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C.R.P.No.1355 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2023

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.1355 of 2020

A.M.Jain College,
Rep.by its Secretary and Correspondent,
M.Sardarmull Chordia,
Registered Office at Meenambakkam,
Chennai.

.. Petitioner

Versus

Mangilal Jain,

.. Respondent

Civil Revision Petition is 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), to allow the Civil Revision Petition and set aside the judgement and decree dated 18.09.2019 passed in R.C.A. No. 754 of 2014 on the file of the learned VIII Judge, Court of Small Causes, Chennai, (Rent Controller Appellate Authority) modifying the fair and decreetal order passed in R.C.O.P. No. 1912 of 2010, by the learned XII Judge, Court of Small Causes, Chennai (Rent Controller) dated 26.07.2013.

For Petitioner : Mrs.Padmaja Mohan

For Respondent : Mr. Aravind Subramaniam



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ORDER

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This revision petition is filed as against the judgement passed in R.C.A.No.754 of 2014 dated 18.09.2019 fixing the fair rent for premises in question at Rs.4,500/-.

2. Originally R.C.O.P.No.1912 of 2010 was filed by the landlord under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, to fix the fair rent for the premises in question.

3. The premises in question is a shop bearing No.7, situated in ground floor of the premises bearing Door No.66, Godown Street, Chennai - 600001, measuring an extent of 253 sq.ft. The premises was let out to the respondent for carrying on non-residential business. According to the landlord, a monthly rent was fixed at Rs.1482/- 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 premises is very near to High Court of Madras including N.S.C. Bose Road,

Mint Street and Anderson Street etc., The Central Railway Station and Fort



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Railway Station are also at a stones throw away. The building was 40 years old and it consist of first and second floors. According to the landlord, the rent per month can be fixed atleast at Rs.24,620/- taking note of the commercial advantages the premises possessed. Therefore for fixing the fair rent at Rs.24,620/-, the landlord has filed the Original Petition.

4. Opposing the petition, the tenant has filed a counter affidavit stating that he is paying a monthly rent at Rs.1,482/- per month from January 2009 onwards. The location of the premises is narrow road and congested one and situated in a very low lying area. After shifting the Mofussil Bus Stand to Koyambedu, the commerciality of the locality has come down. There is no water facility in the premises. The age of the building, as projected by the landlord as 40 years is incorrect, but it is 100 years old. The building is Class-II in nature and there are no schedule-I amenities available thereof. The Petition premises dose not possess the safety parameters as the wiring on the entire building has fallen. The maintenance of the building is very poor. The tenant is already paying a sum of Rs.160/- per month towards amenity charges. There is wooden door for the main gate and it is in a entirely damaged condition. Therefore, 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



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needs no enhancement.

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5. Before the learned Rent Controller, one Poornachandran was examined on behalf of the landlord as PW1 and documents were marked as Ex.P.1 to Ex.P.3. On behalf of the tenant one Chelliah Sarathy was examined as RW1 and documents were marked as Ex.R.1 to R.4.

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 Ex.P.3, arrived at a sum of Rs.7,368/- per month as fair rent payable by the tenant from 03.11.2010.

7. Aggrieved by the fair rent fixed by the learned Rent Controller, the tenant has filed an appeal in R.C.A. No. 754 of 2014 before the learned Rent Control Appellate Authority. It was contended before the Appellate Authority that the fair rent fixed by the learned Rent Controller is not in accordance with the amenities provided to the tenant. It was also contended that the learned Rent Controller erred in not taking note of the cost of construction and estimate given by the qualified Engineer before arriving at the fair rent.



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8. The learned Appellate Authority on hearing the counsel for both sides as well as the report of the engineers under Ex.P.1 and has also Ex.R.1 filed by the parties concluded that the age of the building is 50 years and not 80 years has held by the Rent Controller. The learned Appellate Authority also held that R.W.1 has admitted that he is doing business in the premises atleast for 12 years before filing RCOP No.1912 of 2010 and therefore, he is not a competent person to say that the building is 100 years old. The Appellate Authority has also rendered a finding that the tenant is in occupation of 200 sq.ft of plinth area and in the absence of any Schedule-I amenities in the premises in question, the value of the land was arrived at Rs.77,33,536/- based on Ex.R.2. By placing of reliance on Ex.P.2, a copy of the sale deed dated 15.07.2010, for the property situated in Godown Street, the Appellate Court found it more appropriate to rely upon Ex.R.2. By placing reliance on Ex.P2 and R2, the market value of the property was fixed at Rs.1.5 Crores. Based on the market value, by adding 10% towards basic amenities and deducting 1% towards depreciation, the land value was fixed at Rs.4,05,625/- and the cost of construction was estimated at Rs.42,086/-. By arriving at a sum of Rs.44,77,111/- towards the cost of the land as well as the building and by taking 12% thereof, the Appellate Authority has fixed a sum of Rs.4,500/- as



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fair rent. Aggrieved by the same, the landlord has come forward with this Civil Revision Petition.

