

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.08.2021

Delivered on : 14.09.2021

CORAM :

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (NPD) Nos. 211 & 1030 of 2021
and C.M.P. No. 2004 of 2021

CRP (NPD) No. 211 of 2021
and C.M.P. No. 2004 of 2021

A.Mariappan

... Petitioner

Versus

S.Charlie

... Respondent

Civil Revision Petition is filed under Section 25 of the Tamil Nadu Building (Lease & Rent) Control Act, 1960, against the order modifying the fair rent passed in Judgment and decree in RCA No.388 of 2015 on the file of VII Court of Small Causes, Chennai dated 01.02.2020 modifying the Judgment and decree passed in RCOP No.1959 of 2011 on the file of the XIII Court of Small Causes, Chennai dated 27.04.2015.

For Petitioner

: Mr. V.Rameshvel

For Respondent

: Mr. S.Siva Shanmugam

CRP (NPD) No. 1030 of 2021

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Civil Revision Petition is filed under Section 25 of the Tamil Nadu Building (Lease & Rent) Control Act, 1960, against the order modifying the fair rent passed in Judgment and decree dated 01.02.2020 in RCA No.388 of 2015, on the file of VII Court of Small Causes, Chennai, modifying the Judgment and decree dated 27.04.2015, passed in RCOP No.1959 of 2011 on the file of the XIII Court of Small Causes, Chennai.

For Petitioner : Mr. S.Siva Shanmugam

For Respondent : Mr. V.Rameshvel

C O M M O N O R D E R

C.R.P. Nos.211 & 1303 of 2021 are filed by the tenant and the landlord respectively, against the judgment in R.C.A No.588 of 2015 on the file of VII Court of Small Causes, Chennai, modifying the order passed in R.C.O.P. No.1959 of 2011, on the file of XIII Court of Small Causes, Chennai.

2. The landlord S.Charlie filed a petition under Section 4 of Tamil Nadu Buildings (Lease and Rent Control) Act, for fixing the fair rent against the tenant A.Mariappan. The case of the landlord is that he is the owner of the petition mentioned building and A.Mariappan was the tenant in respect of the ground floor of the petition mentioned property. The tenant was carrying on business in the name and style of M/s. Abirami Vegetable Supermarket. The monthly rent is Rs.25,000/- per month and it is calculated according to English Calendar Month. The tenancy is for non-residential purpose. The building is situated at Dr.Ranga Road, Alwarpet, Chennai. It is surrounded by important locations such as Chennai Central Co-operative Bank, State Bank of India, Nageswara Park, Billroth Hospital, Sai Baba Temple, Bus stops and other commercial areas. The market value of the land is not less than Rs.1,50,00,000/- per ground. The monthly rent of Rs.25,000/- paid by the tenant is very low. The rent, if calculated as per the provisions of Tamil Nadu Buildings (Lease and Rent) Control Act, will not be less than Rs.67,782/- per month. The building is constructed with bricks in cement mortar and plastered with cement. The flooring is partly mosaic tiled and cement. The height of the roof is 10 ft. from floor. The main walls measure 9" and partition walls measure 4 ½ ". There is a rolling shutter in the entrance. Aluminium windows studded with glasses are provided. Basement stands at 3 ft above the road level.

Electricity installation and supply, corporation water supply and drainage connection to corporation sewer facility are available. Schedule I amenities such as common over head tank, electric motor, compound wall and mosaic flooring facility available. The building is type A-1 building and the age of the building is about 11 to 12 years. Therefore, the landlord filed a petition for fixation of fair rent at Rs.67,782/- per month.

