WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.2106 of 2020

and

C.M.P.No.13283 of 2020

M.Venugopal ... Petitioner

Vs.

1.G.Sathyanarayanan
2.G.Srinivasan ... Respondents

PRAYER: Civil Revision Petition filed under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act 1960 against the decree and judgment dated 24.10.2019 passed in RCA No.30 of 2017 on the file of the VII Court of Small Causes/Rent Control Appellate Authority, Chennai, upholding the decree and judgment dated 27.09.2016 in RCOP.No.570 of 2013 on the file of the XV Court of Small Causes/Rent Controller, Chennai.

For Petitioner : Mr.A.Palaniappan
For Respondents : Mr.K.P.Ashok

https://www.mhc.tn.gov.in/judis

WEB COPY

ORDER

This petition has been filed by the unsuccessful respondent in RCOP No.570 of 2013 dated 27.09.2016 on the file of the XV Court of Small Causes/Rent Controller, Chennai. The appeal filed by him in RCA No.30 of 2017 dated 24.10.2019 before the Rent Control Appellate Authority (VII Court of Small Causes) Chennai was also dismissed.

2.Quickly into the facts of the case as averred by the petitioner in RCOP.No.570 of 2013. The demised property is shop no.2 in the premises bearing Old Door No.7, New Door No.13, Choolaimedu High Road, Choolaimedu, Chennai - 600 94. The respondent in RCOP.No.570 of 2013 is the tenant in the shop in the ground floor for a monthly rent of Rs.3,000/- excluding electricity charges and doing a business of electrical goods in the name and style of M/s.TMS Electricals. The plinth area of the shop is 128 sq.ft. and an open area of 80 sq.ft. in the front portion is also occupied by him. The RCOP was filed under Section 4 of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 for fixation

https://www.mhc.tn.gov.in/judis

WEB COPY

of a fair rent of Rs.11,423/- per month. The tenant / respondent countered the RCOP by stating that the building was more than 60 years old and a Type I building. He also contended that except for the electricity connection, there was no other amenity provided by the landlord and therefore, the present rent of Rs.3,000/- itself was adequate and prayed for dismissal of the petition. The trial Court after considering the various factors like age of the building, area of construction, amenities, depreciation and value of the land and also the documentary and oral evidence on both sides arrived at a fair rent of Rs.8,405/- per month. This was contested by both the parties. The tenant contended that the increase in rent was too steep while the landlord felt that it was calculated in a wrong manner and was much less than the one prayed for. These RCAs were filed against the orders in RCOP. They were RCA No.30 of 2017 by the landlord and RCA No.183 of 2017 by the tenant. The Rent Control Appellate Authority dismissed both the appeals concluding that there was no ground to interfere with the orders of the Rent Controller in RCOP No.570 of 2013. The present petition filed by the tenant is against this order.

https://www.mhc.tn.gov.in/judis

WEB COPY

3.Heard Mr.A.Palaniappan, learned counsel appearing for the revision petitioner and Mr.K.P.Ashok, learned counsel appearing for the respondents.

4.The learned counsel for the appellant / tenant would contend that both the Courts below have erred in the following vital aspects :

(a) The building was more than 60 years old but it was not considered while arriving at the depreciation and consequently the fair rent.

(b) The building was Type I construction but the trial Court had accepted it as a Type A-I construction thereby resulting in a higher fixation.

(c) The plinth area was wrongly accepted as 131 sq.ft. and was apportioned into two floors and then added to the cantilever area of 41.25 sq.ft. which was disadvantageous to the tenant and it ought to have been only about 80 sq.ft. which should have been taken for the purpose of arriving at the fair rent.

(d) The market value of the land per ground was taken as Rs.1.75

https://www.mhc.tn.gov.in/judis

WEB COPY

crores which is close to the claim of the landlord of Rs.1.92 crores whereas the actual value of land per ground was not more than Rs.50 lakhs.

(e) The fair rent fixed at Rs.8,405/- was about three fold to the present rent of Rs.3,000/-.

(f) There were no amenities provided like underground drainage or even mosaic or tiled flooring and therefore, the 7.5% for added amenities was incorrect. Moreover when the Rent Controller adopted PWD rates for costs of construction of the building the same shall be inclusive of basic amenities. Therefore, the Rent Controller was wrong in granting 15% towards amenities separately as laid down in the decision in *K.Gowtham Chand Vs. Tmt.Chandrapushpa (died) & Others* reported in *(2014)3 L.W.798.*

Hence he prayed for modification of the order of the appellate Court.

