



C.R.P.(MD)No.2468 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2025

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.2468 of 2017
and C.M.P.(MD).No.11689 of 2017

P.Muthukrishnan ... Petitioner/Appellant/Respondent

Vs.

K.K.Subramanian (Died)

1.K.K.Natarajan (Died)

2.K.Chandrasekaran (Died)

3.S.Vijayalakshmi

4.S.Anitha

5.S.Meena

6.S.Sinduja

7.S.Karthikeyan

8.S.Kameshwari

9.G.Backiyalakshmi

10.S.Keerthika

11.S.Abisheka

12.S.Kadan Prabhu

13.K.S.Palanikumar

14.A.Kasthuri

15.A.Devirani

1/17



C.R.P.(MD)No.2468 of 2017

16.P.Selvatharasi

17.C.Gowsalya

18.H.Backiyalakshmi

19.B.Visalatchi

20.N.Vasundara ... Respondents/Respondents/Petitioners

21.C.Kathar Nadra ... Respondent

(R21 is impleaded as the legal heir of the 2nd respondent by the order dated 12.04.2024 made in C.M.P.(MD).Nos.3280, 3240 and 3241.)

PRAYER : Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to set aside the fair order and decreetal order passed in R.C.A.No.55 of 2008, dated 08.09.2017 on the file of the Rent Control Appellate Authority (Principal Sub Court), Madurai, modifying the fair order and decreetal order passed in R.C.O.P.No.359 of 1999, dated 19.08.2008 on the file of the Rent Control Tribunal (Additional District Munsif Court, Madurai).

For Petitioner : Mr.D.Nallathambi

For Respondents : Mr.J.Barathan for R13
Ms.P.Jessi Jeeva Priya for R21

ORDER

This Civil Revision Petition has been filed to set aside the fair order and decreetal order passed in R.C.A.No.55 of 2008, dated 08.09.2017 on the file of the Rent Control Appellate Authority (Principal



C.R.P.(MD)No.2468 of 2017

Sub Court), Madurai, modifying the fair order and decreetal order passed in R.C.O.P.No.359 of 1999, dated 19.08.2008 on the file of the Rent Control Tribunal (Additional District Munsif Court, Madurai).

2.The facts in brief:

The revision petitioner is a tenant under the respondent. Now it is stated that in pursuance of the order of eviction passed by the Rent Controller, he vacated the premises and handed over the same to the respondent herein. The respondent filed R.C.O.P.No.359 of 1999 under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act for fixation of the fair rent from the date of petition with the following averments:

2.1.The property is situated in the Junction of North Vadampokki Street and Nayakkar New Street, Madurai Town. The revision petitioner entered into oral tenancy, according to the English Calendar Month at the rate of Rs.1,800/- per month. Eviction proceedings were initiated in R.C.O.P.No.81 of 1987 before the Rent Controller. Eviction was ordered on 24.02.1993. Against which, R.C.A.No.53 of 1993 was filed by the revision petitioner before the appellate Authority. It was allowed on



C.R.P.(MD)No.2468 of 2017

07.04.1997. Against which revision was preferred by the respondent in C.R.P.(MD).No.2802 of 1997, which is stated to be pending on the date of the present petition. It is further stated that the property is located in very busy area. Situated on the main road, got entrance on North Marat Street as well as the North Veli Street. Building is belonging to Class I category. Near the building temples, hospitals, education institutions, Bus stand, Railway Station are located. The market value of the vacant site is found more than Rs.5,000/- per square feet. Revision petitioner is occupying first and second floor. It is provided with all amenities like Corporation water connection, western toilet, electricity connection, etc., Fair rent for the building has not been fixed so far. In the petition the necessary particulars as per the provisions are furnished. Apart from that it is mainly contended that the property is situated in main business area.

4.Statements of objection was filed by the revision petitioner. The property is situated in a small road. Main entrance is only from the North Marat Street. City buses are flying through the North Veli street. The petition mentioned property is a portion of a big building having more than 7 tenants. Revision petitioner was running a hotel business in a



C.R.P.(MD)No.2468 of 2017

portion in the ground floor and the first floor. The respondent has not taken any steps to fix the fair rent in respect of other tenants. The amenities mentioned in the petition are denied.

5.The revision petitioner further stated that he has modified the building to suit his hotel business by incurring heavy expenditure with the permission of the petitioner. Only at his cost, he made improvement and amenities. Apart from that other customary denials were made regarding the valuation etc.

6.The Authority appointed a Commissioner in I.A.No.312 of 2001. Apart from that Engineer Report was filed in I.A.No.362 of 2004. The Authority by the order, dated 19.08.2008 fixed the fair rent at the rate of Rs.34,550/- per month without any cost. Aggrieved over the fixation of the fair rent, the revision petitioner filed R.C.A.No.55 of 2008 before the Appellate Authority namely Principal Sub Court, Madurai. The appellate Authority modified the fair rent fixed by the Rent Controller and fixed the same at the rate of Rs.14,234/- per month. Not satisfied with the modification this revision is preferred by the erst while tenant.



