

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

RCRev.No. 363 of 2011 ()

AGAINST THE ORDER/JUDGMENT IN RCA 93/2008 of RENT CONTROL APPELLATE
AUTHORITY (DISTRICT & SESSIONS COURT), THRISSUR DATED 10-03-2011

AGAINST THE ORDER/JUDGMENT IN RCP 79/2005 of RENT CONTROL
COURT, THRISSUR DATED 25.7.2008

REVISION PETITIONERS/APPELLANT/RESPONDENT NO.4:

A.O.SUNNY, S/O.A.A.OUSEPH,
ALAPADAN HOUSE, KANIMANGALAM DESOM, VILLAGE.

BY ADV. SMT.S.KARTHIKA

RESPONDENT(S)/RESPONDENTS/PETITIONER & RESPONDENTS:

1. WILSON, S/O.ANTHONY, THALIKKATTIL HOUSE,
SAW MILL ROAD DESOM, KOORKANCHERY VILLAGE
THRISSUR TALUK-680 007.
2. JOHNY, S/O.A.A.OUSEPH,
ALAPADAN HOUSE, KANIMANGALAM DESOM, VILLAGE-680 027.
3. JOSEPH, S/O.OUSEPH,
DO. PIN-680 027.
4. DAISY, W/O.T.T.JOSE, THAZHEKADAN HOUSE,
LOURDHUPURAM P.O., KIZHAKEKOTTA-682 027.
5. FLORY, W/O.P.LJOSE,
BRAHMAKULATH POKKATHU HOUSE, CROSS BAZAR P.O.
IRINJALAKUDA-680 027.
6. PRINCY, W/O.C.L.LOUIS,
KONKOTHU HOUSE, P.O.THUMBOOR
VIA IRINJALAKUDA-680 027.
7. LISSY, W/O.LATE THOMAS,
ALAPADAN HOUSE, KANIMANGALAM DESOM, VILLAGE-680 027.
8. LINTO, S/O.LATE THOMAS,
DO. PIN-680 027.
9. THARUN, S/O.LATE THOMAS,
DO., PIN-680 027.

R2,3,7,8&9 BY ADV. SMT.ANNIE JACOB
R1 BY ADV. SRI.G.SREEKUMAR (CHELUR)
R1 BY ADV. SRI.K.RAVI (PARIYARATH)

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
19-03-2015, ALONG WITH RCR. 368/11 AND RCR.364/11 THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

R.C.R.Nos.363, 364 & 368 of 2011

Dated this the 19th day of March, 2015

O R D E R

Antony Dominic, J.

1. These revision petitions are filed by the tenants in RCP.Nos.79/05, 78/05 and 77/05 on the file of the Rent Control court, Thrissur. The Rent Control Petitions filed by the landlords seeking eviction of the tenants under sections 11(2)(b) and 11(4)(iv) of the Kerala Buildings (Lease & Rent Control) Act, 1965 were allowed by a common order dated 25.7.2008. In RCA.Nos.93/08, 94/08 and 92/08, that order was confirmed by the Rent Control Appellate Authority, Thrissur again by a common judgment dated 10.3.2011. It is challenging this proceedings, these revisions are filed.

2. Briefly stated, facts of the case are that RCR.363/11 arises from the order passed in RCP.79/05 which was confirmed in RCA.93/08. Facts show that one Ramaswamy was the original owner of the building which was let out in 1952 to a tenant by name Ouseph. On the death of Ouseph, his son A.O.Sunny succeeded

him and in the mean while, one wilson acquired title over the property and it was wilson who sought eviction of A.O.Sunny in RCP.79/05.

3.RCR.364/11 arises from the order in RCP.78/05 which was confirmed in RCA.94/08. Here also, A.O.Sunny is the tenant and the landlord is one George who acquired title from Ramaswamy mentioned above.

4.RCR.368/11 arises from the order in RCP.77/05 which was confirmed in RCA.92/08. Here, the building owner was Ramaswamy who had originally let out the building to one Kochappan whose interest was inherited by one Jose and it was against Jose, the RCP was filed.

