IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.03.2019

Delivered on : 11.06.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).Nos.3199, 3616 and 3753 of 2016 &
C.M.P.Nos.16234 & 18369 of 2016

C.R.P.(NPD).Nos.3199 and 3616 of 2016:

M/s.Kiran Wirenetting Company
rep. by its Partner
Mahendra Kumar Choraria,
No.101 (Old 145),
Rasappa Chetty Street,
Chennai-600 003. ...Petitioner

Vs

P.M.Geethalakshmi ...Respondent

C.R.P.(NPD).No.3753 of 2016:

P.M.Geethalakshmi ...Petitioner

Vs

M/s.Kiran Wirenetting Company
rep. by its Partner
Mahendra Kumar Choraria,
No.101 (Old 145),
Rasappa Chetty Street,
Chennai-600 003. ...Respondent

<u>Prayer in C.R.P.(NPD).No.3199 of 2016</u>: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the Common Judgment and Decree passed in R.C.A.No.34 of 2015 dated 03.08.2016 on the file of the learned VII Judge, Court of Small Causes, Chennai, dismissing the petitioner's appeal and modifying the Judgment and Decree passed in R.C.O.P.No.1844 of 2012 dated 23.09.2014 on the file of the learned XV Judge, Court of Small Causes, Chennai.

<u>Prayer in C.R.P.(NPD).No.3616 of 2016</u>: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the Common Judgment and Decree passed in R.C.A.No.693 of 2014 dated 03.08.2016 on the file of the learned VII Judge, Court of Small Causes, Chennai, partly allowing the Judgment and Decree passed in R.C.O.P.No.1844 of 2012 dated 23.09.2014 on the file of the learned XV Judge, Court of Small Causes, Chennai.

<u>Prayer in C.R.P.(NPD).No.3753 of 2016</u>: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the Common Judgment and Decree passed in R.C.A.No.693 of 2014 dated 03.08.2016 on the file of the learned VII Judge, Court of Small Causes, Chennai, as against the order in R.C.O.P.No.1844 of 2012 dated 23.09.2014 on the file of the learned XV Judge, Court of Small Causes, Chennai.

C.R.P.(NPD)Nos.3199, 3616 of 2016:

For Petitioner : Mr. T. Pramod Kumar Chopda

For Respondent : Mrs. Thilagavathi
Senior Counsel
for M/s.N. Nagu Sah

C.R.P.(NPD).No.3753 of 2016:

For Petitioner : Mrs. Thilagavathi
Senior Counsel
for M/s.N.Nagu Sah

For Respondent : Mr.T. Pramod Kumar Chopda

COMMON ORDER

C.R.P.(NPD).No.3199 of 2016 is a revision filed by the tenant challenging the fair and decreetal order in R.C.A.No.34 of 2015 of the VII Small Causes Court (Appellate Authority), Chennai, which in turn is filed challenging the order in R.C.O.P.No.1844 of 2012 of the XV Small Causes Court (Rent Controller), Chennai. The tenant has also filed C.R.P.No.3616 of 2016, challenging the order in R.C.A.No.693 of 2014, which in turn is filed challenging the order in R.C.O.P.No.1844 of 2012.

2.C.R.P.No.3753 of 2016 is the revision filed by the landlady challenging the fair and decreetal order in R.C.A.No.693 of 2014 of the VII Small Causes Court (Appellate Authority), Chennai, which in turn is filed challenging the fair and decreetal order in R.C.O.P.No.1844 of 2012 of the XV Small Causes Court (Rent Controller), Chennai.

3.The facts necessary to dispose of the above Civil Revision Petitions are common to all the three Civil Revision Petitions as the revisions arise out of a single Rent Control Proceeding. The parties are referred to as landlady and tenant.

Landlady's case:

4.The landlady had filed R.C.O.P.No.1844 of 2012 on the file of the XV Small Causes Court, Chennai, under Section 4 of the Tamil Nadu Building (Lease and Rent Control) Act, 1960, herein after referred to as the Act. The case of the landlady is that the tenant has taken on lease the entire extent of the first and second floor of Door No.101, Old No.145, Rasappa Chetty Street, Chennai - 3, on a monthly rent of Rs.4,700/-.

