



C.R.P.Nos.3182 of 2019 & CRP.No.2633 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.06.2023

Pronounced on : 19.06.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.Nos.3182 of 2019 & CRP.No.2633 of 2022

CRP.No.3182 of 2019 :

V.Sakthi Manohari

.. Petitioner / Petitioner / Respondent

Vs

Tejraj Jain (Died)

1.Pushpa Devi (Died)

2.Pushpa Devi

3.Prakashchand Jain

4.R.Amit Kumar Jain

5.R.Gourav Kumar Jain

6.R.Vishal Kumar Jain

.. Respondents / Appellants / Respondents

[1st respondent died. Respondents 2 to 6 who are already on record are LR's of the deceased respondent-1 viz., Pushpa Devi as per the memo dated 01.06.2023 and vide Court order dated 02.06.2023 made in CRP.No.3182 of 2019 and CRP.No.2633/2022]

Prayer in CRP.No.3182 of 2019: Civil Revision Petition filed under Section 25 of the Tamil Nadu Building (Lease and Rent Control) Act, 1960 praying to enhance the fair rent for the portion premises by modifying the order passed in RCA.No.600 of 2015 dated 17.12.2018 on the file of the IX Court



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of Small Causes at Chennai confirming the order dated 31.07.2015 passed in RCOP.No.364 of 2006 on the file of XI Small Causes Court, Chennai.

CRP.No.2633 of 2022 :

Tejraj Jain (Deceased)
Pushpa Devi (Deceased)
1.Pushpa Devi
2.Prakashchand Jain
3.R.Amitkumar Jain
4.R.Gourav Kumar Jain
5.R.Vishal Kumar Jain

[Cause title accepted vide Court order dated 29.07.2022 made in CMP.No.12321/2022 in CRP.SR.No.37736/2019]

Prayer in CRP.No.2633 of 2022: Civil Revision Petition filed under Section 25 of the Tamil Nadu Building (Lease and Rent Control) Act, Act 18 of 1960 as amended by Act 23 of 1973 and Act 1 of 1980, praying to set aside the judgment and decree dated 17.12.2018 passed by the learned IX Judge, Rent Controller Appellate Authority, Small Causes Court, Chennai in RCA.No.600 of 2015 and confirming the judgment and decree dated 31.07.2015 passed by the learned XI Judge, Rent Controller, Small Causes Court, Chennai in RCOP.No.364/2006 and allow the CRP.

CRP.No.3182 of 2019 :

For Petitioner : Mr.S.S.Rajesh
For Respondents : Mr.N.Gyanchand Jain
[R2 to R6]



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CRP.No.2633 of 2022 :

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For Petitioners : Mr.N.Gyanchand Jain
For Respondent : Mr.S.S.Rajesh

COMMON ORDER

These two revisions were filed under Section 25 of the Tamil Nadu Building (Lease and Rent Control) Act, 1960, challenging the order passed by the Rent Control Appellate Authority in RCA.No.600 of 2015 arising out of a proceedings for fixation of fair rent in RCOP.No.364 of 2006 under Sec. 4 of the Act. Parties would be referred to by their rank before the trial Court.

2.The respondents before the Rent Controller are the tenants of a building which according to the landlady measures 615 sq.ft. It is located in a prime locality of the city at Plot No.4904, II Avenue, Anna Nagar, Chennai - 600 040. The original rent that was being paid at the time when the proceedings for fixation of fair rent was instituted was Rs.4,620/- p.m. The landlady laid RCOP.No.364/2006 claiming that the building in question will fetch a fair rent of Rs.31,442/-. According to the landlady, the building has two portions, and the one in the front was 17 years old and the one at the rear was 25 years old when the petition was laid.