3. The tenant denied the averments made in the petition and stated that the present monthly rent is Rs.21,500/-. It is his case that the petition premises is located at interior portion of Dr. Ranga Road and is 1.5 Kms away from Sai Baba Temple and Nageswara Rao park. Billroth hospital is not located at Alwarpet. The building is situated in a purely residential area. There is no direct bus service through Dr.Ranga Road and there is no transportation except Autos. The present rent of Rs.21,500/- is a reasonable rent. The built up area of the building is only around 950 to 1000 sq.ft and not 1150 sq.ft. There is no cantilevered slab area in the petition premises for an extent of 369 sq.ft. There is only asbestos sheet covering 100 sq.ft. facing road and it cannot be taken into account in the cost of construction. It was put up by the tenant even prior to the purchase by the landlord in 2006-2007. The building is nearly 15 years old. The building is not A1 type building and it is an ordinary building. There is no Schedule I amenities available in the building. The cost of the site would only be

Rs.20,00,000/- and the cost of the construction would be only Rs.4,00,000/-. The present arrangement of rent of Rs.21,500/- is very reasonable. There is no need for fixing fair rent.

4. During the enquiry before the Rent Controller, the Engineer was examined as P.W.1 and Exs.P1 to P4 have been marked. On the side of the tenant, the Engineer was examined as R.W.1 and Exs.R1 to R6 have been marked. On the basis of the oral and documentary evidence produced, the learned Rent Controller fixed the fair rent at Rs.66,068/-. The landlord preferred an appeal against the order R.C.A. No.388 of 2015. On re-appreciation of evidence, the learned Rent Controller Appellate Authority modified the fair rent as Rs.47,618/- instead of Rs.66,068/- . Against the said order, both the landlord and the tenant have preferred these civil revision petitions.

5. Learned counsel appearing for the tenant / petitioner in C.R.P. No.211 of 2021, submitted that the apportionment of land and fixing of value for the land is not correct. Even as per the petition, the RCC Built up area is 1150 sq.ft. There are ground floor and two other floors in the building. The landed area with reference to built up area was rightly apportioned, among the three floors. However, it is claimed in the petition that there is a cantilevered slab to an extent of 369 Sq.ft, lite roof shed area to an extent of 140 sq.ft and OTS area to an extent of 39 sq.ft. These areas have not been apportioned among the three

floors. These areas have been totally taken into consideration for arriving at the land area of 931.33 sq.ft. Taking the areas, namely the cantilevered slab area to an extent of 369 sq.ft, lite roof shed area to an extent of 140 sq.ft and OTS area to an extent of 39 sq.ft. without dividing these areas among the three floors is incorrect. If these areas are divided among the three floors, the total land area for the purpose of calculating the fair rent would come only to 565 sq.ft. In that case, the fair rent calculated by the learned Rent Controller would further come down to Rs.31,122/-. However, the learned counsel appearing for the tenant submitted that both the Courts below have not considered this aspect and taken the whole area for fixing the land area of 931.33 sq.ft. He further submitted that fixing the land value at Rs.1,02,12,199/- is not based on a evidence. Learned counsel for the tenant submitted that the fixation of fair rent by the learned Rent Control Appellate Authority at Rs.47,618/- per month is not correct and prayed for setting aside the order of the learned Rent Control Appellate Authority and reducing the fair rent.

6. In response, learned counsel for the landlord / petitioner in C.R.P. No.1030 of 2021, submitted that the learned Rent Control Appellate Authority without sufficient reasons has reduced the fair rent fixed by the Rent Controller from Rs.66,068/- to Rs.47,618/-. The landlord produced Exs.P3 and P4 to show that the value of the property is more than Rs.4,00,00,000/- per ground.

However, the Rent Control Appellate Authority had taken Ex.R5-sale deed, relating to undivided share of the property. The value of whole property would be much more than the value of the undivided share in a property. The petition mentioned premises is an independent property. Therefore, the Rent Control Appellate Authority should have taken Exs.P3 and P4 documents to arrive at the market value of the property. Therefore, the learned counsel for the landlord prayed to set aside the order of reducing the fair rent by the learned Rent Control Appellate Authority and increase the fair rent ordered by the learned Rent Controller.

