



C.R.P.No.725 of 2021 &
C.M.P. No.6014 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

C.R.P.No.725 of 2021

S.Subramani ... Petitioner

Vs.

S.Gangeshwari ... Respondent
Civil Revision Petition filed under Section 25 of the Tamilnadu
Buildings (Lease and Rent Control) Act 1960 to set aside the Judgment
and decree dated 13.02.2020 on the file of the learned VIII Judge, Small
Causes Court, Chennai in R.C.A.No.676 of 2020 reversing the Judgment
and decree passed in R.C.O.P. No.1341 of 2015 on the file of learned XIII
Judge, Small Causes Court, Chennai.

For Petitioner : Mr. D.Senthilkumar

For Respondent : Mr.T.S.Raja Mohan

ORDER

The present Revision has been filed to set aside the Judgment and
decree dated 13.02.2020 on the file of the learned VIII Judge, Small
Causes Court, Chennai in R.C.A.No.676 of 2020 reversing the Judgment
and decree passed in R.C.O.P No.1341 of 2015 on the file of learned XIII
Judge, Small Causes Court, Chennai.



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2. The brief facts of the case is as follows:-

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The respondent/landlord has filed RCOP No.1341 of 2015 for fixation of fair rent for the petition shop portion in a sum of Rs.15,000/- and a counter was filed by the petitioner resisting the same. The RCOP court on 12.07.2018, has fixed the fair rent for the petition shop portion at a sum of Rs.4,359/- from the date of petition, viz., 04.08.2015. As against the same, the respondent / tenant has preferred an appeal in RCA No.676 of 2018 seeking to set aside the order passed in RCOP. The appellate court in the said RCA vide order dated 13.02.2020 has modified the order passed in RCOP by fixing the fair rent at Rs.3,090/- for the petition schedule premises from the date of petition, ie., 04.08.2015. As against the same, the petitioner/ tenant has preferred the present petition.

3. The learned counsel for the petitioner would submit that the courts below have committed serious error in fixing the land value for the petition premises. Admittedly, the respondent / landlord did not file any documents to prove market value of the land. Hence the market value fixed by the courts below is incorrect and needs interference of this Court.

4. The learned counsel for the petitioner would also submit that the courts below committed serious error by accepting the report submitted by the landlady's engineer, but failed to consider the type, age and



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depreciation of the building stated by the petitioner/tenant's engineer, therefore, pleaded that the order passed by the court below is erroneous.

5. Per contra, the learned counsel for the respondent / landlord submitted that the fair rent fixed by both the courts below is very meager and at the time of filing RCOP, the building consists of ground floor and 1st floor only and the existing 2nd floor is temporary in nature, as it is asbestos roof covering only, constructed in the year 2018. Further, the claim of the petitioner is contrary and imaginary, only to protract the appeal proceedings, this petition has been filed.

6. Heard the learned counsel on either side and perused the documents placed on record.

7. Admittedly, the schedule premises is a building consisting of ground floor and 1st floor. The entire ground floor of the building was constructed for the commercial purpose. The petitioner, as a tenant in the year of 1999 was occupying an extent of the petition portion of 180 sq.ft., At that time the monthly rent was Rs.1,150/, Rs.25,000/ paid as advance and the respondent was paying Rs.1,150/ as a monthly rent till date.



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8. It is the contention of the respondent / landlord that the market value of the land is more than Rs.2,00,00,000/- and earlier, RCOP No.351/13 filed by the petitioner / tenant u/s.8(5) of the Act was allowed, the RCOP filed by the landlord for eviction on the ground of owners occupation was dismissed. Subsequently, the respondent/landlord filed the present RCOP No.1341 of 2015 to fix the fair rent at Rs.15,000/ per month on the basis that the type of building, which is type I and the building was constructed in the year of 1990 with RCC Roof with all the basic amenities. The RCOP court has fixed the fair rent at Rs.4,359/- month. Aggrieved by the same the petitioner/ tenant filed an appeal before the RCA court, the appeal was partly allowed, fair rent was fixed at Rs.3,090/ from the date of petition i.e., 04.08.2015. Aggrieved by the same the tenant has filed by the present CRP on the ground that the Plinth area was fixed solely based on the landlord engineer's report and land value fixed without any supporting documents.