5.In the petition filed invoking the provisions of Section 4 of the Act, the landlady has contended that the petitioner is guilty of wilful default and that the petition was filed for eviction on the ground of wilful default and also that she requires the premises for her own occupation as her son is completing M.S in Ophthalmology in a few months and require the premises for setting up his eye clinic.

6.It is her case that the rent which was being paid is very low and requires a revision. It is her case that the tenanted premises is a Type I construction as it is build with brick and cement and cement plastering has been done through out the building and also teak wood has been used in the building. She would contend that the building is forty four years old and therefore the depreciation that was to be calculated was 1% per annum. According to the landlady, first floor measures 550 Sq.ft., second floor measures 350 Sq.ft., the open terrace in the second floor measure 200 Sq.ft. and the ground floor staircase which was exclusively used by the tenant was 100 Sq.ft. Therefore she would contend that, in all the tenant is in occupation of 1200 Sq.ft.

7.She would contend that the property has basic amenities as well as the schedule amenities and the cost of the construction would not be less than Rs.700/- per Sq.ft. The total apportioned land area, according to the landlady was 467 Sq.ft. She would further go on to state that the property is situate in a prime commercial locality and had all the locational advantages like Schools, Hospitals, Bus Stand, Government Offices, Stations etc., to name a few. She had therefore demanded a fair rent of sum of Rs.1,19,234/-.

Tenant's Case:

8.The tenant who had entered appearance on receiving summons, has filed a counter inter alia denying the claim made by the landlady and contending that the building was over fifty years old and was of Type III construction and that only ordinary wood had been used in the premises. They would further contend that the total extent in occupation of the tenant was only 500 Sq.ft. and not 1,200 Sq.ft., as claimed by the landlady. The apportioned extent, according to the tenant was only 199 Sq. ft. and only the basic amenities have been provided and there was no water supply to the building.

9.The tenant would highlight the locational disadvantages by stating that in the entire area there is a traffic regulation in and by which the said street is a one way. That apart there was no parking available outside the premises or within the area and the petition premises was surrounded by Hawkers and Slum dwellers.

The Rent Controller:

10.Both the parties had only examined their respective Engineer's and on the side of the landlady four documents have been filed as also on the side of the tenant. After analysing the evidence both oral and documentary the learned Rent Controller had come to the conclusion that there was no dispute between the parties with reference to the type of building (Type I) and age of the building (45 years).

11.That apart, there was also no dispute with reference to the plinth area in occupation of the tenant on the first floor RCC building (540.62 Sq.ft.) and the Balcony (35.37 Sq.ft.). However, with reference to the plinth area in the second floor, the landlady would contend that the plinth area was 395.54 Sq.ft., whereas the tenant in

Ex.R.1 would submit that the plinth area was 360.67 Sq.ft. However Ex.R.1, is not supported by any satisfactory evidence.

12.Likewise, as regards the apportionment of the land area there was no major dispute between the parties as the landlady had arrived at an apportionment of 353.39 Sq. ft. and the tenant to an extent of 354.04 Sq.ft. Ultimately, the area of land was fixed at 353.39 Sq. ft.

13.The evidence let in by the parties show a huge variations in the land value. The landlady's engineer taking into account Ex.P.3 and Ex.P.4, arrived at a land value of Rs.1,58,40,000/- per ground, whereas the tenant's engineer had arrived at a land value of Rs.53,33,333/- per ground. The learned Rent Controller however proceeded to fix the land value at Rs.1,25,00,000/- per ground without any basis and adding the value of the building ultimately arrived at a fair rent of Rs.21,423/-.

Appellate Authority:

14.Challenging this order the landlady had filed R.C.A.No.693 of 2014 (which is the subject matter of C.R.P.Nos.3616 and 3753 of 2016). The tenant had filed R.C.A.No.34 of 2015 (which is the subject matter of C.R.P.No.3199 of 2016). The Appellate Authority had taken note of the fact that the landlady had produced documents to show the value of the property in the year 2012 and this document was in respect of Rasappa Chetty Street itself. However the document that was produced by the tenant was of the year 2011, the land value that was shown in the document filed by the landlady was Rs.1,32,00,000/- per ground for the year 2012.