9. The learned counsel appearing for the landlord in the Civil Revision Petition submitted that the Appellate Court failed to arrive at a fair rent in conformity with the amenities provided to the demised the premises. The property was located in Godown Street, which is bursting with commercial activities and therefore, the value of the land per ground will not be less than Rs.2.50 Crores during the year 2010. However, the Appellate Authority reduced the value of the land to Rs. 1.5 Crores without any basis. The Appellate Authority did not notice that the fair rent fixed by the learned Rent Controller is wholly justified, while so, it ought not to have disturbed the findings arrived at by the learned Rent Controller. The learned Appellate Authority has also erred in increasing the rent only at 25% and did not take note of the fact that the rent of Rs.1,482/- fixed for the premises itself is very low. The learned Judge did not appreciate the evidence of R.W.1, who has stated that the erstwhile tenant paid a sum of Rs.19,539/- to the respondent/landlord as rent. While so, the amount of Rs.7,368/- fixed by the learned Rent Controller is in consonance with the locational advantages of the buildings in question, which ought not to have been disturbed by the Appellate



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Authority. Therefore, the learned counsel for the Revision Petitioner has prayed for restoration of the order passed by the learned Rent Controller by allowing the Civil Revision Petition.

10. The learned counsel appearing for the respondent/tenant on the other hand, would justify the order passed by the Appellate Authority. The learned counsel for the respondent had taken this Court to the calculations made by the Appellate Authority in para No.25 of the judgement, which is impugned in this Civil Revision Petition, and submitted that the calculations made by the Appellate Authority reflect true and correct estimate of the amenities and locational advantages enjoyed by the premises in question. By taking note of Ex.P2 as well as Ex.R2, the Appellate Authority is right in arriving at a sum of Rs.1.5 Crores as the market value of the land at Godown Street in the year 2010. The Appellate Authority proceed to determine the fair rent based on the market value of the land fixed at Rs.1.5 Crores and the calculations made for fixing the fair rent cannot be said to be improper. The learned counsel also submitted that the premises in question is situated in a narrow and congested road and therefore, the Appellate Authority has rightly taken note of the basic amenities provided to the property. In any event, the fixation of fair rent by the Appellate Authority need not be interfered with by



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this Court in exercise of Power under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act 23 of 1973 and Act 1 of 1980) and prayed for dismissal of the Civil Revision Petition.

11. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent.

12. The premises in question is situated in a busy commercial locality, viz., Godown Street at Chennai. Admittedly, it is one of the commercial localities which witness bustling trading population at all times. The premises was let out to the respondent/tenant in the year 1998 for a rent of Rs.1,482/- per month. The Original Petition was filed by the landlord in the year 2010 for fixation of fair rent. This Court can take judicial notice of the fact that the premises in Godown Street enjoys lot of amenities and it is bristled with commercial activity at all times, can fetch more rent than the one fixed by the Appellate Authority. In any event, in the year 2010, given the locational advantages the premises in question possess, it cannot be taken up for rent at a sum of Rs.1,482/-.

13. For the purpose of proving the age of the building as well as the amenities provided qualified Engineers on behalf of both the petitioner as



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well as the respondent were examined and they have submitted their report.

The Rent Controller has taken the cost of construction at Rs.393 per sq.ft. The construction was made of Madras Terraced Roof with common passage and toilet etc., apart from electricity service connection and water facility. Based on the age of the building, the Rent Controller has given 1% towards depreciation. On the basis of Ex.P3, the sale deed, wherein the value of the land was mentioned as Rs.72,00,000/- and Ex.R3, which has emanated during the year 2005-2006, in which Rs.63,62,400/- was mentioned as the value of the land, the Rent Controller, in the opinion of this Court, has rightly fixed a sum of Rs.2.50 Crores as the land value that prevailed as on the year 2010. On the basis of PWD rate prevailing at that time being Rs.393/- per sq.ft., for 193.50 sq.ft a total sum of Rs.76,045/- was determined by the Rent Controller. By adding 2,963/- for the common passage, the total sum of Rs.79,008/- was arrived at. By adding 10% towards basic amenities and deducting 1% towards depreciation of the building a sum of Rs.3,847/- was arrived at. On the basis of the land value of Rs.2.50 Crores arrived at the rent Controller fixed the fair rent at Rs.7,368/- per month. However, the Rent Control Appellate Authority without any basis arrived at the value of the land at Rs.1.5 Crores, which in the opinion of this Court is not proper. In any event, for a premises measuring an extent of 142 sq.ft, fair rent of Rs.4,500/- fixed by the Rent Control Appellate



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Authority cannot be said to be proper. On the other hand, 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 to arrive at a sum of Rs.7,368/-. Therefore, this Court is the view that the sum of Rs.7,368/- fixed by the learned Rent Controller appears to be wholly justifiable and it will meet the ends of justice. The judgement of the learned Appellate Authority is therefore liable to be set aside and the order passed by the learned Rent Controller is restored. The fair rent for the premises in question at Rs.7,368/- per month which is payable by the respondent/tenant from the date of filing of RCOP, viz., on 02.11.2010.

14. In the result, the judgement and decree dated 18.09.2019 passed in R.C.A. No. 754 of 2014 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 26.07.2013 passed in R.C.O.P. No. 1912 of 2010, by the learned XII Judge, Court of Small Causes, Chennai (Rent Controller) is restored. Consequently, the Civil Revision Petition is allowed. No costs.

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Index: Yes/No

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Speaking order/Non-speaking order
Neutral Citation: Yes/No

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To

1. The VIII Judge, Court of Small Causes, Chennai.
2. The XII Judge, Court of Small Causes, Chennai.
3. The Section Officer,
V.R. Section, High Court of Madras.



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V.BHAVANI SUBBAROYAN,J.

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