(2012) 02 MAD CK 0057

In the Madras High Court

Case No : C.R.P. (NPD) . No. 1546 2009

Shabbir Sanitary Stores	APPELLANT
Vs	
Amiruddin Bhoy Mullah Abdullah Bhoy Khorakiwala	RESPONDENT

Date of Decision : 24-02-2012

Acts Referred:

Citation : (2012) 02 MAD CK 0057

Hon'ble Judges : V. Periya Karuppiah, J

Bench : Single Bench

Advocate : K.P. Ashok, for the Appellant; S. Ganesan for Mr. A.J. Abdul Razack, for the Respondent

Judgement

Honourable Mr. Justice V. Periya Karuppiah

1. CRP. (NPD). No. 1546 of 2009:

This revision has been directed against the fair and decreetal order passed by the learned Rent Control Appellate Authority in RCA. No. 349 of

2006 dated 23.12.2008 confirming the quantum of fair rent fixed by the learned Rent Controller in RCOP. No. 1319 of 2005 dated 20.01.2006.

CRP. (NPD). No. 1509 of 2009:

This revision has been directed against the fair and decreetal order passed by the learned Rent Control Appellate Authority in RCA. No. 350 of

2006 dated 23.12.2008 confirming the quantum of fair rent fixed by the learned Rent Controller in RCOP. No. 1321 of 2005 dated 20.01.2006.

2. The Revision Petitioners in both the Revisions are the tenants and the respondent is the landlord.

3. For convenience, the relationship of landlord and tenant have been referred as to status in this order.

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4. The case of the petitioner/landlord in RCOP. No. 1319 of 4 2005 before the Rent Controller would be thus:-

The petitioner is the full and absolute owner of the premises No. 27A, Mooker Nallamuthu Street, George Town, Chennai- 1. The respondent is a

tenant under the petitioner in respect of a shop in the Ground Floor of the said premises on a monthly rent of Rs. 1,584/- p.m. The petition

property is situated in a commercial area and all sanitary items and Hardware items are available in the surrounding area. The rent paid by the

respondent is far below the fair rent payable for the said premises. The fair rent for the shop under the occupation of the respondent works out to

Rs. 24,504/- p.m. Hence, the petition.

5. The objections raised in the statement of objection filed by the respondent/ tenant in RCOP. No. 1319 of 2005 before the Rent Controller

would be as follows:

The RCOP is liable to be dismissed in limine as the same is neither sustainable in law nor on facts. The statements and claims made in the above

petition are all false and frivolous and the same are denied. It is absolutely false and frivolous to state that the property is situated in a commercial

area and that all sanitary and hardware items are available in the area and that the rent payable by the respondent is far below the fair rent and that

the fair rent works out to Rs. 24,504/- p.m. The petition premises is in bad and dilapidated condition. The petition premises is 45 to 50 years and

therefore, the depreciation is 1.5% for 50 years. There is only one basic amenity of electricity. The petition premises is located in a small street,

which is a one-way street, and it is located in a ''No parking area''. The petition property is located in a low lying place and there is always water

stagnation even in the slightest rain affecting the business of the respondent. Since the Kothaval Market and the main bus stand has been shifted too

far off Koyambedu area, the market value of site is not more than Rs. 20,00,000/- per ground and therefore, the petition is not maintainable and

the same is liable to be dismissed.

6. The case of the petitioner/landlord in RCOP. No. 1321 of 2005 before the Rent Controller would be thus:-

The petitioner is the full and absolute owner of the premises No. 27-A, Mooker Nallamuthu Street, George Town, Chennai- 1. The respondent is

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a tenant under the petitioner in respect of a shop in the Ground Floor of the said premises on a monthly rent of Rs. 2,400/- p.m. The petition

property is situated in a commercial area and all sanitary items and Hardware items are available in the surrounding area. The rent paid by the

respondent is far below the fair rent payable for the said premises. The fair rent for the shop under the occupation of the respondent works out to

Rs. 24,506/- p.m. Hence, the petition.

