

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)Nos.2617 to 2620 of 2012

Manish Joshi
Proprietor, Premier Agency,
23 Nyniappan Naicken Street,
Sowcarpet, Chennai-600 003. .. Petitioner in CRP.2617/12

Gowtham Chand
Proprietor, Gaj Chemicals
23 Nyniappan Naicken Street,
Sowcarpet, Chennai-600 003. .. Petitioner in CRP.2618/12

Lalbai
Proprietor, Pooja Enterprises,
23 Nyniappan Naicken Street,
Sowcarpet, Chennai-600 003. .. Petitioner in CRP.2619/12

Anand
Proprietor, Gita Surgicals,
23 Nyniappan Naicken Street,
Sowcarpet, Chennai-600 003. .. Petitioner in CRP.2620/12

Gyanchand
Proprietor, Bohras & Cos
23 Nyniappan Naicken Street,
Sowcarpet, Chennai-600 003. .. Petitioner in CRP.2621/12

Vs.

M/s.Medicon (P) Ltd.,
Rep. by its Director,

Gowthanchand
111, Nyniappa Naicken Street,
Chennai 600 003

.. Respondent in all the CRPs

Common Prayer: Civil Revision Petitions filed under Section 25 of Tamil Nadu Buildings Lease and Rent Control Act, 18 of 1960 as amended by Act 23 of 1973, against the judgment and decree dated 04.10.2010 in RCA.Nos.1467, 1470, 1471, 1473 & 1476 of 2004, on the file of the VIII Judge, Court of Small Causes, Chennai, confirming the order and decree passed in RCOP.Nos.2426, 2431, 2432, 2435 & 2440 of 2003 dated 06.10.2004 on the file of X Court of Small Causes, Chennai respectively.

(In all the CRPs)

For Petitioner : Mr.P.B.Balaji

For Respondent : No Appearance

COMMON ORDER

All these Civil Revision Petitions are arising out of Rent Control proceedings. The landlord in all the cases is one and the same and the tenants are different in each case. The landlord had filed a petition under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 for fixation of fair rent in respect of demised premises. All the petition mentioned premises are rented out for residential purpose. The learned Rent Controller fixed fair rent and the appeals filed by the respective tenants are dismissed. Against which the above Civil Revision Petitions are filed by the unsuccessful tenants. The issue

involved in all these Civil Revision Petitions are one and the same hence the above Civil Revision Petitions are disposed by this common order.

2.The revision petitioners in all the above Civil Revision Petition are the tenants and the respondent herein is the land lord in all these Civil Revision Petition. The landlord is one and the same and the tenants are different persons.

3.The case of the landlord/respondent herein is that they are the absolute owner of the property bearing Door No.23, Nainiyappan Naicken Street, Sowcarpet, Chennai and the respective revision petitioners are inducted as tenants in a portion of the demised premises on monthly rent.

4.According to the landlord the petition premises is a Madras Terrace building and the same was made out of Teak Wood and the age of the building is about 75 years old. Further the petition premises is situated in a busiest area which is located nearby Harbour, Central Railway Station, Flower Bazaar, Bus Stand, Government General Hospital, High Court, and other important places. Since the petition

premises is located in the hot of city, the value of the property in that area will be around Rs.60,00,000/- per ground. It is further stated by the landlord that the rent paid now by the tenants is very low considering the value of the property and the amenities provided therein. Hence the landlord sought to fix a fair rent for the petition premises.

5. On the other hand, the tenant / revision petitioner has denied the averments made in the fair rent petition, contending that the wood work in the petition premises is country wood. The cost of constructions is not calculated adopting PWD rate and necessary particulars even with regard to location of the land value on the basis of number of floor is also not available in the fair rent application. The landlord has exaggerated the important of the area without disclosing the locational disadvantages. It is further contented that the petition mentioned premises is situated in a mixed area and considering the sales in the vicinity, the land value is not more than Rs.20,00,000/- per ground. The tenants denied the allegation that the petition premises are having all the basic amenities namely electricity, drainage and etc,. There is no water supply in the petition premises. The rent has been increased from time to time and therefore the

tenants/revision petitioners contented that they are paying reasonable fair rent for the petition premises. The tenant has employed competent engineer and taken separate measurement of the respective portion of the property.

