IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.Nos.3762 & 1912 to 1914 of 2012
and
M.P.Nos.1,1,1 & 1 of 2012 & 1,1,1 & 1 of 2013

C.R.P.No.3762 of 2012

SP.S.Yegappan ..Appellant/Petitioner/Land Lord

Vs.

M/s.Punjab National Bank,
Rep. by its Branch Manager,
Plot No.347, Ground Floor,
Dr.Lakshmanasamy Salai,
K.K.Nagar, Chennai - 600078. ..Respondent/Respondent/Tenant

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control Act, 1960 to set aside the judgement and decree dated 23.08.2012, passed by the learned Rent Control Appellate Authority (VII Judge, Small Causes Court, Chennai) in R.C.A.No.565 of 2010 in R.C.O.P. No.2014 of 2008 and consequently allow the said R.C.A.

For Petitioner : Mr.PL.Narayanan

For Respondent : Ms.G.Revathy

C.R.P.Nos.1912 to 1914 of 2012

M/s.Punjab National Bank,
Rep. by its Branch Manager,
Plot No.347, Door No.347,
Dr.Lakshmanasamy Salai,
K.K.Nagar, Chennai - 600078. ..Petitioner in all the CRPs

Vs.

SP.S.Yegappan ..Respondent in all the CRPs

Prayer in C.R.P.Nos.1912 of 2012: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control Act, 1960 to set aside the fair and final decreetal order dated 09.12.2011, passed by the learned Rent Control Appellate Authority (VIII Judge, Small Causes Court, Chennai) in R.C.A.No.358 of 2011.

Prayer in C.R.P.Nos.1913 of 2012: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control Act, 1960 against the fair and final decreetal order dated 09.12.2011, passed by the learned Rent Control Appellate Authority (VIII Judge, Small Causes Court, Chennai) in M.P.No.508 of 2011 in R.C.A.No.358 of 2011.

Prayer in C.R.P.Nos.1914 of 2012: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control Act, 1960 against the fair and final decreetal order dated 09.12.2011, passed by the learned Rent Control Appellate Authority (VIII Judge, Small Causes Court, Chennai) in M.P.No.605 of 2011 in R.C.A.No.358 of 2011.

For Petitioner in all the CRPs : Ms.G.Revathy

For Respondent in all the CRPs : Mr.PL.Narayanan

COMMON ORDER

The petitioner in C.R.P.No.3762 of 2012 and the respondent in C.R.P.Nos.1912 to 1914 of 2012 is the landlord. The respondent in C.R.P.No.3762 of 2012 and the petitioner in C.R.P.Nos.1912 to 1914 of 2012 is the tenant.

2. Since the revision petitions arises out of the order passed by the learned Rent Controller (XIV Judge, Court of Small Causes, Chennai) in R.C.O.P.No.2014 of 2008 and the revisions have been preferred on the same set of facts, submissions being common, all the four revision petitions are taken up together and disposed of by means of this common order. The parties are hereinafter referred to as per their jural relationship.

3. The landlord filed a petition in R.C.O.P.No.2014 of 2008, on the file of the learned Rent Controller (XIV Judge, Court of Small Causes, Chennai) for fixation of fair rent at Rs.1,00,475/- per month and the learned Rent Controller by an order dated 20.04.2010, fixed the fair rent at Rs.64,797/- per month. Aggrieved over the same, the landlord filed an appeal in R.C.A.No.565 of 2010 in R.C.O.P.No.2014 of 2008 on the file of

the learned Rent Control Appellate Authority (VII Judge, Court of Small Causes, Chennai). The learned Rent Control Appellate Authority by a judgement dated 23.08.2012, confirmed the fair rent fixed by the learned Rent Controller at Rs.64,797/- per month payable from the date of petition. Aggrieved over the same, the landlord has filed a revision petition in C.R.P.No.3762 of 2012 before this Court to set aside the judgement passed by the learned Rent Control Appellate Authority.

