IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP (NPD) No.2326 of 2018

D.Sasikumar ... Petitioner

Vs

T.Soundararajan ... Respondent

Prayer: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings Lease and Rent Control Act 18 of 1960, to set aside the Judgment and decree dated 16.04.2018 made in R.C.A.No.1 of 2014 on the file of the Rent Control Appellate Authority/Principal Sub Judge, Vellore, varying the order and decree passed in R.C.O.P.No.7 of 2010 dated 22.11.2013 on the file of the Rent Control Authority/Principal District Munsif, Vellore.

For Petitioners : Mr.P.B.Balaji

For Respondent : No appearance

ORDER

This Civil Revision Petition is directed against the Judgment and decree dated 16.04.2018 made in R.C.A.No.1 of 2014 on the file of the Rent Control Appellate Authority/Principal Sub Judge, Vellore, varying the order and decree passed in R.C.O.P.No.7 of 2010 dated 22.11.2013 on the file of the Rent Control Authority/Principal District Munsif, Vellore, thereby fixing the fair rent for the petition premises.

2. The petitioner (herein after referred to as 'the landlord') is the landlord and the respondent is the tenant. The landlord is the absolute owner of the petition premises. The tenant is in occupation of the petition premises and it is a non-residential building. The building is aged about 60 years and it was constructed in the year 1950. The total extent of the building is 773 sq.ft. and it is situated in the busy commercial area. Even then, the respondent is paying only a meager rent and as such, the landlord filed a petition for fixing of fair rent and claimed Rs.15,000/- per month.

3. Resisting the same, the respondent filed a counter stating that the building is very old and it is in dilapidated condition. The value of the land in the said locality is Rs.125 per sq.ft and the building is not a second class building and there are absolutely no amenities proved in the building and it is a third class building. The respondent originally admitted as a tenant for the monthly rent of Rs.600/- and now the respondent is paying rent of Rs.2,700/- per month. Therefore, the landlord is not entitled for more rent in the petition premises and the present petition is nothing only to vacate the respondent from the petition premises.

4. On the side of the landlord, P.W.1 and P.W.2 were examined and

seven documents were marked as Exs.P1 to P7. On the side of the tenant, D.W.1 and D.W.2 were examined and six documents were marked as Exs.R1 to R6.

5. On the basis of the pleadings and the evidence let in on either side, the learned Rent Controller fixed the fair rent at Rs.10,504/- per month payable by the respondent. Aggrieved by the same, the respondent preferred an appeal and the learned Rent Control Appellate Authority has partly allowed the appeal and fixed the fair rent at Rs.8,423/- per month payable by the respondent herein. Aggrieved by the same, the present Civil Revision Petition is filed.

6. The learned counsel for the landlord would submit that the learned Rent Controller has rightly fixed the fair rent at Rs.10,504/- and without any reason the learned Rent Control Appellate Authority reduced the same. The learned Rent Control Appellate Authority failed to adopt the guideline value of the petition premises and fixed the monthly rent, whereas, the petition premises is located in the commercial area for fixing fair rent. The learned Rent Control Appellate Authority failed to take into account, the 10% of the enhancement of the market value of the petition

premises and reduced the rent fixed by the learned Rent Controller. In support of his contention, he also relied upon a judgment reported in ***2011(1) TLNJ 20 (Civil) [New Era Engineering Company rep by its partner J.S.Desai and others Vs. Ghyaz Hashim and others].***

7. Heard the learned counsel for the petitioner and none appeared for the respondent.

8. The petition premises is located in the commercial area and it is rented for non residential purpose. The respondent is running a shop in the petition premises and it is measuring 773 sq.f.t. At the time of fixing of fair rent, the respondent paid rent for a sum of Rs.2,700/- per month. The landlord marked a guideline value of the petition premises in the year 2007.

9. A perusal of Ex.P7 reveals that guideline value was fixed at Rs.948 per sq.ft. in the year 2007. The learned Rent Controller fixed the fair rent in accordance with the guideline value issued by the PWD at Rs.948 per sq.ft in the year 2007 and included 10% appreciation in each year. Whereas, the learned Rent Control Appellate Authority did not take

into account the 10% appreciation of the petition premises and reduced the fair rent.

