

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.4769 to 4771 of 2014

M/S.Chandanmal
Ground floor
old No.20, new No.41
Ekambareswarar Agraharam street
Park Town, Chennai-600 003.

.. Petitioner in all
the three CRPs.

Vs.

1.Jagdishbhai Bhatt (deceased)
2.Neeta Ajay Bhatt
3.Beena Pankaj Vyas
4.Piyush Jagdish Bhatt
5.Praesh Jagdish Bhatt

.. Respondents in
all the three CRPs.

(R2 to R5 brought on record as legal heirs
of the deceased sole respondent viz.,
Jagdishbhai Bhatt vide Court order dated
28.02.2018 made in C.M.P.Nos.1291 to 1299 of 2018
in C.R.P.Nos.4769 to 4771 of 2014)

C.R.P.No.4769 of 2014 is filed under Section 25 of the Tamil
Nadu Buildings (Lease and Rent Control) Act, 1960, against the
judgment and decree dated 08.09.2014 made in R.C.A.No.2 of 2014

on the file of the VIII Small Causes Court (Rent Control Appellate Authority), Chennai, confirming the fair and decretal order dated 19.11.2013 made in R.C.O.P.No.29 of 2012 on the file of the XII Small Causes Court (Rent Controller), Chennai.

C.R.P.No.4770 of 2014 is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the fair and decretal order dated 08.09.2014 made in M.P.No.250 of 2014 in R.C.A.No.2 of 2014 on the file of the VIII Small Causes Court (Rent Control Appellate Authority), Chennai.

C.R.P.No.4771 of 2014 is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the fair and decretal order dated 08.09.2014 made in M.P.No.251 of 2014 in R.C.A.No.2 of 2014 on the file of the VIII Small Causes Court (Rent Control Appellate Authority), Chennai.

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In all CRPs.

For Petitioner : Mr.Vikram U.Jain

R1 : Died

For R2 to R5 : Mr.Rajendra Kumar C.Pandya

COMMON ORDER

C.R.P.No.4769 of 2014 is filed against the judgment and decree dated 08.09.2014 made in R.C.A.No.2 of 2014 on the file of the VIII Small Causes Court (Rent Control Appellate Authority), Chennai, confirming the fair and decretal order dated 19.11.2013 made in R.C.O.P.No.29 of 2012 on the file of the XII Small Causes Court (Rent Controller), Chennai.

C.R.P.Nos.4770 and 4771 of 2014 are filed against the fair and decretal order dated 08.09.2014 made in M.P.Nos.250 and 251 of 2014 in R.C.A.No.2 of 2014 on the file of the VIII Small Causes Court (Rent Control Appellate Authority), Chennai.

2.In all the three Civil Revision Petitions, the issues and the parties are one and the same and therefore, they are disposed of by this common order.

3.The petitioner is tenant and respondents are landlords. The first respondent filed R.C.O.P.No.29 of 2012 on the file of the XII Small Causes Court, Chennai, for fixation of fair rent. According to the first respondent, he is the absolute owner of the property

bearing Door No.20, New No.41, Ekambareswarar Agraharam Street, Park Town, Chennai-3. The petitioner was inducted as a tenant in respect of a shop portion in ground floor of the petition premises for commercial purpose on a monthly rent of Rs.1,140/-. According to the first respondent, the petition premises is in the heart of the wholesale and retail markets of all kinds and utilities, clothes, jewellery, fancy goods, all commercial and household items. Further it is situated near schools, hospitals, hotels, banks and vegetable market. It is very near to Broadway bus stand, railway station, High Court and important Government offices. The first respondent furnished the details of the building and stated that value of the ground is more than Rs.1,50,00,000/- and the petitioner is occupying 195 sq.ft. in the ground floor of the petition premises and it has all the basic amenities. The first respondent has issued a notice dated 15.12.2011 to the petitioner demanding rent of Rs.6,500/- per month and claimed for fixation of fair rent at Rs.7,796/- per month.

4. The petitioner filed counter statement and denied that the petition premises is near the places as mentioned in the petition and contended that no basic amenities are provided, except electricity

connection. He has denied the value of the ground is more than Rs.1,50,00,000/- and submitted that the rent paid by the petitioner is correct. Further, the petitioner contended that he is in occupation of 150 sq.ft. and not 195 sq.ft. as stated in the petition and the determination of fair rent as alleged by the first respondent is excessive. The first respondent in the notice dated 15.12.2011 demanded an enhancement of monthly rent at the rate of Rs.6,500/- and now in the petition, he has demanded for fixation of fair rent of Rs.7,796/- and prayed for dismissal of the R.C.O.P.

5.Before the learned Judge, first respondent examined two witnesses as P.W.1 and P.W.2 and marked five documents as Exs.P1 to P5. The petitioner examined one witness as R.W.1 and marked four documents as Exs.R1 to R4.

