



C.R.P.Nos.2685 & 2354 of 2017

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2022

CORAM

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

C.R.P.Nos.2685 & 2354 of 2017

and

C.M.P.No.11100 of 2017

C.R.P.No.2685 of 2017:

S.Nandakumar

... Petitioner

.Vs.

1.M/s.Saree Sansar,
A Partnership Firm,
Represented by its Partner Shree Suresh Vaswani,
Carrying on Business at
98, D.B.Puram,
Coimbatore 641 002.

2.Shree Suresh Vaswani,
Partner,
S/o.Vaswani,
98, D.B.Road,
R.S.Puram,
Coimbatore 641 002.

Padma Vaswani (Died)



C.R.P.Nos.2685 & 2354 of 2017

WEB COPY

3. Neetu P Vaswani

4. Manju

5. M. Inderchand

M/s. Shoba Syndicate,
98, D.B. Road,
R.S. Puram,
Coimbatore 641 002.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order of the Rent Control Appellate Authority (Principal Subordinate Judge's Court) at Coimbatore, dated 21.02.2017 in R.C.A.No.98 of 2015 confirming the fair and decreetal order of the Rent Controller (Principal District Munsif) at Coimbatore, dated 23.01.2015 in R.C.O.P.No.340 of 2008.

For Petitioner : Mr.P.Valliappan
For Respondents : Mr.B.Nambiselvan, for R1
R2 to R5 – Left.

C.R.P.No.2354 of 2017:

1. M/s. Saree Sansar,
A Partnership Firm,
Represented by its Partner Shree Suresh Vaswani,
Carrying on Business at
98, D.B. Puram,



C.R.P.Nos.2685 & 2354 of 2017

WEB COPY

Coimbatore 641 002.

2.Shree Suresh Vaswani,
Partner,
S/o.Vaswani,
98, D.B.Road,
R.S.Puram,
Coimbatore 641 002.

3.Neetu P Vaswani

4.Manju

5.M.Inderchand
M/s.Shoba Syndicate,
98, D.B.Road,
R.S.Puram,
Coimbatore 641 002.

... Petitioners

.Vs.

S.Nandakumar

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside order and decreed dated 21.02.2017 made in R.C.A.No.44 of 2015 on the file of the learned Principal Subordinate Judge, Coimbatore in confirming the order and decree dated 23.01.2015 made in R.C.O.P.No.340 of 2008 on the file of the learned Principal District Munsif of Coimbatore by allowing the present Civil Revision Petition.

For Petitioner : Mr.B.Nambiselvan



WEB COPY



C.R.P.Nos.2685 & 2354 of 2017

For Respondents : Mr.P.Valliappan

COMMON ORDER

These Civil Revision Petitions have been filed by the landlord and the tenant aggrieved by the fair and decreetal order passed in R.C.A.No.44 of 2015 and R.C.A.No.28 of 2015, dated 21.02.2017, confirming the fair and decreetal order passed by the Rent Controller in R.C.O.P.No.40 of 2008 dated 23.01.2015.

2. The petitioner in C.R.P.No.2685 of 2017 filed a petition before the Rent Controller under Section 4 of “the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960” [hereinafter referred to as “Rent Control Act”] to fix the fair rent for the subject property at the rate of Rs.68,806/- per month. The petitioners in C.R.P.No.2354 of 2017 were tenants and they resisted this petition on the ground that the alleged claim made by the landlord is unsustainable and hence sought for dismissal of the petition.

3. The Rent Controller after considering the contentions raised by



WEB COPY

either side and on appreciation of evidence, came to a conclusion that based on Ex.P7, a fair rent of Rs.68,806/- per month can be fixed. Aggrieved by this order, the landlord filed R.C.A.No.28 of 2015 seeking for enhancement of the amount fixed by the Rent Controller. The tenant filed R.C.A.No.44 of 2015 questioning the order passed by the Rent Controller fixing the fair rent at Rs.68,806/- per month.