C.R.P.(MD)No.2468 of 2017

WEB COPY

7.Heard both sides.

8.Before entering into the main issue, the first preliminary point to be cleared is with reference to the averments made by the revision petitioner that he put up the construction at his own cost. According to him, when he was inducted as tenant, there was no first and second floor. No amenities were available like Corporation water, western toilet, electric lighting, etc. He developed the property and provided basic amenities. To this even though the learned counsel for the respondent, at the time of argument disputed the same, the learned counsel for the revision petitioner would draw the attention of this Court to the evidence available on record.

9.Before the appellate Authority, it was argued by the respondent that as per the oral agreement or arrangement the revision petitioner was permitted to make modifications with the consent of the landlord; But, at the time of vacation the enhanced value and modification will belong to the landlord and tenant must vacate the premises as it is. So it was



C.R.P.(MD)No.2468 of 2017

contended by the respondent before the appellate Authority that the modifications at the cost of the revision petitioner could not be allowed to take advantage. It was fair submission made by the respondent before the Appellate Authority. Now, the respondent cannot go against his own admission before the Appellate Authority and contend that what was undertaken by the revision petitioner were only repair works and not additional construction. So this argument is not correct on record and accordingly, it is to be rejected.

10. Another fairness that was made by the respondent before the appellate Authority is that the Rent Controller has committed an error in calculating the site value. It committed an error in including the first and second floor measurements. So they made concession regarding the valuation made for the site. Now we will deal about this issue later. By clearing this preliminary issue we will go further as to the main issue. As mentioned above because of the mistake committed by the Rent Controller in taking the site value, we can straight away go to the Order of the appellate Authority.



C.R.P.(MD)No.2468 of 2017

11.The Commissioner's report and plan submitted in Exs.C1 and C2 were discarded by the Rent Controller. That was accepted by the Appellate Court. So we need not look into Exs.C1 and C2. As per the report submitted under Exs.C3 and C4 the site measurement was taken as 1230.15 square feet.

12.The contention of the revision petitioner that out of the total square feet of 1230.15, 72 square feet was taken as common pathway used by the revision petitioner and other 6 tenants. But, this contention was rejected and found that the entire extent was used only by this revision petitioner. Before this Court also no issue was raised by the revision petitioner on that point. So we can take the extend as 1230.15 square feet.

13.To assess the market value, the landlord relied upon Ex.P1. The property mentioned in Ex.P1 was measuring about 40 square feet. In that document, the value was mentioned as Rs.1250/- per square feet. Since the property covered in Ex.P1 is located only adjacent to this property that was taken as guideline value. But, however, it was reduced to Rs.



C.R.P.(MD)No.2468 of 2017

1,000/- and fixed the same per square feet. So the total value of the site was fixed at Rs.12,30,150/-. This is objected by the revision petitioner stating that as per the settled principle of law, for deciding the valuation for larger area, it is not proper to take valuation fixed for lesser area.

14.For that purpose the petitioner's counsel relied upon the Judgment of the co-ordinate Bench of this Court in the case of ***Greaves Ltd., No.13, New No.26, 2nd Line Beach Road, George Town Chennai – 1 Vs. V.S.Raghavan and another*** reported in ***2007 (3) CTC 262*** and in the case of ***Central Bank of India, rep. by its Regional Manager, Trichy and another Vs. A.Koteeswaran and another*** reported in ***2007 – 1 – L.W. 700***.

15.Per contra, the respondent has relied upon the Judgment of this Court made in the case of ***Ms.Seaeyes Stem Limited, Chennai, vs. C.R.V.Joseph*** in ***C.R.P.(NPD).No.531 of 2021 dated 09.12.2021***.

16.In the light of the above said rival submissions, now let us go to the evidence available on record as to the issue raised regarding the



C.R.P.(MD)No.2468 of 2017

allegation of the property under dispute. The first point raised by the land lord is that the property is located in prime business area and having entrance on both sides, namely towards North Marat Street and North Veli street. It is disputed by the revision petitioner stating that it is located only in a lane area having one entrance. We will go to the evidence on that aspect. The landlord has admitted during the course of cross examination that the property is situated in North Vadampokki Street. There is no Public Transport in that street. So it is evident that as mentioned by the respondent in the main petition, it has no public transport facility. But, located in main area. It is admitted by both sides.

17.Now we will go to Ex.P1. It is located in North Veli Street. The total extent is larger. Out of the larger extent 40 square feet was sold. The four boundaries are, on the north - North Veli Street; on the East - the remaining portion of the vendor; on the south - third party's house; on the west - the property purchased by the purchaser from one Kubendran and others. So it is seen that the purchaser under Ex.P1 was the owner of the western house property bearing door No.182/2.



