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CRP.No. 1898 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

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M/s. Optical Plaza

Represented by its Proprietor Abul Hasan

Shop No.1, Door No.119, Old Door No.53/1

Purasawalkam High Road

Chennai - 600 007.

...Petitioner

Versus

1. Yaseen

2. Mahira

Both are represented by their

Power Agent M/s. Mahnoor Enterprises

Represented by Naina Mohammed

.. Respondents

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960 as amended by Act, 23 of 1973 and Act 1 of 1980), prays to set aside the judgment and decree dated 12.02.2020 in RCA.No. 639 of 2015 (on the file of the VIII Judge, Court of Small Causes at Chennai, (Rent Control Appellate Authority) modifying the fair and decretal order passed in RCOP.No.942 of 2012 on the file of the XVI Judge, Court of Small Causes, Chennai) (Rent Controller), dated 31.08.2015.



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For Petitioner : M/s.Padmaja Mohan

For Respondent : Mr.N. Krishnamurthy

ORDER

The revision petitioner is the tenant and the respondents are the landlord. This Civil Revision Petition is filed as against the judgement and decree passed in R.C.A.No. 639 of 2015, dated 12.02.2020 modifying the fair rent for premises in question at Rs.42,145/- p.m. from the date of petition on 06.04.2012.

2. Originally R.C.O.P.No. 942 of 2012 was filed by the landlord under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960 [as amended by Act 23 of 1973] to fix the fair rent for the premises in question.

3.The premises in question is basement and ground floor was let out to the tenants for carrying on non-residential business. According to the



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landlord, a monthly rent was fixed at Rs.12,000/-per month. The premises in question has electricity connection, water supply and also drainage facilities. The premises is located in a thickly populated commercial hub in the city of Chennai. There are hospitals, Schools, Shopping centres, Banks, Restaurants and various other commercial establishments located around the premises in question. The Central Railway Station is also at a stones throw away. The building in question is about 25 year old. According to the landlord, the rent per month was fixed at least at Rs.12,000/-, taking note of the commercial advantages the premises possessed. Therefore, for fixing the fair rent at Rs.64,361/-, the landlord has filed the Original Petition.

4. Opposing the petition, the tenant has filed a counter affidavit stating that, admittedly, he is a tenant under the respondents herein paying a monthly rent at Rs.12,000/- per month by virtue of a lease agreement dated 08.06.2004. The age of the building is about 25 years. The building is Type A1 structure in nature. The maintenance of the building is very poor and it is in an entirely damaged condition. The tenant is already paying a sum of Rs.12,000/- per month towards rent. Therefore,



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the tenant prayed for dismissal of the Original Petition by contending that the present rent which is being paid by him, is proper and it needs no enhancement.

5. Before the learned Rent Controller, one PW1-M.Sathyanarayanan and PW2-T.Madhavan were examined on behalf of the respondents/landlord and documents were marked as Ex.P.1 to Ex.P.5. On the side of the tenant, RW1-Azeez Mohideen, was examined and Ex.R1 to Ex.R4 were marked.

6. The learned Rent Controller, having regard to the locational advantages and the amenities provided in the demised building, as also the land value, based on the documents arrived at a sum of Rs.42,556/- per month as fair rent payable by the tenant from 06.04.2012.

7. Aggrieved by the fair rent fixed by the learned Rent Controller, the tenant has preferred an appeal in R.C.A. No. 639 of 2015 before the learned Rent Control Appellate Authority. It was contended before the Appellate Authority that the fair rent fixed by the learned Rent



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Controller is not in accordance with the amenities provided to the tenant.

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8. The Appellate Authority, on hearing the learned counsel for both sides, taking into consideration the report of the Engineer under Ex.R.1 concluded that the age of the building is 25 year old. The Appellate Authority has also rendered a finding that the learned Rent Controller has adopted plinth area based on the Ex.R1 Engineer report and therefore, the appellant may not have any grievance over the plinth area taken by the learned Rent Controller. The learned Rent Controller has adopted PWD rates for the cost of construction, which does not require any interference. The learned Rent Controller has adopted the apportioned area as mentioned in Ex.R1 Engineer Report and therefore, the petitioner may not have any grievance over the apportioned area taken by the learned Rent Controller. The landlords have relied upon Ex.P4 to show the market value of the land, and the petitioner has relied upon Ex.R3 sale deed to prove the market value of the land. The property covered under Ex.P4 is situated at Door No. 114, Purasawalkam High



