

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 30.11.2020	Delivered on 09.12.2020
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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP. NPD.No.805 of 2018
and CMP No.4454 of 2018

Dr. H.S. Kumara

.. Petitioner

Vs.

1. D.Govindan (died)

2. G. Kasthuri

3. G.Balaji

4. G.Vanipriya

5. G.Chitralekha

.. Respondents

RR2 to 5 brought on record as Lrs of the deceased sole respondent viz., D.Govindan, vide order of Court dated 06/10/20 made in CMP 8597 & 8598/20 in CRP 805 of 2018 (RSMJ)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order passed in RCA No.369 of 2015 on the file of the IX Small Causes Court, Chennai dated 20.11.2017 confirming the order and decretal order passed by the learned Judge, XV Small Causes Court, Chennai in RCOP No.270 of 2013 dated 04.07.2015.

For Petitioner : Mr.M.Rajaraman
for M/s.C.K.M.Appaji

For Respondents : Mr. P. Sunil
M/s.K.P.Santhosh

ORDER

This matter is taken up for hearing through Video-Conferencing.

This Revision arises out of the proceedings under Section 4 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960. The respondent herein, the landlord, sought fixation of fair rent for the petition premises, which is a portion of a non-residential building, measuring about 605 sq. feet located in the ground floor of the premises bearing New No.42 Perumal Koil Garden Street, Chennai 600 079 and having postal address as No.17, Thirupalli street, Sowcarpet, Chennai 79. The agreed rent was Rs.1,900/- per month. The landlord claimed a monthly fair rent of Rs.38,250/-. The landlord had cited various amenities that were available in the building as well as the locational and other advantages enjoyed by the building as factors that should be taken into account while fixing the fair rent.

2. The tenant responded to the claim contending that the premises is

situate in a crowded market area and it does not enjoy the so called amenities and the advantages as claimed by the landlord. The value of the land as suggested by the landlord, was also disputed and it was claimed that one ground of land in the area could be valued only at a sum of Rs.60,00,000/-. The tenant also relied upon an exemplar Sale Deed to justify his claim.

3. At trial, the landlord on his part examined a chartered Engineer. His Report and Plan were marked as Exhibits P1 and P2, while two exemplar Sale Deeds were filed as Ex.P3(a) and P3(b). An analysis report explaining the valuation of the land was filed as Ex.P4. The tenant examined himself as R.W.1 and examined another Chartered Engineer as R.W.2. Exhibits R1 to R6 were marked.

4. The learned Rent Controller upon an examination of the evidence on record concluded that the area of the building occupied by the tenant is 605 sq. feet and it enjoys at least two basic amenities viz., over head tank and electric motor pump for water supply. The building was also found to be a Clause I building and the age of the building was determined as 58 years. As regards the value of the land, the learned Rent Control found that the exemplar

Sale Deed dated 14.12.2012 marked as Ex.P3(a), relied upon by the landlord's Engineer is close to the date of filing of the petition and the property dealt with under the said Sale Deed being situate in the very same street would offer the appropriate guideline to fix the market value.

5. On the said conclusion, the learned Rent Controller fixed the value of the land at Rs.1,75,00,000/- per ground and apportioned the same for the petition premises for an extent of 248 sq.feet. In order to determine the value of the building, the learned Rent Controller adopted the PWD rates and after providing for depreciation at 1% per annum, the depreciated value of the building was worked out at Rs.2,10,419/-. The land value was worked out as Rs.20,18,752/-. The monthly fair rent, worked out at 12%, was arrived at Rs.20,187/-. Aggrieved the tenant preferred an appeal in RCA No.369 of 2015. The landlord also preferred an Appeal in RCA No.473 of 2015.

6. The learned Appellate Authority upon a reconsideration of the evidence on record concurred with the findings of the Trial Court and dismissed both the appeals. Aggrieved the tenant has come up with this Revision.

7. I have heard Mr.M.Rajaraman, learned counsel appearing for M/s.C.K.M.Appaji for the petitioner/tenant and Mr.P.Sunil, learned counsel appearing for Mr.K.P.Santhosh, for the respondent/landlord.

8. Mr.M.Rajaraman, learned counsel appearing for the petitioner would submit that the Trial Court was not right in determining the area of the building occupied by the tenant at 605 sq. feet, he would refer to the report of the Engineer examined by the tenant viz. R.W.2, who had suggested that the extent of the building in occupation of the tenant is only at 508.89 sq. feet. Mr.M.Rajaraman, would further contend that the authorities were not justified in adding 15% for provision of the basic amenities as only two of the basic amenities set out in the schedule were available in the building. The third contention of Mr.M.Rajaraman, is that the Authorities erred in relying upon Ex.P3(a) for determining the land value.

