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C.R.P.(NPD)Nos.1615 & 1618 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)Nos.1615 & 1618 of 2020
and C.M.P.Nos.9759, 9760, 9796 & 9798 of 2020

M/s.Punjab National Bank
Ground floor, No.321/156
Linghi Chetty street
Chennai-600 001.

... Petitioner

Vs.

1.Taheri K.Dhanaliwala (died)
2.Sabbir K.Dhanaliwala
3.Huzefa S. Dhanaliwala
Represented by her Power Agent
Sabbir K.Dhanaliwala
4.Rashida A.Vagh
3-B Post Office Road
Krishnaswami Nagar
Ramanathapuram, Coimbatore-641 045.

(Represented by her Power Agent
Sabbir K.Dhanaliwala)



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5.Muneera Ghosh
Represented by her Power Agent
Sabbir K.Dhanaliwala

6. Fatema Taheri Dhanaliwala

7.Rashida A.Vagh
D/o.Late Taheri K.Dhanaliwala

... Respondents

(1st respondent viz., Taheri K.Dhanaliwala died and the respondents 6 & 7 brought on record as the legal heirs of the deceased 1st respondent vide order of this Court dated 23.08.2023 made in C.M.P.Nos.5182 & 5185 of 2022 in C.R.P.(NPD)Nos.1615 & 1618 of 2020)

COMMON PRAYER: Civil Revision Petitions are filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by the Act 23 of 1973 against the judgment and decree dated 11.12.2019 in R.C.A.Nos.391 & 304 of 2017 on the file of the VII Judge, Court of Small Causes, Chennai, confirming the order and decree dated 28.03.2017 passed in R.C.O.P.No.663 of 2015 on the file of the XVI Judge, Court of Small Causes, Chennai.

In both the CRPS

For Petitioner : Mr.M.Aravind Subramaniam
Senior Counsel
for Mr.Martin D.Tharakan



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For RR2 to 5 : Ms.Rukmani
for Mr.K.Shivakumar

COMMON ORDER

The petitioner Bank before me is the tenant. The revisions have been filed against a common judgment passed in R.C.A.Nos.391 & 304 of 2017 dated 11.12.2019. The two RCAs' arose against the order passed in R.C.O.P.No.663 of 2015 dated 28.03.2017.

2. There is no dispute between the jural relationship of the landlords and the tenant. The petitioner is the tenant and the respondents are the landlords. They entered into a lease agreement on 21.09.2007. As per the lease agreement, the period of tenancy was from 01.04.2005 to 31.03.2010. The extent given in the schedule was 3270.69 sq.ft. as the area under occupation of the petitioner.

3. After the expiry of the lease, the landlords filed R.C.O.P.No.663 of 2015 for fixation of fair rent. In the said petition, they had made a claim that they are entitled to a sum of Rs.1,61,091/- towards fair rent.



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4. This was stoutly resisted by the tenant Bank stating that the extent under occupation is only 3270.69 sq.ft., but the claim that had been made in the R.C.O.P. was for an extent of 3771.56 sq.ft. Apart from that, they stated that the premises does not possess the parking area and it is having only one entrance that too on the ground floor. It was also pleaded that the area in which the building is situated is a very narrow one, there is no land appurtenant and the entire area is congested. The age of the building was denied as 60 years old and it was pleaded, it is 80 years old. In fine, they had resisted each and every one of the points of the landlords and had stated that the commercial rate in the area cannot be taken, since the petitioner is in occupation of only the ground floor.

5. On the side of the landlords, one Expert Engineer Mr.Aeez Mohideen was examined as P.W.1 and Exs.P1 to P4 were marked. On the side of the tenant Bank, two witnesses were examined namely, R.W.1 and R.W.2 and the documents under Exs.R1 to R5 were filed.



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6. After considering the arguments of either side as well as the evidence that had been tendered, the fair rent was fixed at Rs.1,00,465/- by the Rent Controller. Aggrieved by the same, R.C.A.No.304 of 2017 was preferred by the civil revision petitioner/tenant Bank and R.C.A.No.391 of 2017 was preferred by the landlords/respondents herein.