7. The objections raised in the statement of objection filed by the respondent/ tenant in RCOP. No. 1321 of 2005 before the Rent Controller

would be as follows:

The RCOP is liable to be dismissed in limine as the same is neither sustainable in law nor on facts. The statements and claims made in the above

petition are all false and frivolous and the same are denied. It is absolutely false and frivolous to state that the property is situated in a commercial

area, that all sanitary and hardware items are available in the area and that the rent payable by the respondent is far below the fair rent and that the

fair rent works out to Rs. 24,506/- p.m. The petition premises is in bad and dilapidated condition. The petition premises is 45 to 50 years and

therefore, the depreciation is 1.5% for 50 years. There is only one basic amenity of electricity. The petition premises is located in a small street,

which is a one-way street, and it is located in a ''No parking area''. The petition property is located in a low lying place and there is always water

stagnation even in the slightest rain affecting the business of the respondent. Since the Kothaval Market and the main bus stand has been shifted too

far off Koyambedu area, the market value of site is not more than Rs. 20,00,000/- per ground and therefore, the petition is not maintainable and

the same is liable to be dismissed.

8. The learned Rent Controller clubbed both the RCOPs., filed for fixation of fair rent, since the properties in both the RCOPs. are located in the

same Door Number in Mooker Nallamuthu Street, George Town, Chennai. After appraising the evidence adduced before the learned Rent

Controller, she had come to the conclusion of fixing fair rent for the building in RCOP. No. 1319 of 2005 at Rs. 10,022/- per month and for the

building comprised in RCOP. No. 1321 of 2005, at Rs. 10,417/- per month.

9. Aggrieved by the order passed by the learned Rent Controller, the tenant in

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RCOP.No.1319 of 2005 preferred an appeal in RCA. No. 349 of

2006 challenging the fixation as higher. However, the landlord has also preferred appeal against the said decision of the learned Rent Controller in

RCA. No. 388 of 2006 challenging the fixation as lower.

10. Similarly, the tenant in RCOP. No. 1321 of 2005 preferred an appeal in RCA. No. 350 of 2006 questioning the fixation as higher. The

landlord in RCOP. No. 1321 of 2005 had challenged the fixation of rent by the learned Rent Controller as low by filing an appeal in RCA. No.

389 of 2006.

11. All the four appeals were clubbed together and the learned Rent Control Appellate Authority heard the arguments on all the four appeals and

had come to the conclusion of dismissing all the four appeals and thereby, confirmed the fixation of fair rent at Rs. 10,022/- per month in RCOP.

No. 1319 of 2005 and at Rs. 10,417/- per month in RCOP.No.1321 of 2005.

12. The aggrieved tenant has preferred revision in CRP. No. 1546 of 2009 questioning the fair and decreetal order of the learned Rent Control

Appellate Authority in RCA. No. 349 of 2006 and the aggrieved tenant has preferred revision in CRP. No. 1509 of 2009 questioning the fair and

decreetal order of the learned Rent Control Appellate Authority made in RCA. No. 350 of 2006. The landlord did not prefer any revision against

the orders passed in RCA. Nos. 388 and 389 of 2006.

13. Since the buildings, to which fair rent was fixed by the learned Rent Controller which was confirmed by the learned Rent Control Appellate

Authority, are located in same Door Number in the same street and the landlord are one and the same, whereas the tenants are different, this Court

is inclined to hear both the Revisions jointly in order to pass a common order.

14. Heard Mr. K.P. Ashok, learned counsel for the Revision Petitioners and Mr. S. Ganesh, learned counsel appearing on behalf of Mr. A.J.

Abdul Razack, learned counsel for the respondent/landlord in both the revisions.

15. The learned counsel for the respondent/landlord would submit in his argument that the learned Rent Control Appellate Authority did not

venture into the aspect that the Engineer who was examined as PW.1 on the side of the landlord was not a qualified person and he did not hold

any degree in Civil Engineering but was holding only a diploma. He would further

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submit in his argument that the report of PW.1 should not have

been accepted as he was not having requisite qualification. He would further submit that the cost of construction was taken as Rs. 370/- per sq.ft.

to which the cost would be only at Rs. 349/- per sq.ft. He would further submit that the learned Rent Control Appellate Authority had simply

accepted the fixation of market value of the land at Rs. 85,00,000/- (Rupees eighty five lakhs) per ground as fixed by the learned Rent Controller

and the appellate authority also did not venture into a separate discussion to come to a similar conclusion for fixing the value at Rs. 85,00,000/- per

ground. He would further submit that the value of the land per one ground would not fetch more than Rs. 21,61,306/- as per the evidence of

RW.1, the Engineer examined by the tenant. He would further submit in his argument that the property of the sale deed produced by the landlord in

