



C.R.P.No.736 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.736 of 2021

1. S.Mathi John
2. S.Laya Ali
3. S.Samath
4. S.Mohammed Jinna
5. S.Azees Ali

... Petitioners

Vs.

Canara Bank,
No.112, Jaya Chamarajendra Road,
Bangalore and
carrying on business among other places
at Periyakanchipuram
rep. By its Manager.

... Respondent

Civil Revision Petition is filed under Section 25 of Tamilnadu Buildings Lease and Rent Control Act (Tamilnadu Act 18 of 1960) to set aside the order and decree dated 06.10.2020 of the learned Appellate Authority (Additional Subordinate Court) Kancheepuram in R.C.A.No.8 of 2015 reversing the order and decree dated 28.08.2014 of the Rent Controller, Kancheepuram in R.C.O.P.No.7 of 2012.



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For Petitioners : Mr.S.Hajamohideen Gisthi

For Respondents : Mr.G.K.Sekar for
Mr.E.Arasu

ORDER

The present Civil Revision Petition has been filed to set aside the order and decree dated 06.10.2020 of the learned Rent Control Appellate Authority (Additional Subordinate Court) Kancheepuram in R.C.A.No.8 of 2015 reversing the order and decree dated 28.08.2014 of the Rent Controller, Kancheepuram in R.C.O.P.No.7 of 2012.

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

The petitioners, who are the landlords have preferred R.C.O.P.No.7 of 2012 to fix the fair rent in respect of the petition premises, which is under occupation of the respondent / tenant. A counter was filed resisting the said petition. On considering all the materials placed on record, the court below, on 20.08.2014, fixed the fair rent as Rs.62,446.78 per month, as monthly rent to the petition premises from the date of petition. As against the same, the respondent / tenant had preferred R.C.A.No.8 of 2015. The appellate authority had remanded back to the Rent Controller, Kancheepuram for fresh consideration and disposal of the same as early as possible.



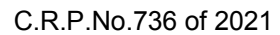
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Aggrieved by the order passed by the appellate authority, the petitioner is before this Court by way of present Revision.

3. The learned counsel for the petitioners would submit that the appellate authority ought to have seen that the fixation of fair rent is for a building irrespective of any agreement between the owner and the tenant and in that view of the matter the RCOP itself is maintainable and the plea of the respondent that the landlords cannot seek fixation of fair rent could not be countenanced in law and consequently, the contention that the landlords can claim only 20% increase after the agreement period is liable to be rejected.

4. The learned counsel for the petitioners also submitted that the appellate authority ought to have seen that the respondent-bank would not at all have taken on lease a class 3 building to run its branch and contention by the Bank is prima facie an utter falsehood, even the strong room in the Bank was constructed at the expenses made by the landlords.

5 .The learned counsel for the petitioners contends that the appellate authority ought to have appreciated that the availability of all amenities



The appellate authority ought to have seen that the reversal of the fair rent fixed by the rent controller after recording that the tenant had not let in any evidence, much less substance evidence, is contrary to law and unsustainable. Unfortunately, the landlords had not examined their engineer since RW1 admitted that the claim of the landlords for Rs.22/- per sq.ft., taking the constructed area as 2838.49 sq.ft., is correct and they were under the impression that no further evidence is necessary.

7. Per contra, the learned counsel for the respondent / tenant contends that a registered lease deed was executed between the petitioners and the respondent on 07.05.2007 and a sum of Rs.1,70,280/- was paid in advance and a initial monthly rent was fixed as Rs.28,380/-. Subsequently, as per lease agreement the monthly rent is enhanced to Rs.34,056/- from 21.03.2012 and the same was also accepted by the



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petitioners. While there is a written agreement for payment of fixed rent on contract basis the petitioners are not entitled to claim any further enhancement of rent as fair rent. Therefore, prays to dismiss the present revision petition.

