IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2019

DELIVERED ON : .07.2019

CORAM:

THE HONOURABLE MR.JUSTICE C. SARAVANAN

CRP.NPD.Nos.3978 & 3979 of 2015
and M.P.Nos.1 and 1 of 2015

M/s.United Commercial Bank
rep.by its Branch Manager,
No.73/1, Valluvar Kottam High Road,
Nungambakkam,
Chennai 600 034. .. Petitioner in both CRPs.

vs.

P.N.Gopal (Deceased)
1.P.G.Susheela
2.P.G.Mohanbabu
3.P.G.Meenakshi .. Respondents in both CRPs.

PRAYER in both CRPs.: Civil Revision petitions filed under Article 227 of the Constitution of India, to set aside the Judgment and decree dated 06.11.2014 passed in R.C.A.Nos.657 of 2012 and 490 of 2013 on the file of the IX Judge, (Small Causes Court) Chennai against the order dated 13.08.2012 made in R.C.O.P.No.2812 of 2008 on the file of XIII Judge, Small Causes Court, Chennai.

For Petitioners (in both CRPs.) : Mr.V.Suthakar

For Respondents : Mr.Kalyanasundaram, Senior Counsel for Mr.R.Vasudevan in both CRPs.

C O M M O N O R D E R

By this common order both the Civil Revision Petitions are being disposed.

2. The petitioner-tenant is aggrieved by the impugned common judgment and separate decrees dated 06.11.2014 passed by the Rent Control Appellate Court in R.C.A.No.657 of 2012 and R.C.A.No.490 of 2013 respectively.

3. By the impugned Judgment and decree, the Rent Control Appellate Court has allowed the R.C.A.No.657 of 2012 filed by the respondent-landlord and dismissed R.C.A.No.490 of 2013 filed by the petitioner-tenant. The Rent Control Appellate Court enhanced the fair rent from Rs.56,074/-per month to Rs.94,159/- per month fixed by the Rent Controller by an order dated 13.8.2012 in R.C.O.P.No.2812 of 2008 that was filed by the respondents.

4. The brief facts of the case are as follows:

i). The petitioner and the deceased P.N.Gopal, the land had entered into a registered lease agreement dated 9.5.1995 which registered as Document No. 440 of 1995. The respondents are his legal heirs and are referred to as land lords/rrespondents.

ii) Under the aforesaid lease agreement, the lease rent was fixed at Rs.10,000/-per month.

iii) The lease was renewable at the expiry of 5 years period and also contemplated enhancement of lease rent by 15% at the time of renewal.

iv) Though, the five years period expired, the lease was continued.

v) In the year 2008, the respondent wanted the petitioner to agree for enhanced lease rent.

vi) Since the petitioner did not agree for enhancement of the lease rent, the respondents filed the R.C.O.P.No.2812 of 2008 for enhancement of the rent.

vii) The respondents sought for enhanced lease rent as fair rent based on the value of the land in the neighbourhood and the age of the building.

5. In the petition, the respondents had claimed the market value of the land to be more than R.4,63,24,800/-. The exact calculation based on which, the respondent-landlord claimed fair rent of Rs.2,10,834/- was not clearly delineated in the petition.

6. Before the Rent Controller, the landlord relied on Ex.P.3- Sale Deed for the purpose of market value of the property. As per Ex.P.3, the value of the land was Rs.1,40,46,570/- per ground.

7. The petitioner (tenant) on the other hand stated that the market value of the property was only Rs.60 lakhs per ground and placed reliance on Ex.R.1 - Engineers' Certificate and Exs.R3 and R4 - Sale deeds.

8. The Rent Controller discarded the market value of the property as per Ex.R.3 sample sale deed filed by the petitioner as the property in Ex.R3 was neither on the Valluvar Kottam High Road nor on the Avenue Road where the subject petition property was situated .

9. Based on the available records and admission of PW.1 and P.W.2, the Rent Controller concluded that the entrance to the 1st floor of the petitioner's property was on the Avenue Road and since there was no entrance to the rented property through Valluvar Kottam High Road the market value was to be determined by considering its locational advantage.

10. While fixing the fair rent, the Rent Controller discarded the evidence of both the petitioner (tenant) and the respondents(landlords) and fixed the market value of the land as Rs.75 lakhs per ground.

11. The Rent Controller however arrived at the extent of property based on the calculation given by R.W.2 Engineer in Ex.R.1.

12. The Rent Controller added total plith area covering the RCC balcony area and staircase as 2812.45 and since the petitioner-tenant was given a lease of the first floor, the total extent that was leased to the petitioner-tenant was arrived as 1406.223 sq.ft.