4. Both the above appeals were taken up for hearing and the Rent Control Appellate Authority through a common order dated 21.02.2017, dismissed both the appeals. Aggrieved by the same, the landlord and the tenant have filed separate civil revision petitions before this Court.

5. Heard Mr.P.Valliappan, learned counsel appearing for the landlord and Mr.B.Nambiselvan, learned counsel appearing for the tenants.

6. When the Rent Controller fixed the fair rent, Ex.P1 to Ex.P7 were marked to establish the rents that were collected in the adjacent shops. The landlord took a plea that the 6th respondent in the RCOP was in fact



WEB COPY

paying rent at the rate of Rs.91.67 per square feet for a mobile shop which was situated two buildings away from the petitioner's property. The landlord was pleading that even though he has claimed for fixation of a sum of Rs.68,806/- per month as the fair rent, that does not estop the landlord from claiming for higher rent and the Rent Controller has to necessarily fix rent in accordance with the procedure as laid down under Section 4 of the Rent Control Act. To substantiate this submission, the attention of the Rent Controller was drawn to the judgment of this Court in ***Krishnaswamy Mudaliar.N Vs. The Controller and Authorised Officer of Buildings*** in reported in ***99 Law Weekly 705***. The Rent Controller took into consideration the report of the engineer which was marked as Ex.P7 and fixed the fair rent at Rs.68,806/-. The Rent Control Appellate Authority has confirmed this order and has not disturbed the fair rent that was fixed by the Rent Controller.

7. It was brought to the notice of this Court that the tenant has already vacated and handed over the premises during April 2022. The learned counsel for the landlord submitted that there was a huge arrears of



WEB COPY

rent payable by the tenant and hence, an eviction petition was filed on the ground of willful default in payment of rent. The eviction was ordered. Thereafter, the tenant had vacated and handed over the property to the landlord during April 2022. The learned counsel submitted that handing over the possession will have nothing to do with the fixation of appropriate fair rent and the landlord can always recover this amount from the tenant by filing a suit for recovery of money.

8. The landlord had sought for fixation of a sum of Rs.68,806/- per month as fair rent. Just because the landlord had specified a particular amount to be fixed as fair rent, that cannot be put against the landlord and the Court is duty bound to fix the fair rent in accordance with Section 4 of the Rent Control Act. The law on this issue has been explained in the case of **Krishnaswamy Mudaliar.N** referred Supra. For proper appreciation, relevant portions in the judgment are extracted hereunder:

“4. The only point that arises for consideration is



WEB COPY

whether even though the fair rent works out to Rs.450 per mensem, for each building, the petitioner is estopped from claiming more in view of the pleadings in the petitions filed for fixation of fair rent. The learned counsel for the petitioner drew my attention to a decision of the Supreme Court in Royal and Co. v. K.C.Ramachandran and others, rendered by five Judges of the Supreme Court. According to the majority judgment, it was held that:-

“The analysis of the Act shows that it has a scheme of its own and it is intended to provide a complete code in respect of both contractual tenancies as well as what are popularly called statutory tenancies. The definition of the term 'landlord' as well as the term 'tenant' show that the Act applies to contractual tenancies as well as cases of statutory general principles governing all Rent Acts it cannot benefit of the tenants when the Act clearly lays down that both landlords and tenants can apply for fixation of fair rent. A close reading of the Act shows that the fair rent is fixed for the building and it is payable by whoever is the tenant whether a contractual tenant or statutory tenant. What is fixed is not the fair rent payable by the tenant or to the landlord who applies for fixation of fair rent but fair rent for the building, something like an incident of the tenure regarding the building.”



WEB COPY



C.R.P.Nos.2685 & 2354 of 2017

(underlining is mine).