4. The tenant aggrieved over the order passed by the learned Rent Controller in R.C.O.P.No.2014 of 2008, dated 20.04.2010 fixing the fair rent at Rs.64,797/- per month payable from the date of petition, has filed an appeal in R.C.A.No.358 of 2011 in R.C.O.P.No.2014 of 2008 on the file of the learned Rent Control Appellate Authority (VIII Judge, Court of Small Causes, Chennai) to set aside the same. Along with the said appeal, the tenant has also filed a petition in M.P.No.508 of 2011 in R.C.A.No.358 of 2011 to stay the order passed in R.C.O.P.No.2014 of 2008. The landlord filed a petition in 605 of 2011 in R.C.A.No.358 of 2011 seeking a direction to the tenant to pay a sum of Rs.23,42,946/- and a further direction to pay the monthly rent at Rs.64,797/- as fixed by the learned Rent Controller till the disposal of the appeal. The learned Rent Control Appellate Authority passed a conditional order in M.P.No.605 of 2011. Since the tenant has not complied with the said conditional order, based on a memo filed by the landlord, the learned Rent Control Appellate Authority has stopped the further proceedings in R.C.A.No.358 of 2011. As the further proceedings in R.C.A.No.358 of 2011 was stopped the learned Rent Control Appellate Authority has closed the stay petition in M.P.No.508 of 2011. Challenging the said orders passed in the two miscellaneous petitions dated 09.12.2011 and also the order of stopping the R.C.A. dated 09.12.2011 in R.C.A.No.358 of 2011, the tenant has filed three revision petitions in C.R.P.Nos.1912 to 1914 of 2012 before this Court.

5. For the sake of convenience, let us first take up the revision filed by the landlord in C.R.P.No.3762 of 2012. The landlord has filed the said revision petition challenging the order passed by the learned Rent Control Appellate Authority in R.C.A.No.565 of 2010. The case of the landlord is that he let out the building to the tenant for a monthly rent of Rs.23,210/-. The building is over 20 years old. The building is provided with all basic amenities and also other amenities as provided in Schedule-I. Since, the market value of the petition locality is Rs.74,32,031/- the landlord seeks a direction to fix the fair rent at Rs.1,00,475/- per month.

6. The case of the tenant is that the tenant admits the tenancy and the present monthly rent paid by them. The landlord

never maintained the petition premises in a good condition and that the tenant bank is maintaining the building and the tenant denies the land value and the cost of construction and fair rent claimed by the landlord. According to the tenant, the landlord claims exorbitant rent which is not a fair rent.

7. Based on the above pleadings, after examining the witnesses and after perusing the Engineer's report filed by both the landlord and the tenant, the learned Rent Controller fixed the fair rent as Rs.64,797/- per month. Challenging the said fixation of fair rent by the learned Rent Controller, the landlord has filed an appeal before the learned Rent Control Appellate Authority in R.C.A.No.565 of 2010. The learned Rent Control Appellate Authority dismissed the appeal filed the landlord and confirmed the fair rent fixed by the learned Rent Controller. Challenging the same, the landlord has filed the revision petition in C.R.P.No.3762 of 2012.

8. The tenant also filed an appeal in R.C.A.No.358 of 2011. Since the landlord filed a miscellaneous petition before the learned Rent Control Appellate Authority in the appeal filed by the tenant to deposit the fair rent as fixed by the learned Rent Controller and also arrears of rent, that was ordered by the learned Rent Control Appellate Authority. Since the tenant failed to deposit that money, the appeal filed by the tenant was stopped. Challenging the same the tenant has filed three revision petitions in C.R.P.Nos.1912 to 1914 of 2012.

9. The learned counsel appearing for the landlord would submit that as far as the relationship between the parties is concerned, there is no dispute, the extent of the plinth area fixed by the learned Rent Controller and the learned Rent Control Appellate Authority is also not in dispute and the market value fixed for the land and building was also not disputed by the landlord.

