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C.R.P.No.1173 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.1173 of 2022

and

C.M.P.No.12225 of 2022

Oriental Insurance Company Ltd.,
Divisional Office, rep. by its
Divisional Manager, Mahalakshmi Mansion,
1st Floor, Old No.14, New No.29,
3rd Cross Street, Gandhi Nagar,
Adyar, Chennai - 600 020.

... Petitioner

VS

Trichy Distilleries and Chemicals Ltd.,
rep. by its Director R.V.Tyagarajan,
112, Uthamar Gandhi Salai,
Nungambakkam, Chennai - 600 034.

... Respondent

Prayer: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Building (Lease and Rent Control) Act, 1960, praying to set aside the order passed by the learned VII Judge, Small Causes Court, Chennai in R.C.A.No.65 of 2019, dated 07.12.2022 by confirming the order passed by the learned XVI Judge, Small Causes Court, Chennai in R.C.O.P.No.955 of 2016, dated 31.08.2018 and allow the Civil Revision Petition.



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For Petitioner : Mr.P.S.Baskar

For Respondent : Mr.PL.Narayanan

ORDER

This Civil Revision Petition arises out of rent control proceedings. The tenant is the revision petitioner.

2. The respondent/landlord filed a petition under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 seeking fixation of fair rent at the rate of Rs.2,15,178/- per month for the demised premises situated in front portion of Mahalakshmi Mansion, 1st Floor, Old No.14, New No.29, 1st Main Road, Gandhi Nagar, Adyar, Chennai - 600 020. The subject matter of the petition is a non-residential building with an extent of 2865 sq.ft. The learned Rent Controller was pleased to fix the fair rent at Rs.2,00,605/- per month. Aggrieved by the same, the petitioner/tenant filed an appeal before the Rent Control Appellate Authority. The appeal was dismissed confirming the findings of the Rent Controller. Aggrieved by the concurrent findings, the petitioner/tenant is before this Court.

3.The learned counsel appearing for the petitioner/tenant assailed the



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concurrent findings of the Courts below on following grounds:-

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- (a) The learned counsel for the petitioner submitted that under Section 4(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the maximum cost of amenities in respect of non-residential building shall not exceed 25% and in the case on hand, the Court below has fixed the cost of basic amenities at 20%. However, having regard to the amenities provided the cost of amenities fixed at 20% is on higher side.
- (b) As per the averments contained in the respondent's petition and the lease deed between the parties, car parking was not subject matter of the lease. However, the respondent let in evidence as if car parking was also subject matter of the lease. In the absence of the pleadings, the respondent is not entitled to lead any evidence as if car parking is the subject matter of the lease and consequently, the Court below committed error in taking into consideration the extent of car parking viz., 1044 sq.ft., while calculating the cost of site as well as construction.
- (c) The learned counsel further submitted that the land value of the site was



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fixed at Rs.4,00,00,000/- by the Rent Controller without any basis. It was also submitted that as per the Tenant Document/Ex.R8, the value of the land was only Rs.3,36,00,000/- and consequently, the value of Rs.4,00,00,000/- adopted by the Court below is not sustainable.

4. Per contra, the learned counsel appearing for the respondent/landlord submitted that in the rent control proceedings strict rules of pleadings as in the case of civil proceedings is not applicable. According to the learned counsel, the petitioner/tenant who was examined as RW.1 admitted that he used car park along with other occupant. Hence, the Courts below were correct in taking into consideration half of the extent of the car park, which the petitioner/tenant shared it with another occupant.

5. As far as the contention of the learned counsel for the petitioner regarding value of the land fixed by the Court below, the learned counsel for the respondent submitted that as per landlord document/Ex.P3, the land value in the locality was Rs.6,00,00,000/-. The learned counsel further submitted that as per the sale deed of the respondent/landlord which was marked as Ex.R5



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dated 27.06.1988, the cost of land even in the year 1988 was Rs.3,60,00,000/-

and hence, the Courts below was justified in taking judicial notice of escalation and fixing the cost of land at Rs.4,00,00,000/- per ground.

6. Heard the arguments of the learned counsel for the petitioner and respondent and perused the typed-set of papers and other records.

7. As far as the first contention raised by the learned counsel for the petitioner is concerned, the reading of Section 4(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 would suggest that the cost of amenities shall not exceed 25% of cost of site and construction in respect of non-residential building.

8. In the case on hand, the Rent Controller had fixed only 20% towards basic amenities provided to the building. Though the learned counsel for the petitioner submitted that in the facts and circumstances of the case, it would be appropriate to fix cost of amenities at 15%, he has not specifically pointed out how 20% arrived at by the Rent Controller is on higher side. Therefore, I am



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unable to accept the said contention of the learned counsel for the petitioner.

