

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.12.2020

PRONOUNCED ON : 14.12.2020

CORAM

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

**CRP (NPD) No.4252 of 2015
and MP.No.1 of 2015**

E.A.Ismail

... Petitioner/Respondent/Tenant

Vs

1.V.Amsa Venkataraman

2.V.Satya

... Respondents/Appellants/Land Lords

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair order and decretal order dated 07.07.2015 passed in R.C.A. No.25 of 2014 by the learned Principal Sub Judge / Rent Control Appellate Authority of Coimbatore and confirming the fair order and decretal order dated 28.01.2014 passed in R.C.O.P. No.202 of 2008 passed by the learned Rent Controller and I Additional District Munsif of Coimbatore.

For Petitioner ... Mr.Dr.C.Ravichandran

For Respondents ... Mr.Saravana Sowmiyan

ORDER

This Civil Revision Petition has been filed by the Respondent / Tenant against the Judgment passed by the Rent Control Appellate Authority (Principal Sub Judge), Coimbatore in R.C.A. No.25 of 2014 dated 07.07.2015.

2. The Respondent herein had filed a petition in R.C.O.P. No.202 of 2008 on the file of Rent Controller (I Additional District Munsif), Coimbatore under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (herein after referred to as "Rent Control Act"), to fix fair rent for the petition mentioned property at Rs.1,10,960/- (Rupees One Lakh, Ten Thousand, Nine Hundred and Sixty only) per month. The learned Rent Controller had partly allowed the said petition by fixing the fair rent at Rs.23,000/- (Rupees Twenty Three Thousand only) per month from 2007 to 2012, thereafter till the date of order, fair rent was fixed at Rs.26,450/- (Rupees Twenty Six Thousand, Four Hundred and Fifty only) per month. Feeling

aggrieved, the landlords filed an appeal in RCA.No.25 of 2014 on the file of Rent Control Appellate Authority (Principal Sub Judge), Coimbatore. The learned Rent Control Appellate Authority by the Judgment dated 07.07.2015 had allowed the said appeal with costs and set aside the order passed by the learned Rent Controller in RCOP. No.202 of 2008 dated 28.01.2014 and fixed Rs.81,600/- (Rupees Eighty One Thousand, Six Hundred only) per month as fair rent from the date of filing of the Rent Control Original Petition. Feeling aggrieved, the respondent / tenant has filed the present Civil Revision Petition.

3. Heard Dr.C.Ravichandran, learned counsel for the petitioner and Mr.Saravana Sowmiyan, learned counsel for the respondents.

4. The learned counsel for the petitioner has submitted that the Rent Control Appellate Authority has committed an error in calculating the total extent of land as 4050 sq.ft. He further submitted that in Ex.P.1, settlement deed dated 05.07.2007, the linear measurement is given as East West on both sides 89 sq.ft and North South on both sides 22 ½ sq.ft which comes to 2002.5 sq.ft only but, in the said

document it is wrongly mentioned as 2250 sq.ft. 1/4th out of 2002.5 sq.ft is only 500 sq.ft of land. Similarly in Ex.P.2 the linear measurement of the land has been given as East West on both sides 77 feet and North South on both sides 22 ½ feet which comes to 1732.5 sq.ft only but in the said document it is wrongly mentioned as 2250 sq.ft. He further submitted that 1/4th out of 1732.5 sq.ft comes to 433 sq.ft only and thus the total land area is only 933 sq.ft and not 2250 sq.ft as held by the Rent Control Appellate Authority.

5. He further submitted that there are four floors in the said premises. If it is divided into four, it would come to only 233 sq.ft and hence the finding of the Appellate Authority that the respondent herein is entitled to 562.50 sq.ft of undivided share in the land is totally against the evidence on record. He further submitted that the Appellate Authority erred in relying upon Ex.P.5 sale deed dated 13.10.2008, which has been produced by the respondent herein in the appeal and the same has been marked as Ex.P.5, without following the procedure in marking the said document and without giving an opportunity to the petitioner herein to cross examine the witness with regard to the said document. He further submitted that it is well settled that the sale deed stands in the name of the third

party cannot be marked and relied upon without examining any one of the parties to the said document, so as to arrive the market value of the site. He further submitted that even in Ex.P.1 and Ex.P.2 the market value of the sites have been valued as Rs.30,00,000/- (Rupees Thirty Lakhs only) and Rs.29,00,000/- (Rupees Twenty Nine Lakhs only) respectively and therefore the Appellate Authority erred in fixing the value of the site at Rs.4,400/- per sq.ft solely based on Ex.P.5 which came into existence 4 months later from the date of petition and in Ex.P.3 undivided share of land was sold, which will not reflect the correct market value of the tenented premises. He further submitted that the Appellate Authority erred in calculating that each of the respondent herein are entitled to the extent of 562.50 sq.ft of site and totally in all 1125 sq.ft instead of 233 sq.ft. He further submitted that the Appellate Authority had not appreciated the evidence in a proper prospective and therefore he prays to allow this Civil Revision Petition and to set aside the Judgment passed by the learned Rent Control Appellate Authority in RCA.No.25 of 2014 and restore the order passed by the Rent Controller in RCOP.No.202 of 2008.

