

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.01.2020

PRONOUNCED ON : 27.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).Nos.3631, 3632 & 3689 of 2011

and

M.P.No.1 of 2011

CRP(NPD).Nos.3631 & 3632 of 2011:

S.Jayanthilal ...Petitioner/5th Petitioner

Vs.

T.S.Raju Chetty Brothers
No.72, Govindappa Naicken Chetty Street,
Chennai – 600 001. ...Respondent/Respondent

COMMON PRAYER: These Civil Revision Petitions have been filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act 23 of 1973 and Act 1 of 1980, against the judgment and decree of the learned VIII Court of Small Causes at Chennai (Rent Control Appellate Authority) dated 05.02.2008 in RCA.Nos.1307, 1509 of 2003 filed against the judgment and decree of the learned X Judge, Court of Small Causes, (Rent Controller) at Chennai, in RCOP.No.854 of 1996, dated 29.08.2003.

For Petitioner
in both petitions : Mr.A.K.Raghavulu

For Respondent
in both petitions : Mr.H.Kishore

CRP(NPD).No.3689 of 2011:

T.S.Raju Chetty Brothers
No.72, Govindappa Naicken Chetty Street,
Chennai – 600 001. ...Petitioner/Petitioner

Vs.

1.S.Kantilal
2.S.Tejraj
3.S.Babulal
4.S.Jayantilal
5.S.Kishore Kumar ...Respondent/Respondent

PRAYER: This Civil Revision Petition has been filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act 23 of 1973 and Act 1 of 1980, against the judgment and decree of the learned VIII Court of Small Causes at Chennai (Rent Control Appellate Authority), dated 05.02.2008 in RCA.No.1509 of 2003, modifying the order and decree of the learned X Judge, Court of Small Causes (Rent Controller), at Chennai, in RCOP.No.854 of 1996, dated 29.08.2003.

For Petitioner : Mr.H.Kishore

For R1, R2, R3 & R5 : No appearance

For R4 : Mr.A.K.Raghavulu

COMMON ORDER

CRP(NPD).Nos.3631, 3632 & 3689 of 2011 have been filed against the order passed by the learned VIII Judge, the Court of Small Causes, (Rent Control Appellate Authority), Chennai, dated

05.02.2008 in RCA.Nos.1307, 1509 of 2003 filed against the order of the learned X Judge, Court of Small Causes, (Rent Controller) at Chennai, in RCOP.No.854 of 1996, dated 29.08.2003.

2 For the sake of convenience, the parties will be referred to as the landlord and tenant.

3 The brief facts of the case are as follows:

(i) The original landlord Mr.S.Seshmall, has filed a rent control original petition in RCOP.No.854 of 1996, before the learned Rent Controller, Court of Small Causes, Madras, for fixation of fair rent to the petition premises at Rs.8,068/- per month from the date of the petition. The learned Rent Controller has partly allowed the said petition and fixed the fair rent for the petition premises at Rs.4,516/- per month.

(ii) As against the order passed in the RCOP., the landlords have prepared RCA.No.1307 of 2003 and the tenant has preferred RCA.No.1509 of 2003, before the learned Rent Control Appellate Authority. After enquiry, RCA.No.1307 of 2003 filed by the landlords was dismissed and RCA.No.1509 of 2003 filed by the tenant was partly allowed, by reducing the fair rent for the petition premises in

RCOP.No.854 of 1996, at Rs.4,278/-.

(iii) Hence, the landlords have preferred two Civil Revision Petitions viz., (i) CRP.No.3631 of 2011 against the order passed by the learned VIII Judge, Court of Small Causes, (Rent Control Appellate Authority), Chennai, dated 05.02.2008 in RCA.No.1307 of 2003, (ii) CRP.No.3632 of 2011, against partly allowing application in RCA.No.1509 of 2003. Having not been satisfied with the reduction of fair rent, the tenant has also preferred CRP.No.3689 of 2011 before this Court. All the CRPs were posted together.

