

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.02.2020

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

**C.R.P(NPD)No.2924 of 2012
and M.P.No.1 of 2012**

Abul Hassan

...Petitioner

Versus

1.Raghupathi
2.Pushakaran

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and final order passed in R.C.A.No.16 of 2011 dated 30.03.2012 on the file of the Rent Control Appellate Authority (Sub-Court), Poonamallee reversing the fair and final order made in R.C.O.P.No.64 of 2008 on the file of the Rent Controller (District Munsif Court) at Ambattur dated 28.04.2011.

For Petitioner : Mr.B.Vijay

For Respondents : No Appearance

ORDER

The present Civil Revision Petition has been filed challenging the judgment dated 30.03.2012 passed by the learned Rent Control Appellate Authority (Sub Court), Poonamallee in R.C.A.No.16 of 2011, in and by which the learned Rent Control Appellate Authority reversed the order dated 28.04.2011 passed by the learned Rent Controller (District Munsif Court), Ambattur in R.C.O.P.No.64 of 2008.

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

The respondents are landlords and the petitioner was a tenant under the respondents' vendor in the petition premises on a monthly rent of Rs.1,400/-. After the respondents' father had purchased the petition premises, the petitioner continued as a tenant under the respondents.

2.1 While so, the respondents fixed the fair rent of the petition premises as Rs.3,700/- per month and caused a legal notice dated 15.07.2008 to the petitioner demanding to pay the said fair rent. However, the petitioner refused to pay the same. Hence, the respondents filed

R.C.O.P.No.64 of 2008 against the petitioner before the District Munsif Court, Ambattur. By order dated 28.04.2011, the learned Rent Controller, Ambattur fixed the fair rent of the petition premises at Rs.3,000/- per month and directed the petitioner to pay the said fair rent to the respondents from the date of Rent Control Original Petition.

2.2 Against the order passed by the learned Rent Controller, Ambattur in R.C.O.P.No.64 of 2008, the petitioner filed R.C.A.No.16 of 2011 before the Sub Court, Poonamallee. The learned Rent Control Appellate Authority, Poonamallee vide order dated 30.03.2012, fixed the fair rent of the petition premises at Rs.3,670/- per month and directed the petitioner to pay the said fair rent to the respondents from the date of Rent Control Original Petition. Aggrieved by the order of the learned Rent Control Appellate Authority, Poonamallee, the petitioner has preferred the present Civil Revision Petition before this Court.

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3. The learned counsel for the petitioner submitted that the learned Rent Controller, Ambattur fixed the fair rent of the petition premises at

Rs.3,000/- per month. The order passed by the learned Rent Control is exorbitant and arbitrary against the principles laid down under the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 since the said order was passed without any basis. Therefore, the petitioner filed a Rent Control Appeal in R.C.A.No.16 of 2011 before the Sub Court, Poonmallee, seeking to set aside the order dated 28.04.2011 passed by the Rent Controller in R.C.O.P.No.64 of 2008. However, the learned Rent Control Appellate Authority, Poonamallee re-fixed the fair rent of the petition premises at Rs.3,670/- even higher than the fair rent already fixed by the learned Rent Controller, Ambattur. Both the Courts below failed to consider the extent and measurement of the shop while fixing the fair rent of the petition premises.

3.1 The learned counsel would contend that the finding of the trial Court as well as the Appellate Court are erroneous in law. He would also contend that despite there was no plea made either by the petitioner or by the respondent to increase the fair rent fixed by the Rent Controller, however, the learned Rent Control Appellate Authority enhanced the fair

rent of the petition premises at Rs.3,670/-. The learned Rent Control Appellate Authority passed the impugned order without any application of mind and therefore, the same is liable to be set aside.

4. Though notice was served on the respondents, none appeared on behalf of the respondents.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. From a perusal of the records, it is seen that the Courts below have failed to apply the cost of depreciation factor in proper perspective instead of which simply relied on the Engineer's report filed on the side of the respondents, while fixing the fair rent of the petition premises. Though the respondents had not adduced any proper evidence to prove the age of the building and the cost of the construction, the Courts below have passed the order in favour of the respondents.

7. In the present case, no Advocate Commissioner was appointed for fixing the annual rental value of the portion occupied by the petitioner. It is also to be noted that though neither the petitioner nor the respondents had made any request to increase the fair rent of the petition premises, the learned Rent Control Appellate Authority *suo motu* enhanced the fair rent of the petition premises at Rs.3,670/- per month without any reason.

8. Considering the above facts and circumstances of the case, this Court is of the view that the order passed by the learned Rent Control Appellate Authority in R.C.A.No.16 of 2011 dated 30.03.2012 is unsustainable in law and therefore, the same is liable to be set aside.

9. Accordingly, this Civil Revision Petition is allowed and the order dated 30.03.2012 passed by the learned Rent Control Appellate Authority in R.C.A.No.16 of 2011 is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

05.02.2020

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Index : Yes/No

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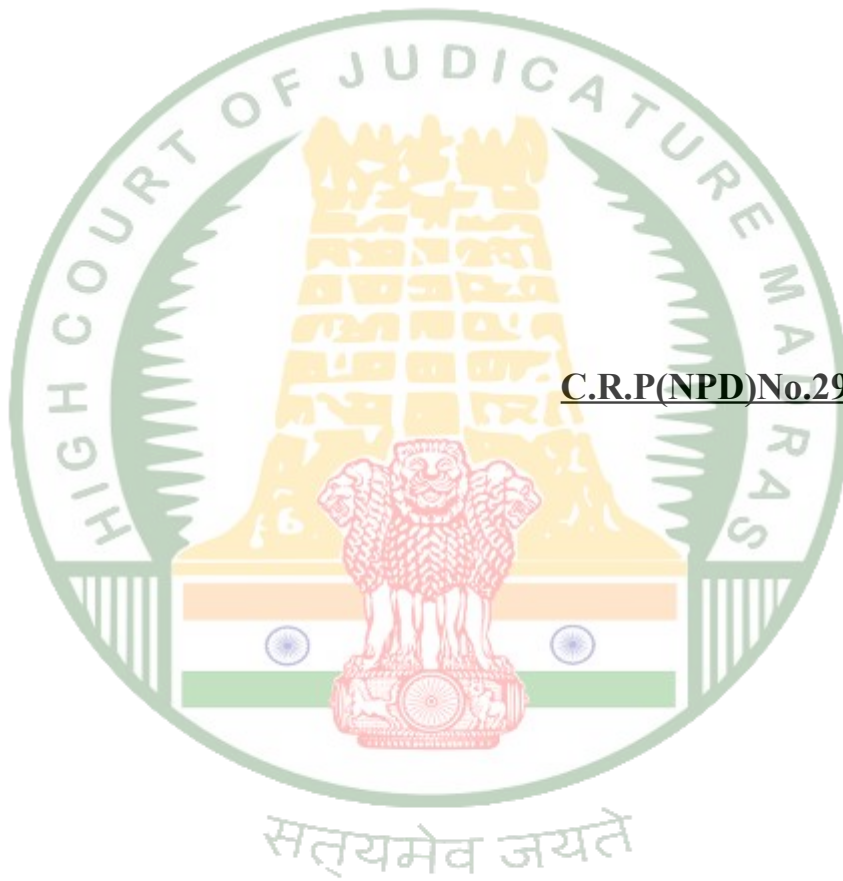
- 1.The Rent Control Appellate Authority (Sub-Court),
Poonamallee.
- 2.The Rent Controller (District Munsif Court),
Ambattur.



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KRISHNAN RAMASAMY, J.,

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