BEFORE THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	***25.08.2021***
Pronounced	***06.10.2021***

CORAM

THE HONOURABLE MR.JUSTICE MRS.S.KANNAMMAL

C.R.P.(NPD) No.1084 of 2016
and
C.M.P.No.5992 of 2016

Next Link Private Limited,
rep. by its Managing Director, Siddhartha Kanoria, ... Petitioner

Versus

1. N.Ramachandran
2. R.Rajesh Babu ...Respondent

Prayer: Revision petition is filed against the fair and decretal order dated 25.09.2013 in RCA No.296 of 2010 on the file of the VIII Court of Small Causes at Chennai, modifying the order dated 28.08.2009 in RCOP No.800 of 2007 passed by the learned XI Judge, Small Causes Court, Chennai.

For Petitioner : Mr.K.F.Manavalan

For Respondent: Mr.P.B.Ramanujam

ORDER

This Civil Revision Petition has been filed by the petitioner, against the order dated 25.09.2013 in RCA No.296 of 2010 on the file of the VIII Court of Small Causes at Chennai, modifying the order dated 28.08.2009 in RCOP No.800 of 2007 passed by the learned XI Judge, Small Causes Court, Chennai.

2. The brief facts which led to the filing of the present Revision Petition, can be stated as under:

2.1. The appellant herein is the tenant and the respondents are the landlords of the premises situated at Old No.501, New No.626, Anna Salai, JVL Plaza, Teynampet, Chennai-10. The appellant was inducted as a tenant on a monthly rent of Rs.28,217.20 per month. The purpose of tenancy is non-residential. According to the respondents/landlords, the rent being paid by the appellant is very low when compared to the locational advantages available at the demised premises. The entire building consists of six floors, while the appellant occupied a part portion of North-Western Corner of first floor facing south and a common passage cum staircase and the entire campus faces east and Anna Salai which is the most commercial heartland of Teynampet and surrounded by many commercial establishments, fall within a radius of 1 k.m. and the value is not less than 2.5 Crores per ground. The age of the building is about 17-18 years and it is a type I, Class-A structure apart from being a special nature of architectural features and provided with all basic amenities. Therefore, feeling aggrieved by the payment of low rent by the tenant, the respondents/landlords moved a petition under Section 4 of the Tamil Nadu Buildings (Lease & Rent Control), Act (in short, 'the Act'), seeking for fixation of fair rent at Rs.1,23,054/-.

3. Resisting the petition, the appellant/tenant has filed a counter, wherein, while denying the averments of the petition, inter alia, it is stated that the tenanted premises are situated on the rear side of Annal Salai where there is another building was located in front of the same. There is no direct or exclusive access to the building from Anna Salai and there is no proper parking facility also. The fair rent claimed by

the respondents/landlords is highly imaginary without any legally acceptable basis and the calculation made is highly inflated and contrary to the prevailing market price. According to the appellant/tenant, the actual rent being paid by him was far above the fair rent and hence, a sum of Rs.35,332/- is liable to be fixed as fair rent and the fair rent claimed by the respondents/landlords is highly usurious and cannot be sustained. With these averments, the appellant/tenant sought for dismissal of the petition.

4. Before the Rent Controller, on behalf of the respondents/landlords, PW.1 was examined and Exs.P1 to P4 were marked, while on behalf of the appellant/tenant, RW.1 was examined and Exs.R1 and R2 were marked.

5. On consideration of the entire facts and circumstances coupled with the evidence both oral and documentary, the Rent Controller has arrived at a conclusion that it is appropriate to fix at a sum of Rs.93,924/- as fair rent and since the appellant/respondent has admittedly, vacated the premises on 31.03.2009, the appellant/tenant was

directed to pay the fair rent at Rs.93,924/- per month from the date of filing of the petition, i.e. 09.04.2007 till the date on which the respondent/tenant vacated the premises, i.e. 31.03.2009. Feeling aggrieved that very low fair rent was fixed, the respondents/landlords preferred an appeal in RCA No.36 of 2010, while as it was fixed very excessive, the appellant/tenant has preferred an appeal in RCA No.296 of 2010 before the Rent Control Appellate Authority.

