

C.R.P.(NPD)No.4668 of 2014 and
M.P.No.1 of 2014 and
C.M.P.No.761 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 04.12.2019

JUDGMENT PRONOUNCED ON : 02.01.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(NPD)No.4668 of 2014

and

M.P.No.1 of 2014

and

C.M.P.No.761 of 2018

1.M/s.Central Co-operative Bank Ltd.,
Door No.14, Prakasam Salai,
Chennai -600 108.

2. M/s.Central Co-operative Bank Ltd.,
Rep.by its Branch Manager,
Old Door No.70, New No.78,
Nungambakkam High Road,
Chennai -600 034.

... Petitioners

...Versus...

1.P.G.Susila

2.P.G.Mohan Babu

3.P.G.Meenakshi

... Respondents

PRAYER:This Civil Revision Petition has been filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act,18 of 1960 as amended by Act 23 of Act 1973 and Act 1 of 1980 against the judgment dated 21.08.2014 made in R.C.A.No.208 of 2012 on the file of the Court of the IX Small causes at Chennai, confirming the order dated 14.10.2011 made in R.C.O.P.No.201 of 2009 on the file of the Court of the XII Small Causes at Chennai.

For Petitioners :: Mr.R.Bala Ramesh

For Respondents :: Mr.R.Ramakrishnan

J U D G M E N T

The respondents/tenants are the Revision Petitioners herein.

2. The respondents had filed a petition in R.C.O.P.No.201 of 2009 on the file of Court of XII Small Causes at Chennai for fixation of fair rent at Rs.2,62,123/- per month and the same was allowed by fixing the fair rent at Rs.1,09,792/-.

3. Challenging the same, the petitioners herein had preferred an appeal in R.C.A.No.208 of 2012 on the file of Court of VIII Small Causes at Chennai. Subsequently, the said R.C.A.No.208 of 2012 has been transferred from the Court of VIII Small Causes at Chennai to Court of IX Small Causes at Chennai.

4. The facts leading to filing of the above Civil Revision Petition in brief are as under:-

i) One Mr.P.M.Namadeva Chettiar was the original owner of the schedule property measuring an extent of 1336sq.ft bearing Door No.70 and New Door No.78 at Nungambakkam High Road, Chennai - 600 034 and initially, a Lease Agreement dated 01.04.1983 was entered between P.M.Namadeva Chettiar and the Bank for a period of 3 years from 01.04.1983 to 31.03.1986 and the monthly rent was fixed at Rs.2,500/- per month. Subsequently, the Lease Agreement was periodically extended upto the year 1996.

ii) In the year 1996, P.M.Namadeva Chettiar, S/o.Mr.Muthu Chettiar had filed a petition before the Rent Control Authority in R.C.O.P.No.674 of 1996 for fixation of fair rent. The Rent Control Authority had fixed the rent as Rs.42,675/- per mensem vide order dated 07.11.1997. Thereafter, on 24.02.1998, a settlement was arrived between the parties and by mutual consent, the said P.M.Namadeva Chettiar and the Bank had jointly decided to give up the fair rent fixed by the Authority and had entered into a fresh Lease Agreement dated 16.03.1998 for a period of 6 years from 01.04.1995 to 31.03.1998 and 01.04.1998 to 31.03.2001 on a monthly rent of Rs.13,356/- and Rs.16,695/- respectively and a sum of Rs.1,36,530/- was paid as additional advance.

iii) The above said lease period expired on 31.03.2001 and a fresh Lease Agreement was entered between the parties for a period of

3 years from 01.04.2001 to 31.03.2004 on a monthly rent of Rs.20,800/- and a sum of Rs.2,08,000/- was paid as advance.

