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C.R.P.No.538 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2023

PRONOUNCED ON : 07.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.538 of 2022

and

C.M.P.No.2828 of 2022

M/s.Dayasadan
Rep.by its General Secretary,
Ratanchand Daga
No.373, Konnur High Road,
Chennai – 600 012.

(Cause title amended vide Court order dated
14.02.2022 made in C.M.P.No.1770/2022
in C.R.P.SR.No.64871/2021)

... Petitioner

Vs.

The Madras Pinjrapole,
Rep.by its Honorary Secretary,
Sri Vitaldas Jagnathadas,
No.383, Konnur High Road,
Chennai – 600 012.

... Respondent

Prayer: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings Lease & Rent Control Act, as amended by Act 23 of 1973 and by Act 1 of 1980, praying to set aside the judgment and decree dated 23.12.2020 passed in R.C.A.No.884 of 2006 by the Learned VIII Judge, Court of Small Causes at Chennai, [Rent Controller Appellate Authority]



modifying the fair and decreetal order passed in R.C.O.P.No.722 of 2005 dated 04.04.2006 by the Learned XI Judge, Court of Small Causes at Chennai, [Rent Controller]

For Petitioner : Mr.Ashok Menon
For Respondent : Mr.V.Lakshmi Narayanan
For Mr.T.Srikanth

ORDER

The Civil Revision Petition has been filed, challenging the judgment and decree dated 23.12.2020 passed in R.C.A.No.884 of 2006, modifying the fair and decreetal order dated 04.04.2006 passed in R.C.O.P.No.722 of 2005.

2. The revision petitioner is the tenant and he is in occupation of the petition premises, measuring about 35.58 grounds (about 6 acres). In the subject property, 15 structures as tabulated by the landlord were constructed by the tenant. The office room was constructed by the Lions Club. The cost of the construction was to be considered as a donation by the Lions Club. Item Nos.13-15 were constructed for dwelling purposes and therefore, the revision petitioner states that they are not liable to pay rent as demanded by the landlord. The revision petitioner claims that they have spent about Rs.9,08,487.75 for construction works and the income and expenditure of the revision petitioner is monitored by the Government of Tamil Nadu.



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3. The revision petitioner Society has been in occupation of the schedule premises from the year 1954 onwards and the petitioner is a Charitable institution, commenced its functioning under the order of the Government in G.O.No.1761, Home Department dated 23.06.1955.

4. The grievances of the respondent/landlord is that the fair rent has not been settled and even now, the arrears of fair rent as directed by the Rent Appellate Authority has not been settled. The respondent/landlord is made to suffer unnecessarily for a longer period and the revision petitioner is dragging on the proceedings, which all are pending before the Courts and even the RLTOP.No.371 of 2021 filed for eviction of the tenant under the TN Act 42 of 2017 is also prolonged and protracted on account of the pendency of the present Civil Revision Petition.

5. The Rent Controller considered the issues regarding the fixation of fair rent and accordingly, fixed a sum of Rs.2,85,314/- per month as fair rent to be paid by the revision petitioner/tenant to the respondent/landlord. The revision petitioner/tenant preferred an appeal in R.C.A.No.884 of 2006 against R.C.O.P.No.722 of 2005, wherein the Rent Control Appellate Authority adjudicated the issues on merits and modified the order passed by



the Rent Controller on 23.12.2020 and accordingly, fixed a sum of Rs.2,75,930/- as monthly fair rent to be paid by the revision petitioner/tenant to the respondent/landlord. The Rent Control Appeal was partly allowed and the fair and decreetal order passed by the Rent Controller was modified. Challenging the said order dated 23.12.2020, the present Civil Revision Petition is filed.

6. The learned counsel for the revision petitioner contended that fair rent fixed by the Rent Control Authority is not only exorbitant, but also made without considering the expenditure met out by the revision petitioner / tenant for building constructions. The Auditor report marked as document would reveal that the petitioner/tenant, by spending huge amount, constructed the building for the maintenance of inmates and those facts were not taken into consideration by the Rent Control Appellate Authority. It is contended that as per the petitioner's Engineers Report, the fair rent assessed was approximately about Rs.77,000/- and therefore, the Civil Revision Petition is to be considered.

7. The learned counsel for the petitioner/tenant drew the attention of this Court with reference to the findings of the Rent Controller, stating that



the landlord has not proved that the building was constructed by him and accordingly, the deposition of the tenant was taken into consideration for arriving a conclusion that the buildings were constructed by the tenant. However, the Rent Control Appellate Authority contrary to the provisions, made a finding that the land belongs to the respondent/landlord and therefore, the burden of proof lies on the tenant to prove that the superstructures were constructed by them. However, the tenant has not produced any document to substantiate the said ground in his appeal.

