W.D. as contemplated under the Statute.

9. Heard the learned counsel appearing for the petitioners as well as respondent and perused the materials available on record.

10. The learned counsel for the petitioners disputed the type of building, land value, plinth area and cost of construction.

10(a) As far as age of the building is concerned, the court below fixed the age of the building as 35 years taking into consideration the report of the engineer. The petitioners have not produced any evidence to show that age of the building is 40 years, as alleged by them. In view of the same, there is no infirmity in the conclusion of the Courts below that the age of the building is 35 years.

10(b) As far as type of the building is concerned, the

petitioners' engineer has stated that the superstructure is supported by RCC columns with walls built up with bricks and cement mortar. The petitioners, in the counter statement have alleged that the building is made up of mud and lime mortar and the respondent has cemented the floor when the same was let out to them, as it was mud flooring. The petitioners have not produced any evidence to substantiate their contention. But the learned counsel for the petitioners referred to Para 9 of the petition wherein the respondent has stated that country wood and aluminum is used in joinery. Admittedly, in the building no teak wood is used. In view of the admission by the respondent/landlady, the contention of the learned counsel for the petitioners that type of the building is Type II and not Type I has considerable force. Except the above said contention, the findings of the Courts below with regard to type of the building and depreciation is modified as Type II building and depreciation is fixed at 1.5% instead of depreciation at 1% for Type I building.

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10(c) As far as marked value of the land is concerned, before the learned Judge, the respondent examined PW2, an engineer and marked Exs.P1 & P2 valuation report, Ex.P6 – sale deed dated 22.03.2007. As per the sale deed, PW2 Engineer valued the

property at Rs.30 lakhs and filed two reports Exs.P1 & P2. The learned Rent Controller has accepted the said reports on the ground that the petitioners did not dispute the same. On the other hand, the learned Appellate Authority having permitted the petitioners to let in further evidence and marked further documents, failed to consider the evidence let in by the petitioners in RCA. The petitioners marked Ex.R4, sale deed which is of the year 2003. The petitioners' engineer gave a report on the said document that market value of the site is Rs.8,44,256/-. According to the learned counsel for the petitioners, the respondent has purchased the petition premises by the said sale deed and it reflects the correct market value as on the date. The petitioners' engineer arrived at the said value by adding 10% per year on the value of Rs.6,34,302/- mentioned in the sale deed. The learned counsel for the petitioners also pointed out that as per Ex.P3 - Engineer's report, the land value per ground is Rs.13,70,399/-. In spite of the same, without any basis, PW2 has given market value as Rs.30 lakhs which was accepted by the learned Rent Controller and modified by the learned Appellate Authority as Rs.25 lakhs.

10(d) The contention of the learned counsel for the respondent that Ex.R4, sale deed which is of the year 2003 by which the respondent/landlady purchased the land at Rs.6,34,302/- cannot be taken as basis to arrive at the market value in the year 2006 has considerable force. Taking into consideration that RCOP was filed in the year 2006 and enormous increase in the land value for industrial purpose and locational advantages of the petition premises, a sum of Rs.15 lakhs per ground will be reasonable and proper market value of the petition premises in the year 2006.

10(e) For the above reasons, the judgment of the learned Appellate Authority with regard to the land value is modified as Rs.15 lakhs per ground.

10(f) As far as construction in the first floor is concerned, PW2 Engineer of the petitioners himself admitted that there is room in the first floor and it was open at the time of inspection and he has not taken the same into consideration to arrive at the value of the building. In view of such admission, the contention of the learned counsel for the petitioners that there is no room in the first floor is without merits. As rightly pointed out by the Courts below, it is not the case of the petitioners that room in the first floor is kept under

lock and key or it was let out to third parties.

10(g) As far as the extent of land is concerned, respondent purchased the petition premises by Ex.A4. The extent of land mentioned therein is 7189 sq.ft. In Ex.A3 - report, the extent of land is mentioned as 8453 sq.ft. The learned Rent Controller, without considering Ex.A4, accepted Ex.A3 and fixed the extent of land as 8453 sq.ft. The learned Appellate Judge, considering both Exs.A3 & A4, held that extent of land is only 7189 sq.ft.. The said finding is finding of fact based on documents and the same is confirmed.

10(h) As far as open space is concerned, the Courts below have taken the same as set back area and fixed Rs.150/- per sq.ft. for 4396 sq.ft. There is no error in the said finding and hence the same is confirmed.

11. In view of the above facts, the fair rent fixed by the Courts below is modified as follows -

Ground Floor ACC Roofing
2045 sq.ft. @ Rs.750/- ... Rs.15,33,750.00

Rear side room
516.37 sq.ft. @ Rs.283/- ... Rs. 1,46,132.00

Office room
565.06 sq.ft. @ Rs.393/- ... Rs. 2,22,068.00

Toilet area
250 sq.ft. @ Rs.283/- ... Rs. 70,750.00

Set back area
4396 sq.ft. @ Rs.150/- ... Rs. 59,400.00

First floor plinth area
265 sq.ft. @ Rs.283/- ... Rs. 74,995.00

Rs.27,07,095.00

Basic Amenities @ 5% ... Rs. 1,35,354.75

Rs.28,42,449.75

Depreciation @ 1.5%
[0.58920723 x 28,42,449.75] Rs. 16,74,791.94

Depreciated value ... Rs.16,74,792/-

Land value :

7189 sq.ft. x Rs.15,00,000/- Rs.44,93,125/-
2400 sq.ft.

Total cost of the land & building Rs.61,67,917/-

Fair rent for non-residential building @ 12% per annum ... Rs.6167917 x (12/100)

Fair rent for one year ... Rs.7,40,150.04

Fair rent per month [7,40,150/12] ... Rs.61,679.17

Rounded off to ... Rs.61,679/-

Thus, the fair rent is fixed at Rs.61,679/- 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.61,679/- payable from the date of filing of the petition. No costs.

सत्यमेव जयते

11.04.2018

rg

Index : Yes

Speaking/Non-speaking order

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To

1.The Subordinate Judge,
Poonamalle.

2.The District Munsif,
Ambattur.

V.M.VELUMANI, J.

rgr



**Pre-delivery order in
C.R.P.(NPD) No.10 of 2015**

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11.04.2018