

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.03.2021

Pronounced on : 25.03.2021

CORAM

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

CRP.NPD.No.3505 of 2017
and CMP.No.16270 of 2017

P.A.Lakshmi Narayanan

..Petitioner

Vs.

Annam

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act against the fair and final order dated 30.11.2016 made in RCA.No.370 of 2015 on the file of the VII Court of Small Causes, Chennai and confirming the fair and final order dated 25.09.2014 made in RCOP.No.1354 of 2012 on the file of the XIII Court of Small Causes, Chennai fixing the fair rent for the petition premises.

For Petitioner

: Mr.V.Lakhminarayan
for Mr.J.Balagopal

For Respondent

: Mr.P.L.Narayanan

ORDER

This civil revision petition is directed as against the fair and decreetal order passed in RCA.No.370 of 2015 on the file of the VII Court of Small Causes, Chennai dated 30.11.2016 thereby confirming the order passed by the learned Rent Controller in RCOP.No.1354 of 2012 on the file of the XIII Court of Small Causes, Chennai dated 25.09.2014 thereby fixing the fair rent for the petition premises at Rs.1,47,936/-.

2. The case of the landlady is that the petitioner is the tenant (hereinafter called as tenant) and the respondent is the landlady (herein after called as landlady). The landlady filed petition for fixation of fair rent for the petition premises situated at Plot No.1660, 21st Main Road, Anna Nagar West, Chennai 600 040 admeasuring 5000 sq.ft. It is consisting of ground floor and first floor. The said petition premises is let out to the petitioner for residential purposes for the monthly rent of Rs.5,000/- and received a sum of Rs.25,000/- as security deposit. Thereafter, rent was enhanced to Rs.10,000/- per month for the petition premises. Since the petition premises is located in prime locality and it fetch more rent and as such the landlady filed petition for fixation of fair

rent. She further averred that the petition premises is located in a very busy locality at Anna Nagar since Chinmaya Vidyalaya, Emmanuels Church, P & T Quarters commercial quarter of Anna Nagar and Krishnasamy Higher Secondary School are very nearby to the petition premises.

3. Resisting the same, the tenant filed counter and stated that the petition has been filed with malafide and vindictive motive to harass the tenant and not filed with bonafide intention to fix fair rent. The landlady instigated the jurisdiction police i.e. Inspector, V-5 Thirumangalam Police Station and threatened the tenant to vacate the premises on false complaint. Therefore, the intention of the landlady is only to vacate the tenant from the petition premises and not for fixation of fair rent. The tenant was constrained to file suit for permanent injunction restraining the landlady from forcible eviction from the petition premises and injunction granted in favour of the tenant. The landlady also filed petition in RCOP No.1501 of 2012 for eviction on the ground of demolition and reconstruction. Therefore, the intention of the landlady is very clear that only to vacate the tenant from the petition premises.

4. In support of the landlady's case, P.W.1 was examined and five documents were marked as Ex.P.1 to Ex.P.5. On the side of the tenant, R.W.1 to R.W.2 were examined and Ex.R.1 to Ex.R.6 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the learned Rent Controller fixed rent at Rs.1,47,936/- per month payable by the tenant for the petition premises. Aggrieved over the fair and final order of the learned Rent Controller, the tenant preferred appeal before the learned Rent Control Appellate Authority in RCA.No.370 of 2015 and the same was dismissed and confirmed the fair rent fixed by the learned Rent Controller. Aggrieved by the same, the present civil revision petition has been filed by the tenant.

5. Mr.V.Lakshminarayan, the learned counsel appearing for the petitioner submitted that though the petition premises admeasuring 5000 sq.ft. and its plinth area is 1426.98 sq.ft, therefore, the cost of construction ought to have been calculated for the plinth area. The amenities provided by the landlady had been taken into consideration at 5% for the schedule I amenities and the basic amenities have been taken

into account at 20% for the petition premises. The land value is fixed on the basis of the sale deed produced by the landlady which is marked as Ex.P3 at Rs.2,95,20,877/- whereas the same locality, the tenant marked sale deed marked as Ex.R5 of the year 2010. The land value fixed at Rs.67,11,627/-. While being so, without any reason the learned Rent Controller fixed land value at Rs.1.5 crores for the petition premises and calculated fair rent. Even 15% appreciation has to be taken into account with the price at Rs.67,11,627/- as per the sale deed of the year 2010, it will come around only Rs.90 lakhs for the petition premises. If it is taken as Rs.90 lakhs as land value, it will come only Rs.60,000/- as monthly rent payable by the tenant. Both the courts below failed to give any valid reason for taking into consideration the land value at Rs.1.5 crores per ground. The market value of the land cannot be fixed notionally on assumption and presumption without any material evidence on record. Further both the courts below failed to consider the value of the land, age of the building and location advantage while fixing the fair rent for the petition premises. Expert opinion and the report filed by the tenant's engineer were also not considered by the court below for fixing the fair rent for the petition premises.