5.Per contra learned counsel for the respondent/landlord would contend that the trial Court and appellate Court were right in rejecting the contention of the appellant/tenant that the present rent itself was enough

https://www.mhc.tn.gov.in/judis

WEB COPY

and any enhancement of the rent as fair rent would only tantamount to injustice as the building lacked any amenities and was old. The learned counsel also contended that the only flaw in the orders was the market value of the land on which the building was built. According to him, the trial Court as well as the appellate Court had accepted the landlord's contentions (substantiated by the documentary evidence) that the actual market value was Rs.1.92 crores but reduced it to Rs.1.75 crores arbitrarily. He further added that had the trial Court considered the actual market value the fair rent would have been Rs.11,423/- per month and hence, that needed to be modified. His further contention was that the locality where the shop was situated was a busy commercial locality in the main road which was easily accessible and the present rent as well as the fair rent fixed were not commensurate to the locational advantage the shop derived.

6.Now the only point to be considered in this petition is whether the fair rent fixation done by the trial Court and upheld by the appellate Court was correct. The different factors analysed by the trial

https://www.mhc.tn.gov.in/judis

WEB COPY

court and the justification given are as follows:

(a) The trial Court decided after analysing the Ex.P1 the Engineer's report on the side of the petitioner and also Ex.R1 the respondent's engineer's report that building falls under type A1 construction. The description of the building in both the reports are similar and therefore, the conclusion cannot be different. The Appellate Authority also accepted the same.

(b) The trial Court had accepted the fact that when the party had done any scientific method to arrive at the age of the building the age given by the Ex.P1 (Petitioner's report) was accepted. The Appellate Authority also accepted the same.

(c) It was held by the trial Court and confirmed by the Appellate Court that the plinth area in ground floor was 131 sq.ft. as per Ex.P1 report. The cantilever portion in front of the shops was also determined as 41.25 sq.ft. Though the landlord had claimed another 41.25 sq.ft. as open to sky it was not accepted by the trial Court as it was not owned by the landlord. However according to the Ex.R1 the plinth area in ground floor was only 118.18 sq.ft.

https://www.mhc.tn.gov.in/judis

WEB COPY

and the cantilever portion as 38.12 sq.ft for which the respondent's engineer as RW1 could not justify in his oral evidence. He did not contradict the petitioner engineer's report thereby the trial Court as well as the appellate Court had to accept Ex.P1. Accordingly, 131 sq.ft. was apportioned in two and 41.25 cantilever portion added to it to arrive at 106.75 sq.ft. The cost of construction was taken at PWD rates. The decision in *K.Gowtham Chand Vs. Tmt.Chandrapushpa (died) & Others* (cited supra) would not apply to the present case since the PWD rates are exclusive of the costs of providing basic amenities like electricity.

(d) Both the parties had accepted that the only amenity provided was electricity and therefore the trial Court had added 7.5% towards basic amenities. The Appellate Court also accepted it.

(e) The depreciation at 0.6491 factor was also based on the age of the building and the apportionment also was based on the two storeys of the building thereby necessitating the plinth area 131 sq.ft. to be apportioned into two.

(f) The land value was as claimed by the landlord was

https://www.mhc.tn.gov.in/judis

WEB COPY

Rs.1,92,00,000/- and relied in Ex.P4 another sale deed for another property on the same road. However, the respondent/tenant adduced Ex.R1 a sale deed for a property in another street of the same locality. The value as per this document was Rs.50,00,000/-. But the trial Court fixed that the property relied on by the tenant was not on the main road and therefore, not eligible for a fair comparison. However, the value has determined at Rs.1.75 crores by the trial Court and accepted by the Appellate Court also. The value was appealed against by the landlord two in RCA No.30 of 2017 but the appeal was dismissed by the Appellate Court.

It is clear that on all these aspects barring the value of land the trial Court had justified its decision and the appellate Court had confirmed the same. However, the fixation of the value of the land as Rs.1.75 crores per ground had no basis. Ex.P4 was accepted by the trial Court but the value was reduced to Rs.1.75 crores. Nevertheless, there was no Civil Revision Petition filed by the landlord against the dismissal of RCA.No.30 of 2017. Therefore, this Court would not go into this aspect when the landlord has no problem with it.

https://www.mhc.tn.gov.in/judis

WEB COPY

7.In the result, Civil Revision Petition is dismissed. The orders of the Appellate Authority in RCA No.183 of 2017 is upheld. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

16.11.2022

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

https://www.mhc.tn.gov.in/judis

WEB COPY

R. HEMALATHA, J.
mtl

To

1.The Judge, VII Court of Small Causes/Rent Control Appellate Authority, Chennai.
2.The Judge, XV Court of Small Causes/Rent Controller, Chennai.
3.The Section Officer, VR Section, High Court, Madras.

C.R.P.No.2106 of 2020
and C.M.P.No.13283 of 2020

16.11.2022

https://www.mhc.tn.gov.in/judis