15.The learned Appellate Authority taking into account the fact that in March 2012, the value of the land was a sum of Rs.1,32,00,000/- per ground, proceeded to fix the land value at Rs.2,00,00,000/- per ground on the date of the petition. Ultimately, the Appellate Authority had enhanced the fair rent to Rs.22,453/-. Challenging the said orders the tenant has filed two revisions namely C.R.P.No.3199 and 3616 of 2016 and the landlady has filed C.R.P.No.3753 of 2016 and all the revisions were taken up together.

Submissions:

16.Mr.T.Pramod Kumar Chopda, learned counsel has entered appearance and argued on behalf of the tenant and Mrs.Thilagavathi, Senior counsel argued on behalf of the counsel for the landlady. Mr.T.Pramod Kumar Chopda would argue that both the authorities below have erred in considering the sale deed Ex.P.3 that has been filed on the side of the landlady which related to the property which is situated far away from the petition premises and which is close to Ratan Bazaar and therefore would enjoy a higher market value.

17.He further argued that Ex.R.3, sale deed which has been produced on the side of the tenant related to the property which was just two Door numbers away from the petition premises and although it is of the year 2011, the authorities below could have adopted an enhancement of 20% for two years since the Section 4 petition had been filed in the month of September 2012. He would further argue that the Full Bench of this Court in its Judgement in ***Sakthi & Co., through its partner, Veeranan Vs. Shree Desigachary*** reported in ***2006 (2) CTC 433*** had laid down the guidelines for fixing the fair rent particularly with reference to the land value, wherein the Full Bench had held that it is only the market value that has to be considered while arriving at the value of the land and the Judgement had also given a method of valuation for ascertaining the market value.

18.He would also rely on the Judgement in ***M.Balasubramanian Vs. N.Ravindran*** reported in ***2016 (3) MWN (Civil) 512***, where this Court has held that while considering a sale deed which was prior to the fair rent it was well open to the Court to increase the value of the land by 10% on the value given in the comparable sale deed. He would therefore contend that the authorities below ought to have adopted the market value of Rs.70,00,000/- and accordingly fixed a fair rent of Rs.13,325/- per month. He therefore prayed for the reduction of the rent fixed by the authorities below.

19.Per contra, Mrs.G.Thilagavathi, Senior Counsel would contend that P.W.1, Engineer appearing on the side of the landlady had clearly held that taking into account the appreciation and land value in and around the petition premises, the Authorities below ought to have adopted a market value of Rs.2,00,00,000/- as suggested by P.W.1

and fixed the fair rent at a sum of Rs.32,603/-. She further argued that the petition premises has several locational advantages like proximity to the Schools, Hospitals, Government Offices, Bus stand etc,. She further submitted that the Authorities below have rightly relied on Ex.P.3. She further contended that the Appellate Authority however failed to consider the fact that Ex.P.3 related to a sale that took place in March 2012 whereas the petition was filed in September 2012 and erred in not considering an enhancement not to the value shown in Ex.P.3. She therefore prayed for an enhancement of the fair rent fixed by the authorities below.

Discussion:

20.The dispute between the landlady and tenant in this Section 4 petition, revolves only around the market value of the site, in all other respects there is no contest between the parties and the value arrived at by the authorities below under these heads are not disputed. The landlady would rely upon Ex.P.3, sale deed which is of the date 05.03.2012, relating to the property which is situate, from a perusal of the schedule to this deed, very close to Ratan Bazar (Evening Bazar). On the contrary Ex.R.3, which is the comparable sale deed submitted by the tenant relates to the property which is just two door numbers away from the petition premises but however relating to early 2011. From a perusal of the documents it is seen that both the authorities below have not given very cogent reasons as to why the sale deed relating to a property next door has not been taken into consideration and a document which, even according to the petitioner's witness is sixty feet away from the petition premises has been considered.

21.From a perusal of the door numbers of the petition premises and the door number of the property in Ex.P.3, it is seen that the property is nearly one hundred and twenty door numbers away from the petition premises and close to the heart of the town. There is no doubt that the property, subject matter of Ex.P.3 is quite close to the Government General Hospital, the Dental College, Central Station, Bus stop, Government Offices etc., whereas the petition premises is right in the middle of Rasappa Chetty Street between Evening Bazar and Wall Tax Road.

