BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.11.2023

PRONOUNCED ON : 01.12.2023

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THE HONOURABLE **MR.JUSTICE P.B. BALAJI**

C.R.P.(MD)No.753 of 2019
and
C.M.P.(MD)No.5056 of 2019

G.Shanthilal Transport Company,
Rep. By its Partner,
Anil G.Vijan. ...Petitioner

/Vs./

K.Sankar ...Respondent

PRAYER:- Petition - filed under Section 25 of the Tamil Nadu Building (Lease and Rent Control) Act, 1960, to set aside the judgment and decree dated 12.09.2018 made in RCA No.54 of 2014 on the file of the Rent Control Appellate Authority (Sub Court), Madurai, confirming the order and decreetal order dated 02.06.2014 made in RCOP No.149 of 1992 on the file of the Additional Rent Controller, (Additional District Munsif Court), Madurai Town.

For Petitioner : Ms.J.Anandhavalli
For Respondent : Mr.L.Shaji Chellan

ORDER

The tenant is the revision petitioner. The respondent, as landlord, filed RCOP No.149 of 1992 for fixation of fair rent under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, Act 18 of 1960. The parties are described as landlord and tenant.

2. The brief facts of the petition in RCOP No.149 of 2014 seeking fixation of fair rent are as follows:-

(i) The premises belongs to the landlord and the tenant was running a lorry office on a monthly rent of Rs.700/- under a lease with the landlord. The petition premises is situated in a prime locality in Madurai, very close to Meenakshi Amman Temple, Railway Station and Periyar Bus-Stand. The market value of site in the locality is not less than Rs.18,00,000/-. The fair rent that would be payable by the tenant would be Rs.13,000/- per month.

(ii) The said RCOP was resisted by the tenant stating that the property is situated in a very congested area and the value as claimed by the landlord is highly exaggerated. Moreover, the building is very old and dilapidated and of nil value. The petition has been filed only to vacate the tenant from the petition premises.

(iii) Initially, the Rent Controller, after enquiry, fixed the fair rent at Rs.

15,870/- per month. In appeal filed by the tenant, the same was reduced to Rs. 12,650/- per month. However, when the matter was challenged by way of revision before this Court, the matter was remanded back to the Rent Controller, as the Courts had adopted the guideline value instead of market value, to arrive at fair rent. After remand, the Rent Controller fixed the fair rent at Rs.12,740/-, which came to be confirmed by the Appellate Authority. It is aggrieved by the said concurrent findings of the Rent Controller and the Appellate Authority that the present revision has been preferred.

3. The main grounds challenging the order fixing the fair rent are that the Courts had erroneously considered Exs.P1 & P2, which are not only situated far away from the petition premises, but also pertain to a small extent of land and cannot be compared to the petition premises. Further it is also contended that Ex.R1 sale deed was pertaining to a property situated very near to the petition premises and the Courts below have not taken the same into account while fixing the market value of the petition premises.

4. The further contention of the tenant is that the Courts below erroneously fixed the age of the building as 45 years. It is the specific case of the tenant that the building was easily more than 100 years old. The evidence of

PW1 also clearly pointed out the fact that the building was constructed during the King Nayakkar's rule in Madurai and was certainly not of any recent origin.

5. I have heard the learned counsel for the petitioner / tenant and the learned counsel appearing for the respondent / landlord. I have also perused the order of the learned Rent Controller and and the judgment of the Appellate Authority and also the oral and documentary evidence adduced by the parties.

6. Admittedly, there is no dispute with regard to tenancy. The parties also admit to the fact that the contractual rent was Rs.700/-. The petitioner's grievance is two fold:- (i) the Courts below have erred in fixing the market value of the property by placing reliance on Exs.P1 & P2, ignoring Ex.R1, which was more proximate and relevant, insofar as the petition premises is concerned. (ii) The age of the building was fixed at 45 years, whereas it is the specific contention of the tenant that the building is easily more than 100 years old.

7. Insofar as the age of the building is concerned, in the RCOP proceedings, the landlord has stated in the petition filed by him that the age of the building is more than 42 years old. It is the specific contention of the respondent that the building is very old and if depreciation is calculated, the value will be nil. The learned Rent Controller has not even discussed the contention with regard to the age of the building and has blindly fxed the age of the building as 45 years. The Appellate Authority has also, without any independent discussion, merely adopted the age of the building as 45 years.

