



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	08.10.2021
DELIVERED ON	17.11.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) .No.1207 of 2021

and

C.M.P. (MD) No.6939 of 2021

- 1.Bharath Mill Depot,
through its Proprietors,
C.A.Asraf Ali.
- 2.C.A.Asraf Ali
- 3.C.A.Liakath Ali
- 4.M/s.Aysha Clothing Company,
represented by her owner Aysha.

...Revision Petitioners/Appellants/
Respondents

Vs.

A.N.Subramanian

...Respondent/Respondent/Petitioner

PRAYER:Civil Revision Petition filed under Section 25 of the Tamil Nadu Building Lease and Rent Control Act, 1960, to set aside the fair and executable order, dated 03.03.2021 in R.C.A.No.72 of 2019 on the file of the Principal Subordinate Court, Madurai/Rent Control Appellate Authority confirming the fair and executable order, dated 06.07.2019 in R.C.O.P.No.60 of 2016 on the file of the learned Principal District Munsif/Rent Controller, Madurai Town and allow the Civil Revision Petition.

For Petitioners :Mr.K.Sekar

For Respondent :Mr.K.Sudalaiyandi

ORDER

This Civil Revision Petition has been filed against the fair and executable order, dated 03.03.2021 in R.C.A.No.72 of 2019 passed by the Principal Subordinate Court, Madurai/Rent Control Appellate Authority confirming the fair and executable order, dated 06.07.2019 in R.C.O.P.No.60 of 2016 passed by the the learned Principal District Munsif/Rent Controller, Madurai Town.



2.The respondent herein/petitioner/landlord has filed a petition in R.C.O.P.No.60 of 2016 on the file of the learned Principal Rent Controller/Principal District Munsif, Madurai Town, under Section 4 of the Tamilnadu Buildings (Lease and Rent) Control Act, to fix the fair rent and the same was allowed and fair rent was fixed. Against the said order, an appeal has been preferred by the revision petitioners herein in R.C.A.No.72 of 2019, on the file of the learned Rent Control Appellate Authority/Principal Subordinate Court, Madurai and the same was dismissed on 03.03.2021. Aggrieved over the same, the revision petitioners are before this Court.

3.This Civil Revision Petition has been filed on the ground that both the Courts below have failed to note that for the same premises the respondent herein/landlord had already filed a petition in R.C.O.P.No.218 of 1991 for fixation of fair rent on the file of the learned Principal District Munsif, Madurai town and in the said petition fair rent was fixed as Rs.3903/-by order, dated 16.03.2000. The Courts below without considering the documents and evidence fixed the fair rent in an exorbitant manner which is not correct and has not followed the rules as enumerated under Section 4 of the Rent Control Act.

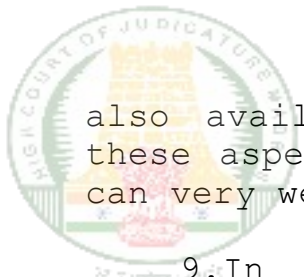
4.Heard Mr.K.Sekar, learned counsel appearing for the petitioners and Mr.K.Sudalaiyandi, learned counsel appearing for the respondent. Perused the material documents available on record.

5.In R.C.O.P.No.60 of 2016, Rs.1,12,288/-was fixed as monthly rent which was confirmed by the Appellate authority.

6.The relationship between the tenants and the landlord is admitted. In R.C.O.P.No.60 of 2016, Rs.1,12,288/-was fixed as monthly rent which was confirmed by the Appellate authority.

7.The relationship between the petitioners and respondent is admitted. In R.C.O.P.No.280 of 1991, rent was fixed at Rs.3,903/-. But, the parties have agreed for Rs.5,000/-p.m.

8.The respondent has stated that the petitioner further stated that the site market value of the petition mentioned property is very high. The present site value of the are is Rs.16,000/-per sq. feet. The probable rent for the petition mentioned property that will fetch not less than Rs.2,50,000/-per month. The building contain all amenities. The present agreed rent of Rs.5,000/-is very low considering the value of the property and comparing with other buildings situated in that area. The electricity, latrine, corporation water connection, underground drainage amenities are



also available in the petition mentioned property. Considering these aspects, the fair rent for the petition mentioned property can very well fetch at least Rs.2,50,000/-per month.

9.In order to substantiate the case, the petitioner was examined as P.W.1 and produced the documents Ex.P.1 to P.5 and Ex.C.1 to Ex.C.3, a witness from PWD Office technical assistant namely Ramesh was examined as P.W.2 and Ex.X.1 marked and a witness from Sub Registrar's office was examined as P.W.3 and Ex.X.2 marked. One Engineer, namely; Sathish Kumar was examined as P.W.4. The respondents side the 1st respondent was examined as R.W.1 and no documentary evidence produced on their side.

10.The petition mentioned property situated in a prime area in Madurai. The area of the property is 1500 sq.feet. The Engineer who gave report (Ex.C.2) was examined as P.W.4 has stated in his report that ground floor extent is 902.84 sq. feet. The first floor extent is 480.90 sq. feet and the second floor extent is 320.25 sq. feet. The total extent is 1763.99 sq. feet.

11.P.W.3, witness for Sub-Registrar Office, has stated that the guideline value of property is Rs.7,000/- per sq. feet. The respondent neither denied the value nor produce any documents to disprove it. So, total site value fixed by the learned Rent Controller is 1,05,00,000/-.

12.Witness for P.W.D was examined as P.W.2. Valuation report was marked as Ex.X.1. As per his report, total value of property including electrification and sanitary arrangements in 31,68,957/-.

13.Due to age of the building (60 years) depreciation was also worked out by the learned Rent Controller. The total value 1,12,28,860/-. As per Section 4 of TNBLRC Act, 12% of value of the property can be calculated for rent i.e., 1,12,288/-p.m.

