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C.R.P. No.3175 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2024

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THE HONOURABLE Mr. JUSTICE P.DHANABAL

C.R.P. No.3175 of 2022

and C.M.P. No.16936 of 2022

N. Krishnamoorthy S/o. R. Rajagopal Respondent / Appellant /
Petitioner.

Vs.

Dr. A. Vikram S/o. Dr. N. Ambalavanan ...Petitioner / Respondent /
Respondent.

PRAYER: Civil Revision Petition is filed under Section 25(1) of the Tamil Nadu Buildings (lease & rent control) Act, 1960, to set aside the fair and decreetal order dated 10.01.2020 passed in R.C.A. No.6 of 2017 by the learned VIII Judge, Court of Small Causes, Chennai modifying the order dated 31.08.2016 passed in R.C.O.P. No.1421 of 2013 by the learned XV Judge, Court of Small Causes, Chennai.

For Petitioner : Mr. Christopher Vijayachandran
For Respondent : Mr. K.V. Babu [Caveator for respondent]

ORDER

The Civil Revision Petition has been preferred as against the order passed in R.C.A. No.6 of 2017 by the learned VIII Judge, Court of Small Causes, Chennai [Rent Control Appellate Authority] dated 10.01.2020,



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wherein the Rent Control Appellate Authority has passed a common order.

This R.C.A. No.6 of 2017 has arisen out of RCOP No.1421 of 2013, wherein the respondent herein has filed the main R.C.O.P. No.1421 of 2013 for fixation of fair rent and the Rent Control Authority has fixed a fair rent. Against the said order, both the parties i.e., landlord as well as the tenant have preferred appeals. The tenant preferred appeal in R.C.A. No.6 of 2017. The landlord preferred appeal in R.C.A. No.259 of 2017. Both the appeals have been heard together and the Rent Control Appellate Authority passed a common judgment by modifying the order passed by the rent control authority. Against which, the tenant has filed the present civil revision petition.

2. The brief averments of the original petition are as follows:-

He is the tenant under the respondent who is the owner of the property under a monthly rent of Rs.15,000/- for non-residential purpose. Thereafter the landlord i.e., the respondent herein filed a petition to evict the petitioner on the ground that he required premises for having his clinic. Thereafter, he filed a petition to fix a fair rent. The built up area of respondent is 782 sq. ft. and the building is Type I, Class A, the age of the building about 16-17 years and all the basic amenities and Schedule I amenities are available in the petition



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premises. Hence this petition is filed for fixation of fair rent at Rs.71,142/- per month. Before the rent controller, both the parties adduced evidence and marked documents and based on the evidence, the Rent controller fixed a fair rent @ Rs.55,787 per month. Aggrieved by the said order, the tenant has preferred an appeal in R.C.A. No.6 of 2017 and the landlord has preferred an appeal in R.C.A. No.259 of 2017. Both the parties have been heard together and a common order was passed by the Rent Control Appellate Authority by modifying the fair rent from Rs.55,787/- to Rs.32,875/-. Against which, the present Civil revision petition is filed by the tenant.

3. The learned counsel appearing for the petitioner would contend that the total plinth area of the premises is 660 sq. ft. and there are three floors besides basement and ground floor in total 5 floors. But the Rent Controller failed to divide the total area into 5 and only divided into 4. Therefore, the Rent Control Authority has wrongly calculated the amount. Further, while arriving the land value, failed to consider that the petitioner has produced the documents which is very nearest to the premises and as per the documents filed by the petitioner, the land value is only at Rs.1,68,00,000/-. To that effect, he has also produced Ex.R3 and Ex.R.4. The rent controller failed to consider the said land value and without any basis, taken the land value as



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Rs.3.5 crores. Therefore, the order passed by the Courts below are liable to be modified.

3.1. In support of his contention, the learned counsel appearing for the petitioner has relied on judgment in ***Sakthi and Co., through its Partner, Veeranan vs. Shree Desigachary reported in 2006 (2) CTC 433 (Mad).***

4. The learned counsel appearing for the respondent would contend that the Rent Control Appellate Authority has correctly calculated the value of the plinth area and as per the report, the plinth area has been taken as 660 sq.ft. and the basement is only meant for car parking and thereby, it cannot be taken into account for dividing the property and thereby, the Appellate Authority had divided the plinth area into 4. Further, the documents produced by the petitioner in respect of the value of the property is noway relevant to this disputed property and the respondent has also filed the documents which are from nearest to the place of the disputed property, thereby the value would come to Rs.5,27,00,000/- based on Ex.P.3, but the Appellate Authority failed to consider the same and has taken the value based on the value fixed by the Rent controller. Therefore, there is no any error in the order passed by the Rent Control Authority. While exercising revisional power, under Section 25



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of the Tamil Nadu Buildings (lease & rent control) Act, 1960, should not interfere with findings of fact merely because it does not agree with the findings of the Subordinate Authority. The power conferred on the High Court under Section 25 of the Tamil Nadu Buildings (lease & rent control) Act, may not be as narrow as the revisional power of the High Court under Section 115 of Code of Civil Procedure and it is not wide enough to make the High Court, a second Court of first appeal. Therefore, as far as the land value is concerned, the Rent Control Appellate Authority reduced the value of the building. Therefore, the order passed by the Rent Control Appellate Authority is in accordance with law and the present civil revision petition is liable to be dismissed.

