IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.06.2019

DELIVERED ON : 29.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE C. SARAVANAN

CRP.NPD.Nos.163 & 164 of 2015

M/s.Kika Bhai Mohammedally Estate,
Rep.by Shabbir Kika Bhai Zavery,
No.28/1, New No.57/1, Armeniam Street,
Madras 600 001. .. Petitioner

vs.

South India Bearing Co.,
Rep.by its Partner Kutub T.Sariya,
Door No.Old (198) New No.272,
Thambu Chetty Street,
George Town, Chennai 600 001. .. Respondent

PRAYER in both CRPs.: Civil Revision petitions filed under Article 227 of the Constitution of India, to set aside the Judgment and decree dated 02.04.2013 passed in R.C.A.Nos.430/2007 & 644 of 2008 on the file of the VII Court of Small Causes, Madras, modifying the order dated 24.11.2006 made in R.C.O.P.No.1275 of 2005 on the file of XI Small Causes Court, Madras.

For Petitioners (in both CRPs.)	:	Mr.R.Raveendran
For Respondent (in both CRPs.)	:	M/s.CPG.Yoganand & Associates,

C O M M O N O R D E R

The above civil revision petitions are directed against the order passed by the VII Court of Small Causes, Chennai, Rent Control Appellate Court in R.C.A.No.163/2015 and 164/2015 dated 02.04.2013, modifying order passed by the Rent Controller presided over by the XI judge Court of Small Causes, Chennai in R.C.O.P.No. 1275 of 2005 dated 24.11.2006 .

2. By the impugned order, the Rent Control Appellate Court has partly allowed the R.C.A.No.430 of 2007 filed by the respondent(tenant) and dismissed the R.C.A.No.644 of 2008 filed by the petitioner(landlord).

3. The petitioner (landlord) had filed R.C.O.P.No.1275 of 2005 for fixation of fair rent under Section 4 of the Tamil Nadu Buildings (Lease and Rent) Act to fix a fair rent at Rs.16,500/- p.m. The respondent contested the same and prayed for its dismissal.

4. By a fair and decreetal order dated 24.11.2006, the Rent Controller fixed the fair rent at Rs.9,767/- per month. In the said proceedings, the petitioner filed Exs.P1 to P5 and PW1 and PW2 were examined as witnesses. The respondent filed Exs.R1 to R.12 and R.W.1 and R.W.2 were examined.

5. Before the Rent Controller, the Revision Petitioner claimed the age of the building to be 15-20 years and the market value of the land to be over Rs.1 crore per ground.

6. The Respondent (tenant) contested value and submitted that the basic amenities provided were not in a fit condition for utilization and that the age of the building was more than 40 years and therefore value of the land per ground was around Rs.30 lakhs.

7. The Rent Controller fixed the fair rent of Rs.9,767/- per month and rejected the market value in Exs.P2, P3 and R12. Aggrieved by the order of the Rent Controller, both the respondent (tenant) and the petitioner (landlord) preferred separate appeal before the Rent Control Appellate Court.

8. The Revision Petitioner(Landlord) filed R.C.A.No.644 of 2008 with regard to the age of the building, plinth area and land value in the order of Rent Control. The Respondent/ tenant filed the RCA.NO.430/2007 questioning the age of the building, basic amenities mentioned in schedule I and land value.

9. The issue before the Rent Control Appellate Court as to whether the fair rent fixed at Rs.9767/- per month was correct or not ?

10. The Rent Control Appellate Court observed that the age of the building determined by the Rent Controller requires no interference. In Rent Control Appellate Court also observed that the Rent Controller was correct in awarding 15% towards the basic amenities and 3% towards Schedule 1 amenities.

11. With regard to the land value, the Rent Control Appellate Court referred Ex.R12 and relied on the Apex Court judgment in **Krishi Utpandam Mandi Samiti Sahaswan, District Badaun, Through its Secretary Vs. Bipin Kumar and others** 2004 2004 All.LJ 3342 and fixed the land value as Rs.50 Lakhs.

12. Thus, the Rent Control Appellate Court dismissed RCA.No.644 of 2008 filed by the Revision Petitioner (Landlord) and partly allowed RCA.No.430/2007 filed by the Tenant (Respondent) and modified the fair rent to Rs.5614/- per month. Aggrieved by the said order, the respondent (landlord) has preferred the present civil revision petitions.