8. It is further contended that the RCOP itself is not maintainable, in view of the Government order, granting exemption to Charitable Institutions. The landlord being a Charitable Institution, cannot maintain the RCOP under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and on that ground also, the petition instituted by the landlord is liable to be rejected.

9. In support of the contentions, the learned counsel for the revision petitioner relied on the following judgments:

(a) The Hon'ble Division Bench of this Court in the case of ***ML Jacob Sheriff (D) by Lrs. Vs. Rajrani Devi, reported in 2004 1 CTC 64,***



held as follows:

“Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section 2(2) – Building – Building allowed to be constructed on vacant land let out by landlord is not building let out by landlord and it cannot be valued as building as it is not building let out by landlord in terms of Section 2(2) of Act – Such building can be valued only as “vacant land” appurtenant land or amenity as the case may be.”

(b) In the case of ***Sherwood Educational Society, Madras Vs. Hussainy Begnm Namazie and others, reported in 1998 LW 212***, wherein this Court held as follows:

“In computing the fair rent for a building under Tamil Nadu Act 18 of 1960, it is not correct to include within the term “building” the superstructure constructed by a tenant after the letting, and the area of the land on which the tenant has raised the superstructure, and evaluate for arriving at the total cost referred to in S.4(3)(a).”

(c) In the case of ***M/s.Maya Appliances and Control Equipment, rep.by its Partner Thiru.Varadarajan and another, Vs. A.Sulochana Reddy and another, reported in 1996 (I) CTC 567***, this Court observed as follows:

“Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section – 4 – construction of building by Landlord –



Relevancy of Engineers evidence – Engineer is not competent to give evidence as to who constructed the building. When landlord has produced building plan and plinth area of building is also more or less same as shown in the plan, an inference can be drawn that entire structure was made by the landlord.”

(d) In the case of ***A.Emberumanar Vs. K.Raghavan, sole prop: Pratap Art Productions, reported in 1998 1 LW 568***, this Court held as follows:

“ - Duty of the landlord to produce the Plan or map/sanctioned plan, etc., - Failure to produce – Inference adverse to the landlord can be drawn by the Court by reason of such failure, unless the non production is explained.”

(e) In the case of ***Pazhaniyandi Vs. Kalyanasundaram, reported in MANU/TN/0224/1988***, wherein it is observed as follows:

“7. The question as to whether the petitioner would be entitled to apply for eviction in view of the expanded definition of 'landlord' would arise only if the provisions of the Rent Control Act could be invoked by the landlord. The basic question which, however, falls for consideration in this case is whether the premises are exempt from the operation of the Rent Control Act in view of the recital in the Trust Deed. There is nothing in the Trust Deed to show that it was ever intended



WEB COPY

C.R.P.No.538 of 2



by the settlor to make provision for income of the Archakas by permitting them to let out the property. If that was the object, undoubtedly the Trust would have become a private Trust. The purposes which are set out in the Trust Deed show that the endowment is for the purpose of residence of persons doing pooja at the temples mentioned therein and also for the purpose of other charitable objects for which expenses are to be met from and out the income of the Trust property.”

10. The learned counsel for the respondent/landlord objected the said contentions by stating that the revision petitioner is a chronic defaulter in payment of rent to the respondent/landlord for long time. Even on earlier occasions, the revision petitioner was a defaulter and agreed rent was not paid to the landlord on several occasions and thus, the respondent/landlord was forced to file a petition for fixation of fair rent. The Rent Controller and the Rent Control Appellate Authority adjudicated the issues elaborately and fixed the rent, taking note of the market value and other criteria fixed under the provisions of the Act and thus, there is no infirmity as such in respect of the order passed by the Rent Control Appellate Authority. The Rent Control Appellate Authority fixed the fair rent as Rs.2,75,930/- as monthly rent and the said fair rent fixed by the Rent Control Appellate Authority has not been paid by the revision petitioner / tenant for the past about 214 months. The



arrears of rent due to the respondent/landlord as of now is Rs.5.8 Crores. In the above circumstances, the respondent/landlord is forced to file eviction petition under TN Act 42 of 2017 on the ground that there is no agreement between the parties after the enforcement of the New Act and thus, the revision petitioner is liable to be evicted.

11. The said R.L.T.O.P.No.371 of 2021 pending on the file of the XI Small Causes Court / Rent Court, Chennai, is prolonged at the instance of the revision petitioner/tenant on the ground that the present Civil Revision Petition is pending before this Court. Even the default in payment of rent is also a ground for eviction under the New Act. Once the fair rent is fixed by the competent Court and the said rent has not been paid for a period of 214 months by the tenant, then the tenant is liable to be evicted on the said ground also.

