

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.07.2021
Pronounced on	30.07.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).Nos.1258 & 1259 of 2015

CRP.No.1258/2015

M/s. Hyder Trading Company Pvt. Ltd.,
Rep. by its Director,
S.A.J. Kamal Batcha
Old No.63, New No.47, Usman Road,
T.Nagar, Chennai – 600017.

... Petitioner/Appellant

Vs.

P.Kesavan

... Respondent

CRP.No.1259/2015

M/s. Hyder Trading Company Pvt. Ltd.,
Rep. by its Director,
S.A.J. Kamal Batcha
Old No.63, New No.47, Usman Road,
T.Nagar, Chennai – 600017.

... Petitioner/Respondent

Vs.

P.Kesavan

... Respondent/Appellant

Prayer in CRP.No.1258/2015: The Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, praying to set aside the order dated 15.04.2014 passed by the Rent Control Appellate Authority) / VIIIth Judge, Court of Small Causes Chennai in RCA.No.440 of 2007 and to enhance the fair rent fixed by the rent controller.

Prayer in CRP.No.1259/2015: The Civil Revision Petition is filed under

Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, praying to set aside the order dated 15.04.2014 passed by the Rent Control Appellate Authority/ VIIIth Judge, Court of Small Causes Chennai, in RCA.No.522 of 2007.

For Petitioner : Mr.A.Chidambaram
(in both CRPs)

For Respondent : Mr.Om Prakash (Senior Counsel)
(in both CRPs) for Mr.K.Selvamani

COMMON ORDER

(Heard through video conferencing)

These Civil Revision Petitions have been filed to set aside the common Order of the Rent Control Appellate Authority/ VIIIth Judge, Court of Small Causes Chennai dated 15.04.2014 passed in R.C.A.Nos.440 & 522 of 2007.

2. The facts of these Civil Revision Petitions have originated from the Rent Control Petition filed in R.C.O.P.No.92 of 2005 by the Civil Revision Petitioner/landlord before the learned Rent Controller/XIII Court of Small Causes, Chennai, for fixing the fair rent for the demised premises. The learned Rent Controller has allowed the Rent Control Petition and fixed the fair rent at Rs.2,02,741/-p.m. The respondent/tenant contested the Rent Control Petition by alleging that there was no landlord-tenant relationship

between himself and the petitioner and the demised premises was let out to him only as a vacant site and the superstructure has been put up by himself; since the superstructure was built by him, the rent control proceedings are not applicable to the demised property.

3. The learned Rent Controller did not accept the said argument and proceeded to record that the demised property was let out to the respondent as a building and fixed the fair rent. The landlord has filed the Rent Control Appeal in RCA.No.440 of 2007 for modifying the quantum of the fair rent. The tenant has filed the Rent Control Appeal in RCA.No.522 of 2007 by challenging the very maintainability of the Rent Control Appeal. A common Order was passed after hearing both the Rent Control Appeals under which the Rent Control Appeal filed by the tenant was allowed and the Rent Control Appeal filed by the landlord was dismissed. Aggrieved over that, the landlord has filed these two present Civil Revision Petitions.

4. Since the parties are the same and the matter in issue also revolves around the issue of the landlord-tenant relationship between the parties and the applicability of the Rent Control Act to the demised premises, a common Order is passed after hearing both side learned counsels.

5. The matter lies in a very narrow campus. It has to be seen whether the respondent is a tenant for the building or whether the vacant site alone was let out to him with a permission to raise superstructure at his expenses and run the business by paying the ground rent alone. If it is found that the respondent has taken only the ground for rent then the Rent Control Act is not be applicable and the very Petition filed by the Petitioner before the Rent Controller itself is not maintainable.

6. The respondent himself has alleged that in the demised property, there was a hall named Hy-Fashion Hall and one G.Prasad was using it for his textile sale. The respondent submitted that he has paid a huge amount to G.Prasad in order to vacate him from the premises and only thereafter, he took its possession. There is no dispute as to the existence of the Hy-Fashion Hall in the demised premises at the time when the respondent came into occupation. It is also not in dispute that the demised premises along with its appurtenants is situated in No.63, Usman Road. The one side of the whole lot of property was facing a street abutting the road and thus, the Hy-Fashion Hall was facing the street. After the respondent came into possession, he converted the features of the hall by making some alterations and doing certain interior work so as to suit his hotel business. And for which, he has

also obtained a license from the Chennai Corporation. License dated 24.11.1999 issued by the Health Department of Chennai Corporation to the respondent for running hotel in the demised premises has been produced as Ex.R8. So the fact that the respondent is running a hotel in the demised premises, is also not in dispute. The only contention made by the respondent is that he has taken the site only on ground rent basis and he himself has put up the superstructure according to his convenience and with the permission of the petitioner. Hence, he cannot be subjected to the provisions of Rent Control Act.