3. The tenants have filed their counter denying the entire allegation of the landlady as regards the constructed area, the extent of the land (though without providing what according to them was the correct information). They pleaded that the age of the building was more than 28 years, and that the land value of the property would be now more than Rs.28.0 lakhs per ground, or about Rs.1,166/- per sq.ft.,

4.1 The dispute was taken up for trial by the Tribunal, before which both sides have examined their engineers as P.W.2 and R.W.1, through whom they have produced Ext.P2, Engineer's Report and Ext.R1, report. For determining the land value while P.W.2 has relied on Ext.P3 sale deed dated 22.11.2004, R.W.1 had relied on Ext.R3, sale deed dated 01.07.2005.

4.2. After considering the evidence before it, the Tribunal fixed the monthly fair rent at Rs.20,532/-. The salient features of the Order of the Tribunal are:

- There is unanimity between the two engineers examined on either side regarding the type of the building, which is the subject matter of the petition.



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- So far as the extent occupied by the building is concerned, while P.W.2 fixed it at 615 sq.ft., as claimed in the petition, the Rent Controller accepted the evidence of R.W.1, who fixed it at 590.60 sq.ft., and took exception to the fact that the landlady had not produced the title documents to ascertain the extent of the constructed area. In other words, the Tribunal accepted the extent of the building based on the evidence of the tenants.
- Regarding the age of the building, while P.W.2 fixed the age of the building as was pleaded by the landlady, the Tribunal fixed the age at 30 years as contended by the tenants.
- Turning to the costs of construction, the Tribunal rejected the evidence of P.W.2 who added 25% to the PWD rate of Rs.374/-, but instead fixed the cost of the construction at Rs.374/- itself.
- Turing to amenities, while P.W.2 fixed it at 5%, R.W.1 would assert it as 2%, but the Tribunal has fixed it at 3%.
- So far as the total extent of open space is concerned, while the petitioner claims it to be 146 sq.ft., the Tribunal determined it at 119 sq.ft., and fixed the total extent at 414.30 sq.ft.
- So far as the all critical land value is concerned, the Tribunal opted to



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rely on Ext.P3 sale deed, which P.W.2 has relied on, over Ext.R3 sale deed which R.W.1 has relied on. Accordingly, the Tribunal preferred to accept the land value of Rs.4,410/- per sq.ft., in terms of Ext.P3 over Rs. 1,166.60 as per Ext.R3. To this value, the Tribunal had added 10% annual appreciation for two years, and fixed the land value at Rs.4,840/- per sq.ft., After due calculation, it determined the fair rent payable at Rs.20,532/-.

To sum it up, except the land value and the type of construction (as regards which there is agreement between the parties), on all other aspects the Rent Controller has accepted the contentions of the tenants.

5. Aggrieved by the said order of the trial Court, the respondents/tenants approached the Rent Control Appellate Tribunal with RCA.No.600 of 2015. And before the Appellate authority, the tenants achieved an insignificant modification of the order of tribunal, when the appellate tribunal reduced the fair rent of Rs.20,532/- as fixed by the Rent Controller to Rs.20,525/-. This is now under challenge.

6.Challenging the same, both sides have preferred separate revisions. While



the landlady had preferred CRP.No.3182 of 2019, the tenants had preferred CRP.No.2633 of 2022.

7. The learned counsel for the landlady, the petitioner in CRP.No.3182 of 2019 would submit that he would rest content with the order of the appellate Tribunal. This implies he is not pressing CRP.No.3182 of 2019.

8. Opening the arguments for the tenants in CRP.No.2633 of 2022, the learned counsel submitted that the Tribunals below have almost mechanically adopted the valuation given in Ext.P3, and did not give any reason as to why it rejected Ext.R3. In this regard, the Tribunals have omitted to consider the socio-economic circumstances affecting the land valuation, and should have suitably reduced the land value to make it just and equitable for the tenants. Secondly, the Tribunal without any basis has granted 10% annual appreciation in the land value for two consecutive years that it determined it based on Ext.P3, which included the year of its purchase, and this is plainly impermissible in law. Reliance was placed on the authorities in *Greaves Ltd., Vs. V.S.Raghavan and another* [2007 (3) CTC 262] and *Central Bank of India and another Vs. A.Kotteswaran and*



another [2007-1-L.W.700].