13. Both the petitioner and the respondents have accepted the extent of the property arrived by the Rent Controller.

14. By an order dated 13.08.2002, the Rent controller fixed a sum of Rs.56,074/- as the fair rent payable by the petitioner under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

15. The calculation of the fair rent fixed by the Rent Controller is as follows:-

Area	Calculation	Amount
1st Floor RCC Roof Plinth area 2386.43 sq.ft.@ Rs.398/- per sq.ft.	(2386.43 x398) = Rs.9,49,799)	Rs.9,49,799
i) RCC balcony area 324.75 sq.ft. @ Rs.300/- per sq.ft	(324.75 x 300) = Rs.97,425	Rs. 97,425
iii RCC Staircase 101.27 sq.ft. @ Rs.250/-per sq.ft. Rs. 25,317/-	(101.27 x 250) = Rs.25,317)	Rs. 25,317 --------------- Rs.210,72,541
Add:-		
Basic Amenities @ 15%	Rs.10,72,541 x 15% = Rs.1,60,881	Rs. 1,60,881 ---------------- Rs.12,33,422 ----------------
Depreciation : 1% for 16 years	(12,33,422 x 0.851) = Rs.10,49,642/-	Rs.10,49,642
Land Value	(2386.43 +324.75 + 101.27) = 2812.45/2 = 1406.22 sq.ft. 1406.22 x 75,00,000/ 2400)= Rs.43,94,438/-	Rs.43,94,438/- -------------- Rs.54.44.080
Schedule 1 Amenities 6%	(Rs.54,44,080 x 6%) = Rs.1,63,322	Rs.1,63,322 -------------- Rs.56,07,402 --------------
.	Total	
Fair Rent @12 %	(Rs.56,07,402 x 12%) = Rs.6,72,888/- Rs.6,72,888/12 = Rs.	Rs.56,074/- p.m.

16. Aggrieved by the order dated 13.08.2002 of the Rent Controller in R.C.O.P.No.2812 of 2008 following the two appeals were filed before the Rent Control Appellate Court:-

i) RCA.No.490 of 2013 by the petitioner ; and

ii) RCA.No.657 of 2012 by the respondents

17. The Rent Control Appellate Court partly allowed RCA.No.657 of 2012 filed by the respondents and enhanced the fair rent to Rs.94,159/- per month from Rs.56,074/- per month fixed by the Rent Controller. Consequently, the Rent Control Appellate Court dismissed the R.C.A.No.490 of 2013 filed by the Petitioner.

18. Aggrieved by the said orders of the Rent Controller, the Petitioner-tenant has filed the present Civil Revision Petitions. The respondents have accepted the verdict of the Rent Control Appellate Court and has not challenged the same. Legality, proprietary and correctness of the common order passed by the Rent Control Appellate Court is put to test in these two Civil Revision Petitions.

19. Heard Mr.V.Suthakar, learned counsel for the petitioner and Mr.Kalyanasundaram, learned Senior counsel for Mr.R.Vasudevan, learned counsel for the respondents. I have considered the submissions and the case laws cited on behalf of either parties.

20. The Rent Control Appellate Court has accepted the extent of land arrived by the Rent Controller while at the same time has increased the fair rent from Rs.56,074/- p.m. to Rs.94,159/- p.m. based on Ex.P.3 filed by the respondents.

21. The petitioner has questioned the adoption of the market value of the property in the impugned order of the Rent Control Appellate Court.

22. The only basis on which the fair rent has been modified by the Rent Control Appellate Court was on account of the market value of the land as per Ex.P.3 read with Ex.P.1. The market value of the petition property as per Ex.P.1- Engineer's Report dated 08.10.2008, is Rs.1,40,46,570/- and is based on Ex.P.3 sample Sale Deed dated 25.04.2008 in the neighbourhood.

23. The dispute that survives in these civil revision petitions is on account of the market value adopted for determination of the fair rent by the

Rent Controller and the Rent Control Appellate Authority. The age of building does not materially alter the fair rent and therefore the arguments were confined to the reliance placed on Ex.P.3 alone for determining the market value of the property in the fixation of the fair rent.

24. The learned counsel for the petitioner(tenant) submits that the enhancement of the rent based on Ex.P.3 -Sale deed was improper merely because the rented premises was a building located both on Valluvar Kottam High Road as well as on the Avenue Road.

25. According to the learned counsel for the petitioner, the property was situated on the Avenue Road and was only visible from Valluvar Kottam High Road and if an Advocate Commissioner had been appointed by the Rent Controller, that fact would have come to light.

