

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.09.2021

Delivered on : 28.09.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (NPD) Nos. 1087 & 1255 of 2021

and C.M.P. No. 8528 of 2021

CRP. (NPD) Nos. 1087 of 2021

and C.M.P. No. 8528 of 2021

M/s.Selvamani Stores

Rep. by its Proprietor, D.Samuel,

Shop No.E&F, Old Door No.37-B/2,

New Door No.128/2, Arya Gowda Road,

West Mambalam, Chennai – 600 033.

... Petitioner

Versus

S.D.Baskar

... Respondent

Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the judgment and decree dated 17.03.2021 made in R.C.A. No.205 of 2019 on the file of the VIII Small Causes Court, Chennai, confirming the judgment and decree dated 18.02.2019 passed in R.C.O.P. No.370 of 2014 on the file of the XII Small Causes Court, Chennai.

For Petitioner : Mr. P.I.Thirumoorthy

For Respondent : Mr. S.Muthukumar

CRP. (NPD) Nos. 1255 of 2021

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Versus

M/s.Selvamani Stores
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... Respondent

Civil Revision Petition is filed under Section 25 of Tamil Nadu .Buildings (Lease and Rent Control) Act, 1960, against the fair and decreetal order dated 17.03.2021 made in R.C.A. No.189 of 2019 on the file of the VIII Judge, Court of Small Causes, Chennai, confirming the judgment and decree dated 18.02.2019 made in R.C.O.P. No.370 of 2014 on the file of the XII Small Causes Court, Chennai.

For Petitioner : Mr. S.Muthukumar

For Respondent : Mr. P.I.Thirumoorthy

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COMMON ORDER

C.R.P. Nos.1087 & 1255 of 2021 are filed against the judgments passed by the learned Judge, VIII Small Causes Court, Chennai in R.C.A. Nos.205 & 189 of 2019, respectively, confirming the judgment passed by the Judge, XII Small Causes Court in R.C.O.P. No.370 of 2014.

2. The tenant is the petitioner in C.R.P. (NPD) No.1087 of 2021 and the landlord is the petitioner in C.R.P.(NPD) No.1255 of 2021. The landlord filed R.C.O.P. No.370 of 2021 under Section 4 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, for fixing fair rent. The landlord is the owner of the premises bearing old door No.37-B/2, new door No.128/2, West Mambalam, Chennai. He owns nine shops in ground floor and eight shops in first floor. The tenant had taken the premises for lease for non-residential purpose. The tenant is running a departmental store from the year 1991. The tenant occupies shop bearing Nos. 'E' & 'F' and pays a monthly rent of Rs.1,450/- for each shop and totally a sum of Rs.2,900/- for both the shops. The petition premises is located in a commercial locality having surrounded by banks like State Bank of India,

Indian Overseas bank, H.D.F.C. Bank, I.C.I.C.I Bank, Chennai Cooperative Bank, Karnataka bank, Indian Bank, Bank of India, Sri Sitaram Vidyalaya Matriculation Higher School, Railway station, Ayodha Mandapam, Marriage Halls and other business establishments. The portion in tenant's occupation in shop No. 'E' and 'F' measures 284 sq.ft. in addition to 65 sq.ft. cantilevered slab projecting outside the shop. The land value in the locality is more than Rs.3,00,00,000/-. The fair rent was fixed at Rs.28,303/- per month. Therefore, the present petition is filed for fixing fair rent.

3. The tenant filed a counter admitting the tenancy and also the payment of rent Rs.1,450/- per shop and totally a sum of Rs.2,900/- per month as rent. Originally the rent was fixed at Rs.525/- and it was enhanced from time to time. The petition premises measures 280 sq.ft. in shop 'E' and 140 sq.ft in shop 'F'. There is no other facility except the shop. The ground floor was constructed in the year 1953 and first floor was constructed subsequently. The building is more than 60 years old. Basic amenities like electricity connection, common water supply in the toilet and drainage connection are available. Front slab area is about 30 sq.ft is common for all. The market value of the land is about Rs.60,00,000/- per ground. Based upon the prevailing rate, the fair rent would be Rs.5,164/- per month. The value claimed by the landlord that the ground

value is Rs.3,00,00,000/-, is not based on the guideline value. But it is a open market value. The claim of fair rent at Rs.28,303/- is highly excessive.

4. In the enquiry before the learned Rent Controller, P.W.1 and P.W.2 and R.W.1 were examined and Exs.P1 to P7 and Exs.R1 to R7 were marked. Thus, we have the Engineer's report and the plan filed by both the parties and sample sale deeds filed by both the parties along with the analysis report of the Engineers to assist the Court.