iv) Thereafter, the said P.M.Namadeva Chettiar had executed a Settlement dated 08.11.2002 by conferring the life interest to and in favour of his wife Ms.Palaniammal and his son P.N.Gopal and after the lifetime of Ms.Palaniammal and P.N.Gopal, 1) Mr.P.G.Mohan Bau (son) and 2) Ms.P.G.Meenakshi (daughter) will get the absolute right over the schedule property. It is submitted that the said P.M.Namadeva Chettiar was expired on 23.05.2003 and hence 1) Ms.Palaniammal, W/o.Late Mr.P.M.Namadeva Chettiar, S/o.P.N.Gopal, S/o.Late Mr.P.M.Namadeva Chettiar 3) Mr.P.G.Mohan Babu, S/o.Mr.P.N.Gopal and 4) Selvi.P.G.Meenakshi, D/o.Mr.P.N.Gopal represented by her father had entered into a Lease Agreement dated 25.09.2003 for a period from 23.05.2003 to 31.03.2004 on a monthly rent of Rs.20,800/-

v) The above said lease period expired on 31.03.2004 and thereafter a fresh Lease Agreement dated 10.05.2006 was entered between the said 1)Ms.Palaniammal, W/o.Late Mr.P.M.Namadeva Chettiar 2) P.N.Gopal, S/o.Late Mr.P.M.Namadeva Chettiar 3) Mr.P.G.Mohan Babu, S/o.Mr.P.N.Gopal and 4) Ms.P.G.Meenakshi, D/o.Mr.P.N.Mohan for the period of 3 years from 01.04.2004 to 31.03.2007 and the Bank had paid a sum of Rs.32,790/- as additional advance on 10.05.2006 and the monthly rent was also fixed as follows:-

<i>S.No.</i>	<i>Period</i>	<i>Rent (Per month)</i>
1.	01.04.2004 to 31.03.2005	Rs.21,840/-
2.	01.04.2005 to 31.03.2006	Rs.22,932/-
3.	01.04.2006 to 31.03.2007	Rs.24,079/-

vi) The above said lease period expired on 31.03.2007 and the said P.N.Gopal vide his letter dated 18.04.2007 had requested the Bank to increase the rent by 25% with effect from April 2007 to renew the Lease Agreement. For which, the Bank vide his reply letter dated 05.06.2007 agreeing for enhancement of rent by 15%.

vii) During pendency of the R.C.O.P.No.201 of 2009, the said P.N.Gopal died on 16.11.2009 and hence the legal heirs of P.N.Gopal i.e., 1) Ms.P.G.Susila (Wife) 2) Mr.P.G.Mohan Babu (son) 3) P.G.Meenashi (daughter) have impleaded vide Order dated 13.04.2010 passed in M.P.No.85 of 2010 in R.C.O.P.No.201 of 2009.

viii) The pendency of the above R.C.O.P, the Bank had vacated the scheduled premises on 31.05.2011. Thereafter, the Court of XII Small Causes at Chennai was pleased to allow the petition vide order dated 14.10.2011 by fixing the fair rent at Rs.1,09,792/-

ix) Aggrieved by the rent fixed by the Court XII Small Causes at Chennai vide order dated 14.10.2011 passed in R.C.O.P.No.201 of 2009, the petitioners-Bank had filed an appeal in R.C.A.No.208 of 2012 on the file of the Court of VIII Small Causes at Chennai. Subsequently, on 12.02.2014 the said R.C.A.No.208 of 2012 has been transferred from the Court of VIII Small Causes at Chennai to Court of IX Small Causes at Chennai.

5. By an order dated 14.10.2011, the said R.C.A was dismissed and the fair rent fixed at Rs.1,09,792/- per mensem from the date of filing of R.C.O.P till the Bank vacated the property as order in the R.C.O.P was confirmed. The petitioners-Bank has filed the present Civil Revision Petition in C.R.P.No.4668 of 2014 before this Court.

6. The learned counsel for the petitioners submitted that the fair rent for the petition premises has been fixed by this Court by an order dated 7.11.1997 in R.C.O.P.No.674 of 1996 against the same appellants, the present second petition for the same building under Section 4 of the Rent Control Act, is not at all maintainable and the Courts below fixing the monthly rent at Rs.1,09,792/- for the petition premises which was vacated on 31.05.2011 is exorbitant.

7. The learned counsel for the respondents/landlords has made submissions in support of the judgment of the Trial Court.

8. The points for determination in the Civil Revision Petition is that i) whether the fair rent fixed by the Rent Control Authorities are reasonable and ii) Whether this petition is maintainable?

