IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.01.2020

Pronounced on : 28.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.4413 of 2013
and
M.P.No.1 of 2013

T.V.Palanisamy ... Petitioner

Versus

1.Punniavathy
2.Sharmila
3.Nirmala
4.P.V.Govindan ...Respondents

Civil Revision Petition has been filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act 23 of 1973 and by Act 1 of 1980, against the fair and decreetal order, dated 13.08.2012, made in R.C.A.No.24 of 2011, on the file of the learned Subordinate Judge cum Rent Control Appellate Authority, Nilgiris at Uthagamandalam and modifying the Fair and Final order dated 02.08.2011, made in R.C.O.P.No.47 of 2005, on the file of the learned District Munsif cum Rent Controller, Uthagamandalam.

For Petitioner : Mr.N.Damodaran

For Respondents : Mr.K.Rakhunathan (for R1 to R3)

: Given up - R4
(vide in Batta 38382/2014)

O R D E R

This Civil Revision Petition has been filed against the order passed by the learned Subordinate Judge cum Rent Control Appellate Authority, Nilgiris at Uthagamandalam, in R.C.A.No.24 of 2011, dated 13.08.2012 and to modify the order passed by the learned District Munsif cum Rent Controller, Uthagamandalam, in R.C.O.P. No.47 of 2005, dated 02.08.2011.

2.The first respondent/tenant in R.C.O.P. No.47 of 2005 is the revision petitioner.

3.Brief facts of the case are as follows:-

(i) The respondents 1 to 3 herein/landlords have filed a petition in R.C.O.P.No.47 of 2005, before the learned Rent Controller, Ootacamund, under Section 4(1) of the Tamil Nadu Buildings (Lease and Rent Control) (Act 18) 1960, for fixation of fair rent for the schedule property. In the said OP, the respondents have filed counter.

(ii) The petition premises is a non-residential premises bearing Door No. 680 of Ward No.16 and situated at Eduljee Street in R.S.No.2406, New R.S.No.E/9/192 of Ootacamund Town.

(iii) During the course of trial, on behalf of the Petitioners, the third respondent herein was examined as PW1 and Ex.P1/Original Sale Agreement has been marked. On behalf of the respondents, revision petitioner was examined as RW1 and Exs.R1 to R9 have been marked. The Court Commissioner and Engineer have been examined as CW1 & CW2 and Exs.C1 and C2 were marked.

(iv) Based upon the oral and documentary evidence, the learned Rent Controller has fixed the fair rent at Rs.548/- per sq.ft and has fixed Rs.3,168/- for the ground floor and Rs.2,570/- for the first floor of the building. After deducting the depreciation, the monthly rent was fixed at Rs.5,416/-, by order dated 02.08.2011.

(v) Aggrieved against the said order passed in R.C.O.P. No.47 of 2005, the landlords have filed a Rent Control Application in RCA.No.24 of 2011, before the learned Subordinate Judge and Rent Control Appellate Authority of the Nilgiris at Udhagamandalam, under Section 23(1) of Tamil Nadue Buildings (Lease and Rent Control) Act, for further enhancement of the fair rent. By an order dated 13.08.2012, the fair rent has been enhanced to Rs.12,500/-, which is payable from the date of the Original petition. As against the same, the first respondent/revision petitioner has preferred this Civil Revision Petition before this Court.

4.Heard both the counsel and perused the materials placed on record.

5.On a perusal of the records it is seen that the learned Rent Controller has taken into consideration the followings points:-

(i) the Court Commissioner's and Engineer's report viz., Exs.C1 and C2,

(ii) Full Bench decision of this Court in **Sakthi & Co., through its Partner Veeranan vs. Shree Desigachary** reported in **2006 (2) CTC 433**, the relevant portion of which is extracted below:-

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

(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.

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."*

(iii) the Judgment of this Court in the case of ***G.Loganathan Vs. S.Chenniya Chettiar*** reported in ***AIR (1996) Mad 224 = 1995 (2) CTC 492****,* wherein, this Court has held that the Guideline value is not the market value. It is intended only for collection of revenue. As such, guideline value cannot be taken as the market value in a suit for declaration and possession.