9. It is pertinent to point out that pending RCA, the petitioner / tenant filed a Miscellaneous Petition seeking permission of court to take a Engineer's report as additional evidence to prove that the building consists of ground floor, 1st floor and 2nd floor, the learned Appellate authority has dismissed the said Petition on the ground that the 2nd floor was only a temporary shed and the same was constructed only in the year of 2018,



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which is subsequent to the disposal of RCOP and the engineers report was also obtained only after disposal of RCOP.

10. This Court in order to arrive at an conclusion is inclined to deal with certain aspects, which are as follows:-

(i) As far as the **type** of the building is concerned, the respondent / landlord's engineer has classified the building as Class AI. The petitioner / tenant's engineer has classified the building as Type I. The learned rent controller has classified the building as Class AI, which was upheld by the RCA court.

(ii) With respect to the **age** of the building is concerned, as per the petitioner / tenant engineer's report, the age of building is 32 years and as per respondent / landlord's engineer report, the age of building is 30 years (both parties have not produced any document to show the age of building). The learned rent controller has fixed the age of building as 30 years, which was upheld by the RCA court.

(iii) With regard to the **depreciation**, as per the PWD guidelines, the depreciation for Class AI and Type I building is 1%. Hence 1% depreciation has been taken for 30 years.

(iv) With respect to the **basic amenities** are concerned, according to both engineers report, the electricity connection alone available in the petition schedule premises, hence 5% was awarded for basic amenities by both the RCOP and RCA court.



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(v) Further, with respect to **Plinth Area**, the respondent / landlord's engineer measured 92 sq.ft., for RCC Roof, 27 sq.ft. for RCC Veranda, 27 sq.ft. for veranda metal sheet. The petitioner / tenant's engineer has measured 78.78 sq.ft. for RCC Roof and 24.24 sq.ft. For RCC projection area. The learned rent controller has adopted the landlord engineer report to arrive the plinth area, whereas the RCA court has held that 27 sq.ft., for veranda metal sheet cannot be taken and included in plinth area, which is in outer side of construction, therefore, 92 sq.ft., for RCC Roof and 27 sq.ft., for RCC projection area, $92 + 27 = 119$ sq.ft., was taken the plinth area.

(vi) Besides the above, the **apportioned area**, the learned rent controller has adopted the respondent / landlord engineer's report and arrived the apportioned area as 87 sq.ft. The RCA court has taken $59.5 \text{ sq.ft.} (119 \div 2)$, is the apportioned area.

(vii) That apart, as far as **Land Value** is concerned, the petitioner / tenant has relied upon Ex R3 to show the market value of the land. The petitioner / tenant's engineers had arrived at the market value of the land at Rs.1,01,64,000/- per ground based on the Ex.R3. The respondent / landlord has not filed any document to prove the market value of the land. Considering the locational advantages, the learned rent controller arrived at the market value of land as Rs.1,05,00,000/ which was upheld by the RCA court. (the difference between the land value given by the petitioner / tenant and the land value fixed by the court is just Rs.3,36,000/-)



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In view of the above, this Court is of the view that considering all the above aspects, the appellate court in RCA No.676 of 2018 on 13.02.2020 has passed an reasoned order, which does not require any interference in the hands of this Court. Accordingly, the present Revision is dismissed and the order passed by the appellate court in RCA NO.676 of 2018 dated 13.02.2020 is affirmed by this Court. Since the landlady/respondent being a senior citizen, the arrears of rent shall be paid by the petitioner / tenant to the respondent directly, immediately, without any further delay i.e., on or before 31st May. Consequently, connected miscellaneous petition is closed.

No costs.

19.04.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd

To
1. The VIII Judge,
Small Causes Court,
Chennai

2. The XIII Judge,
Small Causes Court,
Chennai.



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V.BHAVANI SUBBAROYAN J.

ssd

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