



C.R.P.No.1725 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.1725 of 2021

Mahendar Jain

... Petitioner

Vs.

Bhargavi

... Respondent

Civil Revision Petition is filed under Section 25(1) of Tamilnadu Buildings Lease and Rent Control Act, 1973 to set aside the Judgment and Decree dated 19.01.2021 in R.C.A.No.472 of 2017 on the file of learned IX Judge, Small Causes Court, Appellate Authority under Rent Control Act, Chennai in confirming the fair and decreetal order dated 06.04.2017 in R.C.O.P.No.1697 of 2015 on the file of XV Judge, Small Causes Court.

For Petitioner : Mr.B.Manivannan

For Respondent : Mr.M.Kempraj



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ORDER

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The present Civil Revision Petition has been filed to set aside the Judgment and Decree dated 19.01.2021 in R.C.A.No.472 of 2017 on the file of learned IX Judge, Small Causes Court, Chennai in confirming the fair and decretal order dated 06.04.2017 in R.C.O.P.No.1697 of 2015 on the file of learned XV Judge, Small Causes Court, Chennai.

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

The petitioner is the tenant and the respondent is the landlord and the respondent/landlord has filed R.C.O.P.No.1697 of 2015 to fix the fair rent of Rs.20,961/- for the front side portion of the respondent-premises at Door No.61, Jermiah Road Vepery, Chennai – 7. A counter was filed by the petitioner / tenant to fix the present rent of Rs.3,500/-. The court below upon considering submissions as well as engineers' report allowed the petition by fixing the fair rent for the petition premises at Rs.11,782/- from the date of petition, i.e., 09.10.2015. Aggrieved against the same, the petitioner preferred R.C.A.No.472 of 2017 to fix the fair rent of Rs.3,500/-. The appellate court upon considering the documents placed on record dismissed the petition and confirmed order passed by the court below. As against the same, the petitioner / tenant has filed the present Revision.



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3. The learned counsel for the petitioner would submit that the Rent Controller and the Appellate Authority ought to have seen that even the respondent/ landlord's engineer (P.W.1) had given the plinth area of petition premises as 328.38 sq.ft., and in the petition also the landlord pleaded the plinth area as only 317 Sq.ft., however, both the courts below erred in fixing the plinth area as 465 sq.ft., relying upon Ex.R.1, the release deed in favour of respondent / landlord.

4. The learned counsel for the petitioner also submit that the petition premises is situated in a service road adjoining vepery bridge and therefore, the road width in front of the petition premises is less than 20 feet, hence the property in such narrow stretch will not command any significant market value. Further, the entire property in the name of the respondent is only 465 Sq.ft., and therefore, no development could be carried out in such a small property and such property will not fetch higher market value, therefore, fixing of Rs. 1.5 Crores per ground is excessive and without any supporting evidence, thereby pleaded to allow the present petition.



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5. Resisting the same, the learned counsel for the respondent submits that the petition premises is more than fifty years old and constructed with lime mortar and roofing is madras terrace and not RCC. When the portion was let out for rent to the respondent, there was only wooden door and the respondent, at his expenses, erected the rolling shutter and laid ceramic tiles. Further, there is no basic amenities and the service road in front of the petition premises is only 12 sq.ft., wide and the entire stretch is 'no parking zone' and even for unloading business articles, the goods carrier could not be parked. Hence pleaded that based on the prevailing market value of the land and age and nature of construction of the building, the present rent of Rs.3,500/- itself is the fair rent for petition premises and hence prayed for dismissal.

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

7. On going through the documents placed on record, it is seen that the petition premises is situated at Vepery, jermiah Road, Chennai. Initially, the petitioner / tenant was put in tenancy for commercial occupation by the mother of the respondent / landlady in the year 2002 and at that time, the



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rent was fixed as Rs.2,000/ per month and amenities at Rs.1,500/ totaling a sum Rs.3,500/- The mother of the respondent / landlady subsequently released the property in favour of the present respondent / landlady and also died, then, the respondent / landlady became the absolute owner of the property. Besides the above, from the date of tenancy, to till date, the petitioner / tenant is paying rent at Rs.2,000/ per month and amenities at Rs.1,500/, totalling a sum of Rs.3,500/, without any enhancement in the rent or amenity charges, that too for the past 16 years. Hence the respondent / landlady filed the R.C.O.P. to fix the fair rent at a sum of Rs.20,961/- per month. The petitioner / tenant filed a detailed counter in the R.C.O.P. stating that Rs.3,500/ is the fair rent to the petition premises and prayed for dismissal of the R.C.O.P.