7. The learned Rent Controller has observed in her Order that the existence of Hy-Fashion Hall at the time when the possession was taken by the respondent would show that the demised premises was leased out only as a building and hence, the contention of the respondent that there is no landlord-tenant relationship between himself and the petitioner is not correct.

8. The learned senior counsel for the respondent submitted that the hall was a temporary structure and it cannot be construed as a building. It was the respondent who had given it a shape of a building by putting up a construction therein. It is further submitted by the respondent that in order to show that

the petitioner had leased out only the vacant site, the lease deed dated 01.11.1999 entered into between the petitioner and the respondent which is produced as Ex.R5 = Ex.R22.

9. The learned counsel for the Civil Revision Petitioner submitted that Exs.R5 = R22, is an unregistered lease deed and it is not admissible in evidence; since the possession of the respondent in the demised premises is not disputed, it is not going to serve any co-lateral purpose also. It is further submitted that the above documents are concocted one and the respondent has not chosen to produce the same in the earlier Debt Recovery Proceedings taken against the petitioner and in which the respondent has been impleaded as a garnishee.

10. Admittedly, at the time when the respondent took possession of the property, there was a hall and it was not a vacant site. Had the demised property was vacant, it would not have got the nomenclature 'Hy-Fashion Hall'. The Rent Control Act defines the term 'building' under Section 2(2) and for the purpose of convenience, it is extracted as below:-

“(2) "building" means any building or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes and includes-

(a) *the garden, grounds and out-houses, if any, appurtenant to such building, hut or part of such building or hut and let or to be let along with such building or hut.*

(b) *any furniture supplied by the landlord for use in such building or hut or part of a building or hut, but does not include a room in a hotel or boarding house;”*

11. The Act gives a wider meaning to the term ‘building’, so as to include the structures like less concrete structures like huts also into its fold. The learned Rent Controller has relied on the decision in the case of ***Thangakani Ammal and others Vs. A.K.A. Khaja Mohideen Sahib and another*** reported in **91 LW 659** and held that the existence of temporary structure in the premises would not make it a building and the property has to be considered as a site only. In the said judgement, it is stated that a structure consisting of walls, windows and a door but without any roof cannot be considered as a building. Without a roof over the Hy-Fashion hall, the garments cannot be put for sale by the earlier occupant. Though the learned Rent Controller has concluded that the hall in the premises has to be construed as a building, the learned Appellate Authority has taken a different view.

12. It is admitted by both the parties that the hotel by name Hotel Virudunagar Ayyanar was opened by the respondent on 14.11.1999. The date of the unregistered lease deed Ex.R5 = Ex.R22 is 01.11.1999. Had the hall been demolished and a pucca building is built on the premises, the hotel could not have come into existence on 14.11.1999 itself. Ex.P4 – invitation for the opening of hotel, marked through the cross-examination of R.W.1 would prove that the hotel was opened on 14.11.1999. It is the categorical statement of the petitioner that the hall was given to the respondent during August, 1999. The respondent also did not deny the same. Even during the period between August 1999 to November 1999, the petitioner had been demanding the day rent from the respondent for the hall. Ex.P5, which was produced by the petitioner themselves during the cross-examination of R.W.1 would show that demand letter was sent by the petitioner to the respondent for the license fee for the Hy-Fashion Hall. The demand was made from 07.08.1999. Had the hall been removed, such demands could not have been made.

13. A crucial document which needs to be noted is Ex.P11 – letter written by the petitioner to the Commissioner of Central Excise, Chennai. In the said letter, it is stated by the petitioner that the hall in the demised

premises was given to various customers on day to day basis and on payment of license fee and he thought fit to convert it into a hotel and so the registration of the Hy Fashion Hall under the category *Mandapam* should be cancelled. This was with a view to stop the authorities from demanding service tax from the petitioner for the Hy-Fashion Hall under the head '*Mandapam*'.

14. The relevant portion of the said letter is extracted as below for a better appreciation:

"1. We are the owners of premises 63, Usman Road, T.Nagar, Chennai – 600 017. In this premises there was some open space which was let out to run an Automobile Work Shop. We vacated the work shop and constructed a temporary shed in the open space and named it as Hy Fashion Hall. We used to give the hall to customers for exhibition and sale on day-to-day basis on payment of Daily License Fee. We find difficulty to get customers through out the year and therefore decided to convert the hall to Hotel. Vide our letter dt 9th Oct 1999 which was received by your Tapal Section on 15.10.1999 we informed about the change in our activity and requested you to cancel the registration with effect from 1.9.1999."

