



C.R.P (NPD).No.1094 of 2022 and
C.M.P.Nos.5617 & 10393 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	26.07.2022
Pronounced on	02.09.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

C.R.P (NPD).No.1094 of 2022 and
C.M.P.Nos.5617 & 10353 of 2022

L.Gowtham Chand

... Petitioner

Vs.

V.Palani

...

Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the judgment and order dated 07.01.2021 passed in RCA No.72 of 2016 on the file of the IX Small Causes Court, Chennai, against RCOP.No.2490 of 2012 on the file of the XIII Small Causes Court, Chennai.

For Petitioner : Mr.M.Arvind Kumar

For Respondent : Mr.S.Ravichandran

ORDER

This Civil Revision Petition has been preferred to set aside the judgment and order dated 07.01.2021 passed in RCA No.72 of 2016 on the file of the IX



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Small Causes Court, Chennai, against RCOP.No.2490 of 2012 on the file of
the XIII Small Causes Court, Chennai.

2. Heard Mr.M.Arvind Kumar, learned counsel for the petitioner and Mr.S.Ravichandran, learned counsel for the respondent and also perused the materials placed on record.

3. The short facts of the case are as follows:

The petitioner is the tenant against whom the respondent has filed a petition for fixation of fair rent in RCOP No.2490 of 2012. The petition was allowed and a fair rent was fixed at the rate of Rs.6,291/- per month. Having not satisfied with the above said fair rent fixed by the Rent Controller, both the petitioner and the respondent have preferred Rent Control Appeals in RCA No.72 of 2016 and RCA No.10 of 2016. The learned Rent Control Appellate Authority had dismissed both the Rent Control Appeals and confirmed the order of the learned Rent Controller. Hence, this Civil Revision Petition has been filed by the respondent tenant challenging the judgment passed in RCA No.72 of 2016.



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4. Mr.M.Arvind Kumar, learned counsel for the revision petitioner submitted that the learned Trial Judge had omitted to consider the documents submitted by the respondent for fixing the fair rent; the Courts below have placed reliance to Ex.P5 Sale deed; the property is situated in the 2nd Cross Street, MKB Nagar; but Ex.P5 sale deed relates to a property situated in 14th West Cross Street, MKB Nagar which is situated more than 12 streets far away from the petition mentioned property; the revision petitioner / respondent has produced the sale deed Ex.R5 which relates to a property in 2nd Cross Street, MKB Nagar and that alone should be considered as relevant; the sale consideration in Ex.R5 is Rs.30,00,000/-; the Rent Controller has fixed the land rate at Rs.1,10,99,999/-, basing on Ex.P5 sale deed and by including 10% appreciation; had the Trial Court considered Ex.R5, the value of the land would not have been so high and the fair rent also would have been lesser than Rs.6291/-.

5. Mr.S.Ravichandran, learned counsel for the respondent submitted that the sale deed produced by the revision petitioner *vide* Ex.R5 dated 12.12.2011 relates to a property situated in the 2nd Cross Street of MKB



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Nagar; the respondent has produced a sale deed Ex.P5 dated 24.07.2013 which relates to 14th West Cross Street, MKB Nagar; the value for the property which is situated in 14th Cross Street itself fetches higher value; it is inappropriate to claim that the demised premises which is situated in 2nd Cross Street will have only lesser market value; the learned Trial Judge has rightly considered the matter in issue and preferred to rely on Ex.P5; the fair rent fixed by the Rent Controller and confirmed by the Rent Control Appellate Authority does not require any interference and further, the petitioner's Engineer who was examined as R.W.2 did not subject himself for cross examination. Hence the learned Rent Control Appellate Authority has rightly dismissed the appeal filed by the revision petitioner.

6. The one and only ground on which the revision petitioner / tenant has filed the revision is that the market value fixed for the demised property by adopting Ex.P5 sale deed is not correct. The revision petitioner has stated that he has produced Ex.R5 sale deed and the subject matter of the said sale deed is situated in the same Street where the demised property is situated. Even if the revision petitioner claims that the market value of the demised property should be fixed basing on Ex.R5, the Engineer who produced Ex.R5 and got



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examined as R.W.2 did not subject himself for cross examination. When a property which is situated far away (i.e.) in the 14th Street as seen in Ex.P5 itself fetches a higher value, it is difficult to believe that the property in the 2nd Street will fetch only less value as seen in Ex.R5.

7. The value of the property which is far away from the petition mentioned property would be naturally less and in other words, the property situated at the 14th Cross Street, MKB Nagar would be lesser than the property situated in the 2nd Cross Street, MKB Nagar. Since the petition mentioned property is situated in the 2nd Cross Street, the value of the property would be more than the property situated in the Street which is 12 Streets far away. But however, it is claimed by the petitioner that there is another sale deed Ex.R5, according to which, the value of the land will be only Rs.30,00,000/- and not Rs.1,10,99,999/-. While fixing the value of the land, the sale deed alone cannot be relied on and that sale deed can also be helpful while fixing the value for the land. There are several other factors like prominence of the property and other convenience surrounding the property should also be taken into consideration. The genuineness of both Ex.P5 and Ex.R5 was not denied, but however, while the sale deeds are registered, there is no guarantee that the deeds are registered



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only for the price for which the properties are purchased. There are many instances where the parties to the sale deed may register the sale much below than the actual sale price by taking advantage of the guideline value and escape from paying higher stamp duty.