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Road. The property covered under Ex.R3 is situated at Door No. 289, Purasawalkam High Road. The petition schedule premises is situated at Door No.119 of Purasawalkam High Road. The above said properties are situated in the very same road, but the numbers are different. It is admitted fact that the Purasawalkam High Road is very long road. The landlords' engineers have arrived at the market value of the land at Rs.2,40,00,000/- per ground, on the contrary, the tenant's engineers have arrived at the market value of the land at Rs.1,24,20,000/-. Both sample sale deeds were executed in the year of 2011, but the RCOP has been filed in the year of 2012. The learned Rent Controller, after considering the locational advantages and disadvantages, arrived at the market value of the land at Rs.2,00,00,000/- per ground. The authority has also opined that since the property is located in the busy commercial area at Purasawalkam, Rs.2,00,00,000/- would be the actual market value of the land in the year of 2012 in the locality and therefore, the market value arrived at by the learned Rent Controller does not require any interference. Since the respondents'/Engineer has admitted that bore-well, water tank, electric motor and mosaic floor are available in the petition schedule premises in his report, 3% awarded for schedule I amenities is correct and



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it does not require any interference. Aggrieved by the same, the landlord has come forward with this Civil Revision Petition.

9. The learned counsel appearing for the landlords in the Civil Revision Petition submitted that the Rent Control Appellate Authority grossly erred in fixing the fair rent payable by the petitioner herein at Rs.42,145/- per month. The learned Rent Control Appellate Authority ought not to have concluded that the market value of the land in the vicinity of the petition premises would be Rs.2,00,00,000/- per ground in the year 2012. The learned Rent Control Appellate Authority erred in not accepting the value of land as per Ex.R3 sale deed which had been filed on behalf of the petitioner herein as evidence of the market value of the land. The learned Rent Control Appellate Authority failed to appreciate that both Exs.R3 and Ex.R4 were in respect of different properties in Purasawakkam High Road itself and that while Ex.P4 had been filed by the respondents/landlords' Engineer praying to fix the value of the land at Rs.2.40 Crores, as per Ex.R3, the value of the land as determined by the Engineer for the petitioner herein was Rs.1,24,24,000/- per ground. Therefore, the learned counsel for the Revision Petitioner has prayed for



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restoration of the order passed by the learned Rent Controller by allowing the Civil Revision Petition.

10. Per contra, the respondents are the absolute owners of the schedule mentioned property situated at Shop No.1, Door No.119, Old No. 53/1, Purasawakkam High Road, Chennai - 600 007 and the petitioner/appellant continues to be the tenant and occupied the said property for the purpose of running a shop on a monthly rent and now, he is using the above said schedule mentioned premises for a non-residential purpose. Initially, the petitioner/appellant paid Rs.12,000/- as the monthly rent for the schedule property and the same was enhanced to Rs.42,556/- p.m. by the order passed by the XVI Judge, Small Causes Court, Chennai in RCOP.No. 942 of 2012 and it was revised by the Appellate Court, VIII Small Causes Court, Chennai to Rs.42,145/- per month. As per the judgment dated 12.02.2020 passed in RCA.No. 639 of 2015 in RCOP.No. 942 of 2012, the fair rent has been revised by the VIII Court of Small Causes, Chennai, from Rs.42,556/- to Rs.42,145/- p.m. for the schedule premises in favour of the tenant. Therefore, the petitioner/tenant is liable to pay the modified fair rent from 01.04.2012 to



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29.02.2020 till the legal notice caused to the petitioner/appellant on 03.03.2020 for the period of 95 months (Rs.42,145/- x 95 months), which accrued to Rs.40,03,775/- and after the deduction of the paid rents for a period from 01.04.2012 to 30.09.2019 at Rs.12,000/- p.m., as the old rent is paid in all, totalling to Rs.10,80,000/- and after deducting the above said amount, the payable rent arrears is calculated to Rs.29,23,775/- till 29.02.2020. It is submitted that the further rental arrears accrued from 01.03.2020 to 31.12.2020. Therefore, the total rent arrears is Rs.33,45,225/-. R.C.O.P.No.942 of 2012 was allowed in favour of the landlords and consequently, they preferred an appeal in RCA.No. 639 of 2015 before the Appellate Authority and the same was also decided against tenant, and now the petitioner/tenant has filed the present Revision. It is submitted that, in the grounds of appeal in the present Revision, the petitioner mainly raised question about the market value of the petition premises in deciding the monthly rent for the same. To clarify the same; the provision of law is stated as follows:-

"The provisions of Section 7 of the Tamil Nadu Court Fee and Suits Valuation Act and Section 47AA of the Indian Stamp Act, 1899 determine the market value of the property.