6.The Learned Rent Controller taken up all the above RCOPs together along with other batch of fair rent petitions. During the trial on the side of landlord PW-1 Civil Engineer was examined and Exhibits-P1 to P18 Engineer reports were marked and Exhibits P-19 sale deed and P-20 was marked. On the side of the tenants/ revision petitioners RW1 and RW2 were examined and Exhibits R-1 to R-9 were marked. After considering oral and documentary evidences adduced on either side the Learned Rent Controller by a common order dated 06.10.2004 fixed the fair rent for the petition mentioned premises which is detailed hereunder:

CRP Nos.	Name of the Petitioner	Rent paid	Fair rent sought for	Fair rent fixed by Court
2617/2012	Manish Joshi	Rs.123/-	339/-	1,643/-
2618/2012	Gowtham chand	Rs.1,053/-	7,393/-	13,484/-
2619/2012	Lalbai	Rs.100/-	3,895/-	1,654/-
2620/2012	Anand	Rs.901/-	11,499/-	7,882/-
2621/2012	Gyand chand	Rs.1,316/-	12,904/-	10,270/-

7.Aggrieved over the fixation of fair rent, the respective tenants

filed appeals before the learned VIII Court of Small Causes at Chennai in RCA.Nos.1467, 1470, 1471, 1473 and 1476 of 2014 and the above Rent Control Appeals filed by the tenants were dismissed by a common order dated 04.10.2010 by the Learned Rent Control Appellate Authority. As against the same the parent Civil Revision Petitions are filed by the tenants.

8.I heard Mr.P.B.Balaji, learned counsel for the petitioners in all the Civil Revision Petitions and perused the entire materials available on record. No representation on behalf of the respondent.

9.It is seen that the market value of the property is calculated based upon an unreliable position of sale of a negligible portion of an undivided share. More so, the assessment and evaluation of the building structure is made relying upon the statement and description as projected by the petitioner.

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10.Thus the rent control authorities below have arrived at the finding with regards to the market value of the petition premises baselessly. In the said circumstance without credible material with

regard to the area, age of the building and to substantiate claim for fair rent, the authorities below without any independent documentary proof or any independent opinion have arrived at a conclusion that the market value per ground in that area is Rs.60,00,000/- per ground an assumption and presumption.

11. Therefore, it would be appropriate to remand the matter to the Rent Controller, setting aside the orders impugned and to allow the parties to adduce evidence, to help the Rent Controller to arrive at the correct market value, on the basis of the evidence of bonafide sales between the prudent vendor and the vendee of the lands situated near possessing same or similar advantageous, features during the relevant point of time.

12. Mere submission and calculation of landlord as to the rent is taken as foundation to determine the fair rent, whereas it is equally important to state that the same cannot form a foundation in determination of the market value.

13. In actual it is the duty of the landlord to produce the sanctioned plan, when there is a dispute with regard to the area.

Whereas instant case the respondent herein has merely submitted a map/sketch which do not have a valid sanction, besides lacking few particulars.

14.Only on adducing of evidence with regard to age, area & class of building the fair rent can be decided. Thus the fair rent arrived by the authorities below is improper and is highly excessive. Further with regard to type of building the burden of proof is put on the tenants.

15.It is needless to say that only the respondent/landlord is the fit person to lead the evidence with regard to type of building. Further the depreciation at 1% is found to be very low on comparing the approximate age of 72 years as taken by the Rent Control Authorities below.

16.It is significant to note that in the case on hand the landlord engineer had not filed any sketch denoting the plinth area.

17.More so the existence of basic amenities is also found disputed by the parties. However there is no proper appraisal of evidence with regard to basic amenities.

18.In the result:

(a) these Civil Revision Petitions are allowed and the orders dated 04.10.2010 in RCA.Nos.1467, 1470, 1471, 1473 and 1476 of 2004, on the file of the learned VIII Judge, Court of Small Causes, Chennai, confirming the order and decree passed in RCOP.Nos.2426, 2431, 2432, 2435 and 2440 of 2003 dated 06.10.2004 on the file of learned X Judge, Court of Small Causes, Chennai respectively, are set aside;

(b) the matter is remanded back to the file of the learned Rent Controller for fresh consideration and to dispose of the same in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. No costs.

28.02.2017

vs

Note:Issue order copy on 20.03.2019

Internet:Yes

Index:Yes

To

1.The VIII Judge, Court of Small Causes, Chennai.

2.The X Judge, Court of Small Causes, Chennai.

M.V.MURALIDARAN, J.

VS



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