

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.04.2019

PRONOUNCED ON : 25.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(NPD).Nos.1179 of 2014 and 19 of 2015

C.R.P.No.(NPD)No.1179 of 2014

S.Alagappan (died)

1.A.L.Saminathan (died)

2. A.L.Sundaram

3.S.Bhanumathy

4.S.Karthik

5.S.Kannan

(Petitioners 4 and 5 brought on record as
L.Rs of the deceased 1st appellant vide order
of this Court dated 12.03.2019 made in
M.P.No.1 of 2015 in CRP.No.1179 of 2014)

.. Petitioners

Vs

B.K.Nalini Jayanthi

.. Respondent

Prayer: Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act 18/1960 as amended by Act 23/1973 and Act 1 of 1980 to set aside the Judgment and Decree dated 07.02.2013 made in R.C.A.No.727 of 2005 on the file of VII Court of Small Causes (Rent Control Appellate Authority), Chennai, confirming the Judgment and decree dated

10.03.2005 passed by the XII Court of Small Causes, Chennai in R.C.O.P.No.1448 of 2004.

For Petitioners : Mr.K.P.Ashok

For Respondent : Mr.R.Dasaratha Rao

C.R.P.No.(NPD)No.19 of 2015

B.K.Nalini Jayanthi

.. Petitioner

Vs.

S.Alagappan (died)

M/s.R.R.Pharmacy

1.A.L.Saminathan (died)

2. A.L.Sundaram

3.S.Bhanumathy

4.S.Karthik

5.S.Kannan

(Respondents 4 and 5 brought on record as L.Rs of the deceased 1st respondent vide order of this Court dated 12.03.2019 made in LM.P.No.1 of 2015 in CRP.No.19 of 2015)

.. Respondents

Prayer: Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act 18/1960 as amended by Act 23/1973 and Act 1 of 1980 to set aside the Judgment and Decree dated 07.02.2013 made in R.C.A.No.751 of 2005 on the file of VII Court of Small Causes (Rent Control Appellate Authority), Chennai, confirming the Judgment and decree dated 10.03.2005 passed by the XII Court of Small Causes, Chennai in R.C.O.P.No.1448 of 2004.

For Petitioner : Mr.R.Dasaratha Rao

For Respondents : Mr.K.P.Ashok

COMMON ORDER

The above mentioned Civil Revision petitions are directed against common order and separate decree dated 7.12.2014 passed by the VII Small Causes Court, Chennai as Rent Control Appellate Court in R.C.A Nos. 751 of 2005 and 727 of 2005.

2.The genesis of the dispute arises out of the fair and decretal order dated 10.3.2005 in R.C.O.P.No.1448 of 2004 of the Rent Controller and therefore both the Civil Revision petitions are being disposed by this common order.

3. The land lady was the petitioner and the tenant was the respondent in R.C.O.P No.1448 of 2004 and the appellant in R.C.A No.751 of 2005 and is the petitioner in C.R.P.No.19 of 2015 and the respondent in CRP.No.1179 of 2014. The appellants in R.C.A.No 727 of 2005 and the petitioners in C.R.P.No.1179 of 2014 and the respondents in C.R.P.No.19 of 2015.

4. For the sake of clarity and for the purpose of easy narration of facts parties shall be referred to as landlady and tenants.

5. The landlady had filed R.C.O.P No.1448 of 2004 before the Rent Controller under section 4 Of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 fixation of fair rent of Rs.39,21,743/- per month. The contracted rent that was being paid at that time was Rs.Rs.7500/-.

6. By a fair and decretal order dated 10.3.2005 in R.C.O.P No. 1448 of 2004, the Rent Controller fixed a sum of Rs.12, 091/-as a fair rent to be paid by the tenant.

7. Both the landlady and the tenant filed appeal before the Rent Control Appellate Court vide R.C.A.No.751 of 2005 and R.C.A.No.727 of 2005 respectively.

8. By a common order and separate decree dated 7.2.2013, the Rent Control Appellate Authority has affirmed the order dated 10.3.2005 of the Rent Controller in R.C.O.P No.1448 of 2004.