6.The learned Rent Controller considering the pleadings, oral and documentary evidence, reports of the petitioner's as well as first respondent's Engineers and analysis reports, held that the building is Type-I building and taking into consideration the reports filed by the Engineers of the petitioner as well as the first respondent, wherein it is stated that all the three basic amenities

are available to the petition premises, fixed 15% towards basic amenities. As far as age of the building is concerned, Engineer of the first respondent has stated that the building is 35 years old, while the Engineer of the petitioner has stated that age of the building is 30 years. The learned Rent Controller accepted the age of the building is 35 years as stated by the Engineer of the first respondent and calculated the depreciation of the building at 1% per year.

7.As far as land value is concerned, the learned Rent Controller considering R.C.O.P. is of the year 2012 and Ex.P3/sale deed dated 23.02.2009, which was marked by the first respondent with regard to the building in the Mint street, wherein the market value of the land in that year was stated as Rs.1,50,00,000/- and also taking into account the locational advantages of the building, fixed the ground value at Rs.1,50,00,000/- and rejected Ex.R3/sale deed marked by the petitioner on the ground that it relates to undivided share and for small extent. The learned Rent Controller taking into consideration the road, extent of the petition premises, occupation of the petitioner, number of floors, number of tenants and Engineers' reports filed by the petitioner as well as first

respondent, fixed the fair rent at Rs.4,635/- from the date of petition i.e. 22.12.2011.

8. Against the fair and decretal order dated 19.11.2013 made in R.C.O.P.No.29 of 2012 on the file of the XII Small Causes Court (Rent Controller), Chennai, the petitioner filed R.C.A.No.2 of 2014 on the file of the VIII Small Causes Court, (Rent Control Appellate Authority) Chennai. Along with the appeal, he has filed two petitions M.P.Nos.250 and 251 of 2014 under Rule 11 of Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974, to reopen the case and to recall R.W.1 and permit him to file and mark the sale deed dated 25.08.2008 bearing document No.1068/2008. The first respondent has filed separate counter affidavits in both the petitions.

9. The learned Rent Control Appellate Authority independently considering the order of the learned Rent Controller dated 19.11.2013 made in R.C.O.P.No.29 of 2012 as well as the averments made in the affidavits filed in the two petitions, by common judgment dated 08.09.2014, dismissed R.C.A.No.2 of 2014 as well as M.P.Nos.250 and 251 of 2014 filed by the petitioner.

10. Against the judgment and decree dated 08.09.2014 made

in R.C.A.No.2 of 2014 on the file of the VIII Small Causes Court (Rent Control Appellate Authority), Chennai, confirming the fair and decretal order dated 19.11.2013 made in R.C.O.P.No.29 of 2012 on the file of the XII Small Causes Court (Rent Controller), Chennai and fair and decretal order dated 08.09.2014 made in M.P.Nos.250 and 251 of 2014 in R.C.A.No.2 of 2014, the petitioner has preferred the present three Civil Revision Petitions, respectively.

11.During pendency of the Civil Revision Petitions, the first respondent died and his legal heirs were impleaded as respondents 2 to 5 in the Civil Revision Petitions vide order of this Court dated 28.02.2018 made in C.M.P.Nos.1291 to 1299 of 2018.

12.The learned counsel for the petitioner contended that the learned Rent Control Appellate Authority has erred in dismissing M.P.Nos.250 and 251 of 2014, wherein the petitioner has sought for reopening the case and recalling R.W.1 to mark the sale deed dated 25.08.2008. The learned Rent Control Appellate Authority dismissed both the petitions on the ground that the petitioner has filed M.P.No.251 of 2014 for appointment of an Advocate Commissioner to inspect the petition premises with the help of Civil Engineer of the

Court choice. The two M.Ps. filed by the petitioner are to reopen the case and to recall R.W.1 and permit him to mark the sale deed dated 25.08.2008 bearing document No.1068/2008, which relates to the property in the same street of the petition premises. The reasons given by the learned Rent Control Appellate Authority for dismissing the appeal as well as for rejecting Ex.R3/sale deed marked by the petitioner are erroneous. The land value arrived at by the Courts below based on Ex.P3/sale deed marked by the first respondent is not correct and based on wrong land value, fair rent has been fixed and prayed for allowing the Civil Revision Petitions.

13.Per contra, the learned counsel for the respondents contended that the petitioner has not given any reason for not filing sale deed dated 25.08.2008 bearing document No.1068/2008 before the learned Rent Controller, earlier. Both the Courts below have rightly rejected Ex.R3/sale deed filed by the petitioner giving valid reason. The Courts below have considered Ex.P3/sale deed marked by the first respondent and taking into consideration the locational advantages of the petition premises, fixed the land value of the petition premises at Rs.1,50,00,000/-, which is valid and

prayed for dismissal of the Civil Revision Petitions.

14. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

15. From the materials available on record and judgment and decree of the learned Rent Control Appellate Authority, it is seen that the learned Rent Control Appellate Authority has dismissed both the petitions in M.P.Nos.250 and 251 of 2014 on the ground that the Engineer on behalf of the petitioner had been examined and cross-examined by the learned counsel for the respondents and has marked Ex.R3/sale deed of the year 2011 and there is no necessity to appoint an Advocate Commissioner to inspect the petition premises. The learned Rent Control Appellate Authority has failed to consider that the petitioner filed two petitions in M.P.Nos.250 and 251 of 2014 to reopen the case and recall R.W.1 and permit him to mark the sale deed dated 25.08.2008 bearing document No.1068/2008 and also the reasons given by the petitioner for the same.

16. Considering the above facts and circumstances of the case, without deciding other issues on merits, all the Civil Revision Petitions are allowed. The judgment and decree dated 08.09.2014

made in R.C.A.No.2 of 2014 and fair and decretal order dated 08.09.2014 made in M.P.Nos.250 and 251 of 2014 on the file of the Rent Control Appellate Court, are hereby set aside and remanded back to the learned Rent Control Appellate Authority to consider the two M.P.Nos.250 and 251 of 2014 filed by the petitioner and pass orders on merits and in accordance with law. Further, the learned Rent Control Appellate Authority is directed to consider R.C.A.No.2 of 2014 based on the order passed in two M.P.Nos.250 and 251 of 2014 filed by the petitioner and dispose of R.C.A.No.2 of 2014 on merits. As the R.C.A. and M.Ps. are of the year 2014, the learned Rent Control Appellate Authority is directed to dispose of M.P.Nos.250 and 251 of 2014 within a period of two months from the date of receipt of a copy of this order and dispose of R.C.A.No.2 of 2014 within a period of two months thereafter. No costs.

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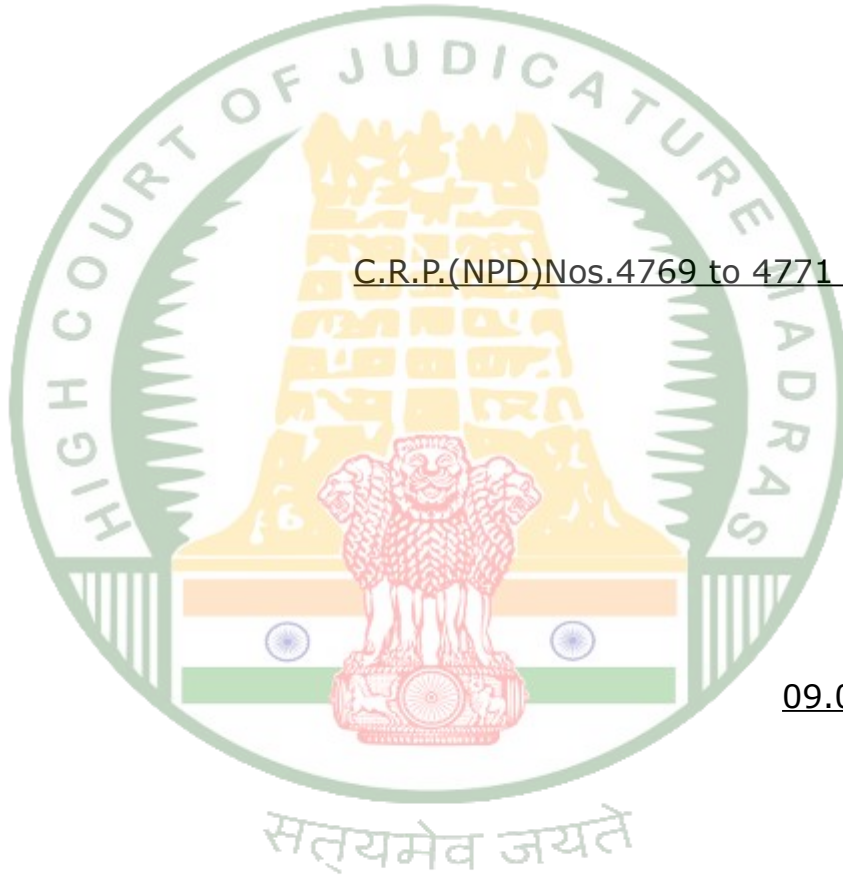
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V.M.VELUMANI,J.

To

- 1.XII Small Causes Court, Chennai.
- 2.VIII Small Causes Court, Chennai.



C.R.P.(NPD)Nos.4769 to 4771 of 2014

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