4 Heard the common argument by all the learned counsels and perused the materials placed on record.

5 On perusal of the records, it is seen that

(i) During the pendency of RCOP.No.2455 of 1994, the original land owner viz., S.Seshmall died and as per the probated Will, Jayanthilal has continued the proceedings as a fifth petitioner before the learned Rent Controller in RCOP.No.854 of 1996.

(ii) RCOP.No.851 of 2003, has been filed, seeking for fixation of fair rent for the petition premises bearing old No.186,

New No.72, Govindappa Naicken Street, Madras 1. The Tenant has occupied a shop in the ground floor of the petition premises on monthly rent at Rs.860/-.

(iii) In RCOP.No.854 of 1996, the tenant has occupied a shop in the ground floor of the petition premises on a monthly rent of Rs.2000/-. The tenancy is for carrying on business purpose. The petition premises is situated in one of the important streets of George Town and the street is a branch of N.S.C.Bose Road, which is very near to Flower Bazaar Police Station. The premises is situated just a few yards from the junction of Govindappa Naicken Street and Audiappa Naicken Street. The Govindappa Naicken Street is very famous for Electrical goods, Chemicals, Textile and Kirana Business. The petition premises is located in a highly commercial area, which was surrounded by Nationalized banks, Kothawalchawadi, Kasi Chetty Street. The land value in this area will not be less than Rs.50 lakhs per ground. The rent paid by the tenant was very low considering the value of the property and other facilities and amenities and also the location of the petition premises. The petition premises Type 1 building. Hence, the landlord has prayed for fixation of fair at Rs.4,713/- per month.

(iv) In the counter statement, the tenant has resisted the claim for enhancing and fixation of fair rent, inter alia contending that he has emphatically denied that Govindappa Naicken Street is famous for textiles and chemical businesses. In the said petition premises, the tenant has been carrying his mosaic flooring and it is furnished with Country wood doors and there were no windows in the shop. There was a small ventilator at a very height of the neighboring building having been constructed and there is only one amenity of electricity was provided. The building is more than 60 years old and the land value would not be more than five lakhs per ground. There was no schedule amenity in the tenant portion such as mosaic. Therefore, the rent paid by the tenant was itself highly excessive.

(v) During the course of trial before the Lower Court, on behalf of the landlords two witnesses were examined and exhibits P1 to P7 were marked. On behalf of the tenant two witnesses were examined and Exs.R1 to R8 were marked.

(vi) The learned Rent controller after enquiry, has allowed the RCOP and fixed the fair rent at Rs.4,516/- per month.

Aggrieved against the same, the landlord and the tenant have preferred the Rent Control Appeals.

(vii) It is also seen from the records that originally RCOP was filed by one Mrs.Pyari Bai, who is the wife of late S.Seshmall and represented through her Power Agent Babulal. During the pendency of RCOP Mrs.Pyari Bai died, therefore her son's were impleaded as petitioner Nos.2 to 6 in RCOP.No.854 of 1996, as per order passed in M.P.No.1225 of 1996 dated 10.03.1997.

(viii) The deceased/first petitioner in the said RCOP is the wife of late Seshmall and petitioners 2 to 6 are the sons of late Seshmall. The petitioner premises originally belongs to late Seshmall. After his death, his legal heirs have become the Co-owners of the petition premises. Ex.R2 is the two rent receipts issued by one of the Co-Owner S.Kanthilal in favour of the tenant Moolchand Champalal. Even though separate portion is allotted to each sons of Seshmall, all the petitioners have jointly filed a petition for fixation of fair rent. All the sons of Seshmall being the legal heirs, have entitled to receive the rent. Hence, the petitioners come under the definition of "the Landlord" under the Rent Control Act.

(ix) The legal heirs of the deceased Seshmall has filed RCOP and they are entitled to receive the rent. Therefore, they are the landlords. Further, the fair rent which was fixed for the petition premises is not for the person. The petitioners are entitled to file petition for fixation of fair rent and the petition is maintainable.

(x) Both the Rent Controller as well as the Rent Control Appellate Authority have taken into consideration the evidence of PW2 coupled with Ex.P1 and oral evidence of PW2 coupled with Ex.R4 and R5, have come to the conclusion that the petition premises is "Type - I" building and there is no dispute between both engineers report filed on behalf of the landlords and the tenant.

