

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

C.R.P.(NPD).No.1562 of 2012

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- 1.M/s.Sri.Venco Jewellers,
rep by its Proprietor,
M.S.Muthusamy
Door No.555, Big Bazaar Street,
Coimbatore -1.
- 2.M/s.Marakottaiyars, Proprietary Concern,
Rep by its Proprietor
M.S.Muthusamy,
Door No.554, Big Bazaar Street,
Coimbatore-1. . . . Petitioners

Vs

- 1.S.Anandakumar,
S/o.late S.Subramaniam
Door No.39, Muthu Vinayakar Koil Street,
Coimbatore -1.

- 2.Chitra,
W/o.B.Kumarasamy,
Door No.3/35, Sri Gopalapuram,
Vadavalli,
Coimbatore- 41.

- 3.Nalini,
W/o.Sivasankar,
Door No.5/56.A, Big Bazaar Street,
Coimbatore – 1.

4. Manjula,
W/o.N.Swaminathan,
Door No.149, 2nd Floor, Palanisamy Illam,
Ponniahrajaapuram,
Coimbatore – 1.

5.Kousalya,
W/o.Karthikeyan,
Lakshmi Balaji House,
Door No.15, Visweswar Iyer Street,
No.1, Church Road,
K.K.Pudur, Coimbatore – 38. ... LRs of the respondents.

Prayer : Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order of the learned Rent Control Appellate Authority cum Principal Subordinate Judge, Coimbatore dated 12.08.2011 passed in R.C.A.No.63 of 2007 confirming the order of the learned Rent Controller cum I Additional District Munsif, Coimbatore dated 13.04.2007 passed in R.C.O.P.No.96 of 2004.

For Petitioners : Mr.J.Antony Jesus
For Respondents : No appearance

ORDER

This civil revision petition is filed against the fair and decreetal order of the learned Rent Control Appellate Authority cum Principal Subordinate Judge, Coimbatore dated 12.08.2011 passed in R.C.A.No.63 of 2007

confirming the order of the learned Rent Controller cum I Additional District Munsif, Coimbatore dated 13.04.2007 passed in R.C.O.P.No.96 of 2004.

2. The case of the petitioners is that the petitioners herein are the tenants and the respondents are the landlord. The respondents have filed a petition under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, in RCOP No.96 of 2004, before the Rent Controller, (I Additional District Munsif), Coimbatore, for fixation of fair rent.

3. The learned Rent Controller, after an enquiry, fixed the rent as Rs.7360/- per month as fair rent. Challenging the same, the petitioners herein have filed an appeal before the Rent Control Appellate Authority (Principal Sub Judge, Coimbatore) in RCA No.63 of 2007. The learned Rent Control Appellate Authority, after hearing the arguments, dismissed the appeal and confirmed the order passed by the learned Rent Controller. Again, challenging the order of the learned Rent Control Appellate Authority, the petitioners are before this Court by way of this revision petition.

4. The learned counsel for the petitioners would submit that though the respondents have stated in their petition that the age of the building was 10

years old, whereas in their evidence, they have admitted that the building was constructed during 1972 -73. Therefore, the building is 31 years old. Further, he would submit that the Rent Controller as well as the Rent Control Appellate Authority failed to follow the decision of the Hon'ble Full Bench of this Court. Further, he would submit that the respondents have not examined any witness to fix the market value. Though, they filed a document under Ex.P5, no witness was examined to prove the Ex.P5 and neither the party to the document nor the attester to the document were examined and proved the document. The learned Rent Controller considered the said document and fixed the market value based on Ex.P5 document. It is against the law laid down by this Court and the Hon'ble Supreme Court of India. The learned Rent Control Appellate Authority also failed to follow the proposition of law and confirmed the order of the Rent Controller.

5. Further, the learned counsel for the petitioners would submit that the plinth area of the construction is 410 Sq.ft. Whereas, the respondents have stated in their petition that the plinth area is 470 Sq.ft. Therefore, the respondents failed to establish that how they are entitled for the fixation of fair rent as claimed by them as Rs.8,825/- per month as fair rent. An Advocate Commissioner was appointed and he suggested the monthly rent of

Rs.9,218/- per month as fair rent. The learned Rent Controller neither accepted the rent claimed by the respondents nor accepted the suggestion made by the Advocate Commissioner and he fixed the rent of Rs.7,360/- per month as fair rent. So, without any evidence, on assumption, the Rent Controller fixed the fair rent. The respondents failed to prove that the market value of the site on the date of filing of the application was Rs.3,100/- per Sq.ft. The learned Rent Controller also on the basis of the Ex.P5 sale deed, fixed the market value of the site as Rs.3,047/- per Sq.ft.

6. Admittedly, the respondents have not examined any of the party to the said document Ex.P5 and not examined any attesting witness or any persons who is competent to speak about the document. Therefore, the rent fixed by the Rent Controller as Rs.7,360/- per month as fair rent, is without any valid evidence and therefore, the same is liable to be set aside. The learned Rent Control Appellate Authority also failed to consider the stand taken by the petitioners herein and also simply without any valid reason, dismissed the appeal and confirmed the order passed by the learned Rent Controller. Therefore, it warrants interference of this Court.

