

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.06.2018

Delivered on : 06.07.2018

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P.(NPD).Nos.1406 and 1954 of 2010

V.Krishna Iyer ... Petitioner
in C.R.P.(NPD) No.1406 of 2010

Vs

1.C.Raman Nair
2C.Dhakshayani
3.Shobana
4.Shailaja
5.Sathish Kumar
6.A.Muralidharan
7.A.Haridoss

... Respondents
in C.R.P.(NPD) No.1406 of 2010

1.C.Raman Nair
2C.Dhakshayani
3.Shobana
4.Shailaja
5.Sathish Kumar

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6.A.Muralidharan

7.A.Haridoss

... Petitioners

in C.R.P.(NPD) No.1954 of 2010

v.

V.Krishna Iyer

... Respondent

in C.R.P.(NPD) No.1954 of 2010

Prayer in both petitions: Civil Revision Petitions filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, as amended by Act 23 of 1973, against the fair and decreetal orders passed by the learned VII Small Causes Judge (Appellate Authority), Chennai, in R.C.A.No.777 of 2008 dated 19.03.2010 modifying the fair and decreetal order dated 20.10.2008 in R.C.O.P.No.370 of 2008 passed by the learned XIV Small Causes Judge, Chennai.

For Petitioners : Mr.A.K. Raghavalu
in C.R.P.(NPD) No.1406 of 2010

Mr.R.Ponhusamy
for P1 to P5 – No appearance
in C.R.P.(NPD) No.1954 of 2010

Mr.V.Lakshminarayanan
for Mr.A.Saravanan
for P6 and P7
in C.R.P.(NPD) No.1954 of 2010

For Respondents : D.Sreenivasan for R2 to R5
in C.R.P.(NPD) No.1406 of 2010

Mr.R.Ponnusamy
for R1 – No appearance
in C.R.P.(NPD) No.1406 of 2010

Mr.V.Lakshmi Narayanan
for Mr.A.Saravanan
for R6 and R7
in C.R.P.(NPD) No.1406 of 2010

Not ready in notice
regarding the sole respondent
in C.R.P.(NPD) No.1954 of 2010

COMMON ORDER

These Civil Revision Petitions originate from the Judgment in R.C.O.P.No.370 of 2008 on the file of the learned Rent Controller, XIV Court of Small Causes, Chennai, filed by the petitioners in C.R.P.(NPD).No.1954 of 2010. The said rent control proceedings have been filed under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The Rent Controller had fixed a fair rent of Rs.34,989/- per month.

2.Challenging the said order, the tenant had filed R.C.A.No.777 of 2008 on the file of the learned VII Court of Small Causes (Appellate Authority) at Chennai. The Appellate Authority partly allowed the Rent Control Appeal by reducing the fair rent to a sum of Rs.27,000/-. The Landlord has challenged this order in C.R.P.(NPD). No.1954 of 2010 and the tenants have challenged the same in C.R.P.No.1406 of 2010. Since the issue involved in both the revisions and arguments adduced are the common, this Court is proceeding to pass a Common Order in both Civil Revision Petitions. The parties are referred to as Landlord and Tenant.

3.The Rent Control Petition seeking fixation of fair rent was filed with the following averments:

- that the tenant had been inducted to the entire property consisting of building and ground in premises New No.30, Old No.23, Harrington Road

(Muthukrishnan Street), Chetpet, Chennai, on a monthly rent of Rs.10,000/-, as per the Rental Agreement dated 07.04.2006. This rent was exclusive of electricity consumption and the other charges payable for the non-residential building. The tenant had taken on rent the said premises for carrying on business of Hotel Suprabha.

- that the lease was for a period of three years from 01.04.2006.
- that the land value in and around the petition premises has escalated in value and consequently, the fair rent payable would also stand enhanced.
- that the petition premises had locational advantages of abutting a prominent Road Harrington Road and having in and around it the Nungambakkam Railway Station, Pachaiyappas College, Schools, Hospitals, Hotels, Post office, etc.,
- that the premises would fetch fair rent of Rs.53,000/-

per month and that a legal notice dated 03.12.2007 had been sent to the tenant, to which, a reply dated 27.12.2007 had been sent refusing to pay the fair rent.

Therefore, this petition.