5.In so far as RCR.368/11 is concerned, the factual position is that during the pendency of RCA.92/08, Sri.Jose, appellant therein, expired on 16.3.2009. Thereupon, IA.1739/09 was filed by his Legal Representatives praying that his wife and two children be impleaded as supplementary appellants and one Legal Representative, who was out of station, be

impleaded as additional respondent. However, the Rent Control Appellate Authority did not pass any order in the IA and instead, disposed of the appeal itself along with the other two appeals.

6. Thereafter, the second petitioner, son of the deceased appellant, has filed RCR.368/08 impleading the wife and other two children of the deceased appellant as respondents 7, 8 and 9 therein. Though the disposal of the appeal with the deceased as the sole appellant, despite the pendency of IA.1737/09, is now pointed out by the counsel for the petitioner in this revision, what we find is that this is an irregularity committed at the hands of the court and the petitioner and respondents 7 to 9 whose impleadment was sought for, are also to be blamed for not obtaining orders in the IA. However, the counsel for the respondent landlord conceded that the said IA can be ordered to be allowed as prayed for. Therefore, we order that IA.1739/09 in RCA.92/08 will stand allowed and the second petitioner herein and respondents 7 and 8 will stand impleaded as

additional appellants and the 9th respondent will stand impleaded as additional respondent in RCA.92/08. This order is passed by us in order to avoid further delay in the litigation or else the matter will have to go back to the Rent Control Appellate Authority causing prejudice to all concerned.

7.The Rent Control Petitions were filed by the respective landlords under sections 11(2)(b) and 11(4)(iv) of the Act and the Rent Control Court and the Rent Control Appellate Authority concurrently held both these grounds in favour of the landlords. In so far as the grounds under section 11(2)(b) is concerned, Exts.A20, A123 and A25 are the notices issued on behalf of the landlord and these notices were issued in 2003. As rightly found by the Rent Control Court and the Appellate authority, despite the notices of demand, the tenants did not have a case that they have discharged the liability. They also did not they have a case that after receipt of the notices, the arrears were paid. They have also

not deposited the arrears before the Rent Control Court. This, therefore, establishes beyond any doubt that rent was in arrears as found by the Rent Control Court and confirmed by the Appellate Authority. Therefore, this finding of the Rent Control Court does not call for any interference.

8. What now remains is the grounds under section 11(4) (iv) of the Act. Section 11(4)(iv) recognises the right of the landlord to seek eviction of the tenants for reconstruction of the building. In so far as this case is concerned, evidence adduced by Pws.1 to 3 show that even in 2005, the building was more than 60 years old and is a tiled one. The building is situated in a commercially important location of Thrissur town and is close to the railway station, KSRTC bus station and commercial centres. Evidence also shows that the building occupied only 1/3rd of the property where it is constructed and that if the building is demolished and reconstructed as a multi-storied one, that can be commercially much beneficial to the landlords. Landlords also have proved that

they have the capacity to reconstruct the building. They had obtained approved plan and permit which were also produced before the Rent Control Court. In order to prove the financial capacity of the landlords for undertaking the work of reconstruction, they had produced Ext.A18 letter from the bank also. All these, therefore, indicate that the landlords were entitled to have the tenants evicted for reconstruction of the building as provided under section 11(4)(iv). In such circumstances, we are not persuaded to think that the orders passed by the Rent Control Court as confirmed by the Appellate Authority requires to be interfered with in these revision petitions.

9.However, we clarify that it would still be open to the tenants to deposit the arrears as found by the Rent Control Court in terms of section 11(2)(c) and get the grounds under section 11(2)(b) vacated.

10.We are informed that the permit obtained by the landlords from the Local Authority has expired by

lapse of time. Therefore, we clarify that before delivery is issued by the execution court, it will satisfy itself that there is a valid plan and permit for undertaking reconstruction in terms of the Act.

Revisions are disposed of as above.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

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PS to Judge