13. The Issue that arises for consideration is whether the order passed by the Rent Control Appellate Court requires to be interfered in these two Civil Revision Petitions?

14. The petitioner had questioned the basis of the order Passed by the Rent Controller regarding the age of the building, plinth area and the land value. The Rent Controller has fixed the age of the building as 55 years in absence of original documents for the rented premises. While the petitioner claimed by way of the building to be 44 years, the respondent submitted that it would be around status. In absence of direct evidence to establish the correct age of the building, the Rent Controller has adopted 55 years. The Rent Control Appellate Court has accepted each.

15. As far as the area is concerned, the Rent Control Appellate Court has accepted the extent of the property based on the calculations given by the respondent in absence of sanctioned plan from the petitioner.

16. Argument in the present Civil Revision Petitions were confined to the market value of the land. According to the petitioner, the age of the property was about 15 years on the date of petition and that as per Ex.P.3 the market value of the land was around one Rupees Crore per ground whereas the Rent Control Appellate Court has fixed the market value of Rs.50 lakhs per ground a mere *ipsi dixit*. The Rent Controller had adopted Rs.1 Crore as the market value quoted by the petitioner as per Ex.P.3 located the market value of the land.

17. I have considered the arguments advanced on behalf of the Revision Petitioner(landlord) and the Respondent (Tenant). The Rent Controller has rejected the value of the property in Exs.P.2 and P.3 and has arrived at the market value based on Ex.R.12 to arrive at the fair rent of Rs.9767/- per month.

18. On the other hand, the Rent Control Appellate Court has determined the value based on Ex.R.12 stating it is nearby the rented premises. All the properties are located in the same vicinity and on the same street. If the value of land is considered based on Ex.P 3, the same would be much higher.

19. The Rent Control Appellate Court has observed that the market value of smaller property does not always reflect the true market value. Therefore, the Rent Control Appellate Court has accepted the value of the property as per Ex.R.12 and has arrived at Rs.50 lakhs per ground instead of Rs.1 crore as determined by the Rent Controller.

20. The Full Bench of this Court in paragraph 18 in **Sakthi and Co. versus Shree Desigachary**, 2006 (2) CTC 433 has observed as follows:-

> "*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.*"

21. Learned counsel for the respondent relied on the following case laws:-

" i) Union of India and Another vs. Ram Phool and Another (2003) 10 SCC 167

ii) Krishi Utpadan Mandi Samiti vs. Khshi Ram and Ors. 2004 All LJ 3342

iii) Ranvir Singh and Another vs Union of India (2005) 12 SCC 59"

All the three decisions cited by the learned counsel for the respondent deal with proposition for determining the compensation of Land Acquisition Act.

22. In **Union of India and Another** vs **Ram Phool and Another,** (2003) 10 SCC 167, the Hon'ble Supreme Court held that the market value of a smaller extent of land cannot be the basis for determination of the market

value of the larger extent of land. These decisions cannot be straight away imported for determination of fair rent under the provisions of the Rent Control Enactments. The yardstick for determining the compensation under the Land Acquisition Act and the yardstick for fixing the fair rent under the Rent Contro Enactments are different.

23. Ideally the Rent Controller should have appointed an Advocate Commissioner to give a report with the help of an engineer to determine the market value of the property.

24. This would have helped the Rent Controller to arrive at the market value without any scope for dispute as it would have been from an independent and an unbiased source. However, this exercise was not done.

25.The disadvantage in placing reliance on the value reflected in the registered the sale deeds involving a single and isolated transaction is that the real value may not necessarily get reflected in the documents. This makes these documents unreliable.

26. This is because of the tendencies of parties to often rely on the

guideline value to pay minimal stamp duty. There could be exceptions such as sale by a government concerns or where there are several deeds involving sale of similar properties by a builder or plot developers. Otherwise, it is very difficult to get genuine market value of the properties as the value that is agreed between the parties rarely get reflected in the registered sale deeds due to tendencies of the parties to evade stamp duty while registering the sale deeds.

27. Sale agreements which do not necessarily culminate in the registration of a sale deed but reach the court for a specific relief to register a sale deed may reflect the true market value of the properties provided they are genuine transactions. They can therefore reflect the negotiated market value of the property provided the sale deeds are also executed pursuant to a decree of the Court.

28. In my view, it would be therefore unfair to determine the market value of the property based on the value reflected in uncontested sale deeds as they may not necessarily reflect the true market value of the property.