9. The landlady had sought for fixation of the fair rent of Rs. 39, 217/- per month based on the following calculations:-

CALCULATION:

Built up plinth area in ground floor:

$$30' \times 19' - 6'' \text{ sq.ft} = 585 \text{ Sq.ft.} \times \text{Rs.} 400/- = \text{Rs.} 2,34,000/-$$

A/C Sheet roof area

$$19' - 6'' \times 15' - 6'' = 302 \text{ Sq.ft.} \times \text{Rs.} 290/- = \text{Rs.} 87,652/-$$

$$\text{Rs.} 3,21,652/-$$

Add 5% for electricity Rs. 26,082/-

$$\text{Rs.} 3,37,734/-$$

Depreciation @ 1% for 40 years

$$(0.6689) (3,37,734) = \text{Rs.} 2,25,910/-$$

LAND VALUE:

$$\text{Built up plinth area: } 585/2 + 302 = 595.5 \text{ sq.ft.}$$

$$\text{Available Vacant Land} = 292.5 \text{ sq.ft.}$$

Since the Apportioned built up plinth area is more than the vacant land area, annexe the same to arrive the market value of the site = 887 sq.ft.

$$\text{Rs.} 1,00,00,000 \times 887 \text{ sq.ft} = \text{Rs.} 36,95,833/-$$

$$2400 \text{ sq.ft.}$$

$$\text{Cost of construction and land value} = \text{Rs.} 2,25,910/-$$

$$(+ \text{Rs.} 36,95,833/-)$$

$$\text{Rs.} 39,21,743/-$$

Fair rent @ 12% per annum for non-residential

Purpose per month: Rs.39,217/- only.

10. The tenant disputed the calculation given by the landlady for fixation of the fair rent. The Rent Controller has concluded that the type of construction of the rented premises was type I.

11. According to the tenant, admittedly teak wood was not used throughout in the rented premises and therefore the conclusion of the Rent Controller as affirmed by the Rent Control Appellate Court was unsustainable.

12. The learned counsel for the tenant drew attention to the deposition and the finding of the Rent Controller in order dated 10.3.2005 in R.C.O.P No.1448 of 2004.

13. The learned counsel for the tenant submits that as far as the basic amenities are concerned the electricity connection was obtained by the predecessor of the tenant.

14. As far as the plinth area is concerned, the landlord has claimed that the plinth area of the RCC portion was 520 ft² while the landlady claimed the plinth area of the RCC portion to be 585 ft² and that of the ACC portion as 302 ft² and 30 4 ft² respectively. According to the tenant ACC portion was not put

up by the landlady. The rent controller has accepted the tenant version for fixation of fair rent of Rs.12, 091/-

15. As far as the total area of land covered by the rental arrangement is concerned, the landlady claimed that length of the land was 60 ft. of land was approximately 45 ft covering the total built-up area including the ACC shed portion with a 15 ft of frontage. The tenant on the other hand has claimed that the total land covered by the rental arrangement was only 45 ft and that 15 ft was used by the landlady herself as the rear portion. According to the tenant the total extent of the land is only 60 ft even as per the patta.

16. In the rent control proceeding before the Rent Controller, the landlady claimed the value of the land as Rs.1.15 crore's and it was rounded off to Rs.85 lakhs based on PW1's Engineer's deposition. The tenant on the other hand has stated that the land values as Rs.40 lakhs. The Rent Controller has accepted the value to be Rs.45 lakhs to arrive at the fair rent of ? 12, 091/-

17. Before the Rent Controller, the tenant marked two sale deeds, extract from the permanent land register, fair and decretal order dated 31.10.2003 in RCOP.No.188 of 2002, an engineer's report dated 11.12.2004, and an analysis report.

18. The tenant on the other hand marked 12 documents which include 3 E.B cards, a photo with the negative letter from the authorities, an engineer's report, sketch, sale deed, analysis report, partnership document, rental receipts, partnership document.

19. On behalf of the landlady PW1 and 2 were examined as witnesses. On behalf of the respondent RW one and RW 1 and 2 deposed evidence.

20. While the landlady seeks for enhancement of the fair rent Rs.39 217/- p.m. as was originally claimed in the rent control proceeding in CRP.No.19 of 2015, the tenant on the other hand C.R.P.No.1179 of 2014 seeks for reduction of the fair rent to Rs.7500 from Rs.12,091/-by the rent controller and submits that the rent of Rs.7500/- was intact more than the fair rent payable for the property.

21. I have perused the respective orders passed by the Rent Controller and the Rent Control Appellate Court. The landlady claims seeks for fixation of the fair rent to Rs.39,217/-per month whereas the tenant seeks to maintain the contractual rent of Rs.7,500/-per month. The Rent Controller has fixed the fair rent at Rs.12,091/-per month which decision has been upheld by the Rent Control Appellate Court.

