



C.R.P. No.2421 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.06.2024

PRONOUNCED ON : 10.07.2024

CORAM

THE HONOURABLE **MR.JUSTICE BATTU DEVANAND**

C.R.P. No.2421 of 2019

1. B.Suresh Kumar
2. M/s.Shrimans

... petitioners

Vs.

K.Santhakumari

... respondent

Prayer : Civil Revision Petition filed under Section 25 of the Tamil Nadu Building Lease and Rent Control Act 18 of 1960 as amended as 23 of 1983 and Act 1 of 1980 praying against the fair and decreetal order dated 24.04.2019 passed in RCA.No.478 of 2016 on the file of the learned VII Judge, Small Causes Court at Chennai modifying the Fair and Decreetal order dated 25.04.2012 in RCOP.No.2277 of 2012 on the file of the learned XIII Judge, Small Causes Court at Chennai.

For Petitioners : Mr.J.R.K.Bhavanantham
For Respondent : Mr.K.P.Ashok



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ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 24.04.2019 passed in RCA.No.478 of 2016 on the file of the learned VII Judge, Small Causes Court at Chennai modifying the Fair and Decreetal order dated 25.04.2012 in RCOP.No.2277 of 2012 on the file of the learned XIII Judge, Small Causes Court at Chennai.

2. The petitioners are the tenants and the respondent is the landlord. It is the case of the respondent/landlord that the petitioners are the tenants under her in respect of the entire house, ground and premises bearing Old No.34, New No.63, Rattan Bazzar Road, Park Town, Chennai and they are paying a monthly rent of Rs.4,500/- excluding EB charges. The respondent already filed a petition for eviction against the petitioners on the grounds of demolition and reconstruction. Since the proceedings are known to take several years and the present rent paid by the petitioners is very unfair, the respondent filed RCOP No.227 of 2012 for fixation of fair rent.



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3. It is the contention of the respondent/landlord that the premises is more than 95 years old and the subject portion has got schedule I amenities. The property is located on the well known commercial area and land value is sky high in that locality. The premises commands all the external and locational advantages such as Schools, Colleges, High Court, Hotels Hospitals, Railway Station, Temple etc. and the hence the market value of the site is around 5 crores. Therefore, she filed a petition to fix fair rent for the petition premises at Rs.1,04,580/- per month.

4. The petitioners/tenants filed a counter affidavit and denied the above submissions of the landlord stating that there are no schedule I amenities in the subject property and the value of the land is also not more than 30 lakhs per ground. Even the present rent paid by the petitioners at Rs.4,500/- is too high and there are no facilities available as alleged by the respondent. The requirement of the petition premises is also not bonafide and the same is filed with ulterior motive to get the petitioners evicted.



5. Before the Rent Controller, on the side of the respondent/landlord,

PW1 was examined and Exs.P1 to P4 were marked. On the side of the tenants, RW1 and RW2 were examined and Exs.R1 to R5 were marked. The Rent Controller after considering the type of building, age of the building, plinth area and cost of construction, basic amenities, schedule I amenities, land value, calculated the fair rent and fixed the fair rent at Rs.64,052/- payable per month from the date of the petition.

6. Challenging the above order and decree dated 25.04.2016, the petitioners/tenants filed RCA.No.478 of 2016 before the Rent Control Appellate Authority stating that the evaluation arrived at by the Court below is erroneous and unsustainable in law. He further averred that the Court below failed to notice that the petitioners are in occupation of only a shop portion of the said premises and as such there is no basic amenities is provided. In spite of the fact that the shop portion under occupation of the petitioners are not provided with water and toilet facilities, the Rent Controller erred in awarding 20% towards basic amenities. Therefore, the fixation of market value of the land and consequently fixing the land at the rate of Rs.2,88,39,698/- per ground is exorbitant.



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7. On the other hand, before the Rent Control Appellate Authority, the learned counsel for the landlord submitted that the building is Type-2, which is evident from Ex.P2, and the age of the building is about 100 years. The entire premises is occupied by the tenant and therefore, full area is to be included in calculating market value.

8. The Appellate Court after considering the arguments of both parties allowed RCA.No.478 of 2016 by its judgment dated 24.04.2019 and the fair rent fixed by the Rent Controller in RCOP.No.2277 of 2012 is modified and the fair rent was fixed at Rs.51,560/- per month from the date of RCOP. Aggrieved by the same, the present Civil Revision Petition has been filed by the tenants.

9. The learned counsel for the petitioners submits that the Lower Court should have accepted the plinth area mentioned by the petitioners' Engineer, wherein it is mentioned that the Ground floor petition portion plinth area Madras terrace is 404.25 sq.ft. and cost of construction is Rs.392/- per sq.ft., first floor petition portion plinth area is 404.25 and cost



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of construction is Rs.368/- per sq.ft., balcony is 27.50 sq.ft. and cost of construction is Rs.175/- per sq.ft., second floor RCC roof is 151.25 sq.ft. and cost of construction is Rs.404/- Rs. per sq.ft., second floor ACC roof is 151.25 sq.ft. and cost of construction is Rs.368/- per sq.ft.