15. The above contents of Ex.P11 – letter also makes it clear that the property of the petitioner is in a busy commercial area and it was being

utilised in a beneficial manner by the land owner. In order to make out an income, the land owners constructed a temporary shed and that was originally let out to an automobile work shop and it seems it got the name Hy-Fashion Hall and this was used for exhibition cum sale. This kind of business oriented activities accommodated in the hall would change in accordance with the seasonal or festival demands. The hall was subjected to service tax and it was registered under the head '*Mandapam*' by the Commissioner of Central Exercise, Chennai. Since the petitioner did not get offers to utilise that All Purpose hall in the premises, he requested the authorities to cancel its registration under the head '*Madapam*' and stop claiming the service tax from him. All this will show that the hall in the premises was existed in such a way that it can be considered as a '*Mandapam*'. It is needless to state that *Mandapam* is a structure which has walls, roof, floor and door and only because of that the hotel could be opened in it on 14.11.1999 itself.

16. Since the hall in the premises is a structure better than a hut, it will very well fit into the wider ambit of '*building*' as defined under Section 2(2) of the Act. The learned First Appellate Authority failed to consider these material documents before arriving at a conclusion that the petitioner had not

proved before the Court that the Hy-Fashion hall had a roof.

17. As the petitioner intended to convert the purpose of the hall by converting it into a hotel premises, he sent Ex.P11 request to the authorities. Ex.P11 – letter is dated 06.04.2002. But the hotel was accommodated as early as on 14.11.1999 itself. This would show that even before the Registration Certificate issued for the Hy-Fashion Hall under the head *Mandapam* was cancelled by the Central Excise Authorities, the hotel of the respondent had been accommodated and started. Ex.R8 – License Receipt dated 24.11.1999 given by the Health Department of Corporation of Madras for running the hotel will also show the same.

18. It is already observed that Ex.P5, which was produced by the petitioner themselves during the cross-examination of R.W.1 would show that demands for license fee were sent by the petitioner to the respondent for claiming day rent for the Hy-Fashion Hall. The first day from which the license fee is sought by the petitioner is 07.08.1999. Though it is pertinent to note that from the day when the rent was demanded, the respondent has been paying the monthly rent. Even by his own statement before the Debt Recovery Tribunal, it was stated by the respondent that he was paying the monthly rent and he has deposited a few months' rent in the DRT itself.

Though the quantum of rent as stated by the respondent was not admitted by the petitioner, the fact remains that the respondent was paying the rent on monthly basis.

19. Curiously, the term 'rent' has not been defined in the Rent Control Act. In the judgement of this Court held in the case of ***Sakunthala Vs. G.S.Ramanathan*** reported in 2010 (3) L.W 140, it is stated as below:-

“29 .In this connection, this Court points out that the term of "Rent" has not been defined under the Tamil Nadu Buildings (Lease and Rent Control) Act 1960. Therefore, the ordinary dictionary meaning will have to be taken note of. Rent is a periodical payment of specific action. As long as the payment is linked with the right of occupation of the premises, the nomenclature given to the payment should make no difference in principle and the totality of such payment must in the eye of the parties and in the eye of law be regarded as rent. In ordinary parlance, the term 'rent' refers to an return in money or kind for enjoyment of specific property held by the person from or under another. The rent visualised in the Section speaks of only the agreed rate of rent and not the fair rent. As per Section 3(1) of the Act rent means actual rent paid or payable and not the fair rent which has not been determined.”

20. In accordance with the above dictum, whatever amount paid by the respondent periodically in connection with his occupation in the premises can be taken as rent, irrespective of the nomenclature adopted by the parties for

the said payment and in the absence of any written agreement. The respondent has been in continuous occupation of the premises from the year 1999 onwards and he has been running a hotel therein. So he is not a seasonal customer for the building as how it was utilised by the previous other occupants.

21. The learned senior counsel submitted that the petitioner himself has admitted that he had not put up any construction after he purchased the site and hence, it has to be presumed that the vacant site alone was let out to the respondent. It has been already pointed out that in Ex.P11, that the petitioner has referred about the temporary shed constructed by them in the premises and that has been registered under the category *Mandapam* and the petitioner was paying service tax for the same. The petitioner has not built up any pucca construction in the site as deposed by him. But he has put up a temporary shed and it has been let out to various occupants for various purposes and the documents would show the same. Since the term 'building' as defined in Rent Control Act does not mandate a pucca construction, the shed which was registered as '*Mandapam*' and subjected to service tax is still a 'building' for the purpose of the said Act.