12. With reference to the maintainability ground raised, the learned counsel for the respondent reiterated that the Charitable institution under the Government order can waive the exemption and institute RCOP proceedings. In the present case, the respondent/landlord waived the exemption granted and accordingly, instituted fair rent proceedings under



the Act. That apart, the respondent is an Association registered under the Societies Registration Act and not a Charitable Trust. Even presuming that it is a Trust under the Government order, the respondent is entitled to waive the exemption granted and thus, the said ground is untenable. There is no dispute in respect of the ownership of the subject property of the respondent/landlord. The petitioner is in occupation of 35.58 grounds of vast area in Chennai city and paying a sum of Rs.60/- per month.

13. That apart, the respondent is also in need of the place for the purpose of performing Charitable services. The claim of the petitioner/tenant that they have put up superstructures was not established. Even the building plan approval or necessary sanction obtained from the competent authorities were not marked as documents and therefore, now the revision petitioner tenant cannot turn around and say that the landlord should prove the building constructions. The tenant, who claims that he constructed building, has to establish that he had obtained proper permission from the landlord and building plan approval from the competent authority and constructed the building. Absolutely, no such documents were filed in the RCOP proceedings and thus, the ground raised in this regard by the tenant is unsustainable.



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14. The learned counsel for the respondent in this regard, relied on the following judgments:

(a) In the case of ***K.Syamala Vs. Khaleel Basha made in C.R.P.(NPD).Nos.2231 and 2232 of 2016 dated 22.03.2018***, wherein the Court made the following observations:

*“12. The Hon'ble Supreme Court in its judgment in **VITHAL N.SHETTI AND ANOTHER VS. PRAKASH N. RUDRAKAR AND OTHERS [2003 (1) SCC 18]** has held that to show the bonafides of the tenant, he should have pleaded and proved that he had obtained a written permission for raising superstructure and obtained approval from the Municipal Corporation and prove it by calling the original record from the custody of the Municipal Authorities. If the tenant fails to prove the same by raising specific pleadings, eviction ordered was upheld.”*

(b) In the case of ***Abdul Salem and another Vs. Renukambal Ammal (Deceased) and 3 others*** passed in ***C.R.P.(NPD).No.136 of 2007 dated 12.11.2014***, the Hon'ble High Court of Madras made the following observations:

*“11. In **Hindustan Petroleum Corporation Ltd., Vs. Dilbahar Singh** reported in 2014 (5) CTC 217 it has been held*



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that;

“We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on reappreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated



above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

15. Relying on the above judgments, the learned counsel for the respondent reiterated that the petitioner's contention that they put up superstructure was not substantiated through any documents. Per contra, the respondent/landlord has filed Exs.P2 to P8 to show that they had put up the superstructures.

16. It is not in dispute that the respondent is the absolute owner of the subject property and it was rented out to the petitioner/tenant for a sum of Rs.60/- per month. Thus, the respondent/landlord preferred RCOP for



fixation of fair rent and after elaborately considering the criteria in consonance with the provisions of the Act, the Rent Control Appellate Authority fixed the fair rent as Rs.2,75,930/- per month. Thus, there is no infirmity. The revision petitioner/tenant has to pay the arrears of fair rent for 214 months, which comes around Rs.5 Crore 80 Lakhs.

17. Considering the arguments, the factual findings both the Rent Controller and the Rent Control Appellate Authority are consistent and the documents filed by the respective parties would reveal that the petitioner/tenant has not filed any document to prove that the tenant constructed building by spending money. In the absence of any document including building plan approval, permission or sanction from the competent authorities, the Court cannot form an opinion that the tenant put up the superstructures. A tenant claiming that he spent and put up superstructures in the rented out premises, has to establish the same through documents and evidences. Mere statement in this regard would be insufficient to arrive a conclusion that they put up superstructures in the subject premises.



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18. As per the Engineers Report, the office room alone was constructed by the lions club and donated to the petitioner, which was excluded by the Rent Control Authority, while considering the fixation of fair rent. In respect of other pleadings, the revision petitioner tenant has failed to establish that they have constructed the same and this Court do not find any infirmity, since the petitioner has not produced any document to establish the same, except the Auditor's report prepared by the revision petitioners themselves, which cannot be taken into consideration for the purpose of arriving a conclusion. Merely stating in the Auditor's report that huge amount has been spent for building construction, in the absence of any documents, cannot be relied upon and thus, the findings in this regard by the Rent Control Appellate Authority is in consonance with the principles established under law. In respect of the office room, Ex.P9 photo clearly shows that there is inscription on the wall of office room that the same was put up by lions club and donated to the petitioner/society. The said fact was admitted by R.W.2 in his cross-examination. Thus, it was established before both the Courts that except the office room, other superstructures were put up only by the landlord and the revision petitioner/tenant has failed to prove that they put up the superstructures by spending their own money.