10. The main contention of the learned counsel appearing for the landlord is that the apartment vacant area has not been calculated as per Section 4(4) first proviso of the Act and also as per the law laid down by the Full Bench of this Court. His second contention was that the 7% fixed towards the cost of the Schedule-I amenities is not a fair treatment as for the non-residential buildings the Act provides for 25% of the cost of site in which the building is constructed and therefore that is the reason why the landlord has seriously challenged the same.

11. So far as his first contention with regard to the land value is concerned, the learned counsel would submit that as per Section 4(4) first proviso of the Act, the market value of the site in which the building is constructed, the learned Rent

Controller the Controller has to take into account only that portion of the site on which the building is constructed and of a portion up to 50% thereof the vacant land, if any, appurtenant to such building, the excess portion of the vacant land, being treated as amenity. Therefore, we have to take the plinth area and add with it one half of the plinth area for taking the extent of the land for the site value. If there are two stories, then it has to be apportioned into one half. In support of the said contention, the learned counsel appearing for the landlord relied upon a Full Bench decision of this Court in H.C.Lodha Vs. C.Ranganathan and Ors reported in AIR 1989 Mad 225. The learned counsel has also relied upon a subsequent decision of this Court which relied on the Full Bench decision viz., M.Radhakrishna Rao Vs. AB Ahmed Basha reported in 1993-1-LW-344. Therefore, according to the learned counsel, based on the above said judgements, for calculating the land value, we have to take plinth area of 3171 and then add 50% to it. Thus, in this matter as there are only two occupants i.e. tenant/bank in the ground floor and the landlord in the first floor, the extent of site will be 3171 Sq.ft. plus 1585 Sq.ft. which is equals to 4756 Sq.ft. when it is multiplied by Rs.3125 per Sq.ft. it will come to Rs.1,48,62,500/- and in view of two floors the aforesaid figure of Rs.1,48,62,500/- will have to be divided by two, which will be the value of the land i.e. Rs.74,31,250/-. The leaned counsel for the landlord has further clarified that if the plinth area is 3171 Sq.ft. and one half of it is 1585 Sq.ft. and the total of it is 4756 Sq.ft. and in view of there being two floors shared by the landlord and the tenant if 4756 Sq.ft. is divided by two it will leave the extent of land as 2378 Sq.ft. and if that is multiplied by per square foot cost of Rs.3125/-, it will come to Rs.74,31,250/-. The P.W.1 Engineer in his report in Ex.P1 has arrived at 2378.25 Sq.ft as the extent of the land but the learned Rent Controller has taken only 1585 Sq.ft alone into his calculations and failed to add the original plinth area of 3171 Sq.ft. Thus, according to the learned counsel for the landlord the learned Rent Controller has failed to follow the principle settled by the Full Bench of this Court that for gathering the extent of the land will be plinth area plus one half of the plinth area. Had the learned Rent Controller followed the said settled principle of law he would have arrived at 4756 Sq.ft and divided by two he would have arrived at 2378 Sq.ft.

12. So far as his second contention with regard to Schedule-I amenities is concerned, the learned counsel appearing for the landlord would submit that as per Ex.P1 the plot extent is 51ft x 100 ft and therefore the land area will be 5100 Sq.ft. According to the learned counsel appearing for the landlord the same has not been cross examined nor demurred by the tenant before the learned Rent Controller. According to the learned

counsel, when there is excess of land over and above the land taken out for computation of the extent of land for assessment of land value, the rest of the land cannot be given any value but it has to be added towards the Schedule-I amenities. According to the learned counsel when Section 4 second proviso (ii) states that the cost of provision of amenities specified in Schedule-I shall not exceed, in the case of any non-residential building, 25% of the cost of site in which the building is constructed and the cost of construction of the building as determined under this Section. Therefore, according to the learned counsel the assignment of only 7% towards the cost of Schedule-I amenities by the learned Rent Controller is absolutely not a fair treatment. Further according to the learned counsel, considering the facts and circumstances of the case, the learned Rent Controller and the learned Rent Control Appellate Authority ought to have given 15% towards Schedule-I amenities. Therefore according to the learned counsel if 15% is given towards Schedule-I amenities the fair rent computation will be in the following manner :