6. Per contra, Mr.P.L.Narayanan, the learned counsel appearing for the landlady submitted that the total extent of the land is 5000 sq.ft. For the computation of market value, the entire extent has to be taken into account. The petition premises consisting of ground floor and the first floor. The built up area is 1426.98 sq.ft. inclusive of portico. Whereas the tenant's engineer calculated the build up area as 1152 sq.ft. leaving the portico area and 50% reduced the extent of built up area and filed his report. Therefore, the learned Rent Controller rightly calculated the built up area as 2140 sq.ft. at the rate of Rs.1,50,00,000/- per ground. It comes at Rs.1,33,77,937/-. In fact, the learned Rent Controller had taken the schedule I amenities only at 5% whereas the petition premises is consisting of schedule I amenities and atleast the learned Rent Controller ought to have considered 10% of schedule I amenities. The only point raised by the respondent that market value of the land is fixed at Rs.1,50,00,000/- without any material on record. Ex.P3, sale deed marked by the landlady of the year 2012 and the property situated very nearer to the petition premises, i.e. plot No. 1660 in 21st Main Road, Anna Naga West. The plot in Ex.P3 sale deed is dated 22.03.2012 is located at Plot No.1155, 21st Main Road, Anna Nagar West. Whereas the sale deed

marked by the tenant as Ex.R5 dated 24.06.2010 is pertaining to plot No.5056 i.e. far away from the petition premises. Further the sale deed of the year 2010, and in the year 2010 to 2012, especially in Chennai, there was high boom in the land value. Therefore, there is a vast difference in respect of the land value from the year 2010 to 2012. The learned Rent Controller rightly had taken the sale deed produced by the landlord for consideration and fixed land value only at Rs.1.5 crores per ground instead of Rs.2.95 crores. Unfortunately, the landlady failed to file any appeal for enhancement of fair rent fixed by the learned Rent Controller.

6.1 He further submitted that the learned Rent Controller did not consider the land value as per the document produced by the landlady as well as the tenant. But the learned Rent Controller had taken into account the locality of the petition premises and individually modified at valuation of Rs.1.5 crores per ground. In support of his contention, he relied upon the following judgments:

- (i) H.C.Lodha Vs. C.Ranganathan and others
reported in AIR 1989 MAD-225

(ii) M.RadhakrishnaRao Vs. A.B.Ahmed Basha and Others

reported in 1992 II MLJ 615

(iii) Shaw Wallace & Co.Ltd. Vs. GovindasPurshothamdas

and another reported in (2001) 3 SCC 445

(iv) SP.S.Yegappan Vs. Punjab National Bank

reported in MANU/TN/4703/2020

7. Heard, Mr.V.Lakshminarayan, the learned counsel appearing for the petitioner and Mr.P.L.Narayanan, the learned counsel appearing for the respondent.

8. The landlady filed petition for fixation of fair rent for the petition premises. Though the tenant raised question of relationship of landlady and tenant, he admitted that he entered into an agreement for lease with landlady in respect of the petition premises and he has been paying the rents to the landlady. The only point for consideration is that whether the fair rent fixed by the courts below is correct or not?

9. The petition premises building is type I construction and its age is about 22 to 25 years. The total extent of the petition

premises is 5000 sq.ft, in which the plinth area ground floor is 1426.98 sq.ft and by adding appurtenant land at 50% comes to 713.49 sq.ft in total 2140.47 sq.ft. The land value as per the Ex.P3 sale deed of the year 2012 per ground Rs.2,95,20,877/-. Whereas the sale deed of the year 2010 produced by the tenant marked as Ex.R5 valued at Rs.67,11,627/-. The property related to the Ex.P3 is situated at plot No.1155 at 21st Main Road, Anna Nagar West. The property related to Ex.R5 is situated at plot No.5056, 21st Main Road, Anna Nagar, Chennai. Whereas the petition premises is situated at plot No.1660, 21st Main Road, Anna Nagar West, Chennai.