19. In the context of fixation of fair rent, the Rent Control Appellate Authority considered the type of building with reference to Ex.P2, the landlord's engineers report, the building type, age of the building, plinth area, cost of construction, basic amenities, depreciation, apportioned area, schedule amenities, land value were considered by the Rent Control Appellate Authority for fixing the fair rent to be paid by the revision petitioner/tenant to the respondent/landlord. The fair rent calculation was made as under:

FAIR RENT CALCULATION

Cost of Construction arrived by the learned Rent Controller is adopted by this authority as it is (except the cost of construction for office room)

<i>Cost of Construction</i>	=Rs. 54,45,904
<i>(-) Cost of Construction of Office Room</i>	=Rs. 3,63,951

	=Rs. 50,81,953
<i>(Add) 15% for Basic Amenities</i>	=Rs. 7,62,292

	=Rs. 58,44,245
<i>(-) Depreciation 1% for 52 Years</i>	=Rs. 30,39,007

	=Rs. 28,05,238
$\text{Land Value} = \frac{20,00,000 \times 28,471.5}{2400}$	=Rs. 2,37,26,250
<i>(Add) Cost of Construction</i>	=Rs. 28,05,238



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22. As far as the Engineer's report submitted by the petitioner/tenant is concerned, the Court found many discrepancies in assessing the property and therefore, the said assessment made by the petitioner/tenant was not accepted and this Court do not find any infirmity in this aspect.

23. It is unacceptable that the revision petitioner/tenant is paying a sum of Rs.60/- per month for the vast extent of property, measuring about 35.58 grounds in Chennai city for several years and this happened on account of the fact that the respondent/landlord is a Charitable Institution. They have not initiated appropriate steps during the relevant point of time.

24. In this regard, the learned counsel for the respondent states that there were certain difference of opinion amongst the office bearers of the respondent/landlord, which took long time for instituting proceedings and after change of office bearers, actions were initiated for fixation of fair rent and subsequently, for eviction of the revision petitioner/tenant from the premises as they are chronic defaulters in payment of rent as per the fair rent fixed.



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25. Pertinently, the plinth area of the office room is excluded from the total plinth area of buildings and the Rent Control Appellate Authority has fixed the Fair Rent at Rs.2,75,930/- per month.

26. The facts disputed between the parties were elaborately adjudicated both by the Rent Controller and by the Rent Control Appellate Authority. The criterias adopted for fixation of fair rent are in consonance with the provisions of the Act and were taken into consideration by the Courts. The documents filed regarding construction of superstructures were also taken into consideration and thus, this Court do not find any infirmity in respect of the method, through which, the fair rent was fixed by the Rent Control Appellate Authority. The modification of fair rent fixed by the Rent Control Appellate Authority is in consonance with the established principles, since the Rent Control Appellate Authority has taken into consideration the type of building, age of the building, plinth area, cost of construction, basic amenities, depreciation, apportioned area, schedule amenities, land value etc., for the purpose of calculating the fair rent in accordance with the provisions of the Act. The elaborate consideration made by the Rent Control Appellate Authority is in consonance with the provisions of the Act and there is no infirmity as such.



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27. That apart, the revision petitioner/tenant is in occupation for long years and now, the landlord has filed a petition for eviction under the New Act. The arrears of rent is to be settled for about 214 months and therefore, the revision petitioner/tenant is a chronic defaulter in payment of rent and for all these reasons, this Court is not inclined to hold that the order passed by the Rent Control Appellate Authority, modifying the order passed by the Rent Controller is infirm.

28. Accordingly, the order dated 23.12.2020 passed in R.C.A.No.884 of 2006, modifying the fair and decreetal order passed in R.C.O.P.No.722 of 2005 dated 04.04.2006 stands confirmed and consequently, the Civil Revision Petition in C.R.P.No.538 of 2022 is dismissed. The revision petitioner/tenant is directed to settle the arrears of rent to the respondent/landlord within a period of one month from the date of receipt of a copy of this order. In the event of failure in payment of fair rent as fixed by the Rent Control Appellate Authority, the revision petitioner/tenant is liable to be evicted. No costs. Connected miscellaneous petition is closed.

07.02.2023

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Index : Yes

Speaking order

Neutral Citation : Yes



C.R.P.No.538 of 2



To

WEB COPY

- 1.The VIII Judge,
Court of Small Causes,
Chennai.
- 2.The XI Judge,
Court of Small Causes,
Chennai.



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C.R.P.No.538 of 2



S.M.SUBRAMANIAM, J.

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C.R.P.No.538 of 2022

07.02.2023