8. The guideline value is just a Basic Valuation Register maintained by the Department for the purpose of calculating the stamp duty. So that cannot be the sole basis for fixing the value of the land. In the case in hand, in the petition demised property the revision petitioner is running a Pawn Broker Shop. While placing reliance on Ex.P5, the Court below has also considered the report of the Engineer who was examined as P.W.2. The Engineer has worked out the value of the land by taking into consideration of several factors like the features surrounding the property, its locational advantage and other connections to the property and submitted his report along with his analysis. In fact, he was examined as P.W.2 and subjected to cross-examination as well. Even though the Engineer of the petitioner tenant has also filed an analysis report and examined himself as R.W.2, he did not turn up for cross-examination.



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9. The learned counsel for the petitioner submitted that even in the absence of R.W.2's evidence, the sale deed Ex.R5, can be taken into consideration for fixing the land value. The methods for determining the cost of the land is enunciated in the judgment of the case reported in **2006 (2) CTC 433 (Sakthi & Co Vs. Shree Desigachary)** In the said decision, it is held as follows:

“15. It is a settled law, as laid down in the judgments referred to above, that in determining the market value, the Court has to take into account either one or the other three methods to determine market value of the lands appropriate on the facts of a given case. According to the Supreme Court, generally, the second method of valuation is accepted, as the best. This method would furnish the evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features, which would enable the Court to determine the market value correctly.

16. In view of the above ratio decidendi fixed by the Supreme Court, the fixation of market value on the basis of guideline value or valuation register, summoned from Sub-Registrar's Office and the Engineer, is illegal and



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unsustainable.”

10. In the case in hand, despite both the petitioner and the respondent have produced their respective sale deeds, the vendors and buyers of the sale deeds were not examined before the Court in order to assert the cost of the land by adopting method No.2. So, in the absence of such evidence, it is always possible to determine the cost of the land by adopting method No.1 which is the opinion of the experts. Though both the tenant and the landlord have filed the reports of their experts, the expert of the landlord subjected himself for cross-examination and thus the reliability of his report is proved. The revision petitioner / tenant's engineer who was examined by R.W.2 did not turn up for cross-examination and his evidence is incomplete.

11. The learned Rent Controller has considered various aspects including the opinion of the experts and arrived at the cost of the land at Rs.1,10,99,999/-. Though it is claimed by the petitioner/tenant that the cost of the land ought to have been fixed at Rs.30,00,000/- which is not substantiated by cross-examining any of the prudent buyer or seller at the relevant point of time. Since the revision petitioner/tenant had not attacked the fixation of fair



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rent or any other aspect excepting the cost of the land and the cost of the land has been rightly assessed by taking into consideration of the expert's opinion and all other aspects, the Rent Control Appellate Authority thought it fit not to interfere.

12. In the absence of any other evidence and the cross-examination of the respondent's Expert / R.W.2, the learned Rent Controller is right in taking the evidence of P.W.2 to fix the cost of the land and that was accepted by the Appellate Authority as well. Since the fixation of fair rent based upon such estimation of the cost of the land does not suffer from any infirmity, no prejudice would be caused upon the petitioner. Therefore, I find no reasons for interference.

13. On 27.04.2022, this Court has ordered to deposit 60% of the differential arrears within a period of six weeks from the date of receipt of a copy of that order. In compliance with the said order, the revision petitioner has deposited 60% of the differential amount of Rs.2,73,980/- before the Registrar, Small Causes Court, Chennai to the credit of R.C.O.P.No.2490 of 2012 on 02.06.2022 by way of a demand draft drawn on State Bank of India.



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Since it is an element of arrears of rent, the respondent landlord filed a petition in C.M.P.No.10353 of 2022, seeking permission to withdraw the aforesaid amount. Since the respondent / landlord has got the right to withdraw the part of arrears of rent, this petition should be considered favourably. Since the landlord is the senior citizen who is 81 years old, the learned Trial Judge is directed to do the needful to disburse the said amount as expeditiously as possible and in accordance with law.

14. In the result, **this Civil Revision Petition stands dismissed** and the order passed by the IX Small Causes Court, Chennai dated 07.01.2021 passed in RCA No.72 of 2016 against RCOP.No.2490 of 2012, is confirmed.

C.M.P.No.10353 of 2022 is allowed and C.M.P.No.5617 of 2022 is closed.

No costs.

Index: Yes/No
Speaking / Non Speaking Order
gsk

02.09.2022



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To

1.IX Small Causes Court, Chennai.

2.XIII Small Causes Court, Chennai.



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R.N.MANJULA, J

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