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Under Section 47-AA of the Indian Stamp Act, the State Government is empowered to constitute a valuation committee under the Chairmanship of Inspector General of Registration for estimation, publication and revision of market value guidelines of properties in any area in the State with such interval and in such manner as may be prescribed for the purpose of Section 47-A. It was observed that the term 'market value' is vague, uncertain and a matter of guesswork. It is also not defined in the Indian Stamp Act. The market value of a land can be fixed only by taking into consideration several factors, like potentiality of a plot for development, shape of the plot, frontage and depth, modification for depth, value in the sense of value to the owner, value in the sense of replacement cost, value in the sense of additional cost, less depreciation and the most important factors which a valuer should study in respect of a property are: (1) Advantages to the property and (2) disadvantages to the property. [J.Jayalalitha and Others v. State, etc., 2002-I.L.W. 194]. Therefore, the Court below as well as the Appellate Court have concurrently decided the above cases in RCOP.No. 942 of 2012 and RCA.No. 639 of 2015 correctly as per law while fixation of fair rent for the petition premises, but only with a malicious intention to avoid to pay



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the arrears of rent and drag on the matter for several years without paying the rent, the petitioner now filed the present Revision. The petitioner is very irregular in paying the monthly rent and he has committed wilfull default to pay the rent from April 2012. Therefore, the schedule mentioned property is required for the respondents for their own occupation for the purpose of setting up shop for their livelihood. Hence, the above revision is vexatious, untenable and liable to be dismissed.

11. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the materials available on record.

12. The premises in question is situated in a busy commercial locality. Admittedly, it is one of the commercial localities, which witness bustling trading population at all times. The premises was let out to the petitioner/tenant in the year 2004 for a rent of Rs.12,000/- per month. The Original Petition was filed by the landlord in the year 2012 for fixation of fair rent. This Court can take judicial notice of the fact that the premises in question provides lot of amenities and it is bristled with commercial



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activity at all times and can fetch more rent. The petition schedule premises is being used for non-residential purpose and 12% is given per annum for the total cost of construction and land value and the fair rent is fixed at Rs.42,145/- p.m. Since the percentage awarded for basic amenities is modified by the Rent Control Appellate Authority, the fair rent has to be modified. The fair rent is fixed at Rs.42,145/- per month for the petition schedule premises. Hence, there are valid reasons to allow this Revision and the Rent Controller, has fixed the fair rent at Rs.42,145/- p.m from 06.04.2012.

13. For the purpose of proving the age of the building as well as the amenities provided, qualified Engineer was appointed and he had submitted his report (Ex.R1). The Rent Controller fixed the fair rent based on the following calculation:-

Ground floor RCC Roof 511.20 sqft.,		
@ Rs.444/- per sqft.,	=	227106
Basement 622.50 sqft x 424	=	263940
Staircase share 5.11 x 350	=	1789
Toilet share in ground floor		
2.08 sqft x 444	=	924
Cantilevered slab area share	=	
in Ground floor 34.54 x 250	=	8635
Motor Room share 1.81 sqft., x 444	=	803



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Polycarbonate Sheet front space		
Share in Ground Floor 17 sqft., x 225	=	3825

Total		507022
Basic Amenities 21%	=	106475

Depreciation 1% 25 years 0.7778		
613497 x 0.7778	=	477178
Land Value : Rs.2,00,00,000/-P.G.		
438.54x 2,00,00,000/2400	=	3654500

		4131678

Schedule 1 Amenities 3%	=	123950

Total		4255628

Since the petition premises is being used for non residential purpose, 12% is given per annum in the total cost of construction and the land value. Hence, the fair rent is Rs.42,556/- p.m.

14. The learned Rent Controller has taken into account the prevailing PWD rate, the amenities provided to the building and also the age of the building. Therefore, this Court is of the view that the fair rent fixed by the learned Rent Controller appears to be wholly justifiable and it will meet the ends of justice. The order passed by the learned Rent Controller is restored.



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15. Accordingly, the judgment and decree dated 12.02.2020 passed in R.C.A. No. 639 of 2015 on the file of the learned VIII Judge, Court of Small Causes, Chennai, (Rent Controller Appellate Authority) is set aside and the fair and decretal order dated 31.08.2015 passed in R.C.O.P. No. 942 of 2012, by the learned XVI Judge, Court of Small Causes, Chennai (Rent Controller) is restored. Consequently, the Civil Revision Petition is disposed of with the following directions.

16. The petitioner/tenant is hereby directed to deposit the rental arrears at the rate of Rs.42,556/- as determined by the learned Rent Controller, after adjusting the rental amount already paid, if any, before the learned Rent Controller, Chennai, to the Credit of R.C.O.P.No. 942 of 2012 on or before 30.06.2023, failing which, the respondents/landlords are at liberty to proceed in accordance with law. No costs.

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Speaking order : Yes/No

Neutral citation : Yes/No

To



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1. The VIII Judge, Court of Small Causes at Chennai,
(Rent Control Appellate Authority)

2. The XVI Judge, Court of Small Causes, Chennai)
(Rent Controller).

3. The Section Officer, V.R. Section, High Court, Madras.

V.BHAVANI SUBBAROYAN, J.

msm

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