IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2021

CORAM

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

C.R.P.(NPD)Nos.4179 & 4267 of 2018
and C.M.P.No.23393 of 2018

C.R.P.(NPD).No.4179 of 2018

1. J.A.Rahman (died)
2. Jalal Tajunissa Begum
3. Jalal Mohammed Ibrahim
4. Jalal Mubeenur Rahman
   Petitioners 2 to 4 brought
   on record as LRs of the
   deceased sole petitioner
   Viz., J.A.Rahman vide
   Order dated 20.07.2021 in
   C.M.P.No.10004 of 2020
   in CRP.No.4179 of 2018 ... Petitioners

Vs.

Central Bank of India,
Rep by its Senior Manager,
Royapettah Branch,
No.220, Ground Floor,
Peters Road, Royapettah,
Chennai – 600 014. ... Respondent

Prayer:- Civil Revision Petition is filed under Section 25 of the Tamilnadu Building (Lease & Rent) Control Act, 1960, to set aside the order dated 03.09.2018 passed in R.C.A.No.55 of 2017, on the file of the VIII Small Causes Court at Chennai, modifying the order dated 16.12.2016 passed in R.C.O.P.No.887 of 2015 on the file of the XII Small Causes Court, Chennai, thereby enhancing the fair rent from 92,000/- to Rs.1,59,288/- as claimed.

For Petitioners : Mr.S.Rajendra Kumar
For Respondent : Mr.C.Nithysh Sekhar

C.R.P.(NPD).No.4267 of 2018

Central Bank of India,
Rep by its Senior Manager,
Now rep. by its Chief Manager,
Royapettah Branch,
No.220, Ground Floor,
Peters Road, Royapettah,
Chennai – 600 014. ... Petitioner

Vs.

1. J.A.Rahman (died)
2. Jalal Tajunissa Begum
3. Jalal Mohammed Ibrahim
4. Jalal Mubeenur Rahman
   Respondents 2 to 4 brought
   on record as LRs of the
   deceased sole respondent
   Viz., J.A.Rahman vide
   Order dated 20.07.2021 in
   C.M.P.No.9792 of 2021
   in CRP.No.4267 of 2018 ... Respondents

Prayer:- Civil Revision Petition is filed under Section 25 of the Tamilnadu Building (Lease & Rent) Control Act, 1960, to set aside the decree and judgment dated 03.09.2018 passed in R.C.A.No.55 of 2017, on the file of the learned VII Judge, (Rent Control Appellate Authority) Small Causes Court at Chennai and confirming the order dated 16.12.2016 passed in R.C.O.P.No.887 of 2015 on the file of the learned XII Judge (Rent Controller), Small Causes Court, Chennai.

For Petitioner : Mr.C.Nithysh Sekhar
For Respondents : Mr.S.Rajendra Kumar

COMMON ORDER

Both the Civil Revision Petitions have been filed as against the decree and judgment dated 03.09.2018 passed by the learned VII Judge, Small Causes Court at Chennai, (herein after called as "Rent Control Appellate Authority") in R.C.A.No.55 of 2017, thereby enhanced the fair rent fixed by the learned XII Judge, Small Causes Court, Chennai, (herein after called as "Rent Controller") by an order dated 16.12.2016 in R.C.O.P.No.887 of 2015, thereby fixing the fair rent for the petition premises.

2. The Civil Revision Petition in C.R.P.No.4179 of 2018 has been filed by the landlord for further enhancement of the fair rent fixed by the learned Rent Control Appellate Authority. The another Civil

Revision Petition in C.R.P.No.4267 of 2018 has been filed by the tenant challenging the fair rent fixed by the learned Rent Controller and also enhanced rent by the learned Rent Control Appellate Authority.

3. The case of the landlord is that he is the owner of the petition premises and the tenant has been inducted as tenant in the petition premises for the monthly rent of Rs.38,000/-. The purpose of the tenancy is commercial and the petition premises is located in the prime busy locality of the City of Chennai. The total extent of the premises is 1930 sq.ft of the built up area and also using the vacant space for the purpose of parking vehicles. The market value of the land, in which petition premises is situated at Rs.4 crores per ground and as such sought for fixing the fair rent at Rs.1,44,606/-.

4. Resisting the same the tenant filed counter and stating that the tenant is the bank and it came as a lessee in respect of the petition premises under the lease agreement dated 13.03.2012. The period of lease is five years, which expired on 28.02.2016. Therefore, fixing of fair

rent itself is premature and liable to be dismissed. As per the contention of the lease agreement, further term of three years has been extended as such the tenant is entitled to occupy for the same rent till February, 2019. So far the tenant is paying rent at Rs.47,000/- and it is very reasonable and remarkable amount for the petition premises. Therefore, prayed for dismissed of the petition.

5. On the side of the landlord, he examined P.W.1 and marked Ex.P.1 to Ex.P.4. On the side of the tenant, they examined R.W.1 and marked Ex.R.1 to Ex.R.5. On perusal of the material produced on record and considering both the oral and documentary evidence adduced by the respective parties and also the submissions made by the learned counsel on either side, the learned Rent Controller fixed fair rent for the petition premises at Rs.50,466/- per month. Aggrieved by the same, the landlord filed appeal in R.C.A.No.55 of 2017 before the learned Rent Control Appellate Authority for enhancement of rent. The learned Rent Control Appellate Authority enhanced the fair rent at Rs.92,000/- per month for the petition premises. Aggrieved by the same, both the landlord as well as

the tenant filed the present Civil Revision Petitions for further enhancement of fair rent and also challenging the fair rent fixed by the Courts below.