10. The learned counsel contends that the Lower Court erred in rejecting the Engineer's report and evidence. He further contends that the Lower Court erred in awarding 20% towards basic amenities in the absence of supply of water presuming from the admission of the existence of overhead tank and toilet without adverting whether the motor pump is functioning or not and the ground water was available in the over head tank or not.

11. He further contends that the Lower Court erred in relying on Ex.P3 sale deed, which pertains to the sale of a property located in evening bazaar, which is far away to the petition premises having higher different value. Instead of that, the Lower Court should have placed reliance upon Ex.R4 copy of the sale deed and Ex.R5 analysis report, which relates to sale of the property very nearer to the petition premises.



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12. He also contends that the Appellate Court erred in fixing the fair rent at Rs.51,560/- per month though it was a consolation to the higher scale of fair rent fixed by the Lower Court at Rs.64,502/-. Finally, the learned counsel for the petitioner submits that the Lower Court ought not to have determined the market value of the site at Rs.2,88,39,698/- per ground providing 10% appreciation for the period 2013-14 and 2014-15, which is contrary to the mandatory provision of the Section 4 of Tamil Nadu Building Lease and Rent Control Act. Accordingly, he sought to set aside the fair rent and decreetal order dated 24.04.2019 passed in RCA.No.478 of 2016 on the file of the VII Judge, Small Causes Court at Chennai and to allow the Civil Revision Petition.

13. On the other hand, the learned counsel for the respondent submitted that in the schedule premises, all 3 basic amenities are available and their Engineer had also marked Ex.P2, which is the plan for the entire building and the building is Type-2 and the age of the building is 100 years and the Engineer had also given 20% depreciation.



14. The learned counsel submits that the entire premises is occupied by the tenant, therefore the entire area has to be included in calculating market value. He further submits that on behalf of the landlord Model Sale Deed was marked as Ex.P3, which is dated three months before the date of filing of RCOP and it relates to the property situated in the same area of the scheduled premises. Whereas the tenants also marked Ex.R3, but the property in Ex.R3 is situated at Rasappa Chetty Street, which is far away from the scheduled premises.

15. The learned counsel contends that the Rent Controller after considering all the documents and evidence fixed the fair rent at Rs.64,052/- and the Appellate Court also considered the issue in detail and modified the fair rent fixed by the Rent Controller and the fair rent is fixed at Rs.51,560/- per month. Therefore, there is no infirmity or illegality in the order passed by the Appellate Court and sought to dismiss the Civil Revision Petition.

16. There is no dispute with regard to the tenancy and the only issue to be considered is with regard to fixation of fair rent. Originally, the Rent Controller fixed the fair rent at Rs.64,052/-. The same was modified by the



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Appellate Court and the fair rent is fixed at Rs.51,560/- per month. While fixing the fair rent, the Appellate Court has considered the type of building, age of the building, plinth area, cost of construction, basic amenities, schedule-I amenities and value.

17. Admittedly, the petitioners' Engineer stated that it is Type-I building, but the respondent's Engineer stated that it is Type-II structure. The respondent's Engineer in his report has given detail specifications of the building and classified the building as Type-II, but in the petitioner's Engineer report there is no specific details given. As such, the Appellate Court accepted the view taken by the Rent Controller that the building is classified as Type-II and with regard to age of the building also, the Appellate Court confirmed the finding of the Rent Controller that the age of the building is 100 years.

18. Having considered the plinth area, cost of construction, basic amenities, schedule of amenities and land value, the Appellate Court fixed the land value. Basing on the cost of construction of built up plinth area and land value, the Appellate Court determined the fair rent per month for the



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scheduled premises as Rs.51,560/-. On perusal of the judgment rendered by the Appellate Court, it is found that the detail calculations are made to arrive the fair rent per month. The Appellate Court passed a reasoned order by fixing fair rent at Rs.51,560/- per month. The Lower Appellate Court has considered all relevant aspects and evidence available on record and fixed fair rent at Rs.51,560/- per month. As such, the contention of the petitioners that the Lower Appellate Court erred in fixing fair rent at Rs.51,560/- per month is rejected. As such, in the considered opinion of this Court, there is no infirmity or illegality in the judgment passed by the Lower Appellate Court.

19. Accordingly, this Civil Revision Petition is dismissed. No costs.

10.07.2024

pvs

Index : Yes / No

Internet : Yes / No

To

1. VII Judge, Small Causes Court at Chennai

2. XIII Judge, Small Causes Court at Chennai



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BATTU DEVANAND, J.
pvs

Pre-delivery Order in
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