5. On going through the oral and documentary evidence, the learned Rent Controller found that the nature of the building according to the landlords' Engineer is Type A-I and according to tenant's Engineer is Type-I Class-A1. The building was constructed with bricks and cement mortar and plastered with cement mortar. The building has RCC roofing and Vinyl sheets are pasted over the floor. The learned Rent Controller accepted the landlords Engineer's report and classified the building as Type A-1 building. The landlords Engineer's assessed the age of the building as 32 years, but the tenant's Engineer's assessed the age of the building as 40 years. Both the Engineer's have not subjected the building to any scientific examination to assess the age of the building. Considering that the landlord will be in a better position to know the age of the

building, in his capacity as owner, the learned Rent Controller took the age of the building suggested by the landlord's Engineer as 32 years and fixed the age of the building as 32 years. Depreciation at 1 % for 32 years was allowed. The landlord's Engineer gave 15% for basic amenities and the tenant's Engineer gave 5% for basic amenities. It is claimed by the landlord that the electricity, water service and drainage services are available in the premises and the tenant claims that only electricity connection was available. The learned Rent Controller found that it is not possible to have the building without water connection and drainage facility and presuming that these facilities are available, awarded 15% for basic amenities. Even in the counter affidavit filed by the tenant, it is admitted that the electricity connection, common water supply in the toilet and drainage connection are available. Therefore the award of 15% for basic amenities cannot be faulted.

6. The landlord's Engineer found that the area of built up RCC roof portion in ground floor has 288.43 Sq.ft., ground floor cantilevered portion has 65 sq.ft., ground floor and first floor RCC roofing area has 12.50 sq.ft. RCC sheet area in first floor and second floor has 12.50 sq.ft. ACC Sheet toilet in second floor has 7 sq.ft. The tenant's Engineer found that the ground floor RCC roof area has 284 sq.ft. RCC Varanda area has 64 sq.ft. A comparative study of

both the Engineer's report shows that the report of landlord's Engineer has given details of measurement but that is missing in the tenant's Engineer's report. Therefore, the learned Rent Controller adopted the measurement given in the landlord's Engineer's report for fixing the area of the building constructed. The cost of construction was adopted on the basis of P.W.D. rates at Rs.586/- per sq.ft for ground floor, at Rs.300/- for ground floor cantilevered portion, at Rs.300/- for ground floor and first floor RCC roofing, at Rs.307/- per sq.ft for first floor and second floor ACC sheet and at Rs.373/- per sq.ft for second floor ACC sheet toilet. The area and the land in possession of the tenant was found to be 219.87 sq.ft by the landlord's Engineer. The tenant's Engineer found that the land in occupation of the tenant as 174 sq.ft. Taking into consideration the fact that the area of construction was arrived at on the basis of report filed by the landlord' Engineer and that there is no contra evidence produced by the tenant challenging the landlord's Engineer, the learned Rent Controller fixed the area of land for the purpose of fixing fair rent at 219.87 sq.ft.

7. The landlord produced Exs.P3, P5, P6 and P7 – sample sale deeds and the tenant filed Ex. R3 sample sale deed for fixing the market value of the land.

The learned Rent Controller found that the documents filed by both the parties

are relatable to the petition mentioned premises. However, it was also found that those documents cannot be alone considered for fixing the market value of the land. The learned Rent Controller had taken into consideration the documents produced by both the parties, the value of land mentioned in these documents, locational advantage of the building and fixed the value of the land at Rs.1,50,00,000/- per ground. On the basis of the report filed by the landlord, 1% was given for Schedule-I amenities. Working out the fair rent on the aforesaid details, the learned Rent Controller fixed fair rent at Rs.15,552/- per month.

8. Aggrieved by the order of the learned Rent Controller, both the landlord and tenant preferred appeals in R.C.A. Nos.189 & 205 of 2019, respectively. The landlord claimed that the fair rent fixed was not correct and fair rent has to be enhanced. The tenant's appeal was to reduce the fair rent. The learned Rent Control Appellate Authority, considered the rival submissions and concurred with the findings of the learned Rent Controller with regard to age of building, type of building, depreciation, basic amenities, plinth area, cost of construction, Schedule-I amenities, apportionment of area and also the land value. Finding that there is no reason to differ with the fair rent fixed by the learned Rent Controller, the learned Rent Control Appellate Authority,

confirmed the order of learned Rent Controller in fixing the fair rent at Rs.15,552/- per month. Against the said judgment, both the landlord and the tenant preferred these Civil Revision Petitions.