10. In this regard, the learned counsel for the petitioner relied upon a Judgment reported in ***2011 (1) TLNJ 20 (Civil)*** in the case of ***New Era Engineering Company rep by its partner J.S.Desai and others Vs. Ghyaz Hashim and others,*** in which this Court held as follows :

> *"15. Admittedly, there was no other document available to fix the value of the property in that locality. The tenant also did not produce any document to support his case that it is valued only at Rs.30,000,00/- per ground. However, it is not disputed that one ground of vacant site in that locality is valued at Rs.45,60,000/- on 05.06.1995, the value fixed in the year 2001. The evidence of P.W.2 that the property has been appreciated by 20% per annum and the property would be therefore valued at Rs.1,36,16,087/- per ground in the year 2001 was rejected by both the courts, since there was no evidence produced in that aspect. But both the courts below, have considered the advantages enjoyed by the respondents in the petition mentioned premises, they have inclined to fix the market value at Rs.60,00,000/- per ground. Certainly the lower court did not follow any formula to arrive to a value of*

Rs.60,00,000/- per one ground.

16. In a judgment of Hon'ble Apex court reported in (2002) 3 SCC 688 in between Special Land Acquisition Officer vs. Mohd. Hanif Sahib Bawa Sahib, it has been categorically held as follows:

"After due deliberations on the contentions raised by the counsel for the parties, we are of the opinion that on the given facts and circumstances of the present case the appreciation of 10% per annum given for the subsequent years is neither excessive nor unreasonable so as to call for our interference. Counsel for the parties did not dispute that after the submersion of the old township area of Bagalkot in water, a new township was being built up. For this lot of developmental activities are taking place.

This is evident from the fact that number of acquisitions have been made for the development of the new township of Bagalkot. In this order, reference has been made to the earlier acquisition of 1979. In Civil Appeal Nos. 1552- 54 of 2000 as well, acquisition of the land was made for formation of a link road to the new town. We agree with the counsel for the appellant that the reference Court wrongly valued the land at Rs.6.85 per sq.ft for the year 1985 taking the base price of the land at Rs.3/- per sq.ft for *the year 1979 on an appreciation of 10% per annum for every subsequent year. The appreciation of value of land at 10% on the base price of Rs. 3/- per sq.ft would increase the value of the land @ 0.30 paise per year. O.30 paise multiplied by 7 would come to Rs.2.10 paise. If the appreciation in value of the land for the next seven years is taken at Rs.2.10 paise and added to the base value of Rs.3/-, the market value of the land under acquisition in the year 1985 would come to Rs.5.10 paise. We agree with the counsel for the respondents that deduction on account of development charges from the price fixed cannot be made as the base price of Rs.3/- had been determined in the earlier cases after taking into account the development charges." According to the dictum laid down by the Honb'le Apex court, whenever there is no current document to show the market value of any property lying with the municipal area and if earlier document is available to show such a value adding 10% of appreciation to the said value annum will not be harmful. This property is admittedly situated within the corporation area and in a prime locality near Madras High Court. Therefore, there cannot be any hesitation to apply the said ratio as enunciated in the judgment of Hon'ble Apex court. When we calculate the years passed from the date of the said sale deed till* *the date of filing of the petition, it is 5 ½ years. Therefore, a appreciation of 55% has to be added to the value so as to find the value of the said suit property as on 2001. When it is applied on the value of with Rs.45,60,000/- the ascertained total value of the property as on 2001 would be at Rs.70,68,000/-. But the case of the petitioner is that the value of the vacant site would be at Rs.70,00,000/- only. Therefore, the said market value Rs.70,00,000/- which is lesser than the ascertained value can be adopted for calculating the fair rent ."*

11. This Court relying upon the judgment of the Hon'ble Supreme Court held that the appreciation of 10% per annum given for the subsequent years is neither excessive nor unreasonable so as to call for interference. Admittedly, the petition premises is located in commercial area in Vellore Town and it is 773 sq.ft. Definitely, it would fetch minimum 10% appreciation per year. Whereas, the learned Rent Control Appellate Authority failed to consider the same and stated that the 10% increase the value is not possible.

12. That apart, the petitioner has produced only the PWD guideline value, whereas, the market value of the property would be more. Though,

the petitioner did not produce any document to ascertain the market value of the property, the learned Rent Controller has rightly fixed the fair rent as per the guideline value of the petition premises. Therefore, there is absolutely nothing warranted to interfere with the learned Rent Control Appellate Authority to reduce the fair rent fixed by the learned Rent Controller.

13. In view of the above, the Judgment and decree dated 16.04.2018 made in R.C.A.No.1 of 2014 on the file of the Rent Control Appellate Authority/Principal Sub Judge, Vellore, is hereby set aside. Accordingly, the Civil Revision Petition is allowed. No costs.

16.04.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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G.K.ILANTHIRAIYAN, J.

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To
1. The Rent Control Appellate Authority/Principal Sub Judge,
Vellore

2.The Rent Control Authority/Principal District Munsif,
Vellore.

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