6.It is to be stated that the learned Rent Control Appellant Authority has relied upon Ex.P1/Sale Agreement entered between the parties. It remains to be stated that the sale agreement and the price fixed therein cannot be the market value of the property. It is an agreement between the parties, which has not culminated into sale deed. In the absence of any Sale Deed, the learned Rent Control Appellate Authority has mis-directed himself the sale agreement as if it is a sale. Hence, the fair rent fixed by the learned Rent Control Appellate Authority is liable to be set aside.

7.After perusing the list of documents filed before the learned Rent Controller, it appears that Ex.R3, Sale deed relates to the adjacent land at Door No.683 of Ward No.16. Ex.R4 is relating to Door No.684 of Ward No.16. Ex.R5 relates to the adjacent property bearing Door No.685 of Ward No.16. Ex.R6 relates to Door No.684 of Ward No.16. Ex.R7 relates to Door No.685 of Ward No.16 and Ex.R8 is relating to Door No. 683 of Ward No.16 and the petitioner premises belonged to Door No.680 of ward No.16.

8. In the Full Bench decision of this Court in **Sakthi & Co., through its Partner Veeranan vs. Shree Desigachary** reported in **2006 (2) CTC 433**, it was held that for the purpose of determining the the fair rent, the guideline value maintained by the office of the Sub-Registrar should not be relied upon and that the market value of the property, based on which a willing prudent vendor and prudent vendee of the lands would bonafide purchase the property and that the advantageous features of the land situated near the land can be taken note of. Therefore, as per the decision of the Full Bench, the market value of the property and the value indicated under Exs. R1 and R2 can be taken note of. Therefore, the findings of the learned Rent Controller as to the extent of land available at 738.84 is hereby confirmed and accordingly, the value of the land is arrived at as

(i) 738.84 x Rs.600 per sqft. = **Rs.4,43,304/-**.

(ii) The costs of the construction of the Public Works Department (PWD) is arrived at for the ground floor is 68.64 square meter x Rs.3168/- = Rs. 217451.52, the round off value is **Rs.2,17,452**/-

(iii) First floor is 62.49 square meter x Rs.2570/- = Rs.160599.3

(iv) Thus, the cost of construction is arrived at Rs.3,78,051/-

(v) Depreciation at the rate of 2% of the building value viz., Rs.3,78,051/- (Rs.3,78,051/- x 2/100) = **Rs.7561.02** (depreciation). Therefore, Rs.3,78,051 - Rs.7561 = **Rs.3,70,490/-.** Thus, after depreciation the value of the building is arrived at **Rs.3,70,490/-.**

(vi) Based upon Ex.C2 for water facility and electricity facility and drainage facility a sum of **Rs.7,210/-** was allowed and the same is accepted and thus (Rs.3,70,490 + Rs.7,210) = **Rs.3,77,700/-**

(i) after depreciation the value is arrived at Rs. 3,70,490/-

(ii) the costs of the land is Rs.3,78,051/-

Rs.3,70,490 + Rs.3,78,051 = **Rs.7,48,541/-**

Since, it is not in residential building 12% has to be calculated as monthly rent, which is,

Rs.7,48,541/- X 12 / 100 = 89,824.92 rounded off to **Rs.89,825/-**

Therefore, the monthly rent can be fixed at Rs.89,825/12 = **Rs.7,485/-**

9.Hence, the fair fixation of rent Rs.7,485/-. Accordingly, the Civil Revision Petition is partly allowed to the limited extent as indicated above and the order dated 13.08.2012 passed in RCA.No.24 of 2011 on the file of the Subordinate Judge cum Rent Control Appellate Authority, Nilgiris, Uthagamandalam is set aside and the fair and decreetal order dated 02.08.2011 made in R.C.O.P.No.47 of 2005 shall stands modified to the extent indicated as above. No costs. Consequently, the connected miscellaneous petition is closed.

28.02.2020

Index : Yes / No
Internet : Yes
Speaking/Non-Speaking order

klt

To

The Subordinate Judge cum Rent Control Appellate Authority,
Nilgiris, Uthagamandalam.

RMT.TEEKAA RAMAN., J

klt

Pre-Delivery Order in

CRP.(NPD).No.4413 of 2013
and
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