6. On appreciation of the findings of the Rent Controller vis-a-vis the grounds raised by the parties in support of their appeals, the Rent Control Appellate Authority, vide common judgement, dated 25.09.2013 has fixed the fair rent at Rs.2,62,420/-. Questioning the same, the appellant/tenant has come forward with the present Revision Petition.

7. Heard the learned counsel appearing for the petitioner/tenant and the respondents/landlords and perused the entire materials available on record.

8. The findings arrived at by the learned Rent Controller for fixing fair rent at Rs.93,924/- for the demised premises, can be extracted

as under:

"6. I find that for the purpose of calculating fair rent for the petition premises as per section 4 of the Act the total plinth area available in the petition premises, the basic amenities and schedule I amenities provided in the building, age of the building, cost of construction, the type of building, land value, apportionment shall be determined. We will take up the points one by one and discuss in seriatum.

i) Type of the building:

Both the engineers have conceded the fact that the petition property is Type 1. Hence the same is taken as such for the purpose of calculating the fair rent. The norms given by the PWD is adopted for the cost of construction for the year 2007.

ii) Age of the building:

The Petitioners Engineer had opined that the age of the building is 17 years and he has given 1% depreciation whereas the Respondent Engineer had stated that the age of the building is 25 and he had given 1% depreciation. I find that the petitioner would be the best person to speak about the age of the old building. In the counter the respondent had not denied the age of the building. There is no basis for the respondent Engineer to fix the age of the building as 25 years. It is established during cross examination of RW1 that the respondent had vacated the premises on 31.03.2009 and the Engineer could not have visited the premises on10.04.2009. Hence the opinion given by the Petitioner Engineer about the age of the building cannot have any bearing. Considering the opinion given by the Petitioner Engineer on his physical observation the age of the building is fixed at 17 years and 1% depreciation is given according to PWD guidelines.

iii) Amenities provided in the building:

As far as the amenities are concerned, it is an admitted fact that electricity, water supply and drainage are available in the petition property. Hence I deem it fit to give 15% for the same.

iv) Cost of Construction:

As per PWD rate the cost of construction for the RCC, constructed portion in the first floor is taken at Rs.365/- per sq.ft. for the cantilevered portion, For Staircase Rs.300/- is given, for E.B. Room and Generator room Rs.283 is given.

v) Plinth area:

In the petition it is stated that the respondent is in occupation of 3618 sq.ft. In the counter the respondent had taken as stand that his occupation of 3162 sq.ft., The respondent Engineer had not visited the premises hence his report cannot be looked into. He had mechanically copied the details shown in the counter and filed his report. Hence the measurements given by the respondent cannot be taken into consideration. The petitioner Engineer had filed his detailed property. As per his report the respondent is in occupation of 2382.25 sq.ft. RCC portion, 809.50 sq.ft cantilevered portion, 86.25 sq.ft Foyer area, 57 sq.ft respondent's share in the stair case portion, 8 sq.ft Respondent's share in the generator room, 4 sq.ft respondent's share in the E.B. Room 11.5 sq.ft AC sheet portion in the generator room and 194 sq.ft basement floor car parking area. The same is taken as such for calculation as the Petitioner Engineer's report was not controverted by the respondent during his cross examination.

vi) Appointment Area:

It is an admitted fact that the building consists of basement, ground Plus six floors. The respondent is in the first floor. The petitioner Engineer had stated that there are vacant land in the petition property. But he had not given measurements of the total extent of the vacant site, total built up area number of floors, constructed portion in each floor and number of occupants. Without giving details of the share of the respondent in the vacant land the appointed area cannot be found out. Hence the measurements given in the report for respondent share in the vacant land cannot be taken into account. The cantilevered portion, foyer area were taken as such. The plinth area generator room, E.B. Room, basement parking lot were divided in proportion to number of floors. After calculation the respondent's share comes to 1200.33 sq.ft.