4.The defence to the said petition by the tenant was on the following grounds:

- ♦ that there is a registered Lease Deed between the parties, wherein the tenant was given the property on lease for a period of three years from 01.04.2006.
- ♦ that there cannot be a demand for enhancement in the form of fair rent, when the period of lease is midway, where the properties does not have the locational advantages, set out in the petition and on the contrary is surrounded by the slums and Koovam River and is on the extreme Western side of Harrington Road.

- ♦ that the property would fetch only a sum of Rs.20 lakhs per ground.
- ♦ that there are no schedule-I amenities for the property.

5. Pending the rent control proceedings, both the parties had got the properties inspected by an Engineer, who have submitted their respective reports. The Engineer appointed by the Landlord had submitted a report, wherein he had fixed the cost of land at Rs.2 crores per ground and further opined that the petition premises is abutting Harrington Road and is surrounded by famous Schools, college, marriage hall, etc., The said Engineer had arrived at a fair rent of Rs.1,18,445/- per month. This report has been marked as Ex.B.10 and the Engineer had been examined as PW1.

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6. On the other hand, the Engineer, who had inspected the property on behalf of the tenant, had filed a report, which was

marked as Ex.R.12, *inter alia* contending that the property in question is located in Muthiah Giramani Street, which abuts Harrington Road, and the width of the street is 12 to 13 feet and the road proceeds Southward and joins the Bridge running over the Koovam river. The area is surrounded by slums and has only ordinary buildings most of which had tiled. He has arrived at a market value of Rs.28,80,000/-. To arrive at this market value, he has taken into consideration Ex.R.14-Sale Deed dated 10.10.2007 relating to a property measuring 108 sq.ft. (undivided share). He has also been examined as R.W.2.

7.Mr.M.Lakshminarayanan, learned counsel appearing on behalf of the Landlord/petitioners in C.R.P.No.1954 of 2010 confined his arguments only to the value of the site arrived at by the Appellate Authority. Mr.A.K.Raghavalu, learned counsel appearing for the tenant/petitioner in C.R.P.No.1406 of 2010 apart from questioning the value of the site arrived at by the Appellate Authority also raised the defence that the petition for

fixation of fair rent has been filed during the subsistence of the contracted lease period and therefore, it was his contention that the petition deserves to be dismissed.

8. Heard the learned counsel appearing for the parties and perused the materials available on record.

9. The learned counsel appearing on either side has challenged the value of the land arrived at by the Appellate Authority. According to the learned counsel for the landlord, the Appellate Authority has not considered the locational advantages available in and around the petition premises. The counsel for the landlord would further submit that the reliance placed by the Appellate Authority on Ex.R.14 for arriving at the market value is erroneous, inasmuch as the Sale Deed that has been relied on by R.W.2, the Engineer examined on the side of the tenant, relates to a property situate on a different street. He would further contend that the Sale Deed that has been relied upon by R.W.2

(Ex.R.14) relates to the sale of an extent of just 108 sq.ft undivided share. He would also turn around his argument on the Plan Ex.R.13 filed along with the report Ex.R.12, which would clearly show that the petition premises is located on Harrington Road, which is a fairly upscale area and the petition premises is close to Pachaiyappa College as well as railway station, etc. Therefore, he would contend that the market value of Rs.35,00,000/- that has been arrived at by the Appellate Authority and consequently, the fair rent arrived at deserves to be interfered with.

10. Per contra, the learned counsel for the tenant would submit that the petition premises is not situate in the better part of Harrington Road and it has situate around it slums. Further, the Road width in front of petition premises is only 12 to 13 feet and proceeds Southward towards the bridge over the Koovam river. He would place reliance upon Ex.R.12 and R13, namely, the Report and Plan of R.W.2, the Engineer, to contend that the

value of land that the Appellate Authority had arrived at, was far in excess of the market value of the petition premises. The learned counsel would also feebly put across an argument that the petition is pre-mature inasmuch as it has been filed during the pendency of the contracted lease period.

11.I have perused Ex.P.9 to Ex.P.11 and R.12 to R.14, which forms the basis upon which the value of the site has been arrived at. Ex.P.9 and Ex.P.10, which are the report and plan filed by P.W.2, the landlord's Engineer would show that P.W.2 has arrived at the value of the land on the basis of Ex.P.11-Sale Deed. The property covered under Ex.P.11-Sale Deed is the property that is situate in Gilcrist Avenue, which is situate at distance from the petition premises. Further, PW2 has not filed a Plan, showing the topography of the area, in and around the petition premises. However, a perusal of Ex.R.12 and Ex.R.13, would give this Court a fairly good idea about the location of the petition premises and its surroundings. It is clear that the

petition premises is situate in an area which is surrounded by slums and the dwelling houses are also, as per Ex.R.12, mostly tiled roofs. Further, the Sale Deed that has been relied upon by R.W.2 to arrive at a market value is parallel to the street in which the petition premises is situate.

