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C.R.P.(NPD).No.3570 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.3570 of 2017
and C.M.P.No.16833 of 2017

Gowtham chand Jain (Deceased)

rep. By his legal heirs

1.G.Kamala Kanvar

2.K.Indra

3.D.Prema

4.G.Rajkumar

5.D.Kantha

6.N.Rekha

.. Petitioners

Vs.

M/s.Chennai Devangar Mahajana Sabai,

Rep. By its President M.C.M.Sundaram,

No.33, Palani Andavar Koil Street,

Vadapalani, Chennai 600 026.

.. Respondent

Prayer: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings Lease and Rent Control Act, to set aside the fair and decreetal order dated 13.04.2017 made in R.C.A.No.345 of 2012 on the file of the IX Small Causes Court, (Appellate Authority) Chennai, confirming the fair and decreetal order dated 11.08.2010 made in R.C.O.P.No.1599 of 2007 on the file of the XVI Small Causes Court, Chennai.



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C.R.P.(NPD).No.3570 of 2017

For Petitioners : Mr.A.Prabhakaran
for M/s.C.T.Mohan

For Respondent: Mr.B.Rajkumar Ashok Singh

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed against the fair and decreetal order dated 13.04.2017 made in R.C.A.No.345 of 2012 on the file of the IX Small Causes Court, (Appellate Authority) Chennai, confirming the fair and decreetal order dated 11.08.2010 made in R.C.O.P.No.1599 of 2007 on the file of the XVI Small Causes Court, Chennai.

2.The respondent is petitioner in R.C.O.P.No.1599 of 2007 on the file of the XVI Small Causes Court, Chennai. One Gowtham Sand Jain was tenant under the respondent in said R.C.O.P. The respondent/ landlord filed the R.C.O.P., against the said Gowtham Sand Jain and other tenants, for fixing the fair rent as per Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act. According to the respondent, the petition premises is situated at busy locality, where temples, many



C.R.P.(NPD).No.3570 of 2017

WEB COPY

Schools, Colleges and Banks are located very nearby. There are number of commercial establishments, Parks and Cinema Theatre near to the petition premises. The petition premises is situated in an important and highly developed commercial area and it commands all the location facilities. The petition premises is type I building, having all amenities. The rent paid by the petitioner is very low and prayed for fixation of rent at Rs.7,055/- per month.

3.The tenant Gautham Sand Jain filed counter statement and denied all the averments in the petition. According to the tenant, rent paid by him is itself on higher side and respondent is not entitled for fixation of fair rent at Rs.7,055/- and prayed for dismissal of R.C.O.P. In view of six R.C.O.Ps., filed by the respondent/landlord, common evidence was let in, in all the R.C.O.Ps. Before the learned Rent Controller, the respondent examined two witnesses and marked 10 documents. The tenants in all R.C.O.P.s examined 3 witnesses and marked 6 documents. The learned Rent Controller, considering the entire materials placed before him, held that the building is type I building with all amenities, fixed age of the building as 22 years, depreciation as 1%, plinth area as



C.R.P.(NPD).No.3570 of 2017

234 Sq.ft. and land value at Rs.75,00,000/- per ground. Considering all the above materials, the learned Rent Controller fixed the rent at Rs.5,690/- per month. Against the order of the learned Rent Controller, the tenant filed R.C.A.No.345 of 2012 and the landlord filed R.C.A.No.58 of 2013. Pending R.C.A.s, the tenant died and petitioners were impleaded as legal heirs of the tenant in the R.C.A.No.345 of 2012 & 58 of 2013. The learned Appellate Authority has taken R.C.A.s along with other R.C.A.s filed by other tenants. The learned Appellate Authority, by the common judgment dated 13.04.2017, considering all the materials on record, order of the learned Rent Controller, confirmed the order of the learned Rent Controller, fixing the fair rent at Rs.5,690/- in present R.C.O.P and dismissed both the appeals filed by the landlord and tenant.

4. Against the judgment of the learned Appellate Authority dated 13.04.2017 made in R.C.A.No.345 of 2012 and order of the learned Rent Controller dated 11.08.2010 made in R.C.O.P.No.1599 of 2007, the petitioners have come out with the present Civil Revision Petition.



C.R.P.(NPD).No.3570 of 2017

WEB COPY

5.The petitioners have raised various grounds in the revision. At the time of arguments, the learned counsel appearing for the petitioners restricted his arguments only with regard to value of the land fixed by the learned Rent Controller and confirmed by the learned Appellate Authority. According to the learned counsel appearing for the petitioners, the learned Rent Controller, having accepted the value of the land at Rs.30,23,993/- as on the year 2006 as per Ex.R3-the sale deed filed by the petitioners and Ex.R4 – Analysis report of Engineer of the tenant, erred in fixing the land value at Rs.75,00,000/- per ground, taking into consideration the date of judgment, instead of taking the date of filing of R.C.O.P. by the respondent/landlord. The respondent has filed R.C.O.P. in the year 2007 and appreciation of 20% of land value can be given only for one year and learned Rent Controller erred in granting appreciation of 20% till the date of judgment in the year 2010 for 4 years. The learned Appellate Authority also failed to consider the contention of the petitioners that appreciation for the land value can be given only for one year and learned Rent Controller erred in giving appreciation of land value till 2010 for 4 years. The learned counsel appearing for the



C.R.P.(NPD).No.3570 of 2017

petitioners submitted that both the learned Rent Controller as well as the learned Appellate Authority erred in fixing the land value and fixed fair rent excessively and prayed for setting aside both the order of the learned Rent Controller and judgment of the learned Appellate Authority.