8. It is pertinent to point out that the Civil Engineers appointed on behalf of either sides were examined as witness before the court below and filed their valuation reports along with the documents. The learned Rent Controller, considering the submissions of the said witnesses on both sides and the exhibits, had fixed a sum of Rs.11,782/, as fair rent for the petition premises. Not being satisfied by the same, an appeal was filed before Rent Control Appellate Authority by the petitioner / tenant on two



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grounds :- (i) That the rent controller erroneously fixed the plinth area 294.32 sq.ft instead of 465 sq.ft and (ii) The rent controller fixed the land value without any supportive evidence and rent controller fixed the higher market value of the land. The Learned Rent Control Appellate Authority after considering all the facts and evidences, dismissed the appeal and confirmed the fair rent for the petition premises of Rs.11,782/- per month, as arrived by the court below. Seeking to set aside the same, the petitioner has come up with this petition.

9. Besides the above, it is to be noted that the report submitted by both the engineers, viz., on behalf of the respondent and the petitioner, states that the superstructure was constructed with brick work in cement mortar, Madras terrace roofing, ceramic flooring, rolling shutter and cement plastered walls in the ground floor and opined that the type of building as Type 1 construction. Accedeing to the said engineers' report, the Appellate Authority has classified the building as **Type 1 Construction**. Further, the engineer appointed on behalf of the petitioner has ascertained the age of the building as 30 years and the engineer on behalf of the respondent has ascertained the age of the building as 45 years. However, both the engineers have not taken scientific test on the building. The court below



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decided the **age of the building as 45 years**, based on the Ex R.1, Release Deed.

10. Moreover, the engineer appointed on behalf of the petitioner has awarded 7.5% towards basic amenities, whereas, the engineer on behalf of the Respondent awarded 5% towards basic amenities. Since only the electricity was available, Appellate Authority had awarded **7.5% towards the basic amenities**. Further, the age of the building was decided as 45 years and depreciation is given as 0.636 (1% per year). The petitioner's Engineer, P.W.1 has calculated the built up area of the ground floor as 328.32 Sq.ft., whereas, the respondent Engineer, R.W.2, calculated the plinth area of ground floor as 294.32 Sq.ft.

11. As far as the land value is concerned, according to the engineer of the petitioner, the market value of land was stated as Rs.2,73,60,000/- per ground by relying upon the sale deed Ex P.4 executed in the year 2016 and analysis report Ex P2. The engineer of the respondent has stated the value of land as Rs 50,00,000/- and has filed the sale deed and analysis report of the property situated in Door No.71, Old Door No. 33, previous door No 518, Maddox Street, Vepery, Chennai- 7, which is away from the



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petition premises. Further, the Respondent has calculated the land value based upon the UDS share of 300 Sq ft, as per Ex R4, Sale deed registered in 2012. After considering the report of both the Engineers, the locational advantages around the petition premises and escalation of land value, the court below has fixed the market value of the petition premises as Rs.1,50,00,000/- per ground.

12. Considering the facts and circumstances of the case and taking note of the fact that the court below has rightly considered the release deed dated 08.05.2009, which was released by the mother of the respondent / landlady in favour of the respondent / landlady, engineers report, location of the petition premises, age of the building, depreciation, market value, basic amenities and type of construction and fixed the fair rent and taking note of the fact that right from the year 2002, the rent has not been increased that too for the property, which is located in the prime location and the fair rent fixed by the court below, as Rs.11,782/-, is very normal price and the amount being paid by the petitioner / tenant as Rs.3,500/- is very meagre, this Court is of the view that the order passed by the order dated 19.01.2021 in R.C.A.No.472 of 2017 on the file of learned IX Judge, Small Causes Court, Chennai in confirming the fair and decretal order



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dated 06.04.2017 in R.C.O.P.No.1697 of 2015 on the file of XV Judge, Small Causes Court, Chennai, is perfectly valid and does not require any interference by this Court. Further, the respondent / landlord has submitted a statement of rental dues payable to the tune of Rs.8,46,960/- by the petitioner / tenant after deduction of the rent paid at the rate of Rs.11,782/- per month.

In view of the above, the present Civil Revision Petition is dismissed and the arrears of rent shall be paid by the petitioner without any further delay, i.e., on or before 31.05.2023. No costs.

19.04.2023

Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Order
ssd

To

1. The IX Judge,
Small Causes Court,
Chennai
2. The XV Judge,
Small Causes Court, Chennai



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V.BHAVANI SUBBAROYAN, J.,

ssd

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