vii) Land Value:

The Petitioner Engineer had relied upon, Ex.P.3 to see the market value. The property mentioned in their sale deed is at situated at an Anna salai in the same locality. The only contention raised by the respondent is that the property is not abutting Anna Salai and it has no direct assess to Anna Salai. Considering the locational advantages available for the petition property as well as the locational advantages available I fix the market value at Rs.1.5 crores per ground.

viii) Schedule 1 amenities:

As far as schedule 1 amenities are concerned it is stated by the Petitioner Engineer that granite cladding, lift room, marble floor in common space, stair case ceramic tiled flooring, galzed walls tiles in the walls in the toilet, common overhead tank, electric motor, compound wall, upper tenant land, architectural features were available for the same he had given 20%. I deem it appropriate to give 8% for the same.

7. It is represented by the petitioner counsel that the responded had vacated the premises on 31.03.2009 and he restrict his claim till the month of March 2009 from the date of petition. The said fact was conceded by the respondent counsel during his arguments. Hence I find that the petitioner is entitled for fair rent from April 2007 to March 2009.

1. In view of the discussions made above the fair rent for the petition premises is calculated accordingly:-

2. Calculations:

1st floor RCC Roof 2382.25 sq.ft @ Rs.365/- per sq.ft	=	8,69,521
1st floor cantilevered RCC area 809.50 sq.ft @ Rs.300/- per sq.ft	=	2,42,850
1st floor Foyer RCC 86.25 sq.ft @ Rs.300/- per sq.ft	=	25,875
Common staircase 57 sq.ft @ Rs.300/- per sq.ft	=	17,100
Ground floor RCC Generator room 8 sq.ft @ Rs.393/- per sq.ft	=	3,144
Ground floor E.B. Room A/C sheet 4sq.ft., @Rs.283/- per sq.ft	=	1,132
Ground floor generator room A/C sheet 11.5 sq.ft.@ Rs.283/- per sq.ft	=	3,254
Basement RCC parking place 194 sq.ft @ Rs.365/- per sq.ft	=	70,810
		12,33,686
Basic amenities 15%	=	1,85,053
		14,18,739
Depreciation 1% for 17 years 14,18,739×0.842	=	11,94,578

LAND VALUE

(2382.25 + 86.25 + 8 + 4 + 11.5 + 194/7)

= 383.17 + 57/8 + 809.50 = 1200.33		
1200.33×1,50,00,000/2400	=	75,02,062

	=	86,96,640
Schedule 1 amenities 8%	=	6,95,731

	=	93,92,371

Since the petition premises is being used for non residential purpose, the monthly fair rent is calculated at 12% is given per month for fair rent Rs.93,924/-.

9. The findings arrived at by the learned Rent Control Appellate Authority in fixing the fair rent at Rs.2,62,420/- for the demised premises by modifying the fair rent fixed at Rs.93,924/- by the Rent Controller, can be extracted as under:

"11. Type of buildings, Amenities provided in the buildings, cost of construction are rightly calculated by the Trial court in the light of both side engineers report.

12. Plinth area:- The landlords engineer report along with blue print Ex.P2 determined the measurement as per civil engineering calculation. In contra, the tenant engineer report only based on rough sketch. The trial court has rightly relied the landlords engineer as civil engineering calculation and rightly arrived the plinth area. The plinth area are as follows.

a. First floor RCCC Roof areas is 2382.25 sq.ft.

b. First floor cantlievered slab areas 809.50sq.ft.

c. First floor Foyer area 1/4th share of the respondent is 86.25 sq.ft.

d. Common stair case share in all floors 578 sq.ft.

e. Ground floor(RCC) Generator room is 8sq.ft.

f. Ground floor E.B. Room & Generator room AC sheet roof area is 15.5 sq.ft.

g. Basement floor parking area (RCC) Roof Respondent share is 194 sq.ft.

h. VII Floor Lift operating Hoist room(RCC) 525 sq.ft. 1/15 the respondent share is 35 sq.ft.