26. Before the Rent Control Appellate Court, a feeble attempt was made by the petitioner by filing a M.P No.4 of 2014 in R.C.A.No.657 of 2012 to appoint an advocate commissioner for the first time, nearly after 6 years the Rent Control proceedings came to be initiated by the respondents to dislodge the market value.

27. In fact, if an advocate commissioner was appointed for such a purpose at that stage, the said exercise would have been futile as the land value had sharply increased during the pendency of the proceedings before the Rent Controller.

28. Therefore, the contemporaneous document in Ex.P.3 appears to be more reliable than a report of an Advocate Commissioner after 6 years in 2014. Therefore, non consideration of M.P.No.4 of 2014 by the Rent Control Appellante Court cannot be faulted.

29. Learned counsel for the petitioner (tenant) further submits that the methodology adopted by the Rent Controller by discarding both the petitioners, respondents and engineer's report was contrary to the method prescribed under the Act and was therefore liable to be set aside. Consequently, enhancement of fair rent ordered by the Rent Control Appellate Court was also liable to be set aside.

30. The learned counsel for the petitioner has relied on the decision of this Court in ***S.V.Ramasamy vs. Rainbow Electric Supply Corporation represented by 1.Kushal Chand Shiyal and 2.K.Gopichand Shiyal)*** dated on

9th February, 2009 rendered in C.R.P.(NPD) Nos.759,1529 and 1530 of 2005 dated 09.02.2009 wherein it was observed as follows:

> *"36.Sub Section (1) of Section 4 oblige the Rent Controller to fix the fair of a building, in accordance with the principles set out in the following sub sections. Sub Sections (2) and (3) indicate that the fair rent for residential and non-residential buildings are to be fixed respectively at 9% and 12% gross return per annum on the total cost of such building. Sub Section (4) prescribes that the total cost of the building would consist of three components viz., (i) the market value of the site in which the building is constructed (ii) the cost of construction of the building and (iii) the cost of provision of any one of more of the amenities specified in Scheduled-I to the Act. The First proviso to Sub Section (4) stipulates that while arriving at the market value of the site, the Controller should take into account only that portion of the site on which the building is constructed. Out of the remaining portion of the vacant land, 50% is to be treated as amenity under Scheduled-I. The Second proviso to Sub Section (4) fixes a ceiling limit of 15% and 25% respectively for residential and non-residential buildings on the cost of site and construction, towards the cost of provision of amenities specified in Scheduled-I. sub Section (5) (a) indicates that the cost of construction of the building is to be determined with due regard to the rates adopted by the Public Works Department. Sub Section (5) (b) mandates the Rent Controller to allow depreciation on the cost of construction, at the rates specified in Schedule-II."*

31. The petitioner further added that the Rent Controller erred in accepting the age of the building as 16 years as compared to 25 years while calculating the depreciation and that the respondents have not produced any documents to substantiate the age of the building.

32. Learned counsel therefore submits that the order of the Rent Controller as modified by the Rent Control Appellate Court was therefore liable to be set aside.

33. Per contra, the learned senior counsel for the respondents submitted that the order passed by the Rent Control Appellate Court was well reasoned and requires no interference and therefore the Civil Revision Petitions are liable to be dismissed with costs.

34. During the course of the hearing, it was mentioned that the petitioner has vacated the premises and that a parallel proceeding to recover the amount was pending.

35. The parties also tried to resolve the dispute during the pendency of this proceeding and have reported that they were not able to arrive at an amicable settlement.

36. The learned Senior Counsel for the respondents relied on the following decisions of the Hon'ble Supreme Court :-

i) ***Olympic Industries Vs. Mulla*** *Hussainy* ***Bhai Mulla Akberally and Others****, (2009)15 Supreme Court Cases 528,* ***it was held as follows****:*

" 8. There is another aspect of the matter. It is well settled that the High Court in the exercise of its revisional jurisdiction under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act, could interfere with the concurrent orders of the tribunals below only if it finds that the findings of the tribunals below were either perverse or arbitrary, irregular or improper, but if the High Court finds that the findings of the tribunals below are based on correct application of the principles and in any way cannot be said to have acted illegally and with material irregularity, in that case it cannot be said that the High Court was entitled to interfere with the concurrent orders passed by the tribunals below in accepting the application for additional counter statement filed by the appellants. "

ii). ***V.S.Kanodia and Others vs. A.L.Muthu and others*** *(2012) 11 SCC 269, wherein it was held that* 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) ***N.Eswari Vs.K.Swarajya*** *(2009)9 Supreme Court Cases 678 , it was held it was not open to the High Court in the exercise of its revisional jurisdiction, to interfere with the concurrent findings of fact of the Rent Controller as well as the appellate authority.*