7. Considered the rival submissions. It is seen from the case set up by the parties before this Court that the issue for consideration by this Court is limited to the extent as to whether the area of land taken for fixing fair rent and the value adopted for fixing the land values are correct. As already stated, during the enquiry before the Rent Controller, P.W.1 and R.W.1 were examined and Exs.P1 to P4 and R1 to R6 have been marked. P.W.1 and R.W.1 are the Engineers. Neither the landlord nor the tenant was examined. Reading the order of learned Rent Controller shows that the learned Rent Controller has taken into consideration, the documents filed by the Engineers and their oral evidence and decided that the type of building is Type -1 on the basis of Ex.R1 report. The age of the building was fixed at 20 years on the basis of Ex.R1 report. Plinth

area and the cost of construction was fixed on the basis of Ex.P2 sketch. Ex.P2 sketch was preferred than Ex.R2 sketch for the reason that Ex.P2 sketch was drawn to scale. Since all the three amenities are available, as per the report of both the Engineers, 20% was awarded for the amenities. On the basis of Ex.P1 report, 6% was awarded for schedule I amenities, for the reason that there is a common over head water tank, electric motor, all round compound wall and exclusive mosaic flooring available. Depreciation was allowed at 1% for 20 years. The land area was fixed at 931 sq.ft. The learned Rent Controller preferred Ex.R5 sale deed, for fixing the land value mainly for the reason that Ex.R5 property is situated at new Door No.92, Dr.Ranga Road and it is nearer to the petition mentioned premises. The value of one ground was fixed at Rs.1,10,40,000/-. 10% appreciation per year was given and the value was fixed at Rs.1,46,94,240/- for the year 2014. Finally, the land value for 931.33 sq.ft was fixed at Rs.57,02,161/-. The cost of construction was fixed at Rs.5,30,740/-. With 6% for Schedule I amenities, the total cost was arrived at Rs.66,06,875/-. Since the building was let out for non-residential purpose, the fair rent was calculated at 12% per annum and the fair rent per month was arrived at Rs.66,068/-.

8. In appeal, the learned Rent Control Appellate Authority, concurred

with the findings of the learned Rent Controller except the finding with regard to the fixation of land value. The learned Rent Controller, fixed the land value at Rs.1,46,94,240/- and the same was reduced to Rs.1,02,12,199/- by the learned Rent Control Appellate Authority. The reason for the reduction is that in the fourth page of the sale deed it was mentioned that the vendor is the absolute owner and is in absolute possession and enjoyment of the property being 1285 / 18500, undivided share out of the A-schedule land, out of the three ground 582 sq.ft. The learned Rent Control Appellate Authority held that as per Ex.R5-sale deed, if the undivided share for 18500 is 1285 sq.ft, then for 3 ground 582 sq.ft. i.e. for 7,782 sq.ft, the undivided share will be 580.53 sq.ft. Calculating on this basis, the value for one ground was fixed at Rs.1,02,12,199/-. Except this modification, the learned Rent Control Appellate Authority accepted and adopted the other findings of the learned Rent Controller for fixing the fair rent and modifying the fair rent at Rs.47,618/- per month.

9. The learned counsel appearing for the landlord submitted that the value of the lands should have been fixed on the basis of Exs.P3 and P4 for the reason that Ex.P3 sale deed relates to the sale of undivided property, on the other hand, Ex.R5 relates to sale of undivided share of property. This aspect may be a relevant factor if the property concerned in Exs.P3 is located nearer to the petition mentioned property. However, it is not in dispute that the property

concerned in Exs.P3, does not situate in Dr.Ranga's road. On the other hand, the property concerned in Ex.R5 is located at Dr. Ranga road and it nearer to the petition mentioned property. That was the reason why the property covered in Ex.R5 was preferred to the properties covered in Ex.P3. The reason given for preferring Ex.R3 sale deed than Ex.P3 sale deed is appropriate and acceptable in the facts and circumstances of the case. Therefore, this Court finds no reason to interfere with the findings given with regard to preferring Ex.R5 sale deed for fixing fair rent.