9. The landlord and tenancy relationship between the parties are admitted.

10. An objection has been raised by the Revision Petitioners/tenants stating the order passed in R.C.O.P.No.674/1996 dated 7.11.1997 whereby, the fair rent was fixed at Rs.42,675/- and hence, this petition is second petition and therefore, the same is not maintainable.

11. A similar objection has been taken before the Authorities below and the same was negated.

12. On a perusal of the counter statement and the evidence of the Revision Petitioners-Bank, it is seen that after the order passed in the above R.C.O.P, there was a private negotiation between the Revision Petitioners- Bank and the landlord and the fair rent was reduced and it is mutually agreed whereby the fair rent has been reduced and re-fixed as Rs.24,079/- for a period of 3 years vide Lease Agreement dated

01.04.2004 and thereafter, another Revision is also taken place and hence, both the Authorities have rightly rejected the plea of the petitioners-Bank regarding the maintainability holding that the earlier fair rent fixed by the Rent Control Authority was not acted upon instead there was a private negotiation whereby the landlord is accepted a lesser amount. Furthermore, taking note of the photographs of Exhibits.P5 to P12 and also the petitioner side Engineer's evidence, both the Courts have concurrently finding of the fact that there was a alteration and modification and repairing work in the petition premises and the same was not challenged in the cross-examination and hence, both the Authorities below have concurrently rendered a finding as to alteration of R.C.C roofing sheet and also repairing work and improvements in the premises and hence, the preliminary objection raised by the tenants are negated on the valid grounds and on re-appreciation of evidence, this Court finds that there is no irregularity in the such finding and hence, the finding rendered by both the Courts below is hereby confirmed.

13. It is seen from the discussion made by both the Courts below, they have rightly adopted to determine the total plinth area available in the above premises, the basic amenities and Schedule I amenities provided in the building and also correctly calculated in the age

of the building, cost of construction, the typed of building, land value and apportionment.

14. It is seen from the records that-

i) The petition premises is constructed in brick in cement Mortar and Lime Mortar and cement plastered walls and Lime plastered walls with Madras Terrace RCC roofing in Manager room, Lobby, Toilet, and wash areas and doors and windows are all in teak wood. Flooring is mosaic flooring and red oxide in some areas and in smaller areas cement plastered.

ii) The age of the petition building Madras Terrace as 50 years and RCC roof as 10 years.

iii) As per P.W.D specifications, depreciation is calculated at 1% for 50 years as 0.605. Further, the age of the building of ground floor RCC roof as 10 years. Hence, as per P.W.D specifications, depreciation is calculated at 1% for 10 years as 0.904.

iv) Plinth area in Madras terrace ground floor is 1203.99 sq.ft and RCC built up area ground floor toilet and wash is 476.80 sq.ft.

Therefore, according to petitioner engineer the total plinth area is 1680.79 sq.ft. The measurements in Ex.P2 sketch are not controverted in cross-examination of P.W.1. Hence, the petitioner's engineer's measurements are accepted. Hence, the plinth area is taken as ground floor Madras terrace as 1203.99 sq.ft and ground floor RCC roof area as 476.80 sq.ft.

v) The cost of constructions as per P.W.D rates is Rs.392/- per sq.ft for Madras terrace portion of ground floor and Ground floor RCC roof is Rs.430 per sq.ft.

vi) There is no dispute in existence of other amenities, the Trial Court has given 1% for such amenity included in the existence of appurtenant land, partly mosaic flooring and thereby given 5% for schedule I amenities.

vii) The building consists of ground floor, first floor and partly second floor only. Hence, the apportioned extent of built up area will be $1203.99 + 476.80 = 1680.79 \text{ sq.ft.}$ Built up in third floor $504.53 + 107.50 = 612.03 / 3 = 204.01$ ($1680.79 - 612.03 = 1068.76 / 2 = 534.38$)