5. In support of his contention, the learned counsel appearing for the respondent relied a judgment of Hon'ble Supreme Court in ***Raja Lakshmi Dyeing Works and others vs. Rangaswamy Chettiar reported in MANU/SC/0480/1980.***

6. Heard both sides and perused all the materials available on record.

7. In this case, the petitioner has challenged the order passed by the Rent Control Appellate Authority mainly on two grounds:-



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(i) The Rent Control Appellant Authority has not divided the plinth area into 5 instead divided into 4, when the building is consisting of basement and ground floor and three floors, totally 5 floors.

(ii) The land value has not been fixed properly when the petitioner has produced the documents very near to the rented premises.

8. As far as the first contention is concerned, it is true that the Rent Control Appellate Authority has divided the plinth area into 4 and thereby, arrived at 165 sq. ft. The learned counsel appearing for the respondent would contend that though the building has basement, ground floor and three floors, the basement is not used for rental purpose and it is used only for the purpose of car parking and hence it cannot be taken into account. Therefore, the learned Rent Control Appellate Authority has only divided it to 4. Per contra, the learned counsel appearing for the petitioner would contend that the petitioner's side witness PW1 himself admitted that the basement was also occupied by the tenants and thereby, it has to be divided into 5. There is no concrete evidence about the occupation of the tenants in the basement. Only the learned counsel appearing for the petitioner relied upon the evidence of PW1, who is an engineer. Apart from that, there is no evidence to prove that the basement is occupied by tenants. However, this Court perused the



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engineer's report of the revision petitioner, where the engineer himself admitted in the report that land is calculated as 1/5th at 160.29 sq. ft. and the Rent Control Appellate Authority calculated the area as 165 sq. ft.. Therefore, there is no vast difference between the area fixed by the Rent control Appellate Authority and the report filed by the engineer. Therefore, this Court need not go into that aspect and thereby, the contention of the petitioner that error in calculation has no merits. Therefore, the order passed by the Rent Control Appellate Authority has to be confirmed.

9. As far as the second ground is concerned, as rightly contended by the learned counsel appearing for the respondent, this Court while exercising revisional power under Section 25 of the Tamil Nadu Buildings (lease & rent control) Act, 1960, scope is limited and thereby, this Court need not look into the matter as if the Court is sitting in the appeal. As far as the 2nd ground raised by the learned counsel appearing for the petitioner that the Rent Control Appellate Authority failed to consider the evidence adduced by the respondent, in respect of the land value of the property which is very near to the place of the rented premises is concerned, already both the Courts have arrived at Rs.3.5 Crores based on the locational advantages and commercial importance of the area. According to the documents filed by the petitioner,



the land value is Rs.1.66 crores. According to the documents filed by the respondent, the land value is Rs.5,72,17,252/-. There is vast difference between the documents submitted by both the parties. Admittedly both the documents are not for the same area and they are situated at adjacent streets. Therefore, the rent Controller has fixed the value as Rs.3.5 crores based on the locational advantages and commercial importance. The Rent Control Appellate Authority has also taken the same value as land value. Therefore, this Court is of the opinion that there is no perversity or error in the order passed by the Rent Control Appellate Authority in fixing the land value.

10. The learned counsel appearing for the petitioner has relied upon a judgment of Hon'ble Full Bench of this Court in ***Sakthi and Co., through its Partner, Veeranan vs. Shree Desigachary reported in 2006 (2) CTC 433 (Mad).***

10.1. On a careful perusal of the said judgment, it is clear that in determining the market value, the Court has to take into account either one or the other three methods to determine market value of the lands appropriate on the facts of a given case. According to the Hon'ble Supreme Court, generally, the method of the lands adjacent to the lands acquired and possessing similar advantages is to be accepted as the best. The said method would furnish the



evidence of bonafide sales between willing prudent vendor and prenent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features, which would enable the Court to determine the market value correctly.

10.2. But in the case on hand, either the petitioner or the respondent produced the sale deed of the property near to the property. Per contra, both the sale deeds are related to the property far away from the disputed property. Therefore, the above said case law will not be applicable to the present facts of the case.

11. The learned counsel appearing for the respondent also relied the judgment in ***Raja Lakshmi Dyeing Works and others vs. Rangaswamy Chettiar reported in MANU/SC/0480/1980.***

11.1. On a careful perusal of the said judgment, it is clear that as per Section 25 of Tamil Nadu Buildings (lease & rent control) Act, 196, the High Court quite obviously should be interfere with findings of fact merely because it does not agree with the findings of the subordinate authority as the power conferred on the High Court under Section 25 of the Act, may not be as narrow as the revisional power of the High Court under Section 115 of the Civil Procedure Code, but it is not wide enough to make the High Court a



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second Court of first appeal.

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11.2. In the case on hand also, both the Rent Controller and Rent Control Appellate Authority fixed the land value based on the locational advantages and commercial importance. Therefore, in view of the said judgment, this Court need not interfere with the findings of the Courts below.

12. Therefore, in view of the above said judgments and above discussions, this Court is of the opinion that the Civil Revision petition has no merits and deserves to be dismissed.

13. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order/non-speaking order
mjs

To

1. XV Judge, Court of Small Causes, Chennai.
2. VIII Judge, Court of Small Causes, Chennai



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