Ex.P3 was located in Armenian Street, which is not the street in which the petition mentioned building is situated. He would also submit that the

building in question is located in Mooker Nallamuthu Street, which cannot be compared with the property at Armenian Street. He would further

submit that the Armenian Street is joining with NSC Bose Road, whereas Mooker Nallamuthu Street is a narrow street which has no connection

with NSC Bose Road. He would further submit that the sale deed produced in Ex.R4 by the tenant would be helpful to the courts below for fixing

the market value of the land in Mooker Nallamuthu Street as the said property was located in Sembudoss Street, which is lying adjacent to

Mooker Nallamuthu Street. He would further submit that the fixation of fair rent at Rs. 10,022/- per month in RCA. No. 349 of 2006 and the

fixation of fair rent at Rs. 10,417/- in RCA. No. 350 of 2006 are so high and they ought to have been fixed at Rs. 1,584/- per month in respect of

the building in RCA. No. 349 of 2006 and at Rs. 2,400/- per month for the building dealt in RCA. No. 350 of 2006. He would, therefore, request

the Court to interfere with the fair and decreetal orders passed by the learned Rent Control Appellate Authority and to set aside the same and

thereby allow the Revisions to fix the fair rent at Rs. 1,584/- and Rs. 2,400/- per month respectively in these Revisions.

16. The learned counsel for the respondent/landlord would submit in his argument that the fair rent was correctly fixed by the learned Rent

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Controller by applying all the principles laid down for fixation of fair rent and had come to the conclusion of fixing the fair rent at Rs. 10,022/- for

the building in RCA. No. 349 of 2006 at Rs. 10,417/- for the building in RCA. No. 350 of 2006 and there is no need to interfere with the same.

He would further submit in his argument that the value fixed for the land as per Ex.P3 was quite correct, since the witness examined by the tenant

himself as RW.1 would admit that, one can walk very quickly to the Bank of India located in Armenian Street from the petition mentioned property

and therefore the value of the land in Armenian Street can be fixed for the land in Mooker Nallamuthu Street, since those properties are located in

prominent place in the George Town, and therefore, there is no flaw in the fixation of fair rent by the Courts below. He would further submit in his

argument that the value of the property mentioned in the sale deed in Ex.P3 was dated very much earlier to the date of petition filed before the

learned Rent Controller and therefore, the calculation as made by the courts below at 10% premium for each year was in accordance with law. He

would further submit that the calculation made by both the Rent Controller and Rent Control Appellate Authority are in terms of the procedure as

contemplated under the Tamil Nadu Buildings (Lease and Rent Control) Act and its Schedules and therefore, there is no necessity for the Revision

of the order passed by the learned Rent Control Appellate Authority. He would also submit that the amount sought to be revised by the revision

petitioner/tenant at Rs. 1,584/- for the building in RCA. No. 349 of 2006 and at Rs. 2,400/- for the building in RCA. No. 350 of 2006 are far

below and there is no merit in seeking revision of such fixed fair rents by both the courts below. He would further submit that both the courts below

have appreciated the evidence and had calculated the fair rent and came to concurrent findings and such factual finding need not be interfered with,

since such finding and fixation of fair rent was very much within the rules and procedures to be followed for fixing the fair rent. Therefore, he would

request the court to dismiss both the revision petitions.

17. I have given anxious thoughts to the arguments advanced on either side.

18. The revision petitioners in both the revisions are the tenants under the respondent for different portions of the building belonging to the

respondent. The relationship of landlord and tenant and the identity of the

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property are not disputed. The contractual rate of rent as put forth in the

petition by the landlord was also not disputed. The landlord has filed the petition for fixation of fair rent in the year 2005 and the learned Rent

Controller and examined the Engineers on either side as PW.1 and RW.1 and admitted the documents and after an elaborate discussion, it had

come to the conclusion of fixing the fair rent at Rs. 10,022/- per month regarding the building dealt with in RCOP. No. 1319 of 2005 against

which RCA. No. 349 of 2006 was filed and dismissed. The learned Rent Controller had also fixed the fair rent at Rs. 10,417/- per month in

respect of the building dealt with in RCOP. No. 1321 of 2005 against which RCA. No. 350 of 2006 was filed and dismissed. Apart from the

Engineers examined on either side, there was any other witness examined. Commissioner was also not sought to be appointed for the purpose of

ascertaining the facts. It has been contended that PW.1 - Engineer examined by the landlord did not possess any qualification to give his opinion.

However, nothing was placed to show that there were qualifications fixed for presenting opinion towards value of properties. It is not disputed that

PW.1 was a diploma holder in Civil Engineering, having technical knowledge to measure the disputed properties and to give his opinion about the

value of land and super structure. Therefore, the contention raised by the learned counsel for the respondents/tenants that PW.1 has no

qualification to file a report and depose before this Court cannot be approved.

