

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 10.12.2019]

[ORDERS PRONOUNCED ON : 11.03.2020]

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.R.P.[NPD] Nos.2187 and 2188 of 2013

Kesaram Choudary ... Petitioner in both C.R.Ps./Tenant

.. Vs ..

1. R.Mangilal Ranka
2. Mahaveer Chand Ranka
3. Sandeep Ranka ... Respondents in both C.R.Ps./Landlords

Prayer in both C.R.Ps.:- Civil Revision Petitions are filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18/1960, praying to set aside the order and judgment of the VIII Judge, Court of Small Causes, Madras, (Appellate Authority) dated 02.01.2013 passed in R.C.A.No.268 of 2008 and R.C.A.No.303 of 2009 respectively (Preferred against the order and judgment dated 19.12.2007 of the XV Judge, Court of Small Causes, Madras) (Rent Controller) passed in R.C.O.P.No.2012 of 2006 on its file determining the fair rent.

In both C.R.Ps.

For Petitioner : Mr.J.Dileep Kumar
For Respondents : Mr.Sandeep S.Shah
for M/s.Shah & Shah

COMMON ORDER

The petitioner in both the civil revision petitions is the tenant and the respondents in both the civil revision petitions are the landlords. Tenancy is admitted. The admitted rent is Rs.2,000/- per month. The petition mentioned premises is situated in Back portion at Singapore Market Complex, No.138, Govindappa Naicken Street, Chennai - 600 001. The landlords/respondents herein have filed a petition in R.C.O.P.No.2012 of 2006 before the learned Rent Controller seeking fixation of fair rent for the non-residential building in the above said address.

2. After trial, the learned Rent Controller [XV Judge, Court of Small Causes, Chennai], by an order dated 19.12.2007, has fixed the

fair rent at Rs.9,132/- per month from the date of filing of the R.C.O.P. As against the said order passed by the learned Rent Controller in R.C.O.P.No.2012 of 2006, the tenant has preferred an appeal in R.C.A.No.268 of 2008 and the landlords have preferred an appeal in R.C.A.No.303 of 2009 before the Rent Control Appellate Authority.

3. After hearing both the learned counsel for the tenant and as well as the learned counsel for the landlords, the Rent Control Appellate Authority [VIII Judge, Court of Small Causes, Chennai], has dismissed the appeal preferred by the tenant and allowed the appeal preferred by the landlords and modified the order and decree passed by the learned Rent Controller and fixed the fair rent at Rs.12,133/- per month for non-residential portion from the date of filing of the R.C.O.P. As against the said order passed by the Rent Control Appellate Authority in R.C.A.No.268 of 2008 and R.C.A.No.303 of 2009, the tenant has preferred the above C.R.P.Nos.2187 and 2188 of 2013 respectively before this Court.

4. Heard Mr.J.Dileep Kumar, learned counsel for the revision petitioner/Tenant and Mr.Sandeep S.Shah, learned counsel appearing for the respondents/landlords and perused the materials available on record.

5. In order to substantiate the claim of fixation of fair rent, before the learned Rent Controller, on the side of the landlords, their Engineer Mr.Poornachandran was examined as P.W.1 and documents Exs.P.1 to P.4 were marked. On the side of the tenant, his Engineer Mr.Aziz Mohideen was examined as R.W.1 and documents Exs.R.1 to R.4 were marked.

6. After taking into consideration the respective pleadings, the built up plinth area of the petition shop was fixed as 1142 sq. ft., front common passage as 114 sq. ft., common passage in ground floor as 247.5 sq. ft., and the staircase as 135 sq. ft. by the learned Rent Controller. Accordingly, in respect of the built up plinth area of the

petition shop in the second floor and the common areas i.e., the common passages, staircase excluding common toilet as inbuilt toilet is provided for the respondent separately, the learned Rent Controller calculated at the rate of Rs.354/- per sq. ft. excluding the A/C sheet of 70 sq. ft. in the petition portion which is calculated at the rate of Rs.244/- per sq. ft. as per P.W.D. rate. For basic amenities, 15% was fixed by the learned Rent Controller and taking into consideration the age of the building as 25 years, 1% depreciation for 25 years i.e., 0.777 $[(100-1/100)^{25} = 0.777]$ was given for depreciation. There is no serious dispute about the said issues.