29. In my view, the rejection of the market value of the land as per the Exs.P2 and P3 filed by the petitioner and reliance on Ex.R12 was not proper. As Ex.P.2 is the property for a smaller extent of land of 38.5 sq.ft. It can therefore be ignored.

30. In the facts of the present case, Ex.P3 can be said to reflect the negotiated value of the property. Therefore ,the Rent Controller as also by the Rent Control Appellate Authority ought to have relied on the same. In my view, the fair rent is liable to be re-determined on the strength of Ex. P3.

31. I do not find any merits in remanding the case back at this distant point of time after a lapse of 15 years from the initiation of the Rent Control proceedings to the Rent Controller for determination of the market value. By doing the longevity of the litigation will be prolonged between the parties. I therefore, intend to put an end to the dispute and bring a closure.

32. I shall therefore determine the market value of the land based on Ex.P3 sale deed dated 9.11.2000 as the said property is also in proximity to the property of the petitioner rented to the respondent. It reflects a negotiated value. Therefore, the value reflected therein can be taken as an

indicator of the market value of the petitioner's property which was rented out to the respondent.

33. If the land value in Ex.P.3 is taken for determination of the market value, the value of the land per square feet will be Rs.3070/- per ft^2 (Rs.8,31,970 divided by 271 per ft^2). Therefore, the market value of the property per ground in the year 2000 would be Rs.3,070 X 2400= Rs.73,68,000/- per ground.

34. While determining the market value of the property an appreciation of 10% per annum can be allowed. 10% appreciation per annum at the time of the petition before the Rent Controller 10% of Rs.73,68,000/- multiplied by 5. i.e 5 x10/100 x 73,68,000 = Rs.36,84,000.

35. Thus, the market value of the property in the location at the time of filing of R.C.O.P would have been Rs.1,10,52,000/- i.e. Rs.73,68,000/- + Rs.36,84,000. The above value is rounded to Rs.1,15,00,000/- per ground for the purpose of determination of fair rent. Applying the above value to the facts of the present case, the fair rent for the property determined as follows:-

Area	Calculation.	Amount
i) Ground Floor RCC terraced 333 sq.ft. @ Rs.371/- per sq.ft. ii Mezanine Floor 242 sq.ft. @ Rs,371 sq.ft iii Apportioned toilet area 2.75 sq.ft. @ Rs.371 per sq.ft Basic Amenities @ 15%	(333 x Rs.371/- = Rs.1,23,543) (242 x 371 = Rs.89,782) (2.75 x Rs.371 = Rs.1,020) Rs.2,14,345x 15% = Rs.32,151)	Rs. 1,23,543 Rs. 89,782 Rs. 1,020 --------------- Rs.2,14,345 Rs. 32,152 --------------- Rs.2,46,497 ---------------
Depreciation for 55 years at 1% Land Value Schedule - I amenities @ 3% Monthly fair rent	Rs.2,46,497/- x 0.575 = Rs.1,41,736/- 1,15,00,000/2400 x 193.58 = 9,27,571 Rs.10,69,307- x 3%= Rs.32,079 Rs.11,01,386 x 12% = Rs.1,32,166/- (Rs.1,32,166 /12 = Rs.11,014)	Rs.1,41,736 9,27,571 ----------------- Rs.10,69,307 Rs. 32,079 --------------- Rs.11,01,386 --------------- 11,014/- p.m.

36. Considering the facts and circumstances of the case, I am

inclined to pass the following orders :-

i) The impugned orders passed by the learned VII Judge, Small Causes Court, Chennai in R.C.A.No.430 of 2007 and R.C.A.No.644 of 2008 dated 02.04.2013 are hereby modified by enhancing the fair rent to Rs.11,014/- per month from the date of filing of the Rent Control Original Petition.

ii) The respondent-tenant is directed to pay the enhanced amount of rent to the petitioner-landlord, after adjusting the amount already paid, within a period of six weeks from the date of receipt of copy of this order.

Both the civil revision petitions are allowed accordingly. No cost.

29.07.2019

Index : Yes/No
Internet: Yes/No
Speaking : Non Speaking order
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To

1. VII Court of Small Causes, Madras.
2. XI Small Causes Court, Madras.

C.SARAVANAN,J.

kkd

Pre-delivery Common Order in

CRP.(NPD)No.163 & 164 of 2015

29.07.2019