7. Heard the learned counsel appearing for the petitioners. Though notice was served and name was printed in the cause list, no representation on behalf of the respondents.

8. It is noted that the petitioners are the tenants and the respondents are the landlords and the landlords and tenants relationship is not in dispute. According to the respondents, the demised premises belonged to the respondents. They let out the building for commercial purpose to run the jewellery shop and as per the agreement dated 01.03.1989, Rs.1,090/- was fixed as rent per month. The building was constructed to an extend of 470 Sq.ft. and the market value of the vacant land at the time of filing of the petition was Rs.3,100/- per Sq.ft. The building comprised ground floor as well as the first floor. The market value of the building is Rs.14,57,000/-. Two floors were constructed and the respondents occupied only one floor. Therefore, the half of the value of the building comes to Rs.7,28,500/- . The cost of construction worth about Rs.400/- per Sq.ft and the total cost of construction of 470 Sq.ft comes to Rs.1,80,000/-. After allowing depreciation of Rs.42,000/-, the cost of construction of the property is 1,44,000/- and for amenities, they claimed Rs.8000/-. So, totally valued the building and claiming that the market value of the site is Rs.7,28,500/-. Therefore, the

respondents claims Rs.8,825/- per month as fair rent.

9. According to the petitioners, the extend of the plinth area is approximately 440 Sq.ft and there is no evidence to prove the same and further, the market value, they claimed for the site is Rs.3100/-per Sq.ft , for which, also there is no evidence and the cost of construction is also not proved and the building is more than 30 years old and the respondents have wrongly stated that the building is 10 years old. The rent claimed by the respondents as Rs.8825/- is highly exorbitant. They also failed to proved the same before the Rent Controller as well as the Rent Control Appellate Authority and they failed to follow the statutory principles as well as the decisions of the Hon'ble Supreme Court and this Court.

10. Heard the learned counsel for the petitioners and perused the materials. As already stated, admittedly, there is no dispute with reference to the landlord and tenant relationship. As far as the extend of vacant site is concerned, though the respondents have stated that the plinth area is 470 Sq.ft, whereas the PWD Civil Engineer has clearly stated that the plinth area of the shop is 410 Sq.ft. and the cantilever area is 87.66 Sq.ft. Therefore, though the respondents have stated in their petition for fixation of fair rent

that the shop is situated to an extent of 470 Sq.ft, it is contra to the evidence of the Civil Engineer and the Civil Engineer taken into consideration of 410 Sq.ft and calculated the market value for 410 Sq.ft.

11. As far as the market value is concerned, though the learned counsel for the petitioners would submit that the respondents have not examined any witness to prove Ex.P5 sale deed and also he has referred the citations before the Rent Controller that while fixing the fair rent, the market value of the site has to be taken into consideration not the guideline value. While fixing the market value, the respondents have to produce the documents for the market value prevailing as on date in the said locality. Though the respondents have filed Ex.P5 sale deed, but they have not examined any of the witness to prove the said document. Therefore, as per the guidelines of the Hon'ble Full Bench of this Court, neither guidelines value nor the value of the register has to be considered, only the market value alone has to be considered, for which, the respondents have not proved the document Ex.P5 by examining the relevant witness and the Rent Controller and the Rent Control Appellate Authority failed to consider the said principle.

12. A careful reading of the entire materials, in order to prove the market value of the site, the first respondent himself was examined as P.W.1 and the Civil Engineer was examined as P.W.2 and also the sale deed in the said locality was marked as Ex.P5. Though as stated by the learned counsel for the petitioners, no witness was examined, but, however, the petitioners have not disputed that the said property covered under sale deed Ex.P.5 is not in the said locality and the document was created or concocted, in order to fix the higher rent. The Apex Court in the case of **Land Acquisition Officer Vs. Narasaiah**, reported in **II 2001 (3) SC 157**, held that the High Court cannot therefore be faulted for relying on the transactions recorded in Ex.A2 and A4 though no one was examined for proving such transactions. No evidence has been adduced by the state for creating any doubt regarding the bonafides or genuineness of the transactions mentioned therein. Further, in **(2001) 3 MLJ 396, in the case of Susainathan and another Vs. T.Vijayan**, held that the certified copy of the document can be accepted for computing the market value and it is not necessary that the party or parties to the document has to be examined. The Court can act on document after considering the transactions recorded in the document.