9. Contending contra, Mr.P.Sunil, learned counsel appearing for the respondent would submit that both the Authorities had considered the evidence available on record and had accepted the report of the landlord's Engineer where the extent was fixed at 605 sq.feet. Being a concurrent finding if fact,

according to the learned counsel, I should be slow to interfere with the same sitting in a Revision under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act. He would also point out that it is discretion of the Court to fix the percentage to be added towards provision of basic amenities, the location of the building and the advantages enjoyed by the premises have been taken into account and the Authorities have arrived at the percentage at 15%.

10. On the contention of the learned counsel appearing for the petitioner regarding the land value, Mr.P.Sunil, would submit that the land value reflected by Exs.P3(a) & P3(b), which are closer to the date of the filing of the petition will only offer the appropriate value and an earlier document cannot be taken as determinative of the value of the land when documents which are nearer to the date of the filing of the petition are available in evidence. He would also point out that there is no suggestion to the Engineer examined on behalf of the landlord that Ex.P3(a) does not reflect the correct market value or there is any evidence to show that the value of the land shown in the said document is inflated. The learned counsel would therefore submit that the fixation of fair rent by the Authorities needs no interference at my hands.

11. I have considered the rival submissions.

12. As regards assigning a percentage of the value of the building for the available basic amenities, Section 4 of the Act provides that the Controller may add a percentage of the value of the building, as also the cost for provision of amenities specified in the Schedule I. The second proviso to Sub Section (4) of Section 4 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, which deals with such addition reads as follows:

“Provided further that the cost of provision of amenities specified in Schedule I shall not exceed.

(i) in the case of any residential building , fifteen percent; and

(ii) in the case of any non-residential building, twenty-five percent, of the cost of site in which the building is constructed, and the cost of construction of the building as determined under this Section.”

13. The amenities set out in Schedule I of the Act are 17 in number. It is

an admitted case of the parties that out of the 17 amenities only two are available in the petition premises. Though the Rent Controller is allowed to add up to 25% of the value for Schedule I amenities, such addition has to be on the basis of reasoning, it cannot be a figure that has no nexus to the amenities that are actually available in the building. The contention of Mr.M.Rajaraman is that the cost of provision of these amenities is already included in the cost of the construction and therefore, there is no question of addition of any amount for provision of any one of the amenities listed in Schedule I, is stated only to be rejected.

14. The Hon'ble Supreme Court has in ***K.C.Nambiar, v. The IV Judge, of Court of Small Causes***, reported in ***AIR 1970 SC 1656***, held that the cost of construction though includes provision of any one of the amenities the legislature had intended that certain allowances should be included twice once as part of component (i) and again as part of component (iii). Therefore the contention of Mr.M.Rajaraman that once the cost of provision of these amenities is included in the cost of construction of the building no percentage could be added to the value of the building, as the consideration for the presence of any one of those amenities, cannot be accepted. The Law is now

settled that a certain percentage will have to be added for the provision of any one of the amenities specified in Schedule I, apart from the cost of actual provision of those amenities having been added to the cost of construction of the building.

15. Coming to the percentage that can be added towards provision of any one of these amenities, there are 17 amenities listed out in the Schedule. A perusal of the Reports filed by the both the Engineers would show that the petition building enjoys only two of those 17. Apart from the other locational advantages which can also be taken into account while assessing to the percentage to be added towards the value of the amenities. It is already seen that the petition premises is situate in Thirupalli Street in Sowcarpet, which is a commercial hub and the tenant is running a clinic in the premises. The petition premises is also a corner building at the junction of two streets, as such it enjoys certain proximity. Considering the said advantages, the Rent Controller must have fixed the percentage to be added to the value of the building. I find that the addition of 15% without any reasoning cannot be justified.

16. Of course, the Court cannot venture into a mathematical calculation

going by the number of amenities set out in the schedule. Provision of some of them may cost more some of them may cost less. The exercise involves an element of guess work and an attempt should be made to rationalise the guess work. Considering the fact that the petition premises has only two of the basic amenities and also considering the locational advantage enjoyed by the petition premises, I am of the considered opinion that an addition of 5% towards basic amenities could be just and reasonable.