Type of Building	: Type 1 Class-A,	
Age of the Building	: 25 years	
Cost of construction:		
Ground Floor RCC roof portion		
2994.87 Sq.ft @ Rs.358 per Sq.ft.		= Rs.10,72,163
ATM centre RCC roof area is		
37.79 Sq.ft @ Rs.358/- per Sq.ft		= Rs. 13,529
Portico area is 138.75 Sq.ft @ Rs.250 per Sq.ft		= Rs. 34,688
Total		= Rs.11,20,380
Basic Amenities 15%		= Rs. 1,68,057
Total		= Rs.12,88,437
Depreciated value : 1% for 25 years (0.777)		
Rs.12,88,437 x 0.777		= Rs.10,01,116
ADD towards cost of strong room		= Rs. 1,00,000
	Total	= Rs.11,01,116
Land Value		
2378 Sq.ft x Rs.75,00,000 / 2400		= Rs.74,31,250
	Total	= Rs.85,32,366
Schedule-I Amenities @ 15%		= Rs.12,79,854
	Total	= Rs.98,12,220

Thus, according to the learned counsel for the landlord, since the demised premises is used for non-residential purpose, the annual fair rent is calculated at 12%, which is Rs.11,77,466/- and to arrive at monthly rent dividing by 12 months, the monthly fair rent will be Rs.98,122/- and seeks this Court to fix the same.

13. The learned counsel appearing for the tenant would submit that the appurtenant land is not fully utilised by the tenant and they are used by landlord and it is not used for the purpose of the bank alone and therefore, it cannot be called as amenities to the bank and also the cost of strong room as fixed by the learned Rent Controller is so high and the learned Rent Control Appellate Authority also has not properly considered the same and further the landlord has not produced any account for construction of the strong room and the value of the land fixed by the learned rent controller is high. Though the landlord filed the document in Ex.P1, the tenant also filed documents and the learned Rent Controller failed to consider the documents filed by the tenant and fixed the market value of the site prevailing as on date taking into consideration only the document filed by the landlord. Even the learned Rent Controller has taken the value higher than what has been mentioned in the document produced by the landlord. Therefore, the cost of construction is also not properly given. The learned Rent Controller failed to consider the value fixed by the Engineer of the tenant but accepted the value fixed by the Engineer of the landlord.

14. The learned counsel appearing for the tenant further submitted that the tenant is a nationalised bank and the landlord entered into an agreement with the tenant and as per the agreement they paid the rent and as per the agreement proposal they have to increase the rent as mentioned in the agreement and the landlord cannot arbitrarily increase the rent. The learned Rent Controller failed to consider all these facts and also the provisions of law and the propositions of law laid down by the Hon'ble Supreme Court and various decisions of this Court. Therefore the orders warrants interference.

15. Further according to the learned counsel appearing for the tenant, though both the parties do not agree with the rent fixed by the learned Rent Controller, they filed appeals. Though the appeal filed by the tenant was stopped, however the appeal filed by the landlord was decided by the learned Rent Control Appellate Authority and it has only confirmed the order of the learned Rent Controller and has not given any independent finding. The one of the main contentions of the learned counsel appearing for the landlord is that the learned Rent Control Appellate Authority has copied verbatim the learned Rent

Controller's calculations of fair rent and without any change simply endorsed the findings of the learned Controller and he has not given any findings, therefore the order warrants interference.