C.R.P.(MD)No.2468 of 2017

18.The property purchased is situated adjacently. By pointing out the description of property, the revision petitioner submitted that the trial Court as well as the appellate Court committed an error in taking Ex.P1 as the sample sale deed for fixing the market value. No doubt that by reading the recitals in Ex.P1 the valuation mentioned in the document cannot be taken as a base value for the simple reason that as mentioned above the purchaser was already having a property on the north. He purchased a small extent lying on the adjacent area.

19.Even as per the Judgment of the Honourable Co-ordinate Bench of this Court made in the case of ***Greaves Ltd., No.13, New No.26, 2nd Line Beach Road, George Town Chennai – 1 Vs. V.S.Raghavan and another*** reported in ***2007 (3) CTC 262***, valuation mentioned in Ex.P1 ought not to have been taken as a guideline value for fixing the market rate. But, however the appellate Authority reduced the same to Rs.1,000/- as noted above by showing some concession.

20.Now with this we will go to other aspect. Whether the appellate Court has committed an error in taking valuation of the building also. A



C.R.P.(MD)No.2468 of 2017

serious objection was made by the revision petitioner stating that it was admitted by the respondent herein that construction was made with the consent of the respondent by himself by incurring the expenditure and made amenities. So the appellate Authority has committed an error in taking the construction valuation. The appellate Authority has observed that since the revision petitioner was in occupation of the first and second floor, the valuation must be taken into account.

21.To that the revision petitioner would rely upon the judgment of the Co-ordinate Bench of this Court made in the case of ***M.L. Yacob Sheriff (D) by L.Rs. Vs. Rajrani Devi***, reported in ***AIR 2004 Supreme Court 1200*** and would contend that when the construction was admittedly made by this revision petitioner, the valuation of the building ought not to have taken into account by the appellate authority. Only on that issue as mentioned above the respondent made submission before this Court that only repair work was undertaken by the revision petitioner. But, that contention was rejected by me, in view of the argument advanced by the respondent before the appellate authority. But, the appellate authority failed to take note of the above said fair



C.R.P.(MD)No.2468 of 2017

arguments advanced by the respondent and found that there is no evidence on record to show that the revision petitioner put up the additional construction and in occupation of ground and first floor.

22.The lease agreement was marked before the Rent Controller, wherein, we find that in the description of property the ground floor and first floor are mentioned as demised property. Now according to the revision petitioner that was completely modified by him at his own cost.

23.Ex.R2 is the approved plan for the additions and alterations to the existing building. It was made subsequent to the lease agreement. The estimate is under Ex.R3. The document will show that the additions, alterations and modifications were made only by the revision petitioner at his own cost. So the appellate authority was not right in talking the cost of construction as the valuation for fixing the fair rent. Whether that portion of the order can be interfered is the point for consideration.

24.The approved plan and the charges remitted by him was produced by the revision petitioner. So naturally, he would have incurred



C.R.P.(MD)No.2468 of 2017

the expenditure. But, the exact amount spent by the revision petitioner in making the alterations or new constructions is not available. But, however, the appellate Court has taken the same as Rs.2,43,797/-, which is liable to be removed from the consideration.

25.Now coming to the site value as mentioned above Ex.P1 cannot be taken into account for giving the correct market value for the simple reason that the site purchased is only 40 square feet and that too adjacent to the purchaser's building. So, naturally the purchaser would have purchased the same for higher value.

26.Equally, the market value fixed by the authorities cannot be accepted as guiding factor, in view of the settled position of law. As pointed out in the case of ***Greaves Ltd., No.13, New No.26, 2nd Line Beach Road, George Town Chennai – 1 Vs. V.S.Raghavan and another*** reported in ***2007 (3) CTC 262*** referred earlier.

27.Ex.X1 is the guideline value fixed by the authorities. We will find that the valuation is mentioned as 756.70 as on 01.04.1999.



C.R.P.(MD)No.2468 of 2017

Similarly, as mentioned above, Ex.P1 also cannot give a correct figure.

So, naturally, it has to be fixed reasonably by taking into account the lie of the property, the location, the business conducted by the revision petitioner, etc. facts.

28.The appellate Court has fixed the same at Rs.1,000/- as a guess work. But I am of the considered view that it may be reasonably fixed as Rs.900/- per square feet. So the fair rent is fixed at Rs.11,071/- (1230.15 x Rs.900/- = Rs.11,07,135/-; Rs.11,07,135 x 12/100 x 1/12)

29.Accordingly, this civil revision petition is partly allowed. The fair rent fixed by the appellate Court is modified as Rs.11,071/- per month. No costs. Consequently, connected miscellaneous petition is closed.

30.01.2025

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



C.R.P.(MD)No.2468 of 2017

To

WEB COPY

- 1.The Principal Subordinate Judge, Rent Control Appellate Authority,
Madurai.
- 2.The Additional District Munsif, Rent Control Tribunal, Madurai.
- 3.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.R.P.(MD)No.2468 of 2017

G.ILANGOVA,J.

TM

C.R.P.(MD)No.2468 of 2017

30.01.2025