6 Accordingly, a concurrent finding has been rendered by the Authorities below as to the building as "Type- I" and the same is hereby confirmed. On the point of age of the building, the learned counsel for the landlords has drawn my attention to the evidence of PW1.

7 Per contra, learned counsel for the tenant has also drawn my attention to the cross-examination of PW1 and also

Ex.R1/Partnership Deed. It is seen that even as per the tenant's Engineers Report, the age of the building was shown as 50 years and the same was accepted by the both the Authorities Below and hence, the concurrent finding by the Authorities below regarding the age of the building at 50 years is also hereby confirmed.

8 Both the Authorities below have taken into consideration the built up area, PW2/Landlords Engineer along with Ex.P2/Landlord Engineer Report and RW2/Tenant Engineer Report along with Ex.R7/Tenant Engineer Report, have calculated the plinth area and arrived at 892.83 sq.ft. Thereby, the landlords' engineer measurement in the plaint was accepted. After going through the same, this Court does not find any error in computing the plinth area and the same is hereby confirmed.

9 Regarding the cost of the construction prevailing PWD rates for the year 1995 – 1996, was made applicable to the petition premises since the RCOP was filed in the year March 1996. As per PWD rate, the cost of construction for RCC roof portion and construction of common passage was accordingly fixed at Rs.198/- per sq.ft and Rs.90/- per sq.ft respectively. As the same was concurrently found by the Authorities below, the same does not

warrant any interference by this Court.

10 With regard to basic amenities and on going through the Ex.P3, this Court is of the considered opinion that the basic amenities should be calculated at 12% not at 10% as done by the Appellate Authority and hence, fine in this regard shall stand modified and basic amenities is re-fixed at 12% per mensum. On the point of depreciation for 50 years, the same has to be calculated at the rate of 1%.

11 The assessment made by the Rent Controller Appellate Authority regarding the extent of land at 362 sq.ft is appears to be just and reasonable as per the nature of the building viz., ground floor plus three floors and totally area being 957 sq.ft and hence, the extent of land fixed at 362 sq.ft by both the Courts below, does not warrant any interference on the point of value of land at the relevant point of time.

12 After hearing both the learned counsel, it is to be stated that though the landlord alleged the value of the land is not less than Rs.50,00,000/- lakhs per ground, on the contrary, tenant has contended the value of the land will not be more than five lakhs.

While, the PW2/Landlord Engineer fixed the value at Rs.65,00,000/- per ground, the RW2/Tenant Engineer has fixed value at Rs.15,00,000/- per ground to substantiate their respective assessments Ex.P4 and Ex.R6 were marked. Both Ex.P4 and P6 are Sale Deed executed in the year 1987. It is seen that the very small portion of the property was conveyed therein and hence, Rent Controller Appellate Authority has rightly rejected the same.

13 Based upon the Ex.R5, the Appellate Authority has calculated the land value and fixed at Rs.20,00,000/-. However, taking note of the local advantages and that the petition premises is situated in one of the important street of George town, which is a big branch of NSE Bose Road, which is very near to Flower Bazaar Police Station and it is few yards away from the Govindappa Naicken Street and Audiappa Naicken Street. Both are commercial hub and are also surrounded by the Nationalized Bank, Kothawalchanwadi, Kasi Chetty Street, which is a commercial area of the city of Madras. I am of the considered view that Rs.20,00,000/- per ground fixed by the Appellate Authority has to be enhanced to Rs.25,00,000/- (Rupees Twenty Five Lakhs) under schedule one amenities has to be comply. Accordingly, fair rent is re-fixed as under:

Cost of construction:

Built up area RCC Roof Portion $957 \times 198 = \text{Rs.}1,89,486.00$

Basic Amenities 12%

$[\text{Rs.}1,89,486 \times (12/100)] = \text{Rs.}22,738.32$

 $\text{Rs.}2,12,224.32/-$

Depreciation 1% for 50 years $= \text{Rs.}2,12,224.32 \times 0.605$
 $= \text{Rs.}1,28,395.71/-$ -----(a)

Land Value is $\text{Rs.}25,00,000/-$ per ground

$25,00,000/- \times 362$

 $24,000/-$ $= \text{Rs.}37,708.33/-$ -----(b)

a + b

 $= \text{Rs.}1,66,104.04/-$

For non-residential purpose fair rent has to be calculated at 12%

$= \text{Rs.}1,66,104.04/- \times (12/100)$

$= \text{Rs.}19,932.48/-$

Fair Rent $= \text{Rs.}19,932.48/-$ per month $=$ Round off to
 $\text{Rs.}19,900/-$ per month.