16. I have heard the learned counsel on either side and also perused the entire records carefully.

17. As already stated, there is no dispute with regard to the jural relationship between the parties and also there is no dispute with the amenities provided and also the agreement. However, after the agreement, the landlord filed a petition to fix the fair rent. As there is no prohibition and the landlord feels that the rent paid by the tenant is not adequate and therefore they can always approach the learned Rent Controller to fix the fair rent. In this case, the tenant being a nationalised bank entered into an agreement and all the conditions being mentioned in the agreement itself, whereas, the landlord approached the learned Rent Controller to fix the fair rent felt that the rent mentioned in the agreement is not fair.

18. Though the learned Rent Controller considered both the oral and documentary evidence let in by both the parties, to fix the market value, the learned Rent Controller relied on the documents filed by the landlord in Ex.P2 and as per Ex.P2 the market value of one ground comes to Rs.74,32,031/-. On the side of the tenant, they have marked a document in Ex.R2, as per the said document filed by the tenant, the market value of one ground comes to Rs.35,04,000/-. Whereas, the learned Rent Controller considering the prime locality of the land, fixed the market value for the area as Rs.75,00,000/- per ground. Though both the documents only reflect lesser extent, as per Ex.P2 the extent of the land is 650 Sq.ft. as per the document produced by the tenant Ex.R2, the extent of the land as 335.16 Sq.ft. Considering the locality of the land and also the fact that nearby the demised premises the Police Training College, Kendriya Vidhyalaya, Padma Seshadri Higher Secondary School and Government Physiotherapy College are there and also considering the fact that the tenant Punjab National Bank is one of the popular nationalised Bank and they would situate their branch in a prime locality, the learned Rent Controller fixed the market value at Rs.75,00,000/- per ground for that area.

19. Though the tenant challenged the same by way of appeal as stated above the said appeal was stopped. Further the learned Rent Control Appellate Authority also agreed with the said value. Though the landlord is not aggrieved with the value fixed, but since it is a factual finding, the learned Rent Controller as well as the learned Rent Control Appellate Authority, considering the prime locality and nearby important

schools and other facilities are available, fixed the market value at Rs.75,00,000/-. Therefore, this Court does not find any perversity in the order with regard to the land value fixed by the learned Rent Controller as well as the learned Rent Control Appellate Authority per ground. A reading of the calculation shown in the judgement of the learned Rent Control Appellate Authority and the order passed by the learned Rent Controller, both are one and the same and there is no changes, as pointed out by the learned counsel appearing for the landlord. Though the landlord has filed the calculation that is also by comparing both the things the landlord has not denied the plinth area and the market value of the construction and the basic amenities provided.

20. The dispute is with regard to two points, while calculating the plinth area, 50% of the vacant land has not been added as per the decision of the Hon'ble Full Bench of this Court. According to the landlord, even as per Ex.P1, the land area is 5100 Sq.ft as the extent of the land is 51ft x 100 ft which is equal to 5100 Sq.ft. The constructed area as 2994.87 Sq.ft and the ATM area as 37.79 Sq.ft and the portico area as 138.75 Sq.ft and totally it is 3171.41 Sq.ft. Though in the agreement, the carpet area is mentioned as 2664 Sq.ft but as per the decisions of the Hon'ble Supreme Court in Shaw Wallace & Co. Ltd., Vs. Govindas Purushothamdas and another reported in (2001) 3 SCC 445, while calculating the construction portion, the plinth area has to be taken into consideration and not the carpet area and also the platform and hen-pen also be taken into consideration. Therefore, as per the ratio laid down by the Hon'ble Supreme Court in the above mentioned case cited supra, the learned Rent Controller has rightly fixed the plinth area as 3171 Sq.ft. Though the learned counsel appearing for the landlord would further submit that the learned Rent Controller stopped with the said plinth area but the area of the land in which the building was constructed as only 5100 Sq.ft. Therefore, after deducting 3171 Sq.ft. and in the balance vacant site 50% of the land value has to be calculated. Therefore he has raised the said ground in the revision.