Open parking area 437.61 sq.ft. Thus, the total apportioned extent is:-

$204.01 \text{ sq.ft} + 534.38 \text{ sq.ft} + 437.61 \text{ sq.ft} = 1176.00 \text{ sq.ft.}$

viii) On the point of land value, it is not in dispute. The petition premises is situated in the heart of the Madras city. The petition premises has several locational advantages like Schools and Colleges, Banks, Hospitals, Hotels, Shops and Offices. Further, the petition premises is easily accessible to ValluvarKottam, Tennis stadium, Nungambakkam Park, F-3 Police station, ESI Staff Quarters. To arrive a land value, the petitioner Engineer's referred a sample Sale Deed Document No.1004 of 2007 was marked as Ex.P3 and Analysis Report was marked as Ex.P4 and according to the petitioner Engineer's Report the value of the property is Rs.4,63,24,800/- in the year 2007. Considering the locational advantages and other facts, the Trial Court takes the market value per ground as Rs.2 crores.

15. Thus, this Court finds that both the Authorities have considered the rival submissions and also rendered a factual finding in ascertaining the ground value as Two crores and accordingly, fixed the fair rent and also taking note of the fact that the building is used for non-residential purpose and fair rent is calculated at 12% which comes to Rs.1,09,782/- and hence, I do not find any reason to interfere with the well considered order passed by the both the Rent Control Authority as well as Appellate Authority.

16. In this view of the matter, this Civil Revision Petition is dismissed. No costs. Consequently, connected M.P and C.M.P are closed.

02.01.2020

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Index:Yes/No

Internet:Yes/No

Speaking Order:Yes/No

To

1.The IX Small causes at Chennai,

2.The XII Small Causes at Chennai.

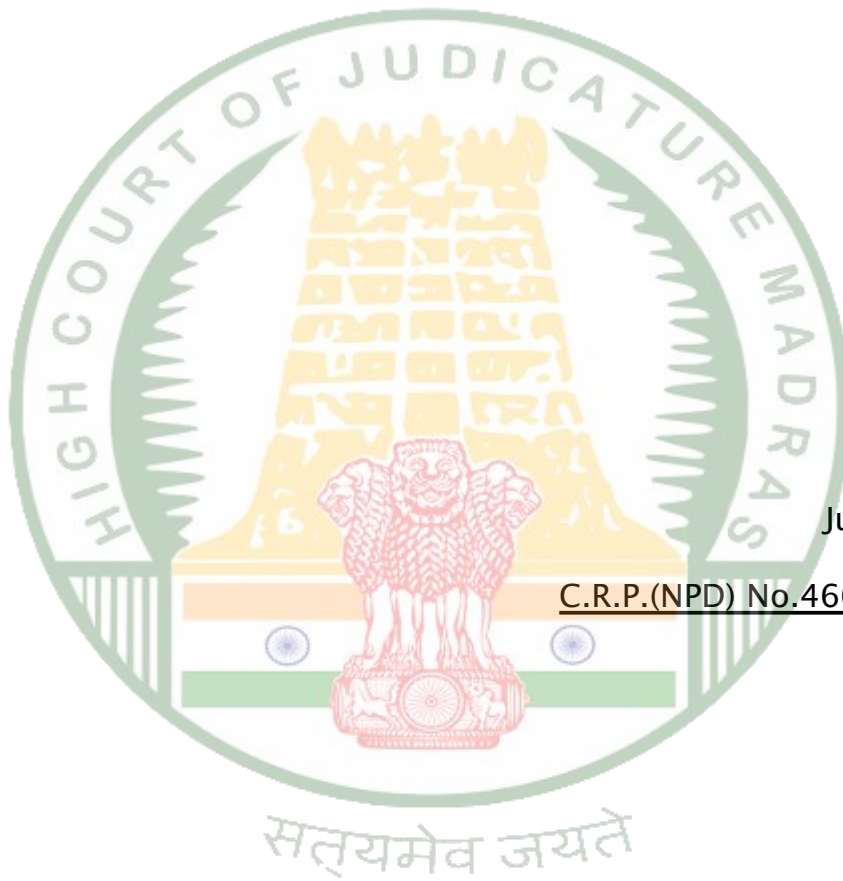


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RMT.TEEKAA RAMAN,J.,

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Judgment in
C.R.P.(NPD) No.4668 of 2014

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