9. Learned counsel appearing for the tenant submitted that the findings recorded by both the learned Rent Controller and the learned Rent Control Appellate Authority are based on assumptions and presumptions. The sale deeds which have come into existence after filing of the R.C.O.P., were considered for fixing the fair rent. The decision was based entirely on the basis of the report filed by the landlord's Engineer. No scientific test was conducted to fix the age of building. Except the toilet facility, no other facilities are available. Therefore, the basic amenities available are not based on the evidence. The ground floor was constructed 60 years back and only subsequent that to the first floor was constructed. The parties to the documents were not examined to prove the contents of the sample sale deeds. Engineer is not an expert and therefore, his report cannot be relied to fix the fair rent. The apportionment was not properly made when there are other tenants. The cost of construction cannot be the same for the reason that both the ground floor and the first floor were constructed at different points of time. However, without considering these aspects, the fair rent was fixed on the basis of assumption and

presumption. Therefore, the fair rent fixed by the learned Rent Control Appellate Authority has to be set aside.

10. Learned counsel for the petitioner relied upon the judgments in the case of *T.H.S.Rahmath Fathima Vs. T.K.Kader Mohideen* reported in 1996(2) L.W. Page 637 and in the case of *K.Ramanathan (died) and others Vs. B.K.Nalini Jayanthi* reported in 1996(2) L.W. Page 658, for the proposition that mere marking of a document is not sufficient to prove the market value of the land. He also relied on the judgment in the case of *A.V.Gopalakrishnan Vs. O.L.V.R.Paramanandam* reported in C.R.P.(NPD) (MD) No.386 of 2004. for the proposition that an Engineer cannot be called as an expert to offer his opinion in respect of the market value of the site.

11. In response, learned counsel for the landlord submitted that the landlord has given evidence in the case. But the tenant has not chosen to give evidence. Both the landlord and the tenant filed Engineer's report and the Engineers were also examined. The tenant's Engineer has evaded to give answers for many questions. Both the Rent Controller and the Rent Control Appellate Authority fixed the fair rent on the basis of oral and documentary evidence. However, the grievance of the landlord is that both the Courts have

not taken into consideration the value of the land given in the sample deeds for fixing the fair rent. It is the contention of the learned counsel appearing for the landlord that if they relied the sample sale deeds filed by the landlord to fix the market value of the land, the fair rent could have been much more higher. Unfortunately, the value given in the sample sale deeds filed by the landlord were not considered by the learned Rent Control Appellate Authority and that resulted in fixing lesser fair rent at Rs.15,552/-. Thus, the learned counsel for the landlord prayed for enhancing the fair rent by taking into consideration the value of the land given in the sample sale deeds, filed by the landlord. He further submitted that it is not necessary to examine the parties to prove the value of the land.

12. Learned counsel for the respondent relied on the judgments in the case of *Land Acquisition Officer and .. Vs. V.Narasaiah*, reported in 2001 (3) SC 157 and the case of *Susainathan and another Vs. T.Vijayan* reported in 2001(3) MLJ 396, for the proposition that examination of parties to the document is not necessary for proving the market value of the land.

13. Considered the rival submissions and perused the records. The narration of the facts of the case, the findings of both the learned Rent

Controller and the learned Rent Control Appellate Authority and the submission of both the counsel, show that the tenant is in occupation of two shops in the building at old Door No.37/B-2, new door No.128/2, West Gowda Road, West Mambalam, Chennai. It is not in dispute that this area is an important locality in Chennai and it is surrounded by commercial and business establishments. The tenancy is for non-residential purpose. The landlord and the Engineer were examined as P.W.1 and P.W.2 on the side of the landlord. The tenant has not chosen to give evidence and the Engineer was alone examined as R.W.1.

14. It appears that there is not much dispute with regard to the type of the building. Though the tenant claims that the age of the building is more than 60 years, for the ground floor and that the first floor was constructed 15 years later after construction of ground floor, in support of his contention, there is no material produced by the tenant. As per his Engineer's report, the age of the building is 40 years. There is also no material produced to show that the ground floor and the first floor are constructed at different points of time with a gap of 15 years. Therefore, from the available evidence, the landlord fixed the age of the building at 32 years. Depreciation at 1% was rightly given. Even in the counter, it is submitted by the tenant that electricity connection, common water

supply connection in the toilet and drainage connection are available. With all the three basic amenities are available, the grant of 15% for basic amenities cannot be faulted. Though there is some different view expressed with regard to the area of land apportioned from the constructed area of the building, to the area in possession of the tenant, the learned Rent Controller found from the evidence produced that the landlord's Engineer's report is acceptable than the tenant's Engineer's report. The area in occupation of the tenant was alone considered for arriving at the built up area. The cost of construction was arrived at the rate as stipulated by Public Works Department. Though there are objections with regard to the assessment of age of building, apportionment of built up area, the tenant has not produced any better evidence than the evidence produced by the landlord. Therefore, the objection made by the tenant with regard to the age of the building, percentage of depreciation, basic amenities, area of occupation, cannot be accepted.