10. As said earlier, the main grievance of the learned counsel for the tenant is that the RCC built up area was apportioned among three floors. The cantilevered slab area, lite roof shed area and OTS area have not been apportioned among the three floors. Learned counsel for the landlord submitted that these areas are in total occupation and in enjoyment of the tenant. Other tenants have no access to these areas and therefore, it is not necessary to apportion these areas among the three floors. Learned counsel for the tenant relied upon the judgment reported in (2007) 1 CTC 561 for the proposition that when there are multiple floors, the land areas are to be apportioned among the floors for fixing the area of land and the value of the land. There is no dispute with regard this proposition.

11. Admittedly, the RCC built up area of the building to an extent of

1150 sq.ft was apportioned among three floors. It is the claim of the landlord that the cantilevered slab area, lite roof shed area and OTS area are all under the independent enjoyment of the tenant. In this regard, the sketch filed on behalf of the landlord was pointed out. The sketch is marked as Ex.P2. It shows that the petition mentioned property is situated facing Dr.Ranga road. There is a road on the western side of the building. The tenant has occupied the ground floor and running a vegetable super market. The cantilevered slab and lite roof shed area are provided on the top of the ground floor. The sketch shows that there is fruit sale counter in lite roof shed area. Thus it is clearly evidence from this sketch that the RCC Built cantilevered area and lite roof shed area are in complete occupation and enjoyment of the tenant in the ground floor. There are steps provided for the tenants in upper floors in Beemanna Second street, for the tenants to reach their first and second floor. Thus it is clearly established from Ex.P2, that cantilevered slab area, lite roof shed area and OTS area are all exclusively enjoyed by the tenant in the ground floor. When it is in exclusive enjoyment, the tenant cannot ask for apportioning these areas with other floors. Therefore, this Court finds that taking the cantilevered slab area of 369 sq.ft, lite roof shed area to an extent of 140 sq.ft and OTS area to an extent of 39 sq.ft. along with 1/3rd of RCC built up area to an extent of 1150 sq.ft and arriving the land area as 931.33sq.ft. is correct and there is no need to interfere with this

calculation.

12. Learned Rent Control Appellate Authority, on re-appreciation of evidence, especially Ex.R5-sale deed and the evidence of R.W.1, has rightly modified the land value at Rs.1,02,12,199/-. It is based on the evidence available on record. Therefore, this Court is of the considered view that fixation of fair rent at Rs.47,618/- per month by the learned Rent Control Appellate Authority is based on proper and right appreciation of oral and documentary evidence in this case and it needs no interference. In this view of the matter the judgment and decree passed by the learned VII Judge, VII Court of Small Causes, Chennai, in R.C.A. No.388 of 2015, dated 01.02.2020, is confirmed and both these Civil Revision Petitions are dismissed. The parties are directed to bear their own costs. Consequently, connected miscellaneous petition is closed.