6.Per contra, the learned counsel appearing for the respondent/landlord contended that every year land value increases and both the Courts below have rightly granted enhancement of land value till the date of judgment. The learned Rent Controller as well as the learned Appellate Authority failed to consider the sale deed filed by the respondent/landlord, which shows the value of the property as One Crore per ground, at the time of filing R.C.O.P. The Courts below have not given any reason for not accepting the documents filed by the respondent/landlord. The fair rent is fixed in the year 2010. Now 11 years have passed and rental value in the said locality has increased in manifold and other 5 tenants have not filed any appeal or revision and they have accepted the fair rent fixed by the learned Rent Controller and are paying the rent and prayed for dismissal of the Civil Revision Petition.



C.R.P.(NPD).No.3570 of 2017

WEB COPY

7. Heard the learned counsel appearing for the petitioners as well as the respondent and perused the entire materials available on record.

8. The only issue to be decided in the Civil Revision Petition is whether the learned Rent Controller was correct in granting enhancement of land value for 4 years up to the date of judgment or not?

9. When the respondent/landlord files a petition for fixation of fair rent, the fair rent fixed by the Court is payable from the date of R.C.O.P. and it is not from the date of judgment. In view of this position of law, the learned Rent Controller as well as the learned Appellate Authority has to fix the value of the land only as on the date of filing of R.C.O.P. In the present case, it is admitted case that R.C.O.P. is filed in the year 2007. The petitioners have filed Model sale deed of the year 2006, in respect of the property in the same street and filed Engineer's Analysis report to show that the market value is only Rs.30,23,993/- per ground, in the year 2006. The learned Rent Controller accepted the sale deed – Ex.R3 and Analysis report – Ex.R4, filed by the tenant and fixed the value of the



C.R.P.(NPD).No.3570 of 2017

land at Rs.30,23,993/- per ground. The sale deed and Analysis report filed by the respondent/landlord was not accepted by learned Rent Controller. Having fixed the land value at Rs.30,23,993/- in the year 2006, as per the documents filed by the tenants, the learned Rent Controller ought to have fixed the land value only for the year 2007, by granting 20% appreciation only for one year. The learned Rent Controller erred in granting appreciation till the date of judgment in the year 2010 and fixing the land value at Rs.75,00,000/- per ground. The learned Appellate Authority also failed to consider this fact and erroneously confirmed the value of land as fixed by the learned Rent Controller. In view of such error, the land value fixed at Rs.75,00,000/- per ground is set aside and the same is fixed at Rs.36,28,791.60 [Rs.30,23,993 + Rs.6,04,798.6 (20% appreciation)].

10.In view of the above facts, the fair rent fixed by the Courts below is modified as follows -

Cost of Construction

Ground Floor RCC Roof area ... Rs.91,962.00



WEB COPY



C.R.P.(NPD).No.3570 of 2017

234 sq.ft. @ Rs.393/-

Common Varanda

44 sq.ft @ Rs.393/-

...

Rs.17,292.00

Rs.1,09,254.00

Basic Amenities @ 5%

...

Rs.5,462.00

Rs.1,14,716.00

Depreciation @ 1% for 22 years
[0.703 x 1,14,716]

Rs.80,645.00

Land value :

Apportioned site area $234/3+44/4+62 = 151$ sq.ft

The Land value per
ground as on 2006
Add : 20% appreciation

Rs.30,23,993.00

Rs. 6,04,798.60

Rs.36,28,791.60

$\frac{151 \text{ sq.ft.}}{2400 \text{ sq.ft.}} \times \text{Rs.36,28,791.6}$

Rs.2,28,311.47

Schedule I amenities @ 3%

Rs.6849.34

Total cost of the land & building

Rs.2,35,160.81

Fair rent for non-residential
building @ 12% per annum

...

Rs.2,35,160.81 x (12/100)

Fair rent for one year

...

Rs.28,219.30



C.R.P.(NPD).No.3570 of 2017

WEB COPY

Fair rent per month ... Rs.2,351.61
[Rs.28,219.30/12]

Rounded off to ... Rs.2,350/-

Thus, the fair rent is fixed at Rs.2,350/- modifying the fair rent fixed by the Courts below.

11.In the result, this Civil Revision Petition is partly allowed fixing the fair rent at Rs.2,350/- payable from the date of filing of the petition. No costs. Consequently, connected Miscellaneous Petition is closed.

27.10.2021

Index :: Yes/No

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To

10/12



C.R.P.(NPD).No.3570 of 2017

WEB COPY

1.The IX Judge,
Small Causes Court,
(Appellate Authority) Chennai.

2.The XVI Judge,
Small Causes Court,
Chennai.



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C.R.P.(NPD).No.3570 of 2017

V.M.VELUMANI, J.

gsa

C.R.P.(NPD)No.3570 of 2017

27.10.2021