22. The jurisdiction of this court is neither that of an appellate court nor that of a revisional court under Section 115 of the Civil Procedure Code. Its powers are wider than the power of the court under Section 115 of the Civil Procedure Code but narrower than that of an appellate court as held by the Honourable Supreme Court in **Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar**, (1980) 4 SCC 259. The Court held that *“The language of Section 25 is indeed very wide. But we must attach some significance to the circumstance that both the expressions “appeal” and “revision” are employed in the statute. Quite obviously, the expression “revision” [AIR 1969 NSC 186 : (1969) 2 SCWR 679] is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression “appeal”. In fact it has to be noticed that under Section 25 the High Court calls for and examines the record of the Appellate Authority in order to satisfy itself. The dominant idea conveyed by the incorporation of the words ‘to satisfy itself under Section 25 appears to be that the power conferred on the High Court under Section 25 is essentially a power of superintendence. Therefore, despite the wide language employed in Section 25, the High Court quite obviously should not interfere with findings of fact merely because it does not agree with the finding of the subordinate authority. The power conferred on the High Court under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act may not be as narrow as the revisional power of the High Court under Section 115 of the*

*Code of Civil Procedure but in the words of Untwalia, J., in **Dattonpant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval**[(1975) 2 SCC 246] ; “it is not wide enough to make the High Court a second Court of first appeal”*

23. Being aware of the limitations of the jurisdiction of this court under section 25 of the Tamil Nadu Buildings (Lease and Rent Control), Act 1960, proceed to dispose these two civil revision petitions are filed by the landlady and the tenant.

24. The Court can call for and examine records of the Rent Control Appellate Authority to satisfy as to the regularity of such proceedings or **correctness, legality or propriety** of any decision or order passed therein and only if it appears that any such decision or order requires to be modified, annulled, reverse order remitted for reconsideration, it may pass orders accordingly.

25. The landlady has claimed that the total area of the land that has been leased to the tenant on which the RCC structure and the Asbestos shed exist to be 595 Sq. ft. while the tenant has stated it to be 337 Sq Ft. The Rent Controller has considered area of land covered by Asbestos shed and RCC structure to 564 Sq. ft. The easiest and most practical way to determine the

physical feature of the property could have been appointment of an advocate commissioner to give a report.

26. Such report would have determined the extent of the land leased along with the build up area for determination of the fair rent. Since, there is not much of difference in the land claimed to have been rented by the tenant and the finding arrived by the Rent Controller, I do not find any serious irregularity in the determination of the extent of land for the purpose of the fixation of fair rent.

27. Further, the finding of the facts arrived by the Rent Controller cannot be upset or interfered in this proceeding under Section 25 of the unless it is shown that there is a taint of miscarriage of justice..

28. The Rent Controller has taken the value of land as Rs.45 lakhs per ground whereas according to the landlady the value of the land in the year 2000 was Rs.1.15 Crores as per Exhibit P7 in the same area but was restricted to Rs.85 Lakh for the purpose of determination of fair rent.

29. The tenant produced sale deeds of the years 2003 and a certificate of an Engineer in 2004 Vide Exhibit R-6 and Ex. R. 4 respectively to

demonstrate the land value to be Rs.40 Lakh and Rs.45 Lakhs. Ex.R-4 is the Engineers Report produced by the tenant while Exhibit R-6 is copy of the sale deed of the year 2003 wherein the sale is in respect of a residential flat of 1525 Sq.Ft together with an undivided share in the land to an extent of 1005 Sq Ft. The Value of the land has been declared as 19,00,000/- and the value of the flat has been declared as Rs.500,000/- in Ex,R.6.

39. The Rent Controller has taken the value of the land as Rs. 45 Lakh as per Exhibit R 4, it being certificate of the Engineer of the same year as that the of RCOP.

31. Both Exs. P.7 and R. 6 are sale deeds of two different residential properties. (in the same location) Ex. P. 7 produced by the Landlady pertains to sale of 3 grounds and 2300 Sq Ft of land together with building valued at Rs.62,53,000/- and Rs 7,4700/- respectively for a total sale consideration of Rs.70,00,000/-.

32. The value of the land even as per Exhibit P7 would be only Rs.15,79,705/- per ground in the year 2000 and not Rs.85,000/- as was argued. The value of the land as per Exhibit R-6 of the year 2003 is Rs.19,00,000 for a UDS of 1005 Sq Ft.

33. Thus, the value of land per Sq ft. in the year 2003 was 1890.54 per Sq Ft. and therefore the value per ground would be Rs.45,27, 313/- .

34. Both these documents pertain to land in the same residential area. Comparison of the value per ground of these residential land increased from Rs.15,79,705/- per ground in 2000 to Rs.45,27,313/ in 2003 i.e. Rs 30 Lakh in these years. i.e. at an average of Rs.10,00,000 per year. Therefore, the value of the residential land in 2004 can be safely concluded would have been Rs.55,00,000/- per ground.

35. The fact that the land in question is situated in a busy commercial area in Luz Corner , Mylapore in Chennai which incidentally was one of earliest commercial areas to have developed in the city of Chennai, it can be safely assumed that the Rent Controller erred to arriving at the value of the property as Rs.45,00,000/- per ground based on Ex.R.4. The Rent Controller ought to have resorted to his best judgment to arrive at the correct value of the land instead of relying on Ex. R4 certificate of an engineer produced by the tenant.