5. *The said decision arises out of a Full Bench decision of this Court in M/s.Raval and Co., and another v. K.C.Ramachandran (minor) and others.*

6. *My attention was also drawn to another decision of the Supreme Court in Mistry Premjibhat Vithaldas v. Ganeshbhai Keshavji, wherein their Lordships of the Supreme Court held that the fair rent has to be ascertained by means of specified procedure prescribed by the Act and not according to the rent quoted by the tenant or the landlord. In view of the ratio in the above decisions of the Supreme Court and also in view of the provision of S.4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, it is clear that the fair rent has to be fixed only according to the procedure laid down under S.4 of the Tamil Nadu Act 18 of 1960 and the more fact that the landlord has mentioned that the fair rent would be Rs.500 per mensem could not in any way higher rate and the petitioner is not estopped from claiming more as there cannot be any estoppel against statute. For all these reasons, I hold that the fair rent for each of the buildings is to be fixed at Rs.450 per mensem and the orders passed by the learned authorities below are liable*



WEB COPY

to be modified to this extent.”

9. It is clear from the above judgment that the Rent Controller is duty bound to fix the fair rent according to the procedure laid down under Section 4 of the Rent Control Act and the fair rent cannot be limited to the extent claimed by the landlord. In other words, there cannot be an estoppel for the landlord against a Statute which provides for fixation of the fair rent for a rented property.

10. The Rent Controller while fixing the fair rent, did not take into consideration the document marked as Ex.P1 to Ex.P7. It can be seen from these documents that the 6th respondent in the RCOP was actually paying a monthly rent at a rate of Rs.91.67 per square feet for the adjacent shop and a mobile shop which was situated two buildings away, carried a monthly rent of Rs.200/- per square feet. On taking into account all these documents, the landlord was pleading before the Rent Controller to fix the fair rent at least at the rate of Rs.45/- per square feet. However, the Rent Controller did not take into consideration the documents available and



WEB COPY

merely relied upon Ex.P7 to fix the fair rent at a rate of Rs.68,806/- per month. This amount was exactly the amount that was sought for by the landlord while filing a petition and the Rent Controller wanted to confine the amount to the extent it was claimed by the landlord. The Rent Control Appellate Authority did not even go into all these issues and mechanically confirmed the order passed by the Rent Controller.

11. There was sufficient material before the Rent Controller to fix the monthly rent more than what was claimed by the landlord in the petition filed under Section 4 of the Rent Control Act. The attention of the Rent Controller was drawn to the rents that were collected in the adjacent buildings ranging from Rs.91.67 per square feet to Rs.200/- per square feet. After taking this into consideration, the Rent Controller should have at least fixed the rent at the rate of Rs.45/- per square feet as was claimed by the landlord. The Rent Controller did not choose to fix the fair rent by taking into consideration this reasonable amount that was suggested by the landlord and rather preferred to rely upon Ex.P7 and fix the fair rent as was claimed in the petition.



WEB COPY

12. The order passed by the Rent Controller requires the interference of this Court and there are sufficient materials to show that the Rent Controller ought to have fixed the monthly rent at least at the rate of Rs.45/- per square feet and such fixation would have been reasonable. The Rent Control Appellate Authority failed to take note of this fact and had mechanically confirmed the order passed by the Rent Controller. Accordingly, this Court is inclined to interfere with the order passed by both the Courts below and fix the fair rent at the rate of Rs.45/- per square feet. If fair rent is fixed at that rate, the total monthly rent will workout to Rs.80,950/-. To this extent, the order passed by the Rent Controller is modified.

13. In the result, C.R.P.No.2354 of 2017 is dismissed and the C.R.P.No.2685 of 2017 is allowed and the fair rent is fixed at the rate of Rs.80,950/- per month and the tenant is liable to pay this amount till the subject property was vacated and handed over to the landlord. Consequently, the connected miscellaneous petition is also closed. There



C.R.P.Nos.2685 & 2354 of 2017

WEB COPY

shall be no order as to costs.

12.12.2022

Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No

nsa



WEB COPY



C.R.P.Nos.2685 & 2354 of 2017

N.ANAND VENKATESH,J.

nsa

C.R.P.Nos.2685 & 2354 of 2017
and C.M.P.No.11100 of 2017

12.12.2022