37. The Court there followed the decision of the Court in ***Rajbir Kaur vs chokesiri and co.*** (1989) 1 SCC 19 which is held as folows:-

"43.When the findings of fact recorded by the courts below are supportable on the evidence on record, the Revisional Court must, indeed, be reluctant to embark upon an independent reassessment of the evidence and to supplant a conclusion of its own, so long as the evidence on record admitted of and supported the one reached by the courts below. With respect to the High Court, we are afraid, the exercise made by it in its revisional jurisdiction incur the criticism that the concurrent finding of fact of the courts below could not be dealt and supplanted by a different finding arrived at on an independent reassessment of evidence as was done in this case."

38. During the course of the hearing, it was mentioned that the petitioner has vacated the premises and that a parallel proceeding to recover the amount was pending at the behest of the respondents.

39. The parties also tried to resolve the dispute during the pendency of this proceeding and have reported that they were not able to arrive at an amicable settlement. In fact when the case was earlier listed for pronouncing orders, both the parties sought time to settle the dispute amicably.

40. I have considered the arguments of the parties and perused the orders. As per Ex.P.3 is a certified copy of the sale deed dated 25.04.2008, filed by the respondents. The value of the land as per the said exhibit is Rs.1,40,46,570/- whereas, as per the petitioner's engineer, the market value of the land would be only Rs.60,00,000/- based on Ex.R.3-Sale Deed dated 12.11.2008. It is evident that these documents are contemporary documents.

41. The Rent Controller has concluded that Ex.R.3 Sale Deed dated 12.11.2008 is not for a property located either at Valluvur Kottam High Road or on the Avenue Road and has rejected of the market value based on Ex.R.3. Therefore, this finding of the Rent Controllercannot be faulted.

42. At the same time, rejection of the market value based on the value in Ex.P.3 sale deed dated 25.04.2008 was not justified as it was a

contemporary sale deed of a property on the Avenue Road where the subject property is located.

43. The Rent Controller had thus arbitrarily arrived at the lower market value of Rs.75 lakhs for the property on the ground that even though the property is situated both on Valluvur Kottam High Road and on the Avenue Road with entrance on the property on Avenue Road and has assumed that since there was no entrance to the property from Valluvur Kottam High Road, the value of the property In Ex.P.3 must be higher than the rented property.

44. Therefore, the determination of the market value of the petition property at Rs.75 lakhs by the Rent Controller was not correct. This was arrived after concluding that the property had only locational advantage.

45. The Rent Controller has purely resorted to a guess work while arriving at the aforesaid fictitious market value. The market value was fixed on an *ipsi dixit*. The market value cannot be determined based on assumptions, presumptions and conjectures.

46. The petitioner has not produced any other document to

substantiate the value of the property was low as Rs.60 lakhs in the same location. Therefore, the Rent Controller while dealing with the summary proceeding under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1962 can only rely on the best evidence that is produced. In this case, Ex.P.3 sale deed dated 25.04.2008 is for the property located in the same location and is the best evidence.

47. Therefore, reliance placed on Ex.P.3 and Ex.P.1 by the Rent Control Appellate Court cannot be faulted. The petition property is facing Valluvur Kottam High Road with the entrance on the Avenue Road . The property certainly had locational advantage. That apart the petition property is located in a busy commercial area which has banks, hotels hospitals, police station, schools etc., in the immediate neighbourhood. In view of the same, enhancement of the fair rent by the Rent Control Appellate Court cannot be interfered with. I do not find any reasons to interfere with the order of the Rent Control Appellate Court.

48. In view of the above, these civil revision petitions are dismissed. The order dated 13.08.2012 passed by the Rent Controller (XIII Judge, Small Causes Court) Chennai dated 13.08.2012 in R.C.O.P.No.2812 of 2008 as modified by the Rent Control Appellate Court vide impugned Judgment

and Decree dated 06.11.2014 in R.C.A.Nos.490 of 2013 and 657 of 2012 is upheld. No costs. Consequently, connected miscellaneous petitions are also closed.

18.07.2019

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

To

1.XIII Judge,
Small Causes Court, Chennai.

2. IX Judge, Small Causes Court,
Chennai.

C.SARAVANAN,J.

kkd

Pre-delivery Common Order in
CRP.NPD.Nos.3978 & 3979 of 2015
and M.P.Nos.1 and 1 of 2015

18.07.2019