IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.R.P.(NPD).No.2507 of 2011

1. Maragathammai
2. Shanmugasundaram
3. S.Balasubramanian ... Petitioners

Vs

1. P.Stanes @ Stanis Laus
2. S.Jacinthamary ... Respondents

Prayer: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, against the order of the Rent Control Appellate Authority First Additional Subordinate Judge, Coimbatore dated 22.10.2007 in R.C.A.No.145 of 2005 preferred against the order of the Rent Controller (Principal District Munsif) Coimbatore dated 24.03.2005 in R.C.O.P.No.111 of 1998.

For Petitioners : T.M.Hariharan
For Respondents : No Appearance

ORDER

The revision petitioners are the landlords of building bearing Door No.33, Chellappa Gounder Street, Kattur, Ramnagar Post, Coimbatore. The petitioner has moved the Rent Controller (Principal District Munsif), Coimbatore in R.C.O.P.No.111 of 1998, for fixation of fair rent under Section 4 of the Tamil Nadu Building (Lease & Rent Control) Act, 1960. The brief facts that are necessary for the current purpose are as below :

- Both the Rent Controller as well as the Rent Control Appellate Authority have reckoned the site area at 1,359 sq.ft, being the plinth area of 906 sq.ft. and 50% being the permissible appurtenant vacant land for determining the fair rent. Thereafter, for determining the market value, the petitioner has produced Ext.A5 sale deed that pertains to another property having an extent of 949 sq.ft. sold at a market value of Rs.8,71,059. Based on this the Rent Controller fixed the market value at Rs.917.87/- per sq.ft. and rounded it off to Rs.920/- per sq.ft. and accordingly applying this market value of Rs.920/- to the value of the petitioner's property having an extent of 1,359 sq.ft., it arrived at the market value of the said property at Rs.12,50,280/- and rounded it off to Rs.12,50,250/- . The value of the superstructure is reckoned at Rs.1,00,000/-, which makes the total value of the property at Rs.13,50,250/-. Calculating the annual return at 9% on this value, the Rent Controller had arrived at the annual rental value at Rs.1,21,522/- and had determined the monthly fair rent payable for the property of the petitioner at Rs.10,126/-.

- Aggrieved by the order of the Rent Controller, the respondents/tenants moved the Rent Control Appellate Authority in R.C.A.No.145 of 2005. The Rent Control Appellate Authority has reduced the fair rent payable to Rs.3,800/- per month, fixing the market value of the site at Rs.300/- per sq.ft. In arriving at this figure, the Rent Control Appellate Authority has relied on Exts.R1 and R2, the two sale deeds filed by the tenants before the Appellate Authority.

2. The learned counsel for the revision petitioners now contends :

a) That the Rent Control Appellate Authority has erred in relying on Exts.R1 and R2, without granting the petitioners an opportunity of establishing that the property covered under Exts.R1 & R2 are not located in the same locality.

b) That between the Ext.A5, sale deed, which the petitioners/landlords has produced and Exts.R1 and R2 which the tenants/respondents has produced, Ext.A5 ought to be preferred, inasmuch as the property covered under Ext.A5 is located in the very street in which the petitioners' property too is located. At any rate, the Rent Control Appellate Authority has not given any specific reason as to why he preferred Exts.R1 & R2 to Ext.A5.

c) Turning to the reasoning of the Rent Control Appellate Authority, the said Appellate Authority had fallen in error in construing that the total extent covered under Exts.R1 and R2 respectively deal with half of the total extent of 1,544 sq.ft. In other words, the extent covered under each of the sale deed is 772 sq.ft. Only, and in this 772 sq.ft., is sold for consideration of Rs.4,50,000/- in each of the two sale deeds namely Exts.R1 and R2. The Rent Control Appellate Authority, even if his preference to rely on Exts.R1 and R2 is presumed to have been correctly made, yet in the matter of computing the market value based on them, should have worked it on the basis of the total extent of the property at 1,544 sq.ft. for a total value of Rs.9,00,000/-, or 772 sq.ft. for a total value of Rs.4,50,000/-. In stead it has taken 1,544 sq.ft. for a total consideration of Rs.4,50,000/-. This is an error apparent on the face of the very materials placed before the Court.

3. This case came up for hearing on 10.04.2018 and there was no representation for the respondents. Since the respondents did not appear before this Court, the case was posted today for hearing. Even today there is no representation for the respondents.

4. Ext.A-5 sale deed is dated 19.01.1998. The R.C.O.P. was filed on 23.04.1998. The property covered in Ext.A-5 is situated in Chellappa

Gounder Street wherein the property of the petitioners is located. The sale deeds in Exts.R1 and R2 are dated 06.05.1998, and the property therein, though located in the same locality, still are not situated in the same street where the petitioner's property is located.

5.1 On perusing the papers, this Court finds merit in the submission of the learned counsel for the petitioners. When Ext.A5, Exts.R1 and R2 were taken together and are compared, it is seen that Ext.A5 is dated some three months prior to the filing of the petition for fixing fair rent, whereas Exts.R1 and R2 are filed within few weeks after the filing of R.C.O.P. Therefore, in point of time there is not much difference between the two set of documents. However, the property covered under Ext.A-5 is located in the same street whereas some properties covered under Exts.R1 and R2 are not in the same street. This Court therefore holds that Rent Control Appellate's Authority's preference for Exts.R-1 and R-2 does not appear to be appropriate. The Order is devoid of any reasoning justifying his preference either.

5.2 There is yet another aspect in that both Exts.R-1 and R-2 were produced by the tenant/respondents only at the appellate stage and not before the Rent Controller. Therefore, the Appellate Authority did not have the benefit of a proper enquiry regarding the merit of Exts.R1 and R2.

6. This apart, there is an error which the Rent Control Appellate Authority has

committed in treating the total extent of the property involved in Exts.R-1 and R-2 but not the actual extent conveyed thereunder. As rightly indicated by the counsel for the revision petitioners, the total extent of the property is 1,544 sq.ft., but in both Exs.R-1 and R-2, only half of this extent has been sold for a consideration of Rs.4,50,000/- each. Hence, even if Exts.R-1 and R-2 are to be relied on still fair rent payable would be Rs.6,692.25 per mensum. It therefore has to be held that the reasoning of the Rent Controller Appellate Authority is founded on an erroneous factual premise.

7. For the reason stated, this Court holds that Ext.A5 has to be relied on. If so, then necessarily this Court has to restore the order of the Rent Controller fixing the fair rent at Rs.10,126/- per month.

8. In conclusion, this revision petition is allowed and the order of the Rent Control Appellate Authority in R.C.A.No.145 of 2005 dated 22.10.2007 is set aside and the order of the Rent Controller in R.C.O.P.No.111 of 1998 dated 24.03.2005 is restored. No costs.

11.04.2018

Index:Yes/No
ssn

To

1. The Rent Control Appellate Authority,
   First Additional Subordinate Judge,
   Coimbatore.

2. The Rent Controller,
   Principal District Munsif,
   Coimbatore.

N.SESHASAYEE, J.,
ssn

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