6. Per contra, the learned counsel for the respondent has submitted that as per Ex.P.1 and Ex.P.2 settlement deeds, the

respondent's family entitled to the total extent of 4050 sq.ft of land and as such the respondents 1 and 2 jointly entitled to undivided 2250 sq.ft. He further submitted that the Judgment of the Rent Control Appellate Authority shows that Ex.P.5 was marked by consent and as such there is no necessity to give an opportunity to the petitioner herein to cross examine the witness with reference to the said document. He further submitted that the learned Rent Control Appellate Authority after considering the Advocate Commissioner's Report and the Engineer's Report had fixed the fair rent at Rs.81,600/- (Rupees Eighty One Thousand, Six Hundred only) per month from the date of filing of the Rent Control Petition and in the said order this Court need not be interfere and therefore he prays to dismiss this Civil Revision Petition.

7. A perusal of the typed set of papers filed by the petitioner shows that the respondents herein had filed a petition in RCOP.No.202 of 2008 on the file of the Rent Controller (I Additional District Munsif), Coimbatore under Section 4 of the Rent Control Act to fix fair rent for the petition mentioned property at Rs.1,10,960/- (Rupees One Lakh, Ten Thousand, Nine Hundred and Sixty only) per month. In the description of the property given in the said petition, it

is stated that East West on both sides 77 feet and North South on both sides 22 ½ feet which works out to 1732.5 sq.ft. but in the said description of property the extent of land it is mentioned as 2250 sq.ft. The Rent Controller and also the Rent Control Appellate Authority did not consider the linear measurements given in the petition. The authorities below taken into consideration only the extent of the land given in the said petition. The authorities below did not verify the fact that if the linear measurement given aforesaid is converted into square feet, that will not tally with the extent mentioned in the said petition. Further, the Appellate Authority did not give any finding even though the linear measurement as mentioned in the said petition is converted into square feet which would come to 1732.5 sq.ft only, whereas the total extent has been mentioned as 2250 sq.ft in the petition.

8. The Appellate Authority in its Judgment at Page no.8 in Para-11 has stated that, in order to show the market value of the land, no document has been filed before the Rent Controller. It is further stated that during course of argument in the appeal, a Registration copy of the sale deed dated 13.10.2008 has been filed on behalf of the appellant and marked as Ex.P.5. It is further stated that the

respondent therein contended that the said document came into existence after filing of the Rent Control Petition and hence the said document cannot be taken into consideration and after considering the said objection, the Appellate Authority has held that in the said document the value of the property mentioned as Rs.4,500/- per sq.ft and since the document came into existence four months after filing of the Rent Control Petition it has reduced Rs.100 per sq.ft. and fixed the value at Rs.4,400 per sq.ft. But in the annexure of the said judgment, the Appellate Authority mentioned that the said Ex.P.5 has been marked as exhibit by consent. So the aforesaid statement is not correct, because as already pointed out that the respondent therein has specifically opposed to consider the said document. In such a case, it cannot be presumed that the respondent gave consent for marking the said document.

9. It is also to be pointed out that in the Judgment, Appellate Authority has not at all stated as to whether the appellant had filed any application seeking leave of the Appellate Authority to receive Additional documentary evidence. Further, no reason has been given for receiving the said document at the appellate stage. Further, even, if it is assumed that any application has been filed by the appellant

therein seeking leave of the Appellate Authority to receive additional documentary evidence, after allowing the said application, the Appellate Authority should not have straight away marked the said document as exhibit. After allowing the said application, the Appellate Authority should have either recorded evidence with regard to the said document or should have directed the Rent Controller to record evidence with regard to the said document and an opportunity should have been given to the other side to cross examine the witness with regard to the said document and also to adduce rebuttal evidence. But without following the said procedure, the Appellate Authority had straight away marked the said document as Ex.P.5 and relying upon the said document it has fixed the market value of the land. Hence, the order passed by the Rent Controller and the Judgment passed by the Appellate Authority have to be set aside and the matter has to be remitted back to the Rent Controller for deciding the Rent Control Petition afresh after giving opportunity to both sides to adduce evidence with regard to the extent of the land and market value of the said land and building.

10. In the result, this Civil Revision Petition is allowed and the order passed by the Rent Controller in RCOP.No.202 of 2008 dated

28.01.2014 and the Judgment passed by the Rent Control Appellate Authority in RCA. No.25 of 2014 dated 07.07.2015 are set aside. The matter is remitted back to the Rent Controller (I Additional District Munsif), Coimbatore. The Rent Controller is directed to dispose of the said Rent Control petition afresh after giving opportunity to both parties to adduce evidence with regard to the extent of the land in which the building is constructed and market value of the said land and also value of the building. No costs. Consequently, connected Miscellaneous Petition is closed.

14.12.2020

Index: Yes/No
Speaking/Non-speaking Order
drl

To

1. The Principal Sub Judge /
Rent Control Appellate Authority,
Coimbatore.
2. The Rent Controller / I Additional District Munsif,
Coimbatore.

P. RAJAMANICKAM,J.
drl



Pre-delivery judgment made in

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