21. Further for the Schedule-I amenities, the learned Rent Controller has fixed only 7%, but as per the Act for commercial buildings upto 25% can be fixed, but whereas he has fixed in the schedule 15%. Plinth area plus the 50% of the vacant land, he has calculated 2378 Sq.ft. Therefore, from that excess of plinth area and the excess of amenities, he has claimed in the appeal Rs.98,122/- rent per month. The learned Rent Control Appellate Authority has not agreed with the landlord and he has confirmed the order passed by the learned Rent Controller. Therefore, as far as the plinth area of construction is concerned, there is no dispute that it is 3171 Sq.ft. and the

total area of the land as per Ex.P1 is 5100 Sq.ft. Therefore,

Total area	= 5100 Sq.ft.
Plinth area	= 3171 Sq.ft.
Vacant area	= 5100 Sq.ft-3171Sq.ft= 1929 Sq.ft
50% of the vacant area	= 1929 Sq.ft x 50% = 964.5 Sq.ft
Total area of the site	= 3171 Sq.ft+964.5Sq.ft=4135.5Sq.ft
As two persons are occupying the premises the area has to be divided	= 4135.5 / 2 = 2067.75 Sq.ft

Land Value @ 75,00,000/- per ground
is 2067.75 Sq.ft x Rs.75,00,000 / 2400 = Rs.64,61,718.75

The total land value will be
Rs.64,61,718.75 + Rs.11,01,116/- = Rs.75,62,834.75

As per the decision of the Hon'ble Full Bench of this Court if more than one tenant is occupying the land, then 50% of the amount has to be calculated.

22. As far as Schedule-I amenities is concerned, the learned Rent Controller has fixed 7%. The learned Rent Control Appellate Authority also confirmed the same and the landlord claims 15% but the tenant has denied that the amenities were provided. Though as already stated that the 50% of the vacant land has to be calculated with the market value of the land and the remaining vacant land has to be treated as amenities and as stated by the landlord in his application itself that Schedule-I amenities also has been provided by the landlord in the demised premises, therefore considering the facts and circumstances of the case the Schedule-I amenities have now been fixed at 10%, which will be as follows:

Schedule-I amenities @10%= Rs.75,62,834.75 x 10% = Rs.7,56,283.47

23. Therefore, this revision in C.R.P.No.3762 of 2012 is partly allowed and the rent fixed by the learned Rent Control Appellate Authority is reversed and the fair rent is fixed as follows:

Land Value	= Rs.75,62,834.75
Schedule-I Amenities	= Rs. 7,56,283.47
Total	= Rs.83,19,118.22

Fair Rent = 83,19,118.22 x 12 / 12x100 = Rs.83,191/-

24. Since the revision filed by the landlord is partly allowed and as the tenant filed the appeal against the order of the learned Rent Controller before the learned Rent Control Appellate Authority, though the tenant challenged the rent fixed by the learned Rent Controller he has not complied with the order of the learned Rent Control Appellate Authority and the tenant should have at least deposited the amount and in case the appeal filed by the tenant is allowed that can be adjusted with the amount. Since the tenant being a nationalised bank has not complied with the order of the learned Rent Control Appellate Authority and since the appeal filed by the landlord is allowed, naturally the appeal filed by the tenant has to be dismissed and therefore, the three revision petitions filed by the tenant are dismissed.

25. In the result, the C.R.P.No.3762 of 2012 filed by the landlord is partly allowed and the C.R.P.Nos.1912 to 1914 of 2012 filed by the tenant is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Rent Control Appellate Authority
   The VII Judge,
   Small Causes Court, Chennai

2. The Rent Control Appellate Authority
   The VIII Judge,
   Small Causes Court, Chennai

3. The Rent Controller
   The XIV Judge,
   Court of Small Causes, Chennai

C.R.P.Nos.3762 & 1912 to 1914 of 2012 and
M.P.Nos.1,1,1 & 1 of 2012 & 1,1,1 & 1 of 2013

NRL(CO)
RGA(22/09/2021)