15. The main objection of the tenant seems to be that the sale deeds which had come into existence after the filing of R.C.O.P. were taken into consideration for fixing the land value, that too without examining the parties to the sale deed. The landlord produced Exs.P3, P5, P6 & P7 sale deeds. Among these, Ex.P5 had alone came into existence after the filing of R.C.O.P.

Exs.P3, P6 & P7 had come into existence before filing the R.C.O.P. The sale deed filed by the tenant and landlord had come into existence in the year 2012 to 2014. As already said, though the learned Rent Controller had referred the sample sale deeds, after knowing the market value of the land, the learned Rent Controller fixed the market value of the land not entirely on the basis of the value given in the sample sale deeds. The value given in the sample sale deeds and the locational advantage of the building, were considered for fixing the land value at Rs.1,50,00,000/- per ground.

16. With regard to the contention that fixing of market value without examining the parties to the sample sale deed, there are two views on this proposition. When there is no question of genuineness of particular sale deed, it is not necessary to examine the witnesses. It has been so held in the case of *Susainathan vs. T.Vijayan* reported in *CDJ 2001 MHC 1088* and *V.Krishnamoorthy vs. M.R.Lalitha* reported in *CDJ 2007 MHC 4037*, that when there is no doubt regarding the *bona fides* or genuineness of the transaction mentioned in the document marked for determining the market value, the document can be retrieved without examining the parties thereto. The relevant portions observed thus;

"In the decision reported in Land Acquisition Officer and Mandal

Revenue Officer v. V.Narasaiah (2001) T.L.N.J. 33:(2001) 2 C.T.C. 424 it was held that the transaction recorded in the exhibits marked in the case that was under consideration could be relied on though no one was examined for proving such transaction. This conclusion was arrived at because in that case, the State had not created any doubt regarding the bonafides or genuineness of the transactions mentioned therein. In this case, the appellate court declined to accept the value of the site recorded in Ex.P-11 though the transaction was not denied by R.W.2, the respondent herein nor was anything elicited in the oral evidence that the transaction was not genuine. One of the parties to this sale deed is a public limited company namely the Coramandel Engineering Company and we have no reason to believe that the sale consideration reflected therein is inflated or that it was a distress sale."

"Certified copies of sale deed can be accepted for computing market value and parties to the documents need not be examined."

17. Therefore, this Court is of the considered view that where there is no question raised with regard to the genuineness of the sale deeds produced by the landlord, non-examination of the parties to the document is not necessary to determine the market value of the land. The Engineer has only suggested the value of the land. But the Court has recorded its finding independently on its own assessment on the basis of the value given in the sample sale deeds, locational advantage of the building and not merely based on the Engineer's report. Therefore, this Court finds that the judgment relied by the learned counsel for the tenant are not applicable to the facts and circumstances of this

case.

18. The learned Rent Control Appellate Authority, considered the submissions on the legal proposition that without examining the parties to the document, the document cannot be relied for fixing the market value of the land. Finding that there are judgments to support the case of the landlord that it is not necessary to examine the witnesses to the document to prove the market value of the land, that both parties have produced sample sale deeds and have not chosen to examine the parties to the document, the parties may not come forward to give evidence in a case which is not related to them, held that the value adopted by the learned Rent Controller needs no interference. To arrive at this decision, the learned Rent Control Appellate Authority found that the tenant's Engineer arrived at the market value of the land at Rs.1,00,00,000/- and the landlord's Engineer arrived at the market value of the land at Rs.2,58,75,000/-, Rs.4,80,00,000/- for Ex.P5 property and Rs.9,14,40,000/- for Ex.R3 property. Even after reducing the value of the building, the value of the land would still be much higher. Ex.P3, P5, P6 & P7 and Ex.R1 relate the sale of undivided properties. 160 sq.ft. was conveyed through Ex.P3 for Rs.34,00,000/-. 600 sq.ft. was conveyed through Ex.P6 and P7 for Rs.90,00,000/-. 100 sq.ft was conveyed through Ex.P5 for Rs.20,00,000/-. 100 sq.ft was conveyed through Ex.R3 for Rs.3,81,000/-. The market value of land