36. It would be unfair to infer that the land value was sliding down ward based on a wrong inference of facts and figure that were available before the Rent Controller. Considering the fact that the land in question was a land

located in a busy commercial area in the same vicinity, its value can be scaled up by another 25%.

37. I therefore deem it fit to add 25% to the notional value of residential land to determine the value of the land in question for the purpose of determination of the fair rent.

38. Therefore, the value of the land is enhanced to Rs.68,75,000/- per ground (Rs.55,000 + 25%) and accordingly the fair rent being recomputed.

39. However, while re-computing, the other finding regarding the type of building and the extent of land arrived by the Rent Controller are not disturbed. The fair rent awarded by the Rent Controller is enhanced from Rs.12,091/-p.m. to Rs.17,672/- p.m as follows:-

		In Rupees
Cost of Construction	RCC	1,82,000.00
	AS Shed	76,304.00
	Total	2,58,304.00
Infrastructure		Nil
Depreciation 1% p.a. for 53 years (as held by Court below) : -	564 Sq ft	
Hence depreciated value of		

building Extent of Land 2,58,304 x 0.587(as per Court below)		1,51,624.00
Extent of land	564 sq.ft.	68,75,000.00
Value of the land per Sq Ft.[68,75,000.00/2400]		2,864.58
Value of land 564 Sq Ft @ 2864.58 per sq.ft.(2864.58x564)		16,15,623.00
Value of the Rented premises 16,15,625.00+1,51,624 = (Rs.		17,67,249.00
Annual Rental at 12%. of the above Value.		2,12,069.88
Monthly fair rent(2,12,069 / 12)		17,672/-

40. Thus, CRP No.19 of 2015 filed by the landlady is partly allowed and the fair rent fixed at Rs.12,091.24/-per month by the Rent Controller as affirmed by the Rent Control Appellate Court is set aside and the same is enhanced to Rs.17,672/- per month from the date of filing of Rent Control Original Petition.

41. The tenant is directed to pay the enhanced amount of rent to the landlady, if the arrears of rent has not been already paid, within a period of six weeks from the date of receipt of copy of this order,

C.SARAVANAN.,J.

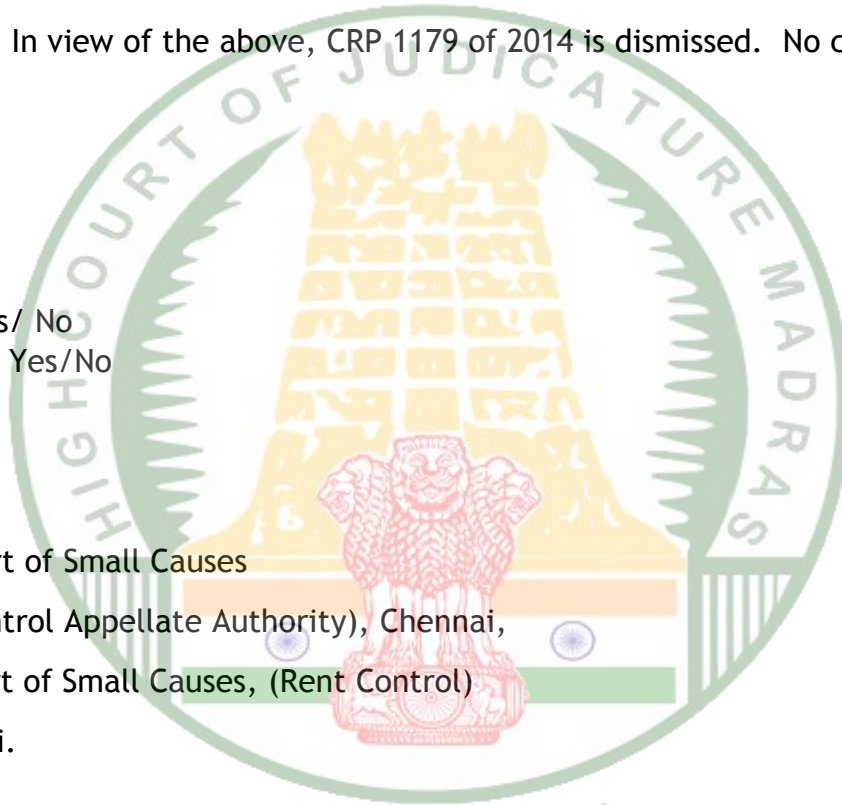
Arb/kkd

42. In view of the above, CRP 1179 of 2014 is dismissed. No cost.

25.04.2019

Index: Yes/ No
Internet : Yes/No
arb/kkd

To
1.VII Court of Small Causes
(Rent Control Appellate Authority), Chennai,
2.XII Court of Small Causes, (Rent Control)
Chennai.



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and 19 of 2015

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