17. There is no dispute regarding the apportionment of the area of the land to the area of the building occupied by the tenant that is fixed at 248 sq. feet. The value of the land has been taken at Rs.1,75,00,000/- per ground i.e., 2400 sq. feet by the learned Rent Controller. The said fixation has been affirmed by the Appellate Authority. A perusal of the Analysis Report which has been marked as Ex.P4 shows that as per the Sale Deed marked as Ex.P3(a), the value of one ground of land as on 14.10.2012 was at Rs.1,44,00,000/- per ground. The Chartered Engineer was examined as P.W.1 has added 20% of it towards escalation, per year, and fixed the value at Rs.1,72,80,000/-. After having arrived at a valuation of Rs.1,72,80,000/- per ground, the Chartered Engineer has said that since the petition premises is a corner building having

road on two sides, the value of the land should be taken at Rs.3,00,00,000/-.

18. If we are to consider the evidence that is offered by the tenant in this regard, the Chartered Engineer examined on the side of the tenant as R.W.2 has taken as a Sale Deed of the year 2010 to arrive at the land value. Though he has produced the Sale Deed of the year 2010 as Ex.R4, he has not furnished the Analysis Report to show the basis on which he had arrived at the land value at Rs.60,00,000/- per ground. The Sale Deed Ex.R4 produced by him is dated 18.11.2010 i.e., 2 years and 4 months prior to the filing of the petition. Under the said Sale Deed an extent of 21 sq. feet of undivided share has been sold for a sum of Rs.52,500/- taking the value of the land to Rs.60,00,000/- per ground.

19. Per contra, the Sale Deed Ex.P3(a) filed by the landlord also relates to a building that is situate in the very same street viz., Thirupalli Street and the extent of land sold under the said document is 207 sq. feet of UDS and the valuation of the land alone has been made at Rs.12,42,000/- the value of per ground as per Ex.P3 Sale Deed would be Rs.1,44,00,000/-, since the said document is of the year 2012 and the Rent Control Original Petition came to be filed in the year 2013, the Chartered Engineer had added 20% towards

escalation. I do not think such an addition is justified because the date of the said document is 14.10.2012 and the date of the filing Rent Control Original Petition is February 2013, there cannot be an escalation of 20% within a span of four months. I am therefore of the opinion that the learned Rent Controller was not right in fixing the land value at Rs.1,75,00,000/-. Taking the locational advantages and adopting the value reflected by Ex.P3 Sale Deed, I am of the opinion that the land value could be fixed at Rs.1,50,00,000/- per ground.

20. As regards the area in occupation of the tenant while the landlord's Engineer has said that it is 605 sq.feet, the tenant's Engineer had said that it is about 508 sq. feet. There are certain differences in the measurement of the plinth area. Relying upon certain suggestions made and the answers given in the evidence of R.W.1 the tenant as well as R.W.2 the Engineer, both the Authorities have concluded that the area in occupation of the tenant is only 605 sq. feet and not 508 sq. feet as found by the Engineer examined by the tenant.

21. I do not find any perversity in the said conclusion of the Authorities, I therefore agree with the findings of the Authorities that the area in occupation of the tenant is 605 sq. feet. The monthly fair rent payable by the tenant is

calculated as follows is on the basis of the above reasonings.

Fair Rent Calculations:

Building value (PWD Rate is adopted)

<i>Description</i>	<i>Value</i>
Ground floor – M.T.Roof – 605 sq. ft @ Rs.542/- per sq. ft.	3,27,910.00
Add 5% towards basic amenities	16,395.50
Total	3,44,305.50
Depreciation @ 1% per year for 58 years Depreciated value of building, (0.558x3,44,305.50)	1,92,122.46
<u>Land Value:</u>	
There is a partial second floor over petition portion = 328 sq. ft. Apportioned site area = $328/3f + 605-328=277/2f=248$ sq. ft. Land Value = $(1,50,00,000/2400) \times 248$	15,50,000.00
Total	17,42,122.00

Fair Rent @ 12% comes to Rs.17,421.22.

22. In view of the above, the Civil Revision Petition is **partly allowed** and the fair rent fixed by the Authorities is reduced and it is fixed at Rs.17,421/- per month, from the date of filing of the petition viz., 07.02.2013.

It is stated that the tenant has vacated the premises on 31.08.2020. The same is recorded and his liability to pay fair rent shall be from the date of filing of the petition till date of vacating the premises. No costs. Consequently, the connected miscellaneous petition is closed.