13. Appointment site Area:- The landlords engineer has filed blue print Ex.P2 with civil engineering calculation are as follows:

The total built up plinth area of the respondent:-

2385.25 + 809.5 + 86.25 + 57 + 8 + 15.5 + 194 + 35 = 3587.5 s.ft.

Undivided share of 3015 sq.ft. For a built up plinth extent of 10,600 sft (first floor extent)

Proportionate undivided share of the respondent for the area in occupation:

3015/10,600 x 3587 s.ft = 1020 sq.ft

Apportioning the plinth areas of the respondent:

(2382.25 – 428.75 – 1953.5 sft) 428.75 + 35 + 57 = 520.75/8 = 65 sq.ft

[1953.5 + 86.25 + 8 + 15.5 + 194] = 2257.25/7 = 322.46 + 809.5 + 65 = 1,197 sq.ft.

Apportioned site area available to the respondent is 1020 + 1197 = 2217 sq.ft

13. The tenant engineer has filed only rough sketch with engineering calculation. Therefore this court is relied the Ex.P2 with Ex.P1 relating to the civil engineering calculation and the apportionment site area is fixed as 2217 sq.ft.

14. Land Value:- The petition premises is situated in Old No.501, New No.626, Anna Salai, JVL Plaza, Teynampet, Chennai. The model sale deed Ex.P3 is Old No.267, then Old No.84, New No.365, Anna Salai, Teynampet. So the model sale deed is situated in same locality of the petition premises. The land value based on model sale deed is one of the acceptable calculation in imperfect

demand and supply of the land. Therefore the model sale deed Ex.P3 is rightly reflect the land value of the petition premises. The tenant side has not filed any suitable in Anna Salai which is the heart of the City of Chennai with so many locational advantages. Hence this court is inclined to accept the analysis report based on Ex.P3 and fixed the land value as Rs.2,50,00,000/-.

15. With the above said details this court has to arrive the age and plinth area are correct and there is no need for intervention but the land value and apportionment site area are modified and the fair rent of the premises as per the calculation given below:

First floor RCCC Roof area is 2382.25 sq.ft.	
@ Rs.365/- persq.ft.	= 8,69,521
First floor cantilevered slab areas 809.50 sq.ft.	
@ Rs.365/- sq.ft.	= 2,95,468
First floor Foyer area 1/4th share of the respondent	
@ 86.25 sq.ft @ Rs.365/- per sq.ft	= 31,481
Common stair case share in all floors 57 sq.ft	
@ Rs.350/- per sq.ft.	= 19,950
Ground floor (RCC) Generator room is 8 sq.ft	
@ Rs. 393/- per sq.ft	= 3,144
G.floor E.B. Room & Generator room	
AC sheet roof area is 15.5 sq.ft.	
@ Rs.283/- per sft	= 4,386
Basement floor parking area (RCC) roof	
respondent share is 194 sq.ft	
@ Rs. 393/- per sft.	= 7,624
VII Floor Lift operating Hoist room (RCC)	
525 sft, 1/15 the respondent	
share is 35 sq.ft	= 12,250

	= 12,43,824
Basic Amenities 15%	= 1,86,574

	= 14,30,398

Depreciated Value 1% for 17 years
14,30,398x0.842 = 12,04,395

Land Value: Rs. 2,50,00,000/- per ground
2217x2,50,00,000/2400 = 2,30,93,750

= 2,42,98,145
Schedule I Amenities 8% = 19,43,852

Total = 2,62,41,997

The petition premises is used for non-residential purpose, the monthly fair rent is calculated @ 12% per annum.
2,62,41,997 x 12/100 x 1/12 = 2,62,419.97/-
rounded to Rs. 2,62,420/-
The fair rent is fixed at Rs.2,62,420/- per month."