22. It might be even true that the petitioner had not constructed the shed and it had been constructed by any of the earlier occupant. But once any of the earlier occupant who constructed the hall vacated the premises and handing over it to the petitioner, he becomes the owner for both the site and the structure. Though the respondent claimed that he had paid a hefty sum to the previous tenant for vacating him, it was not elaborated whether it was the consideration paid for the cost of construction of the hall. And further, the respondent's claim that he has paid a hefty sum to the earlier occupant was also not proved. However, Ex.P11 would show that the petitioner has let out the premises for running an automobile work shop prior to its incarnation as Hy-Fashion Hall. So it cannot be claimed that any of the person who had occupied the premises had put up the hall.

23. The learned Rent Control Appellate Authority has omitted to appreciate these material facts placed before him in a proper perspective and arrived at a short sighted conclusion that the Hy-Fashion Hall did not have any roof and hence, it cannot be called as a building. Only on that wrong premise, the learned Rent Control Appellate Authority has concluded that there was no landlord and tenant relationship between the petitioner and the respondent and the Rent Control Act has got no application.

24. The respondent has produced sufficient documents before the court to show that he has done an extensive exterior and interior works in the premises suiting to his hotel business. In fact, the regularization for the building itself was obtained by the respondent himself by applying to the Chennai Metropolitan Development Authority (CMDA) by attaching the plan. The copy of the application dated 30.06.2002 submitted to CMDA, has been marked as Ex.R15. Though it is true that after taking the Hy-Fashion Hall for rent, the respondent himself has undertaken the burden of remodelling it by putting up any additional features suiting to his hotel business with the permission of the landlord, that will not dis-entitle the landlord from filing a petition for fixation of fair rent before the Rent Controller. Just because the respondent has incurred expenditure towards improving the building by adding and modifying certain features in the existing structure, he cannot claim that he had taken only the open space for rent and not the building. However, the landlord cannot include the cost of the additions or improvements made or amenities created by the respondent while calculating the fair rent, without reimbursing its cost to the respondent or as how agreed between the parties while according permission to effect improvements.

25. R.W.2 – Engineer has stated in his evidence that while he was making structural alterations in the building, it was a vacant site. His evidence is just contrary to the evidence of the respondent himself, who has admitted the existence of Hy-Fashion Hall in the premises. In fact, the respondent has stated in his evidence that prior to housing the hotel in the premises, he thought of using it to accommodate his super market there. Since the learned Rent Control Appellate Authority has arrived at a wrong conclusion that the respondent has taken only a vacant site from the petitioner by not considering the Hy-Fashion Hall would fall under the definition of ‘building’ under Section 2(2) of the Act, the Order of the Rent Control Appellate Authority requires interference and it has to be set aside. Since the Rent Control Appellate Authority has disposed the Appeals without appreciating the fairness of the rent fixed by the Rent Controller, the matters need to be remitted back to the Appellate Authority himself for disposing it afresh after appreciating the said aspect.

In the result, CRP.Nos.1258 & 1259 of 2015 are **allowed** and the Common Order dated 15.04.2014 passed by the Rent Control Appellate Authority in RCA.Nos.440 & 522 of 2007 are set aside and both the matters

are remanded to the Rent Control Appellate Authority to decide them afresh with regard to the correctness of fixing the fair rent by the learned Rent Controller, after giving liberty to the respondent to raise additional grounds with regard to the said aspect of fairness in fixing the fair rent. Taking into consideration of the long pendency of the matter, it is desirable that the Rent Control Appeals are disposed as expeditiously as possible. No costs.