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

9. At this juncture, it is pertinent to point out that the order of remand has been seriously questioned by the learned counsel for the petitioners/landlord. It is the contention of the learned counsel that the Rent Control Appellate Authority has no power to remand the matter back to the Rent Controller for fresh consideration. It is also contended by the learned counsel for the petitioners that having decided to allow R.C.A. No. 8 of 2015, the Rent Control Appellate Authority should have proceeded to examine all the issues which arise for consideration and should have passed final orders, either allowing the appeal or dismissing the appeal.

10. It is relevant to note that Section 23 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, as amended, is hereby extracted as follows :



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“23. Appeal. – (1) (a) (b) (2)

(3) The appellate authority shall call for the records of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as he thinks fit either personally or through the Controller, shall decide the appeal.

Explanation. - The appellate authority may, while confirming the order of eviction passed by the Controller, grant an extension of time to the tenant for putting the landlord in possession of the building,

(4)”

From the above, it is thus seen that the Rent Control Appeal Authority has to decide the appeal. There is no provision to remand the matter back to the Rent Controller.

11. In 2002 (3) MLJ 500, N. Bacherlal Vs., S. Subhash Chandra Bose, where also a Revision was filed questioning an order of remand by the Rent Control Appellate Authority, this Court had held as follows:

“The civil revision petition has to be allowed on a short ground. The Rent Control Appellate Authority has remanded the matter to the Rent Controller on the question of wilful default. This Court in series of decisions in Rangaswami Naidu v. The Second Judge, Court of Small Causes, Madras (1949)1 MLJ. 24 and Kuttappa Nair v. S.S.A. Shahul Hameed (1973)2 MLJ. 55, has held that the Rent Control Appellate



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Authority has no such power of remand. Following the said decisions I hold that the Rent Control Appellate Authority was not correct in remanding the matter to the Rent Controller. 2. Mr.K.Kannan, learned counsel appearing for the respondent submitted that the Rent Control Appellate Authority has remanded the matter because the petitioner herein sought to introduce documents, which the respondent stoutly opposed. I am of the view that when the petitioner has produced certain documents, the appellate authority should have either considered the documents or called for findings from the rent controller on the documents and hence for that purpose the power of remand cannot be exercised.”

12. At this stage, it is not out of place for this Court to refer the Judgment of Hon'ble Supreme Court in Civil Appeal Nos.7657-7658/2017 **[Nadakerappa Since Deceased By Lrs & Ors. Vs Pillamma Since Deceased By Lrs. .]** on 31st March, 2022 wherein it is held as follows:-

“ It is settled law that the order of remand cannot be passed as a matter of course. An order of remand cannot also be passed for the mere purpose of remanding a proceeding to the lower court or the Tribunal. An endeavour has to be made by the Appellate Court to dispose of the case on merits. Where both the sides have led oral and documentary evidence, the Appellate Court has to decide the appeal on merits instead of remanding the case to the lower court or the Tribunal.”



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13. Even in the instant case, when the Rent Control Appellate Authority had thought it fit to allow R.C.A. No.8 of 2015 stating that the rent controller had failed to follow the guideline laid down by the Act in fixing fair rent to the petition premises, then, the only other option available to the Authority was to proceed to decide the appeal after considering the merits of the rival contesting parties and by appointing a valuer. The Appellate Authority cannot and should not have shirked from that duty. In view of the above well settled proposition, the order under revision is set aside and the Revision Petition is liable to be allowed.

14. Accordingly, the present Civil Revision is allowed setting aside the order of remand dated 16.10.2020 made in R.C.A. No.8 of 2015 and the learned Rent Control Appellate Authority is hereby directed to dispose of the R.C.A.No.8 of 2015 on merits within a period of six months from the date of receipt of records from the Registry. The Rent Control Appellate



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Authority may appoint an appropriate / qualified valuer to assess the present market value prevailing in the petition mentioned premises and thereafter, fix the fair rent in accordance with law. No costs.

21.03.2023

Index : Yes/No

Internet : Yes/No

Speaking /Non-Speaking Order

Note: Registry is directed to return the records / relevant papers to the appellate court.

ssd

To

1. The Additional Subordinate Court,
Kancheepuram
2. The Rent Controller,
Kancheepuram



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V.BHAVANI SUBBAROYAN, J.,

ssd

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