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9. Per contra, the learned counsel for the landlady submitted that while the property covered under Ext.P3 sale deed dated 22.11.2004 is situated barely some 150 sq.ft. from the building of the landlady, the property covered under ExtR3 is located about 1½ km., away from it.

10.1 This Court carefully weighed the rival submissions. The only point in dispute is the value of the land which is a major component that affects the determination of the fair rent under Section 4 of the Act. If the entire order of the Tribunals are scrutinised, except the land value, on all the other components, the Tribunals have essentially sailed with the tenants and not with the landlady. This would imply that contrary to the contention of the tenants, the tribunals indeed have applied their mind to the facts before it.

10.2 Turning to the land value, the property covered under Ext.P3, sale deed covers 2 grounds and 800 sq.ft. or in other words 5,600 sq.ft., which was transacted for the sale consideration of Rs.2.47 crores (it works out to Rs.4,410/- per sq.ft.). While the subject matter of property is situated in



Plot No.4904 in II Avenue, Anna Nagar, Chennai - 600 040, the property covered under Ext.P3 is in Plot No.4674 in the same road. So far as the property covered under Ext.R3 is concerned, it covers an extent of 2,800 sq.ft., but it is not located in II Avenue, Anna Nagar, but in the 4th Street in Plot No.3083, Anna Nagar. It is not in dispute that II Avenue, where the building in question is, is a 100 ft. road, and that it has now become a busy commercial area though it is classified as residential-cum-commercial area. Indeed, even the subject matter of the present petition itself comprises of both residential and non-residential portion. Therefore, the property covered under Ext.R3 cannot be equated or matched with the property covered under Ext.P3.

11. Somewhere in the course of his arguments, the counsel for the tenants argued that the property covered under Ext.P3 was purchased by a leading business house in the city, and they, for certain reasons have jacked up the price manifolds than the market price. The statement though was made, was not backed up by any evidence to support it. Therefore, this Court does not find anything wrong in the Tribunal relying on Ext.P3.



12. The only aspect is whether the Tribunals were justified in giving an annual appreciation of 10% over the land value as determined in terms of Ext.P3. In terms of Ext.P3, the value of the site is Rs.4,410/- per sq.ft. This is as on November 2004. The Tribunal had granted an annual increase of 10% for two years and fixed the land value at Rs.4,840/-, and difference is Rs.430/- per sq.ft.

13. The petition for fixation of fair rent was filed in 2006. Today, it is in its 17th year of its institution. And, today, the present market value will have no relevance to something that is being debated and decided now. Therefore, this court considers the argument challenging the decision of the Tribunals to increase the market value of the property by 10% annually may have to be appreciated in the context of socio-economic consideration as affecting the property, and the loss the landlady might be suffering over the last 17 years. In this regard, this Court found that the tenants were not seen to be enthusiastic even to deposit the differential arrears of rent even in terms of their calculation. This court also needs to weigh where fairness lies.

14. In conclusion, this court does not find any merit in C.R.P.2633 of 2022



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and the same is liable to be dismissed. In fine, CRP.No.3182 of 2019 is dismissed as not pressed and CRP.No.2633 of 2022 is dismissed with costs and the fair rent fixed by the Rent Control Appellate Authority in its order in RCA No.600 of 2015 is upheld.

19.06.2023

Index : Yes / No
Speaking order / Non-speaking orders

To:

- 1.The IX Judge
Rent Controller Appellate Authority
Small Causes Court, Chennai.
- 2.The XI Judge
Rent Controller,
Small Causes Court, Chennai.
- 3.The Section Officer
VR Section, High Court, Madras.



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N.SESHASAYEE.J.,

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Pre-delivery order in
C.R.P.Nos.3182 of 2019 & CRP.No.2633 of 2022

19.06.2023