8. When the landlord approaches the Court seeking fixation of the fair rent, it is the burden of the landlord to establish the age of the building. The age of the building is one of the key factors that will decide the value of the building, because the Act stipulates that fair rent will be fixed based on the value of the building and market value of the site. The rate of the depreciation is another factor which depends on the age of the building. Unfortunately, both the learned Rent Controller as well as the learned appellate authority have, without any discussion whatsoever taken the age of the building as 45 years.

9. Even though the landlord has stated in his petition that the building is 42 years, there is absolutely no evidence forthcoming from the landlord to establish the correct age of the building. The landlord is the best person to prove the age of the building because he can either produce the sanction plan or the sale deed/s in connection with the purchase of the building, which will clearly and clinchingly show the correct age of the building. Unfortunately, the landlord has not chosen to produce any evidence to establish the age of the building. On the contrary, the tenant has taken a specific plea that the building is very old and if depreciation is taken into account, the building value will be nil.

10. I also find a suggestion put to PW1 during cross examination that the building is more than 200 years old. The age of the building is something which the tenant cannot prove or establish by direct or primary evidence. When the tenant disputes the age of the building stated by the landlord, then it is the burden of the landlord to bring satisfactory or reliable evidence before the Rent Controller and establish the age of the building. Therefore, I am constrained to interfere with the concurrent findings of the Rent Controller and the appellate authority that the age of the building is 45 years.

11. However, considering the stand taken by the tenant that the age of the building is more than 200 years old, from the available evidence on record and also considering the stand taken by the tenant in the pleadings as well as evidence and the admission of the PW1 with regard to the nature of construction which was done only in ancient times, I proceed to fix the age of the building as 100 years.

12. Coming to the crucial point, namely, market value of the site on which the building is constructed, Exs.P1 & P2 are sale deeds which have been marked by the landlord to establish the market value of the petition premises. Per contra, the tenant has exhibited Ex.R1 sale deed to show that the market value is lower than what is claimed by the landlord.

13. The appellate authority has applied his mind to these three documents and after discussing the contentions and objections to the said document, has confirmed the findings of the Rent Controller. The appellate authority has also specifically discussed Ex.R1 and found that the document was undervalued and deficit stamp duty was also paid and therefore, rightly came to the conclusion that no reliance could be placed on Ex.R1.

14. While rejecting Ex.R1, the appellate authority has noticed that the property conveyed under Ex.P1 was 35 sq.ft., and the property covered under Ex.P2 was in respect of 370.5 sq.ft., and proceeded to the square foot value at Rs.415/-. The appellate authority arrived the market value of the land/site at Rs.10,79,000/-, considering the fact that the premises was of an extent of 2600 sq.ft. of land. The Courts below have not blindly adopted the market value as exhibited in Ex.P1 & P2. On the other hand, the appellate authority has arrived at value of Rs.415/- per sq.foot., contrary to Rs.425/- under Ex.P1 and Rs.607.28/- under Ex.P2. Therefore, I do not find any ground to interfere with the findings of the Courts below in fixing the market value.

15. Considering the age of the building being less than 100 years, the cost of construction of the building would stand virtually nullified and no amount can be added to the market value on account of cost of construction of the building as at 1% depreciation for 100 years would wipe out the entire cost by the building itself. Therefore, the fair rent is modified as hereunder:-

Rs.10,79,000 / 12% = Rs.1,29,480 (per year) / 12 = Rs.10,790/- per month.

(Market Value of site * 12% for non-residential premises / 12 months)

16. In the result, this civil revision petition is partly allowed and the fair rent fixed by the Rent Controller and confirmed by the appellate authority at Rs.12,740/- stands modified to Rs.10,790/- per month. Consequently, connected Miscellaneous Petition is closed.

01.12.2023

NCC : Yes/No
Internet :Yes/No
Index :Yes/No

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TO:-

1.The Rent Control Appellate Authority (Sub Court), Madurai.

2.The Additional Rent Controller,
(Additional District Munsif Court), Madurai Town.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

P.B. BALAJI, J.

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Order made in
C.R.P.(MD)No.753 of 2019

Dated:
01.12.2023