6. The learned counsel appearing for the landlord submitted that the learned Rent Control Appellate Authority failed to consider 15% increased market value of the petition premises while fixing the fair rent. The learned Rent Control Appellate Authority has taken the land value at Rs.3,00,000/- per ground, as per the Ex.P.3 which was of the year 2015. When it being so, the learned Rent Control Appellate Authority ought to have calculated the increased value by 15% per annum and then calculate the fair rent. Therefore, he prayed for further enhancement of the fair rent fixed by the Courts below.

7. Per contra, the learned counsel appearing for the tenant vehemently contended that as per the lease agreement which was marked as Ex.R.2 dated 13.03.2012, the lease period for the petition premises is five years for the monthly rent of Rs.38,000/-. The lessee shall be

desirous to continue the further period of three years with 25% of enhanced rent. Accordingly, the tenant is paying monthly rent of Rs.47,000/- for the petition premises. Further lessee shall be desirous to continue the tenancy for further period of three years from the monthly of March, 2019 with further enhancement of 25% viz., till 2022. Therefore, the lease agreement period will expired only on 21.02.2022 and the tenant is ready and willing to pay 25% enhanced amount from the March, 2019. Therefore, even before the expire of the lease agreement, the landlord cannot ask for fixation of fair rent and according to the lease agreement, the landlord can ask for only 25% of enhanced monthly rent till February, 2022 and as such, the learned Rent Controller as well as the learned Rent Control Appellate Authority ought not to have enhanced the fair rent.

7.1. He further submitted that Section 7(2) of the Tamil Nadu Building lease and Rent Control Act, 1960, defines that where the fair rent of a building has not been fixed, the landlord shall not claim, receive or stipulate for the payment of, any premium or other like sum in addition to the agreed rent. Admittedly, as per the lease agreement, the landlord periodically increased the rent at 25% per three years once and the tenant also is continuously paying the enhanced rent for the petition premises.

7.2. He further submitted that the learned Rent Control Appellate Authority blindly calculated the market value of the petition premises based on the sale deed, which was marked as Ex.P.3. The said sale deed relevant to only 60 sq.ft., of undivided land for the total sale consideration of Rs.13,00,000/-, as such the learned Rent Controller fixed a sum of Rs.3 crores per ground and enhanced value for the three years 15% per annum. The property mentioned in the sale deed and the petition premises are completely different and the same is situated at the main road. That apart, the sale deed in respect of the undivided share in the apartment floor, which is not applicable to the petition premises. Therefore, he prayed to set aside the order passed by the learned Rent Controller and Rent Control Appellate Authority.

8. Heard Mr.S.Rajendra Kumar, learned counsel appearing for the landlord and Mr.C.Nithysh Sekhar learned counsel appearing for the tenant.

9. The landlord entered into an agreement for lease with the tenant dated 13.03.2012 which was marked as Ex.R.2. Accordingly, the tenant is liable to pay a sum of Rs.38,000/- as monthly rent for the petition premises. The petition premises has plinth area of the 1930 sq.ft., and the same was leased out for commercial purpose. The tenant is the bank and also having parking facilities in front of the petition premises.

10. Though a clause contained in the lease agreement, with regard to the extension of lease period for the further term of three years viz., till 2016 with enhanced rent at the rate of 25%, it doesn't mean that the landlord prevented from asking for fixation of fair rent for the petition premises. Further the tenancy has been extended from March, 2016 with 25% of enhanced and the tenant was paying a sum of Rs.47,000/- as monthly rent for the petition premises. So after March

2016, the tenant is liable to pay rent with another 25% enhancement rent till 2022. Admittedly, the tenant has not paid the enhanced rent from March, 2019 onwards.

11. The learned Rent Controller fixed the value of the land for the petition premises by considering the engineer report and the sale deed which were marked as Ex.P.1 and Ex.P.3 respectively. The property mentioned in the Ex.P.3 is situated at old No.61/FF/4, new No.81/25. Whereas the petition mentioned property situated at old door No.113, new No.220, Peters Road, Royapettah, Chennai – 600 014. Admittedly, the property mentioned in the sale deed is undivided share to an extent of 60 sq.ft. Though the engineer valued the property at Rs.4,56,26,000/- per ground, the learned Rent Controlled fixed the value of the property at Rs.1,50,00,000/- per ground without any basis. Therefore, the learned Rent Control Appellate Authority fixed the land value at Rs.3,00,00,000/- per ground for the petition premises. The learned Rent Control Appellate Authority had taken into account all the data in the sale deed which was marked as Ex.P.3 and fixed the land value at

Rs.3,00,00,000/- per ground. Since it is undivided share of 60 sq.ft., the learned Rent Control Appellate Authority, though valued at Rs.4,56,26,000/- fixed at Rs.3,00,00,000/- as land value of the petition premises property.

12. The learned counsel appearing for the landlord submitted that the Ex.P.3 is of the year 2012 and the petition was filed in the year 2015 as such the Court below ought to have add 15% increase value for each year. As stated supra Ex.P.3 the sale deed with regard to the undivided share as such 15% increasing value cannot be granted. Insofar as the other valuation are concerned, no quarrel between the landlord and the tenant. Therefore, the learned Rent Control Appellate Authority rightly enhanced the value of the land at Rs.3,00,00,000/- per ground and fixed the fair rent at Rs.92,000/- per month. Further the tenant did not prefer any appeal as against the fair rent fixed by the learned Rent Controller. Therefore, this Court finds no infirmity or illegality in the order passed by the learned Rent Control Appellate Authority and it doesn't warrant any interference from this Court

13. Accordingly, both the Civil Revision Petitions are dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

22.07.2021

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order

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To

1. The VII Judge,
   Small Causes Court,
   Chennai.

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

3. The Section Officer,
   V.R. Section,
   Madras High Court,
   Chennai.

G.K.ILANTHIRAIYAN, J.

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