10. A perusal of the above findings rendered by both the Rent Controller and Rent Control Appellate Authority, this Court finds that for the purpose of fixing the fair rent, the calculation in respect of land value alone will differ while in other respects, the calculations are similar with little variation. The Rent Controller has taken the land value at Rs.1,50,000/- per ground (2400 sq.ft.) while the Rent Control Appellate Authority has modified and taken it as Rs.2,50,000/- per ground and by this, it is fixed at Rs.75,02,052/- in respect of the total area under

occupation by the appellant/tenant by the Rent Controller, while it is fixed at Rs.2,62,420/-.

11. Therefore, now the issue for determination in this Revision is, what would be appropriate fair rent to be fixed?

12. A Full Bench of this Court in "***M/s.Sakthi & Co.,through its Partner, Veeranan -Vs- Shree Desigachary***", (C.R.P.No.3092 of 1996, order dated 7.4.2006), has observed that the fixation of market value on the basis of guideline value or valuation register, summoned from Sub-Registrar's Office and the Engineer, is illegal and unsustainable. And having observed so, the Full Bench has concluded as under in paragraphs 14 to 20:

> "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.

15. It is a settled law, as laid down in the judgments referred to above, that in determining the market value, the Court has to take into account either one or the other three methods to determine market value of the lands appropriate on the facts of a given case. According to the Supreme Court, generally, the second method of valuation is accepted, as the best. This method would furnish the 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, which would enable the Court to determine the market value correctly.

16. In view of the above ratio decidendi fixed by the Supreme Court, the fixation of market value on the basis of guideline value or valuation register, summoned from Sub-Registrar's Office and the Engineer, is illegal and

unsustainable.

17. The view expressed by Justice S.S.Subramani, in our view, is correct, as it is in consonance with the principles laid down by the Supreme Court. The other view expressed by Justice Srinivasan is not correct, as the methods suggested by the Supreme Court for fixing the market value would not include the consideration of guideline value and valuation register. So, in our opinion, the said view is wrong.

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.

19. In view of the above settled position of law and conclusions, both the counsel for the parties would now agree for setting aside the orders impugned and for remanding the matter for fixing the fair rent in respect of the property during the relevant point of time to follow the methods as mentioned above, after allowing the parties to adduce evidence.

20. Therefore, it would be appropriate to remand the matter to the Rent Controller, after setting aside the orders impugned, and to allow the parties to adduce evidence, to help the Rent Controller in arriving at the market value, on the basis of the evidence of bona fide sales between the vendor and the vendee of the lands situated near about that land possessing same or similar advantageous features during the relevant point of time; which is, accordingly, ordered."

13. Having regard to the Full Bench dictum (cited supra), for the purpose of market value, this Court has to take into consideration of

locational advantageous features during the relevant point of time apart from bona fide sales between the vendor and the vendee of the lands situated near the subject property.

14. For the purpose of determining the land value, the Rent Controller relied upon Ex.A3 which is a copy of the sale deed in respect of the property situated on Mount Road and fixed the market value at Rs.1.5 crores while the Rent Control Appellate Authority, having accepted the analysis report which was prepared based on Ex.P3, has fixed the land value at Rs.2.5 crores. It is not in dispute that the building consists basement, ground plus six floors and the appellant/tenant occupied the premises situated in the first floor. It is also not in dispute that the appellant/tenant has mentioned in this counter that he is in occupation of 3162 sq.ft. and since the Engineer of the respondent had not visited the premises, the Rent Controller has rightly not taken his report. While the respondent/landlords' Engineer has filed a detailed report with measurements and as per which, the appellant/tenant was in occupation of 2382.25 sq.ft. This was confirmed by both the Rent