22.The authorities below are not right in adopting the value given in Ex.P.3 to arrive at the fair rent. The Full Bench in its Judgement reported in ***2006 (2) CTC 433*** had held that while determining the market value of a property the Court should shy away from considering the guideline value of the property. The Full Bench has held that the guideline value is the value fixed by the Government only for the purpose of stamp duty and is fixed with reference to a locality and not with reference to a particular survey number, whereas the market value is a value which is fixed as a result of bargain between two parties and in respect of a specific survey number. The Full Bench had ultimately concluded 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."

23.Therefore the Full Bench had clearly laid down that the Court should adopt the value shown in a sale deed which is the result of a bargain between the seller and the purchaser and not take note of the guideline value. Considering the fact that Ex.R.3 relates to the property which is right next to the petition premises, the authorities below ought to have adopted the value fixed therein.

24.No doubt the said value is of early 2011 the authorities below ought to have adopted the dictum laid down by the Honourable Supreme Court in the Judgement in ***Special land Acquisition Officer Vs. Mohamed Hanif Sahib Bawa Sahib*** reported in ***2002 (3) SCC 688***, wherein the Apex Court has held that where there is no current document to show the market value of any property and where an early document is available, 10% appreciation of the value given in the earlier document can be given so as to arrive at the market value of the property on the date of the filling of the petition under Section 4 of the Act.

25.In fact, the counsel for the tenant had conceded that 20% appreciation could have been given for two periods by the authorities below. This in my view would have given the correct market value for the petition premises on the date of the filing of the fixation of fair rent. Both the authorities below have totally erred in ignoring the documents filed by the tenant particularly when the documents relate to the property right next door.

26.The Appellate Authority has simply accepted Ex.P.3 on the ground that it is of the year 2012 and Ex.R.3 was of the year 2011, totally ignoring the fact that Ex.R.3 related to a property next to the demised premises and Ex.P.3 relates to a property situate several door numbers away from the demised property.

27.Therefore this Court is adopting the value given in the Ex.R.3 i.e., Rs.48,48,484/- and taking note of the fact that the counsel for the tenant has conceded that 20% increase for two years be given to the market value found in Ex.R.3 this Court arrives at a market value of Rs.70,00,000/- per ground and ultimately a fair rent of Rs.3,01,725/- as per the working given below:

Market Value of the land in 2011 as per Ex.R.3	*Rs.48,48,484/-*
(Add)Annual Increase of Market Value at 20% for 1st year	*Rs.9,69,696/-* *Rs.58,18,180/-*
(Add)Further Annual Increase of Market Value at 20% for 2nd year	*Rs.11,63,636/-*
Market value of the land of petition premises	*Rs.69,81,816/-*
Rounded to	*Rs.70,00,000/-*

Calculation of Fair Rent:

Land Value = Rs.70,00,000 x 353.39 / 2400 = Rs.10,30,720/-

(Add) Cost of Construction as per the order of the authorities below = Rs. 3,01,725/-
total value of petition premises = Rs.13,32,445/-

Fair Rent @ 1% p.m (12% p.a)

Rs.13,32,445 x 1 / 100 = Rs.13,324.45 or Rs.13,325/-

Fair Rent: Rs.13,325/- per month.

28.This Court exercising revisional jurisdiction under Section 25 of the Act is interfering with the order of the Authorities below since the Authorities below have failed to take into account Ex.R.3 and enter a finding thereon as a result of which the order of the Authorities below is improper.

Therefore the C.R.P.Nos.3199 and 3616 of 2016 are allowed and the order of the Authorities below is modified by reducing the fair rent to a sum of Rs.13,325/- per month. The Civil Revision Petition filed by the landlady in C.R.P.No.3753 of 2016 therefore stand dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petitions are also closed.

11.06.2019

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Index : Yes/No
Speaking order/non-speaking order

To

1.The VII Judge,
Court of Small Causes,
Chennai.

2.The XV Judge,
Court of Small Causes,
Chennai.

P.T.ASHA, J.,

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Pre-Delivery order in
C.R.P.(NPD)Nos.3199, 3616
and 3753 of 2016 &
C.M.P.Nos.16234 &
18369 of 2016

11.06.2019