14 In the result,

(i) CRP(NPD).Nos.3631 & 3632 of 2011, filed by the
landlord viz., S.Jayanthilal, are partly allowed by fixing the fair rent
at $\text{Rs.}19,900/-$ per month.

(ii) CRP(NPD).No.3689 of 2011 filed by the tenant is dismissed and the order passed by the learned VIII Court of Small Causes (Rent Control Appellate Authority), Chennai, dated 05.02.2008 in RCA.No.1509 of 2003, is hereby modified to the extent indicated above.

(iii) No costs. Consequently, connected Miscellaneous Petition is also closed.

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Index : Yes / No
Internet : Yes

To

- 1.The VIII Judge, Small Causes Court, Chennai.
- 2.The X Judge, Small Causes Court, Chennai.

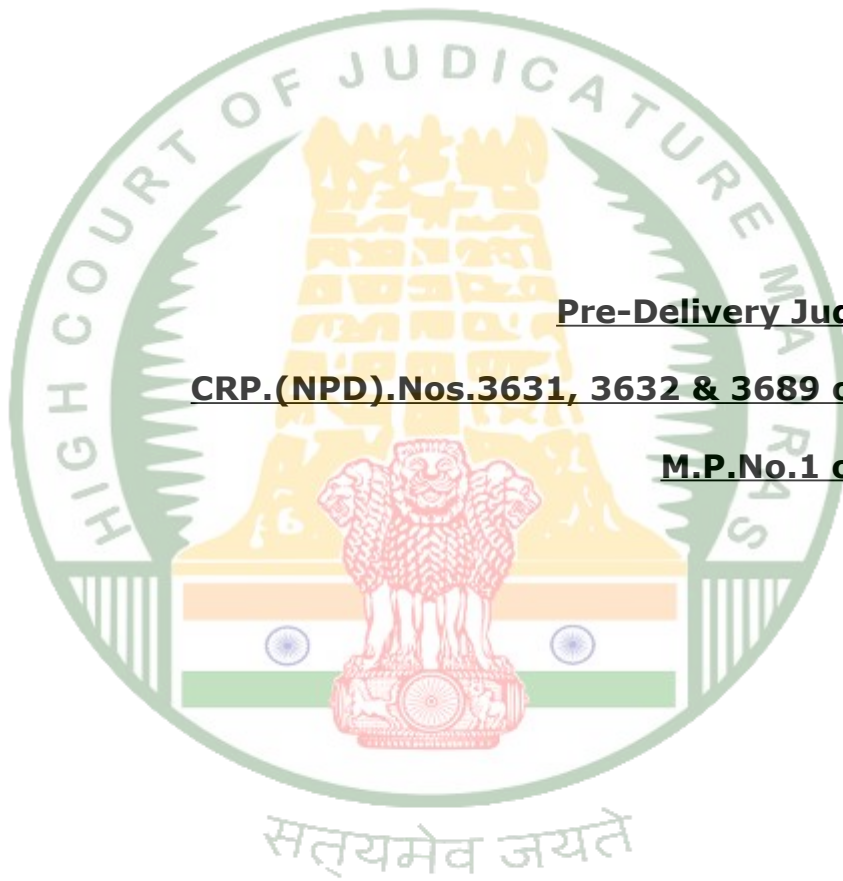
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CRP.(NPD).Nos.3631, 3632 & 3689 of 2011
and M.P.No.1 of 2011

RMT.TEEKAA RAMAN., J

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Pre-Delivery Judgment
in
CRP.(NPD).Nos.3631, 3632 & 3689 of 2011
and
M.P.No.1 of 2011

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