7. The landlords sought for enhancement of fair rent in their appeal and the tenants wanted to reduce the fair rent fixed by the Rent Controller. R.C.A.No.304 of 2017 preferred by the tenant was dismissed, whereas R.C.A.No.391 of 2017 filed by the landlords was allowed enhancing the fair rent from Rs.1,00,465/- to Rs.1,60,183/-.

8. Against these findings, C.R.P.(NPD)No.1615 of 2020 has been preferred against R.C.A.No.391 of 2017 and C.R.P.(NPD)No.1618 of 2020 has been preferred against R.C.A.No.304 of 2017.



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9. Heard Mr.M.Aravind Subramaniam, the learned Senior Counsel appearing for Mr.Martin D. Tharakan, the learned counsel for the petitioner and Ms.Rukmani, the learned counsel representing Mr.K.Shivakumar, the learned counsel for the respondents. I have carefully perused the entire records.

10. Mr.M.Aravind Subramaniam, would putforth two arguments, one was that the parties had agreed that the lease area is only 3270.69 sq.ft. and the fixation of fair rent for 3771.56 sq.ft. is erroneous and contrary to the lease deed. The second submission was that there are no schedule-I amenities available in the premises and therefore, both the Courts below had erred in fixing the fair rent.

11. Ms.Rukmani, would argue that both the submissions are erroneous. In so far as the lease deed is concerned, what was leased under the document dated 21.09.2007 is only the carpet area and not the entire area under the occupation of the tenant. On the second submission of the petitioner Bank, she would state that R.W.1 and R.W.2 had entered



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the witness box and had admitted that all the three basic amenities viz., water, electricity and sewerage, are available in the premises. Therefore, both the grounds raised by the petitioner do not survive for consideration.

12. I have gone through the lease deed dated 21.09.2007. As rightly pointed out by Ms.Rukmani, the premises under occupation is the ground floor, but the extent is specifically mentioned as “carpet area”. The fixation of fair rent under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act is not confined only to the carpet area, but for the entire portion under the occupation of the tenant including the land appurtenant, if any. Before the Rent Controller, P.W.1 has entered the witness box and has filed a report stating that the area under occupation is 3771.56 sq.ft. There is a difference between the area under the actual occupation and the area given as carpet area. The Rent Controller, as already pointed out, is concerned with the entire area and not merely the area leased out as “Carpet area”.



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13. In so far as the valuation of the land is concerned, the Rent Controller has relied upon Ex.P3, which is a sale deed dated 18.11.2014. It is one year prior to the filing of the R.C.O.P. under the Act 18 of 1960 as amended by the Act 23 of 1973. The Rent Controller only looks at the value of the property on the basis of the same principles as would be applied under the Land Acquisition Act. That is to say, to arrive at the value of the land under Section 4 of the Act 18 of 1960, the same principles, which are applied under Section 23 of the Land Acquisition Act 1 of 1894 have to be followed. Unfortunately, the tenant has not filed any document in order to arrive at the value of the land. Unless and until a contra document was available before the Court, the Court did not have any other option than to proceed on the basis of Ex.P3 and the analysis report under Ex.P4. Therefore, I cannot find any mistake on the part of the Courts below in adopting Ex.P3 for fixation of value of the land.

14. In so far as the basic amenities are concerned, both the Courts below have concurrently found that R.W.1 and R.W.2 have in fact



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conceded to the statement that the building possess all the basic and schedule-I amenities. Therefore, sitting under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, I am not in a position to re-appreciate the evidence. In the upshot of the discussion, both the Civil Revision Petitions deserve only the order of dismissal and accordingly, they are dismissed.

15. At this stage, Mr. M.Aravind Subramaniam, would submit that a sum of Rs.14,47,988.25 has been deposited by the petitioner Bank pursuant to the interim order of this Court. The respondents/landlords are entitled to withdraw the said amount on filing an appropriate application before this Court.

16. Mr.M.Aravind Subramaniam, would also submit that pending the litigation, the fair rent that had been fixed by the Rent Controller has been paid from 16.09.2020. The Bank would be answerable only for the difference of the amount that had already been paid as against the amount, which has been confirmed by me today.



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17. With the above observations, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

25.08.2023

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No

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To

- 1.XVI Judge, Court of Small Causes, Chennai.
- 2.VII Judge, Court of Small Causes, Chennai.



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V.LAKSHMINARAYANAN,J.

Kj

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