12.It is seen from the order of the Appellate Authority that the Appellate Authority has applied his mind to the fact that the Sale Deed Ex.R.14, was with reference to a property situate on a parallel Road and also, relating to the previous year.

13.The learned Appellate Authority has rightly arrived at a market value of Rs.35 lakhs by giving credit to the fact that the demised premises does have some locational advantages and also, giving a 10% appreciation to the market value of the land given in Ex.R.14.

14.As observed by the Appellate Authority, the value of the land given by PW2 cannot be considered since the same relates to a property which is situate for away from the demised premises. Therefore, I am of the view that the market value which has been determined by the Appellate Authority is fair and reasonable.

15.As regards the argument of the learned counsel for the tenant regarding the petition, being pre-mature, I do not find any substance in this argument, since the tenant has entered tenancy as earlier in the year 1969. Further, the learned counsel has not produced any Authority to substantiate his contentions.

16.Considering the scope and jurisdiction of this Court exercising revisional powers under Section 25 of the Act, it is held that the petitioners have not made out a case for interference with the findings of the Appellate Authority.

In the result, both the Civil Revision Petitions are dismissed and the order dated 19.03.2010 passed by the learned VII Small Causes Judge (Appellate Authority), Chennai, in R.C.A.No.777 of 2008, is confirmed. There shall be no order as to costs.

06.07.2018

Index : Yes/No
Internet : Yes/No
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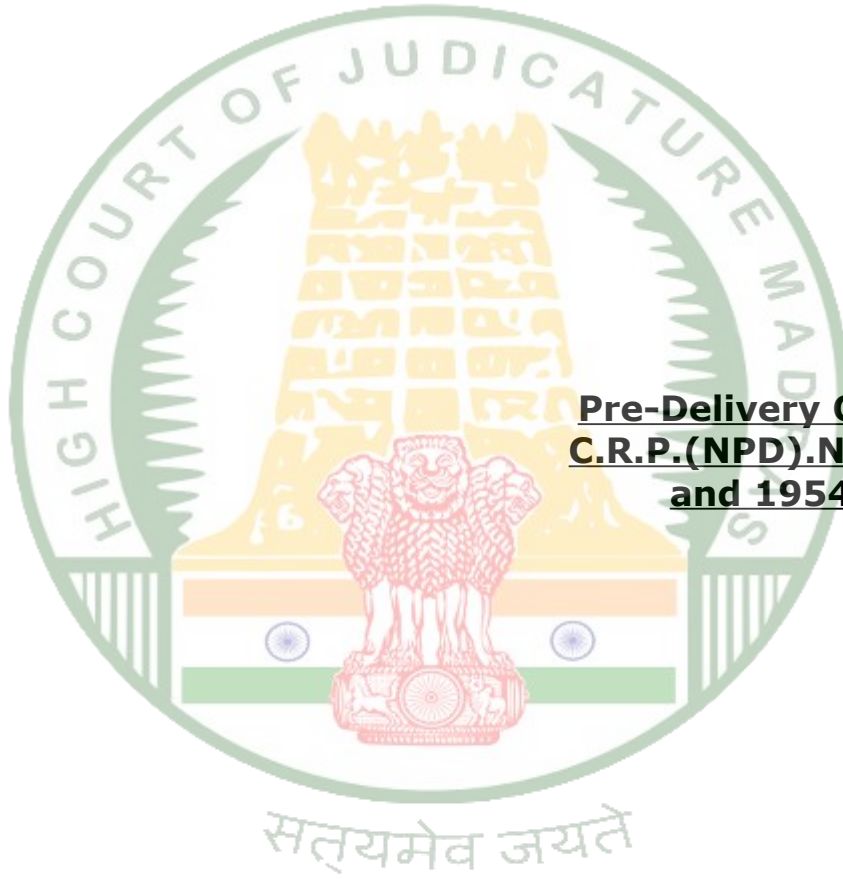
1.The VII Small Causes Judge
(Appellate Authority),
Chennai.

2.The XIV Small Causes Judge,
Chennai

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P.T. ASHA, J,

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Pre-Delivery Orders in
C.R.P.(NPD).Nos.1406
and 1954 of 2010

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