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9. The next contention of the learned counsel for the petitioner would be that as per averments found in the petition of the respondent and also as per terms in the lease deed between the parties viz., Ex.R4, there is no reference about the car park and hence, the car park is not subject matter of lease. Consequently, the Rent Controller is erred in taking 50% of extent of car park while calculating the fair rent. Though there is no pleading in the petition filed by the respondent/landlord about letting the demised premises along with car park, there is a clear admission by the petitioner himself as RW.1, wherein he admitted that the demised premises had car parking facilities and he shared it along with other occupant of the building. The relevant admission of the petitioner in vernacular language is as follow:-

“... எங்கள் அலுவலகத்திற்கு தனிப்பட்ட முறையில் வாகனம் நிறுத்தும் பகுதி இல்லை. எங்கள் அலுவலகத்திற்கும் மற்றும் கரடி பார்க் நிறுவனத்திற்கும் பொதுவான வாகனம் நிறுத்தும் பகுதி உள்ளது என்றால் சரிதான் இடம் கிடைத்தால் மட்டுமே வாகனம் நிறுத்தும் பகுதி உள்ளது. எங்கள் நிறுவனத்தில் உள்ளவர்கள் முன்னால் சென்று வாகனத்தை அவர்களுக்கு கிடைக்காது என்றால் சரிதான்....”



WEB COPY 10. Therefore, the close scrutiny of evidence of the petitioner herein as

RW.1 would suggest that petitioner himself admitted there was a common car park area and the petitioner shared it along with other occupant of the building. Therefore, the Rent Controller is justified in taking 50% of the total extent of the car park area. Admittedly, the total extent of the car park area is 1044 sq.ft., and the learned Rent Controller had taken into consideration only 522 Sq.ft., while calculating the fair rent. Therefore, the second contention of the learned counsel for the petitioner also not acceptable to this Court.

11. The third contention of the learned counsel for the petitioner is with regard to the valuation of land at Rs.4,00,00,000/- per ground adopted by the Rent Controller for the cost of the site. As per the respondent/landlord's document/Ex.P3 dated 23.01.2013 the market value of the site was Rs.6,00,00,000/- per ground. The respondent's witness viz., the engineer of the respondent/landlord also deposed that the market value of the land was Rs.6,00,00,000/- per ground.



12. On the other hand, the petitioner who was examined as RW.1 deposed that the land value is only Rs.2,50,00,000/- per ground. The petitioner's engineer in his report Ex.R6 assessed the land value based on the sample sale deed produced by the petitioner, which was marked as Ex.R8. Even as per the exhibits relied on by the revision petitioner Ex.R6 and Ex.R8, the land value was Rs.3,36,00,000/- per ground. Therefore, the evidence of petitioner that the land value is only Rs.2,50,00,000/- per ground is against his own documentary evidence and consequently, the same is rejected.

13. The learned counsel for the respondent by relying on the judgment reported in **1992 (2) MLJ 615 (Radhakrishna Rao vs. Ahmed Basha)** submitted that if direct evidence is available to prove the market value of the site of the demised building then no resort can be had to documents pertains to other site and drawing inference therefrom. The relevant observations of this Court in the above judgment is as follows:-

“19. ... 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. ...”

14. In the case on hand, the respondent/landlord produced a sample sale deed Ex.P3 wherein the cost of the land is mentioned as Rs.6,00,00,000/-per ground. It is relating to the properties situated in 1st Main Road, Gandhi Nagar, Adyar, Chennai-600 020. It was of the year 2013. The petitioner/tenant produced a sample sale deed Ex.R8 wherein the cost of the land is mentioned as Rs.3,36,00,000/-. The property is covered under Ex.R8 is situated at 3rd Main Road, Gandhi Nagar, Adyar, Chennai. Therefore, it is clear that property covered under Ex.R8 relied on by the petitioner is not situated in the very same road in which the demised premises is situated. Whereas, the sample sale deed



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relied on by the respondent/landlord is situated in the very same road in which the demised premises is situated.

15. As held in the above mentioned decision of this Court, while fixing the land value, the Court can always take judicial notice of the fact relating to escalation in the real estate prices and locational advantages etc. As far as the case on hand is concerned, the sample sale deed produced by the respondent/landlord is situated in the very same road where the demised premises is situated. The sample sale deed produced by the petitioner/tenant situated in a nearby road but not in the very same road in which the demised premises is situated. Even as per the petitioner/tenant sample sale deed the market price is Rs.3,36,00,000/-. The Court below by taking judicial notice of the locational advantages, which was also admitted by the petitioner as RW.1 fixed the cost of the land at Rs.4,00,00,000/- per ground very much less than the market price mentioned in the sample sale deed produced by the respondent/landlord. Therefore, I do not find any merit in the contention of the learned counsel for the petitioner that the cost of the land fixed by the Court below is liable to be interfered with. In view of the discussions made above, I



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do not find any reasons to interfere with concurrent findings of the Courts

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16. Accordingly, the Civil Revision Petition is dismissed. No costs.

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Index : Yes / No

Speaking Order : Yes / No

dm

To

The VII Judge,
Small Causes Court, Chennai.



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dm

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S.SOUNTHAR.J.

After pronouncement of the order, the learned counsel for the respondent made a request that he filed a petition in C.M.P.No.12225 of 2022 seeking a direction to the Registrar, Small Causes Court, Chennai to make payment out to the petitioner a sum of Rs.77,25,006/- deposited by the petitioner in pursuance of the order passed by this Court in main Civil Revision Petition in C.R.P.No.1173 of 2022 dated 18.04.2022. The said amount was deposited by the revision petitioner towards differential rent. Therefore in view of the dismissal of the revision confirming the order passed by the Court below, there may not be any impediment for ordering this application. Therefore, this Civil Miscellaneous Petition in C.M.P.No.12225 of 2022 is ordered.

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