7. The only point agitated before this Court is with regard to the land value. The landlords have marked the documents Exs.P.2 and P.3, Sale Deeds. The property relating to Ex.P.2-Sale Deed is situated on the West of Govindappa Naicken Street, in which the petition premises is situated and the description of Ex.P.2-Sale Deed goes to show that the petition portion adjoins Ex.P.2 property, whereas the property relating to Ex.P.3 is situated in N.S.C. Bose Road and therefore, in the absence of any topographic plan, the learned Rent

Controller has rejected the document Ex.P.3.

8. The property situated on the East of Govindappa Naicken Street under Ex.R.3-Sale Deed is of the year 2003. However, R.C.O.P.No.2012 of 2006 was filed in the year 2006, which assumes significance. Taking into consideration the fact that the property relating to Ex.P.2 is a property adjacent to the petition mentioned property, however, the Sale Deed is of the year 2003, by applying 10% formula, it comes about to Rs.8,68,228/- per ground, whereas, for the same year, the value given under Ex.R.3 property is Rs.35,56,202/- per ground and therefore, Ex.R.3 was taken into consideration and the land value of the petition property was fixed as Rs.47,33,304/- per ground by the learned Rent Controller. The same was enhanced to Rs.1 crore by the Rent Control Appellate Authority. However, no reason has been assigned.

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9. In a Full Bench decision of this Court reported in **2006 (2) CTC 433 (FB) [Sakthi & Co., Vs. Shree Desigachary]**, at paragraph Nos.14 and 18, it has been held as follows:-

"14. The methods of valuation for ascertaining the market value, as suggested in the above decisions, are as follows :

1. (1) Opinion of experts.

(2) The price paid within a reasonable time in *bona fide* transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages. Evidence of *bona fide* sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features would furnish basis to determine market value.

(3) A number of years purchase of the actual or immediately prospective profits of the lands acquired.

15 to 17.

18. Therefore, our conclusions are as follows :

(1) The guideline value, contained in the Basic Valuation Register, maintained by the Revenue Department or the Municipality for the purpose of collecting stamp duty, has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for registration.

(2) Evidence of *bona fide* sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features would furnish basis to determine the market value. In this case, the guideline value alone has been considered, which, in our view, is illegal.

(3) The Rent Controller and the Rent Control Appellate Authority, in the present case, are not right in relying upon the guideline value, maintained by the Revenue Department, for arriving at a fair rent, to be fixed under Section 4 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960."

10. The petition premises is situated nearby the High Court of Madras having all the amenities and the tenant himself admitted in the counter statement before the learned Rent Controller that the market value of the property is not more than Rs.50,00,000/- [Rupees Fifty Lakhs only] per ground and hence, this Court is of the considered view that since the Rent Control Original Petition was filed in the year 2006, the market value of the petition premises could have been approximately Rs.60,00,000/- [Rupees Sixty Lakhs only] per ground and hence, except the land value, in all other respects, the calculation as affirmed by the Rent Control Appellate Authority, is confirmed.

11. (i) **Apportionment of Site** :- The petition building consists of ground floor plus 5 floors. The learned Rent Controller has rightly observed and divided by 6 floors in a correct manner. AC sheet roof divided by 3 floors. The total apportionment area was calculated as $1072 + 7.87 = 1079.87/6 = 179.97$. $70/3 = 23.33$ sq. ft. Hence, apportioned site area was calculated as $179.97 + 23.33 = 203.3$ sq. ft.

12. With the above said details, this Court has to arrive at fair

rent of the premises as per the calculation given below:-

Second floor RCC Roof Plinth area 1072 sq. ft @ Rs.354/- per sq. ft.	= Rs.3,79,488.00
Common passage 114 + 247.5 sq. ft. = 361.5/63 = 5.73 sq. ft @ Rs.371 per sq. ft.	= Rs. 2,125.83
2nd Floor Stair case area as 135 sq. ft./63 = 2.14 sq.ft @ Rs.354/- per sq. ft.	= Rs. 757.56

	= Rs. 3,82,371.39
Basic amenities 15%	= Rs. 57,355.70

	= Rs. 4,39,727.09
Depreciation : 1% for 25 years Rs.4,39,727.09 x 0.777 [P = A (100-r/100)^n]	= Rs. 3,41,667.94

