
(2009) 01 MAD CK 0161

In the Madras High Court

Case No : C.R.P. (NPD) . No. 1115 of 2007 and M.P. No. 2 of 2007

R. Manickam

APPELLANT

Vs

Jan Mohamed Sait and Numaraia Jan Mohamed Sait

RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 4

Citation : (2009) 01 MAD CK 0161

Hon'ble Judges : A.C. Arumugaperumal Adityan, J

Bench : Single Bench

Advocate : V.R. Rajasekaran, for the Appellant; Lenin, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Arumugaperumal Adityan, J.—This Civil Revision Petition has been directed against the Judgment in RCA. No. 27 of 2005 on the file

of the Subordinate Judge, Uthgamandalam (Rent Control Appellate Authority), which had arisen out of the order in RCOP. No. 40 of 2002 on the

file of the learned Rent Controller, Uthagamandalam. The landlord had filed the RCOP. No. 40 of 2002 u/s 4 of the Tamil Nadu Building (Lease

and Rent Control) Act for fixing a fair rent to the petition scheduled premises at the rate of Rs. 9,000/- per month. The respondent had filed his

counter before the learned Rent Controller contending that the petition scheduled premises is in dilapidated condition and is a very old one and will

not fetch more than current rent of Rs. 300/- per month.

2. Before the learned Rent Controller, an Advocate Commissioner was appointed, who had filed Ex.C.1-report with the help of a qualified

Engineer. Before the learned Rent Controller, the petitioner has examined himself as P.W.1 besides examining the Advocate Commissioner as

P.W.2. On the side of the respondent R.W.1 was examined. Except Ex.C.1-Advocate Commissioner's report, no other document was marked

on either side before the learned Rent Controller.

3. After meticulously going through the evidence on record, the learned Rent Controller has fixed the fair rent as Rs. 4,740/- per month. Aggrieved

by the findings of the learned Rent Controller, the tenant had preferred RCA. No. 27 of 2005 before the Rent Control Appellate Authority,

Uthagamandalam. The learned Rent Control Appellate Authority after giving due deliberations to the submissions made by the learned Counsel on

both sides and after scanning the evidence, finding no reason to interfere with the findings of the learned Rent Controller, has confirmed the orders

of the learned Rent Controller with a modification by reducing the monthly rent from Rs. 4,740/- to Rs. 4,450/-, which necessitated the tenant to

approach this Court by way of this revision.

4. Heard the learned Counsel appearing for the revision Petitioner. The main contention of the learned Counsel appearing for the revision petitioner

is that the petition scheduled premisses will not come under the definition of ""Building"" under the Tamil Nadu Building (Lease and Rent Control)

Act. According to the learned Counsel, there is no wall on four sides for the petition scheduled premisses and he had only put up tin sheet to cover

the shop/alleged petition scheduled premises. But this defence was not raised by the revision petitioner before the learned Rent Controller to show

that the lease between the respondent and the revision petitioner herein is only in respect of land and not for any building.

5. A perusal of Ex.C.1-Advocate Commissioner's report will go to show that the petition scheduled premises consists of ground floor in R.S. No.

1747/1 at Garden Road, Nelgiris and it was with a G-I sheet roof with iron angles and the superstructure is also made up of G-I Sheet and the

flooring is a concrete furnished with ceramic tiles. Taking into consideration the age of the building which is 50 years, the learned Advocate

Commissioner with the help of a qualified Engineer has fixed the depreciation value as 1%. Taking into consideration the locality in which the

petition scheduled premises is situated the value of the land was fixed by the learned Advocate Commissioner in Ex.C.1 as Rs. 3,96,060/- on the

basis of the guideline value for the site available in the Joint Sub-Registrar's

Office, Uthagamandalam. On appeal, the learned Rent Control

Appellate Authority has increased the depreciation value from 1% to 2% taking into consideration the age and condition of the building and

reduced the rent from Rs. 4,740/- fixed by the learned Rent Controller to Rs. 4,450/-. The learned Counsel for the revision petitioner relying on

Harish Chandra and Another Vs. Mohd. Ismail and Others, would contend that if the superstructure is of tin sheet it cannot be construed as the

building"" defined under the Tamil Nadu Building (Lease and Rent Control) Act. The facts of the said ratio are that the tenants therein had taken on

lease a shop premises from the landlords put up with tin shed raising a wall on the respondents" building. The land admittedly belonged to the

respondents/landlords and the tin shed was put up by the tenants therein. The Rent Control Petition was filed under the provisions of the UP Urban

Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. While considering whether the suit premisses in that case will squarely come under

the definition of Building under the UP Rent Act, it was held by the Honourable Supreme Court at paragraph 4 as follows:

In our opinion, the question whether the said tin shade falls within the connotation of the term ""building"" within the meaning of the said term as used

in Clause (i) of Section 3 of the U.P. Rent Act, is a matter involving considerable controversy. The decision of the Allahabad High Court relied

upon by the Additional District Judge, namely, Narayan Chand Dass v. Panna Lal 1969 ALL LJ 229, in our opinion, has no application to the

case before us because in the case before the learned Single Judge of the Allahabad High Court, the letting was of an open piece of land on which

the tenant had been permitted to build a tin shed. The agreement between the parties in that case provided that when the tenant left the land, he

would be entitled to take away the material used in the construction of the tin shed. In such a case the lease would be obviously of open land which

admittedly does not constitute a building within the meaning of the said term in Section 3(i) of the U.P. Rent Act.

The said ratio decidendi will not be applicable to the present facts of the case because there is no material produced by the revision petitioner to

show that the lease between the landlord and the tenant in the case on hand is only in respect of the land only. Further, it is not the case of the

revision petitioner/tenant that the superstructure in question was put up by the tenant under the permission of the landlord. Even in the counter filed by the tenant before the learned Rent Controller in RCOP. No. 40 of 2002 he would admit that the landlord had initiated an earlier proceedings against the tenant under RCOP. No. 20 of 1990 u/s 10(2)(i) against which an appeal was preferred in RCA. No. 82 of 1991 and also a CRP was preferred before this Court under CRP. No. 299 of 1995 and that all ended against the landlord. There is no material placed before this Court or before the Courts below to show that the tenant/revision petitioner herein had raised the defence that the tenancy was only in respect of land and not in respect of the superstructure. Apart from this, with regard to the formula followed in fixing the fair rent either, by the learned Rent Controller or by the learned Rent Control Appellate Authority, the tenant/revision petitioner herein has no grievance. Under such circumstance, I do not find any reason to interfere with the findings of the Courts below in fixing the fair rent for the impugned building as Rs. 4,450/- per month.

6. In fine, the Civil Revision Petition fails and the same is dismissed confirming the judgment of the learned Rent Control Appellate Authority in

RCA. No. 27 of 2005 on the file of the Subordinate Judge, Uthagamandalam. Connected Miscellaneous Petition is closed. No costs.