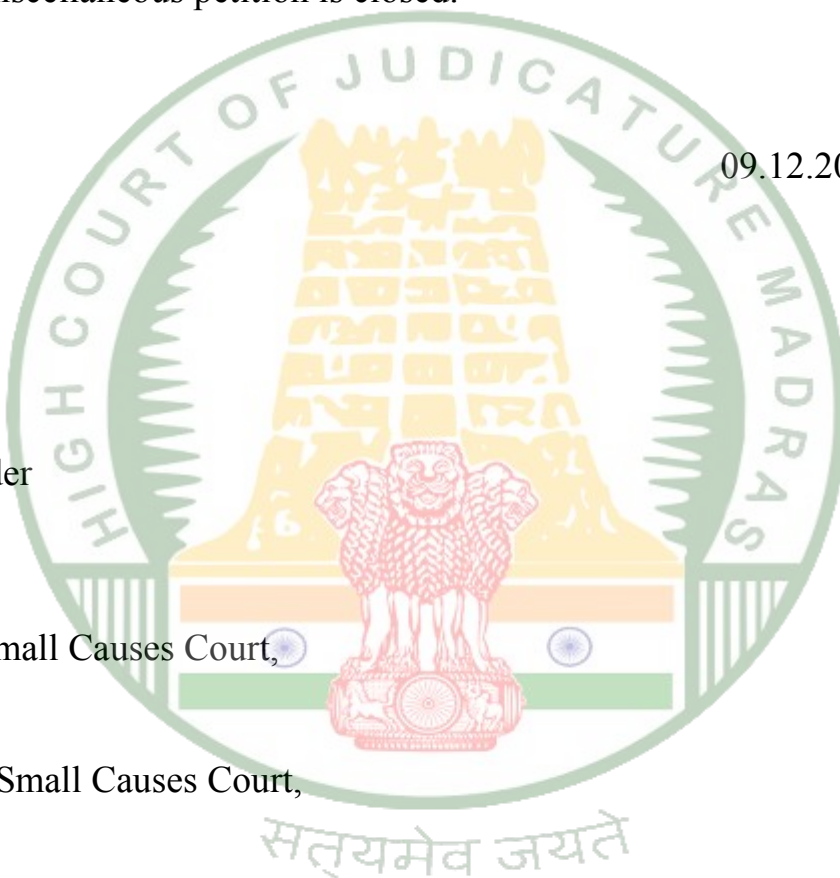
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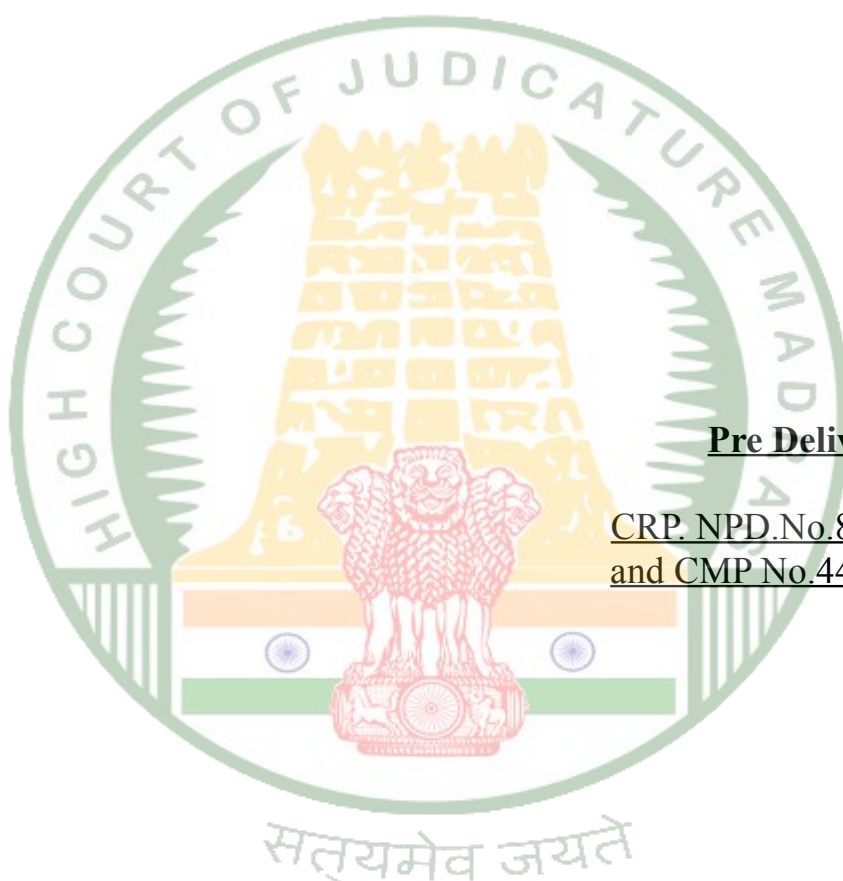
1. The IX Small Causes Court,
Chennai
2. The XV Small Causes Court,
Chennai
3. The Section Officer,
V.R.Section, High Court of Madras.



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R.SUBRAMANIAN, J.
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