LAND VALUE:

$$\begin{aligned}
 1072 + 7.87 &= 1079.87/6 = 179.97 \\
 70/3 &= 23.33 \\
 &----- \\
 &= 203.30 \text{ sq. ft.} \\
 &-----
 \end{aligned}$$

$$\begin{aligned}
 203.3 \times 60,00,000/2400 &= \text{Rs.}5,08,250.00 \\
 &----- \\
 &= \text{Rs.}8,49,917.94 \\
 \text{Schedule I Amenities @ 2\%} &= \text{Rs.} 16,998.35
 \end{aligned}$$

Total Value

= Rs.8,66,916.29

13. Since the petition portion is used for non-residential purpose, the monthly fair rent is calculated at 12%. Accordingly, the fair rent is fixed as under:-

$\text{Rs.}8,66,916.29 \times 12/100 \times 1/12 = \text{Rs.}8,669.16,$

Rounded off to Rs.8,670/- p.m.

14. In the result, both the Civil Revision Petitions are allowed to the extent indicated above. The fair rent for the petition premises is fixed at **Rs.8,670/-** per month for non-residential portion from the date of filing of R.C.O.P.No.2012 of 2006. Accordingly, the common order passed by the Rent Control Appellate Authority in R.C.A.No.268 of 2008 and R.C.A.No.303 of 2009 is modified. No costs.

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Index : Yes/No

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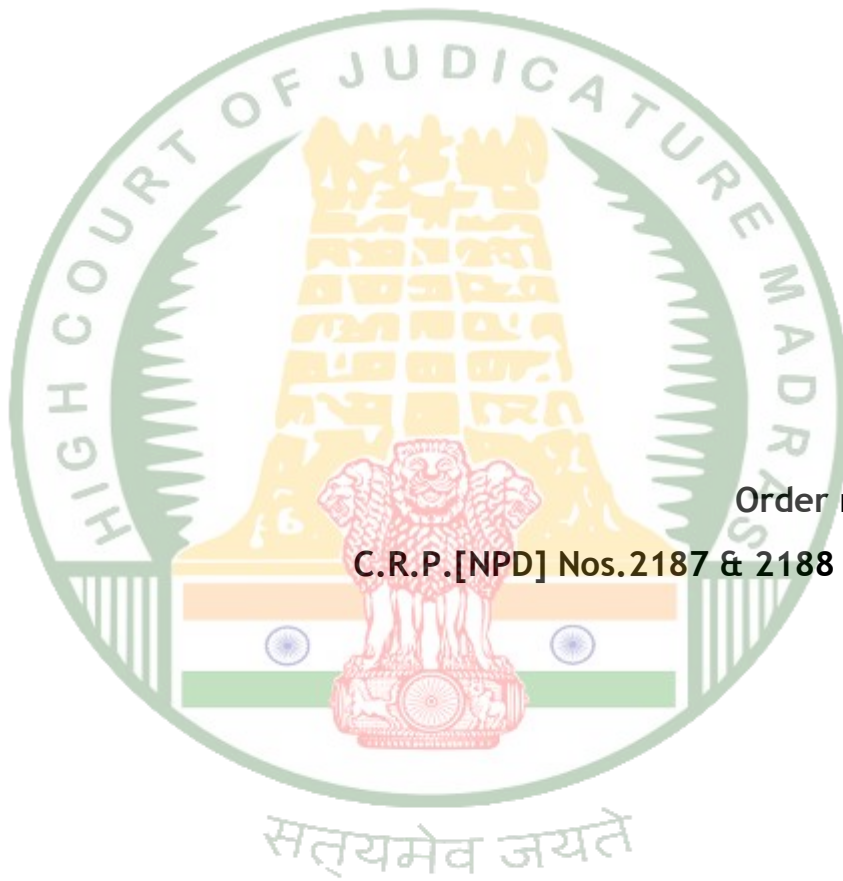
1. VIII Judge,
Rent Control Appellate Authority,
Court of Small Causes, Chennai.
2. XV Judge,
Rent Controller,
Court of Small Causes,
Chennai.



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RMT.TEEKAA RAMAN, J.

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Order made in
C.R.P.[NPD] Nos.2187 & 2188 of 2013

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