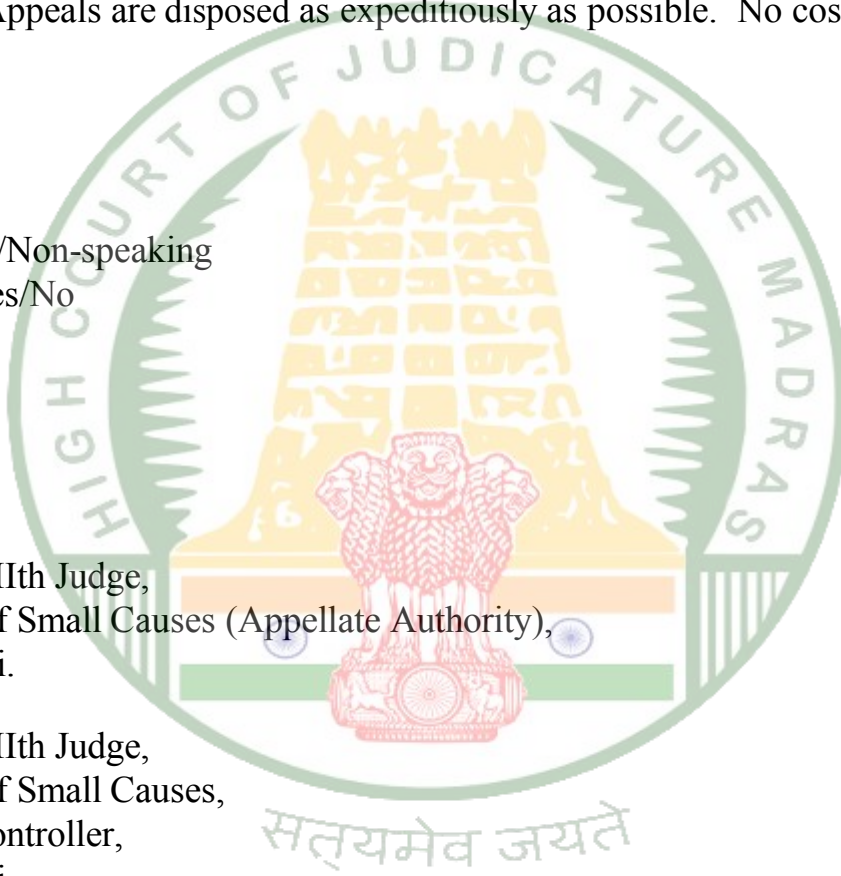
30.07.2021

Speaking/Non-speaking
Index: Yes/No

Sni

To

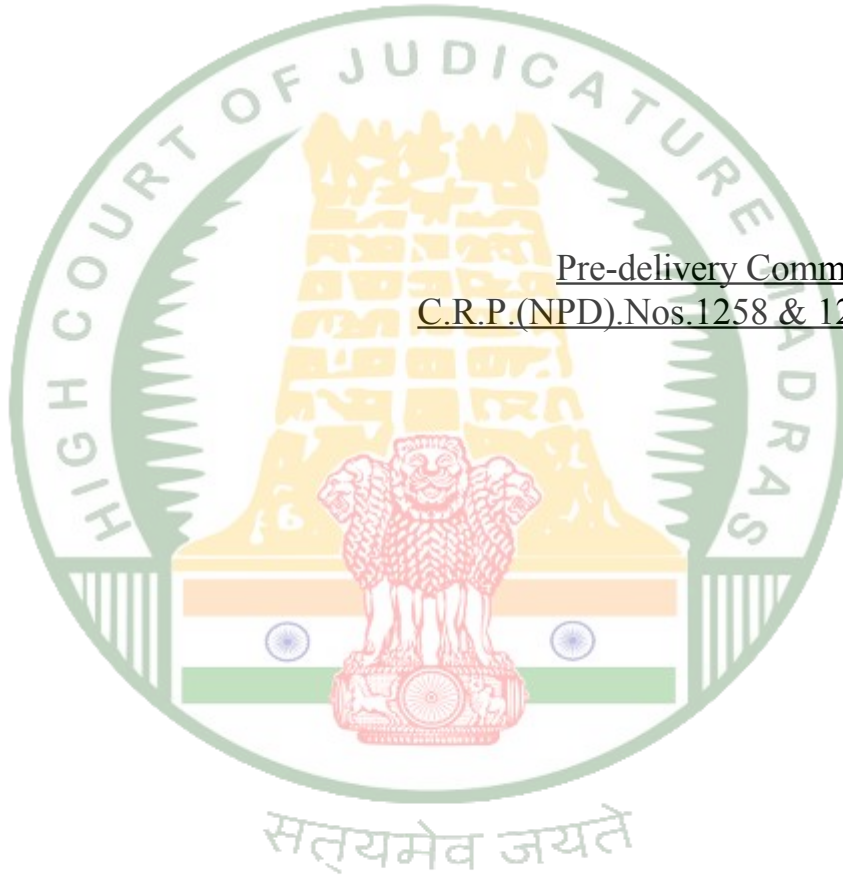
- 1.The VIIIth Judge,
Court of Small Causes (Appellate Authority),
Chennai.
- 2.The XIIIth Judge,
Court of Small Causes,
Rent Controller,
Chennai.
- 3.The Section Officer,
V.R.Section,
High Court, Madras.



WEB COPY

R.N.MANJULA,J.

Sni



Pre-delivery Common Order in
C.R.P.(NPD).Nos.1258 & 1259 of 2015

30.07.2021

WEB COPY