Controller and the Rent Control Appellate Authority. As regards the apportionment area is concerned, the Rent Controller has taken it as 1200.33 sq.ft while the Rent Control Appellate Authority, by relying upon Ex.P2 Blueprint filed by the Engineer of the respondents/landlords with calculations, has taken it as 2217 sq.ft. This Court also does not find any infirmity in regard to this aspect since as admitted by the appellant/tenant, he was in occupation of 3162 sq.ft. However, as regards the location of the building is concerned, it is situated at Old No.501, New No.626 Anna Salai, JVL Plaza, Teynampet, Chennai. According to the appellant/tenant, it is not abutting Anna Salai and has no direct access to Anna Salai since there is another building was located in front of the same and that there is no direct or exclusive access to the building from Anna Salai and there is no proper parking facility also. Therefore, when taking into consideration the advantageous features of the demised property, the same cannot be compared as that of the property situated at the main location of Anns Salai, having every advantageous facility. In such circumstances, the land value arrived at by the Rent Control Appellate Authority, in the opinion of this Court, is very high and the same is liable to be reduced. The Rent Controller, while taking into consideration of the locational advantages, has fixed the market value at Rs.1.5 Crores, which in the opinion of this Court, is is also not reasonable and the same is liable to be reduced and accordingly, this Court feels it appropriate to fix at Rs.1.00 Crore. As regards the Schedule I amenities, the Rent Controller as well as Rent Control Appellate authority have rightly awarded 8%, which in the opinion of this Court, does not require interference. As regards the age of the building, both the authorities have held that it is 17 years and deducted 1% towards depreciation in the absence of any material produced on behalf of the respondents/landlords, which is confirmed. In all other respects, the calculations arrived at by the Rent Controller, in the opinion of this Court, are appropriately fixed and no interference is required.

15. For the foregoing reasons and taking into consideration the locality where the demised premises are situated and other facts and

evidence, it would be appropriate to fix the fair rent as follows:

Calculations:

1st floor RCC Roof 2382.25 sq.ft @ Rs.365/- per sq.ft	=	8,69,521
1st floor cantilevered RCC area 809.50 sq.ft @ Rs.300/- per sq.ft	=	2,42,850
1st floor Foyer RCC 86.25 sq.ft @ Rs.300/- per sq.ft	=	25,875
Common staircase 57 sq.ft @ Rs.300/- per sq.ft	=	17,100
Ground floor RCC Generator room 8 sq.ft @ Rs.393/- per sq.ft	=	3,144
Ground floor E.B. Room A/C sheet 4sq.ft., @Rs.283/- per sq.ft	=	1,132
Ground floor generator room A/C sheet 11.5 sq.ft.@ Rs.283/- per sq.ft	=	3,254
Basement RCC parking place 194 sq.ft @ Rs.365/- per sq.ft	=	70,810
		12,33,686
Basic amenities 15%	=	1,85,053
		14,18,739
Depreciation 1% for 17 years 14,18,739×0.842	=	11,94,578

LAND VALUE

(2382.25 + 86.25 + 8 + 4 + 11.5 + 194/7)
= 383.17 + 57/8 + 809.50 = 1200.33

1200.33×1,00,00,000/2400	= 50,01,375

	= 65,95,953
Schedule 1 amenities 8%	= 4,95,676

	= 70,91,629
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16. The demised premises is rented for non-residential, the monthly fair rent is calculated at 12% per annum. 70,91,629x12/100x1/12 = 70,916/-. Accordingly, the fair rent is fixed at Rs.70,916/- per month.

17. Accordingly, the Revision Petition is allowed and the orders of the Courts below are modified, fixing the fair rent at Rs. 70,916/- per month which is payable by the tenant to the landlord only from the date of the petition till 31.3.2009. No order as to costs.

suk 06.10.2021

To

1. VIII Judge, Small Causes Court, Chennai
2. XIV Judge, Small Causes Court, Chennai.

S.KANNAMMAL, J.

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Pre delivery order in
C.R.P.(NPD) No.1084 of 2016

06.10.2021