19. Now we have to see whether the valuation done by the learned Rent Controller as well as the Rent Control Appellate Authority are not in

accordance with law and are liable to be interfered.

20. The learned Rent Controller had fixed the value of the land on the basis of the document produced as Ex. P3, which was of the year 2000.

However, the tenant had produced a sale deed in Ex. R4, which is of the year 1999. The said document produced in Ex. P3 was in relation to a

property located in Armenian Street. However, the property dealt with in Ex. R4 is a property located in Sembudoss street. Sembudoss Street is

located adjacent to Broadway Road, whereas Armenian Street is branching from NSC Bose Road and was running towards north. However,

when we consider the location of Mooker Nallamuthu Street, it is very much located near Armenian Street than Sembudoss Street. It is the

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evidence of RW.1 that Bank of India situated in Armenian Street, is located very near to Mooker Nallamuthu Street. Therefore, I could see that

the decision reached by the learned Rent Controller for preferring Ex. P3 to fix the land value, where the building is located at Mooker Nallamuthu

Street, is correct. Accordingly, learned Rent Controller had calculated the value of the land, in which the building stood, at Rs. 85,00,000/- per

one ground. The learned Rent Control Appellate Authority had also discussed the said issue independently and accepted the finding of the Rent

Controller. Therefore, I do not find any reason to interfere in the said finding, reached concurrently.

21. As regards other points under which the learned Rent Controller as well as the learned Rent Control Appellate Authority have considered in

respect of type of building as Type-I and the age of the building fixed at 63 years on the basis of the evidence given by RW.1, cannot be disputed

by the tenant, because it was adduced by RW.1 only on behalf of the tenant. On the basis of the said type of the building and the age of the

building, the depreciation for 63 years at 1% per year has been calculated by both the courts below. Similarly, the basic amenity and the extent of

plinth area have also been decided by both the courts below, relying only on the evidence of RW.1 and the evidence of PW.1 was not relied upon

by both the Courts below in that regard. Therefore, findings regarding the amenity regarding the electricity given at 5% and the extent of plinth area

of property fixed, at 507 sq.ft for the building dealt with in RCOP. No. 1319 of 2005 and at 527 sq.ft for the building dealt with in RCOP. No.

1321 of 2005 cannot also be disturbed.

22. It has been questioned by the revision petitioners that the fixation of construction cost at Rs. 370/- per sq.ft for Type-I building in the year

2005-2006, could not be correct. The revisions petitioners have asked for fixation of construction cost at Rs. 349/- per sq.ft. The courts below

have come to a conclusion on the basis of the costs of construction for type-I building in the schedule of assessment given by the Public Works

Department (PWD) only. It has not been established as to why it has to be fixed at Rs. 349/- per sq.ft for the year 2004-2005 by the tenant.

Therefore, the fixation of the value at Rs. 370/- per sq.ft and the basic amenities at 5% on the said value for ascertaining the building costs as per

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the evidence of RW.1 cannot also be questioned by the tenant. The depreciation calculated for 63 years at 1% was also decided by both the

courts below on the basis of the evidence given by RW.1, who is the Engineer examined by the tenant. Therefore, the building costs as well as the

land value for the land on which the building is standing, have been properly assessed by the learned Rent Controller and it was also discussed

elaborately by the learned Rent Control Appellate Authority to reach the findings that the said value at Rs. 85,00,000/- per ground and the total

value of the building was also assessed by the learned Rent Controller and the learned Rent Control Appellate Authority and they have come to a

conclusion of fixing the annual value after adding 12% with Rs. 10,02,206/- and Rs. 10,41,741/- respectively in respect of the buildings dealt with

in RCA. No. 349 of 2006 and 350 of 2006 as they are tenanted for non-residential purpose. Thus, the fair rent was fixed at Rs. 10,022/- and Rs.

10,417/- respectively in R.C.A. Nos. 349 and 350 of 2006. On a careful perusal of the calculation made by both the courts below, I do not find

any infirmity or mistake in the said calculations to reach such annual rental value and to fix the fair rent for the said buildings. In the said

circumstances, I find no reason for interfering with the finding of the learned Rent Control Appellate Authority in confirming the order passed by the

learned Rent Controller.

23. For the foregoing discussions, I am of the considered view that there was no reason for interfering with the findings reached by the rent Control

Appellate Authority in R.C.A. Nos. 349 and 350 of 2006. Accordingly, both the Revisions are dismissed with costs.

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