for these properties comes to Rs.5,10,00,000/- for Ex.P3 property; Rs.3,60,00,000/- for Exs.P6 & P7 properties. The learned Rent Controller fixed the market value of the land at Rs.1,50,00,000/-. It is also found that the Engineer admitted that the petition mentioned property is situated 400 metres away from the property covered under Ex.P3. Ex.P3 property relates to 160 sq.ft. of undivided share. The market value of the land was arrived at Rs.1,50,00,000/- by the learned Rent Controller taking into consideration the market value of the land and the locational advantage of the building. When there are two different valuations adopted by the Engineers of landlord and tenant, it is necessary for the Court to strike a balance. This method was approved by this Court in the case of *Greaves Ltd. Vs. V.S.Raghavan and another* reported in 2007 (2) CTC 262. That was rightly done in this case. Fair rent should be a reasonable fair rent and it should not result in unjust enrichment. The learned Rent Control Authorities have not entirely dependent on the market value of the land quoted in the sample sale deeds produced by the parties, but considered the market value of the land along with locational advantages and then independently fixed the market value of the land.

19. On consideration of the oral and documentary evidence and the submissions of the learned counsel appearing for both the parties, this Court

finds that the Courts below have rightly appreciated the evidence produced before them while fixing fair rent for the building. This Court finds no reason to interfere with the judgment passed by the learned VIII Judge, Court of Small Causes, Chennai, in R.C.A. No.189 of 2019, dated 17.03.2021, and the same is confirmed. Accordingly, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.09.2021

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Index: Yes / No

Speaking order / Non speaking order

Internet : Yes / No

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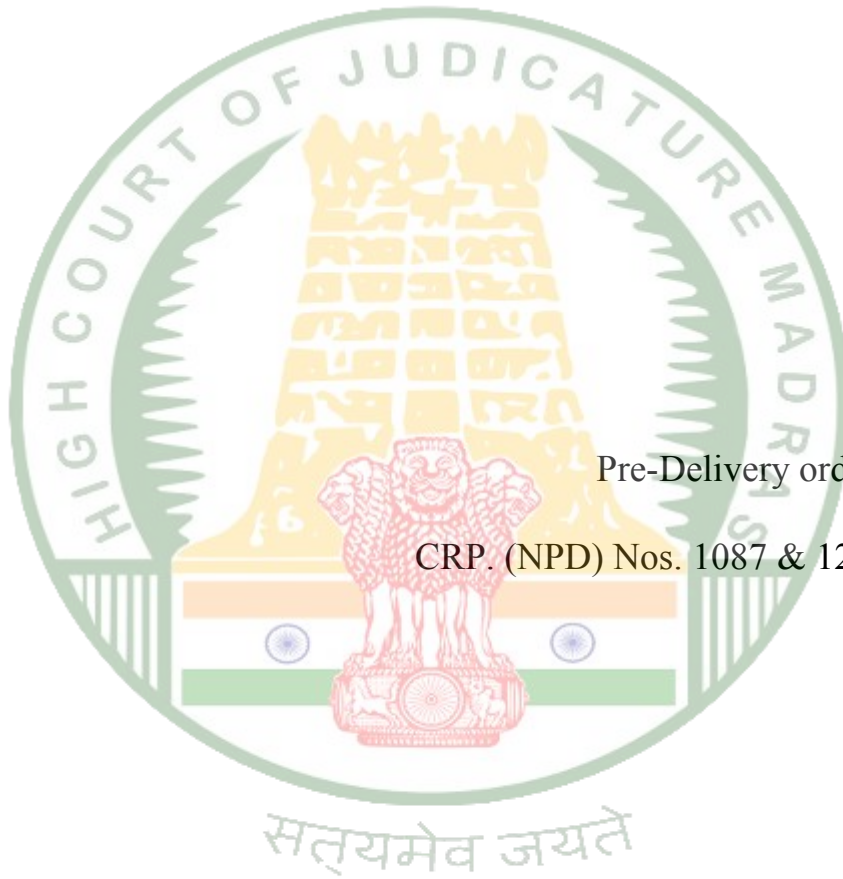
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The VIII Judge, Court of Small Causes, Chennai

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G.CHANDRASEKHARAN. J.,

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Pre-Delivery order made in
CRP. (NPD) Nos. 1087 & 1255 of 2021

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