14.In the absence of any contra evidence the learned Rent Controller has fixed rent as Rs.1,12,288/-. The Rent Control Appellate authority has also confirmed the rent.

15.Already, the fair rent was fixed in R.C.O.P.No.218 of 1991. The revision petitioners have contended that already fair rent was fixed by the learned Rent Controller. So, the second petition cannot lie for fixation of fair rent.

16.The learned counsel appearing for the petitioner relied upon the Judgment reported in **2002(1) CTC 724** in the case of **Kethmul Vs. Hussaini Begum**, held as follows:



"Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section 5-

Maintainability of second petition for fixing fair rent - Landlord filed petition against tenant for fixing fair rent and fair rent was fixed by Rent Controller - Tenant died and tenant's son and landlord entered into fresh agreement whereby tenant's son agreed to pay higher rent than fixed by Rent Controller - Section 5 deals with fixing of fair rent for building and it is not relatable to landlord or tenant once fair rent is fixed for building by Rent Controller - Second petition is barred - Substitution of tenant's son as tenant on death of tenant does not take away rigour of earlier proceeding - Subsequent agreement between landlord and tenant's son to pay higher rent does not affect maintainability of second petition - Section 7 prohibits landlord from receiving or claiming rent in excess of fair rent - Second application is not maintainable - Order of appellate authority in holding that second application was maintainable set aside- "

17.He also relied upon the Judgment reported in **1994 (1) MLJ 648** in the case of **G.Kanniah Chetty and another Vs. M/s.Sha Magajee Asal Das, Madras**, wherein this Court held as follows:

" Sec. 5(3) of the Tamil Nadu Buildings (Lease and Rent Control) Act, states that where the fair rent of any building has been fixed before the date of the commencement of the Tamil Nadu Buildings (Lease and Rent Control) Amendment Act, 1973, the landlord or tenant may apply to the controller to refix the fair rent in accordance with the provisions of Sec. 4 and on such application the controller may refix the fair rent. Therefore, once the fair rent is fixed after 29.6.1973, a second petition for fixation of fair rent under Sec.4 is not possible. This was the view expressed by this Court in the case of Sha Dhanraj Chunilal V. C.Vedachalam Chetty, 99 L.W. 672."

18.Admittedly, already the fair rent was fixed by the learned Rent Controller. But, Rs.5,000/-p.m., was fixed as rent in the year 1991 by both the parties. The second petition for fixing fair rent is barred as per Act.

19.The Judgment reported in **2002 (1) CTC 734** in the case of **Kethmul Vs. Hussainin Begum**, wherein this Court held as follows:

<https://hcservices.ecourts.gov.in/hcse/Nips/> But in these proceedings the constitutionality



of Section 5 cannot be considered and definitely not solely on the basis of **Malpe Viswanath Acharya's** case, AIR 1998 SC 602. As the learned Judges of the Supreme Court themselves have held in 1995 Supp. 3 SCC 668, the constitutionality of the provisions of one Act cannot be decided on the basis of the decision given perhaps with regard to a similar though not identical provision in another Act. The Bombay Act which came up for consideration in **Malpe Viswanath Acharya's** case, AIR 1998 SC 602 pegged down the rates prevailing on 1.9.1940. The Andhra Act which was struck down in 1987 (I) ALT 216, froze the rents at a prior to 5.4.1944. But the Tamil Nadu Act is different. The scope of the provisions regarding fixing of fair rent under Section 4, 5, 6, and 7 of the Act has already been touched upon. The Appellate Authority ought not to have entertained the second petition for fixing of fair rent when the Act does not permit the same. Therefore, the impugned order must be set aside. This order does not ofcourse preclude the right of the respondent to challenge the constitutional validity of the provisions of the Act. The civil revision petition is therefore, allowed. No Costs. The connected CMPs. Are closed.

20. But, due to lapse of time, the rent cannot be freezed. Admittedly after improvement the rent was fixed at Rs.5,000/-p.m., in the year 2006.

21. The second petition filed for fixing fair rent in the year 2016. For commercial building the increase in rent is 12% per year. For 5000 x 12% = 600 per year. For 10 years, it must be Rs.6,000/-. So, the rent must be Rs.11,000/-p.m in the year 2016.

22. Likewise, the rent will be increased 12% per year till to date and even in future.

23. Both the Courts below have not considered the bar of the second petition under the Tamil Nadu Rent Control Act.

24. Finally, this Civil Revision Petition is partly allowed by setting aside the fair and executable order, dated 03.03.2021 in R.C.A.No.72 of 2019 passed by the Principal Subordinate Court/Rent Control Appellate Authority, Madurai, confirming the fair and executable order, dated 06.07.2019 in R.C.O.P.No.60 of 2016 passed by the learned Principal District Munsif/Rent Controller, Madurai Town. The rent is fixed at Rs.11,000/-p.m., and at the time of filing of R.C.O.P.No.60 of 2016 on the file of the learned Principal



District Munsif/Rent Controller, Madurai Town, with 12% increase in every year. No Costs. Consequently, connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar(CS-I)

WEB COPY

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Principal Subordinate Court/
Rent Control Appellate Authority,
Madurai.
2. The Principal District Munsif/Rent Controller,
Madurai Town.

Copy to

The Section Officer,V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1 CC to M/s.K. SEKAR, Advocate (SR-34706[F] dated 17/11/2021)

+1 CC to M/s.K. SUDALAITYANDI, Advocate (SR-34790[F] dated 17/11/2021)

C.R.P. (MD) .No.1207 of 2021
17.11.2021

KM(CO)
TR(06.12.2021) 6P 7C