14.09.2021

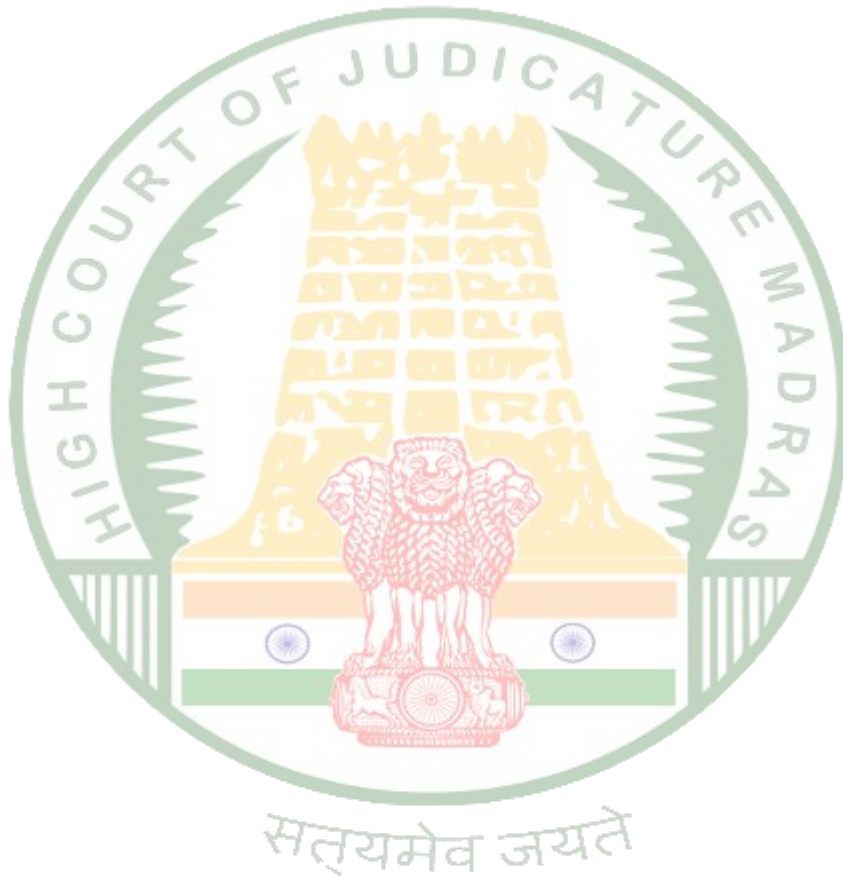
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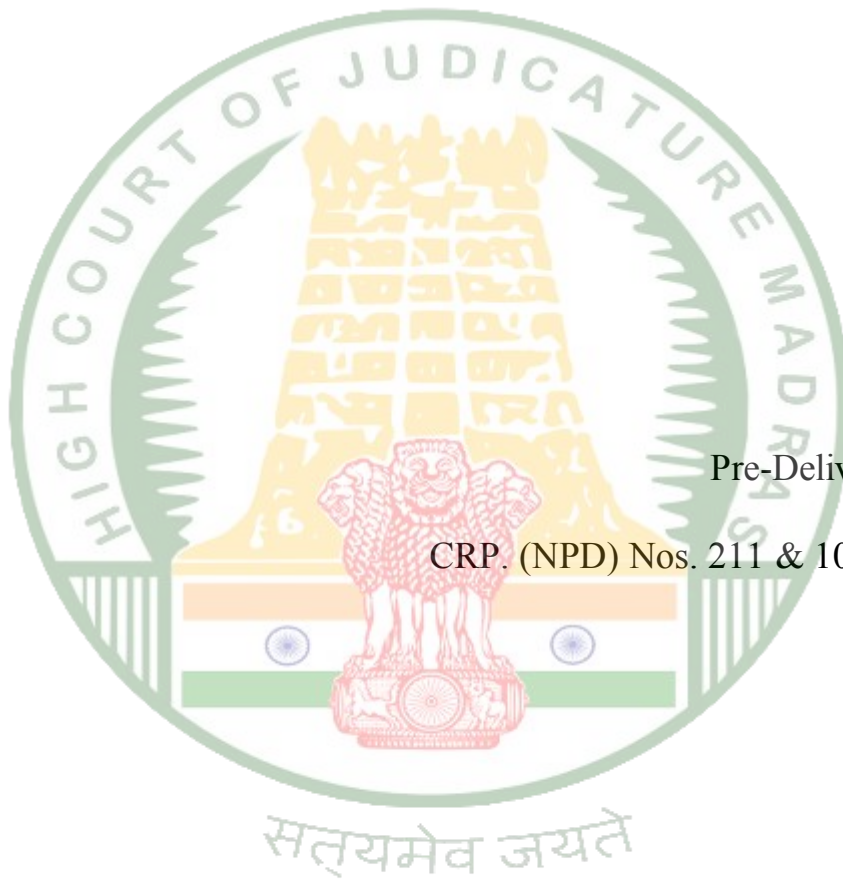
1. The VII Judge, VII Court of Small Causes, Chennai.
2. The XIII Judge, Court of Small Causes, Chennai.



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G.CHANDRASEKHARAN. J.,

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Pre-Deliver order in
CRP. (NPD) Nos. 211 & 1030 of 2021

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