10. Admittedly, the document produced by the tenant is of the year 2010 and the document produced by the landlady is of the year 2012. Though all the three properties located in the same street, within a period of two years, the land valued at three times higher from the year 2010 to 2012. Further the petition premises is located in the prime locality and it has locational advantages. There is no evidence to show that the petition premises is how long away with the sample sale deeds produced by them. It is known fact that 21st Main Road of Anna Nagar of Chennai is

prime locality and its value is raising day by day, that too from the year 2009 to 2013 there was high appraisal in the land value. It shows from the sale deed produced by the tenant as well as the land lady. Admittedly, there are schools, banks, hospitals, colleges, hotels, shopping complex and marriage halls are situated in and around the petition premises. Even then, the learned Rent Controller fixed land value only at the rate of Rs.1.50 crores per ground for the petition premises. Insofar as the basic amenities such as electricity, water supply and sanitary installation are provided to the petition premises and it is considered at 20% in respect of basic amenities. As far as the schedule I amenities are concerned, the learned Rent Controller had taken into consideration only at 5%, though the petition premises was provided with overhead tank, electric motor, compound wall and vacant land in and around the building area. The tenant now disputes only in respect of land value alone for the petition premises while fixing the fair rent.

11. In this regard, the learned counsel for the landlady has cited the judgment of this Court in the case of **M.RadhakrishnaRao Vs. A.B.Ahmed Basha and Others** reported in **1992 II MLJ 615**, wherein this court has held as follows:

"19. V. Land value: The landlord has claimed at the rate of Rs. 1,00,000 per ground. On the other hand, the tenants contend that it should be worked out at Rs. 15,000 per ground. The landlord relied on Ex.P-5, a sale deed relating to another property situated at a distance of half a furlong away from the petition premises. The Rent Controller relied on Ex.R-1, the sale deed under which the landlord purchased the petition property on 1.7.1981 from its previous owner. The total consideration is found to be Rs. 2,50,000. The subject matter of conveyance comprises a total area of 4 grounds and 1,862 sq.ft. of land and as per the document the building area is 1,655 sq.ft. Taking into account the value of the building at the rate provided by R.W. 1 in Ex.R-2, the Rent Controller fixed the value of the land at Rs. 25,000 per ground. On appeal, the appellate authority increased it to Rs. 50,000 per ground relying on a sentence in the deposition of R.W. 1 that he ascertained the value of the land in the area to be Rs. 60,000 per ground. In the present report containing the findings the appellate authority has stated that the value of the land fixed at Rs. 60,000 was not disputed before him in the course of arguments. This Court called for findings with reference to the cost of construction, having regard to the nature and type of construction and the P.W.D. rates. With regard to the value of the land, this Court did not direct the appellate authority to consider the question, though one of the directions given is to decide the quantum of fair rent.

That will not, however, prevent the parties agitating the question of value of the land before me. In fact, counsel on both sides argued the question. According to learned Counsel for the landlord, the value should be fixed on the basis of Ex.P-5, dated 1.4.1982. He submits that the petitions for fair rent were filed on 7.4.1982 and the said document ought not to have been rejected by the Courts below. On the other hand, it is argued by learned Counsel for the tenants that Ex.P-5 relates to land situated far away from the petition premises and when there is a document proving the value of the petition premises itself, no reliance can be placed on other documents. It is also argued that the expression used in the section is "market value of the site in which the building is constructed". According to learned Counsel, if direct evidence is available to prove the market value of the said site, no resort can be had to documents pertaining to other sites and drawing an inference there from. No doubt, there is considerable force in the contention of learned Counsel for the tenants. But judicial notice has to be taken of the fact that prices have been increasing at galloping rates since 1980. The petitions for fixation of fair rent were filed one year after the purchase of the property by the landlord. Even if the value of the land at the time of his purchase should be taken to be Rs. 25,000 per ground, there is nothing wrong in holding that it was Rs. 60,000 per ground on the date of applications. Moreover, the evidence of R.W. 1

is very clear that he made enquiries and ascertained the value to be Rs. 60,000 per ground. Hence, I do not find any justification to interfere with that finding.”

This Court held that judicial notice has to be taken of the fact that prices have been increasing at galloping rates since 1980. The petitions for fixation of fair rent were filed one year after the purchase of the property by the landlord.

12. In the case on hand, the sale deed produced by the landlady of the year 2012 whereas the sale deed produced by the tenant of the year 2010. As stated supra, in all over Chennai, day by day value of the land is increasing and as such the value of the land has to be taken for the year 2012. Though the learned Rent Controller had taken in to consideration of the land value as per the sale deed of the year 2012, fixed land value for the petition premises only at Rs.1,50,00,000/- per ground. That apart, the learned Rent Controller had taken into account in respect of the schedule I amenity is concerned, only at 5%, though the petition premises was provided with all the schedule I amenities. Therefore, overall the value, basic amenities, schedule I amenities and the cost of the construction and land value fixed by the learned Rent Controller do not

suffer from any irregularity or infirmity which warrants interference from this Court.

13. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

25.03.2021

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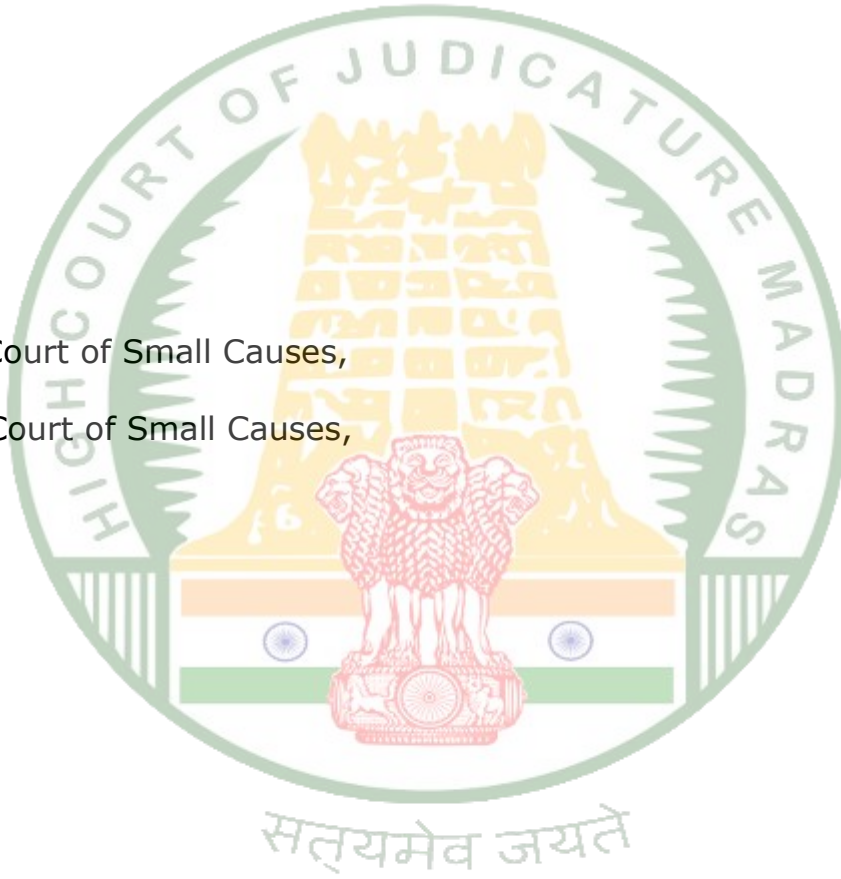
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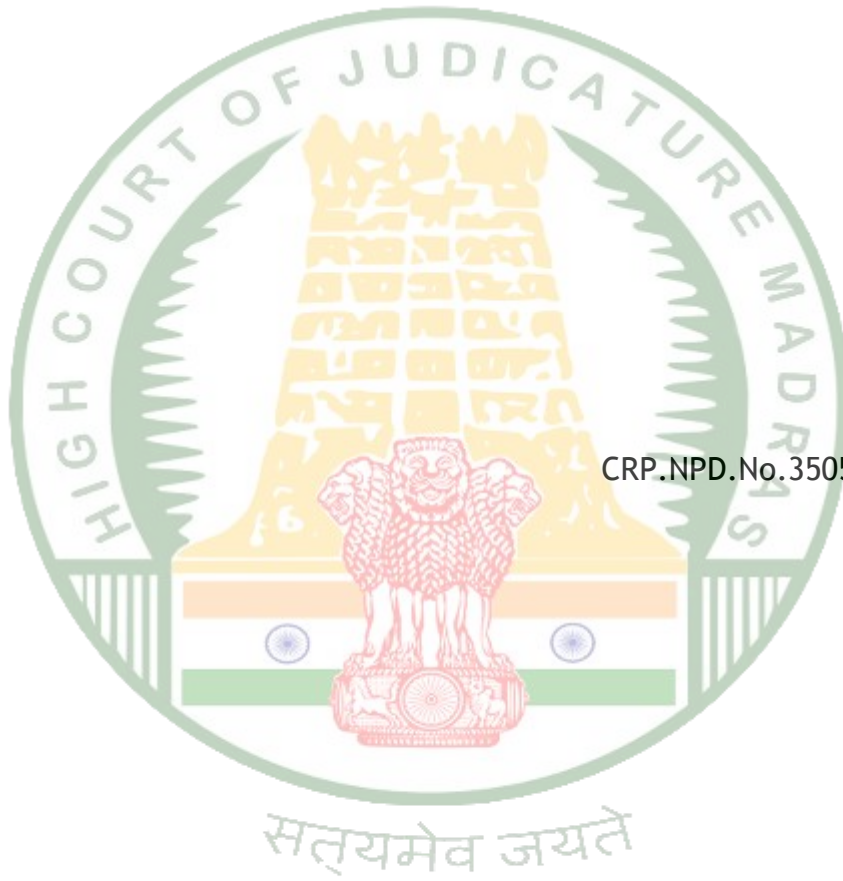
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