13. In this case, even though the party to the document has not been examined, the Rent Controller considered the evidence and the document Ex.P5 is with reference to same locality of the petition mentioned property and found that the petitioners herein have not disputed that the market value is not Rs.3,047/- per Sq.ft and they have not produced any contra evidence or document that at the relevant point of time, the market value is less than Rs.3,047/- per Sq.ft. Therefore, in the absence of any contra evidence, the Rent Controller considered the documents and fixed the market value based on the document. Therefore, as far as the cost of construction of the building is concerned, as per the Civil Engineer, the Rent Controller fixed the value and the Rent Controller also taken the evidence of the respondents that the building is 31 years old. Therefore, the depreciation was deducted for 31 years and fixed the cost of construction of the building and the amenities also, though the Civil Engineer fixed as Rs.20,000/-, but the Rent Controller taken only Rs.8,000/- for cost of amenities. However, the respondents have not challenged the rent fixed by the Rent Controller or the Rent Control Appellate Authority and not challenged any of the mode of fixation of the rent and only the petitioners/tenants have challenged the same.

14. A careful reading of the entire materials, the Rent Controller considered all the facts on hand and also the materials and oral and documentary evidence and rightly fixed the rent as Rs.7,360/- per month. The learned Appellate Authority also considered the materials and confirmed the same by dismissing the appeal filed by the petitioners. While deciding the revision, the revision Court cannot sit in the armchair of the appellate Court and revisit the entire evidence. If any perversity in the appreciation of the evidence, the revision court can interfere with and perversity can be rectified.

15. On reading of the entire materials, this Court does not find any perversity in the order passed by the Rent Controller and the Rent Control Appellate Authority. Even though in Ex.P5, no evidence and party to the document or attester to the document were not examined, but the document is pertaining to the same locality and also prior to filing of this petition, the locality is a prime locality and the petitioners are running a jewellery Shop and that itself shows that the locality is the prime locality and the petitioners also not disputed any amenities available to the property and other aspects regarding petition mentioned property situated in the prime locality. The only objection raised by the learned counsel for the petitioners that Ex.P5 which was considered for fixing market value of vacant site, was not proved and the

Rent Controller has wrongly considered the document for fixing the fair rent. As already stated that the Hon'ble Supreme Court of India and this Court have held that mere non examining of the witness or party to the document will not vitiate the case of the respondents and the Rent Controller can consider the records and other evidence and in this case, admittedly, the petitioners have not filed any document or produced any evidence contrary to the document Ex.P.5.

16. Therefore, under these circumstances, this Court is not inclined to interfere with the order passed by the Rent Controller as well as the Rent Control Appellate Authority and the revision petition is dismissed. No costs.

12.08.2020

Index: Yes/No
Internet: Yes/No
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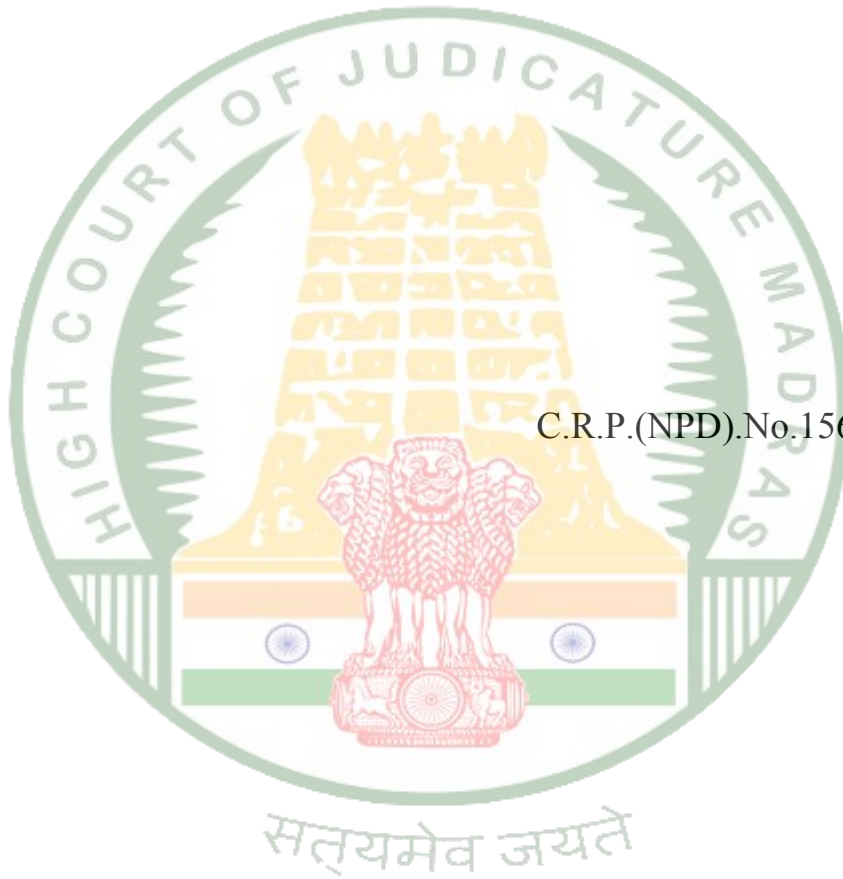
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To

- 1.The I Additional District Munsif, Coimbatore.
- 2.The Principal Subordinate Judge, Coimbatore.
- 2.The Section Officer, V.R. Section, High Court, Madras.

P.VELMURUGAN,J.

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