

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

RCRev.No. 182 of 2013 ()

AGAINST THE ORDER/JUDGMENT IN RCA 58/2011 of VI ADDL.DISTRICT COURT (RENT
CONTROL APPELLATE AUTHORITY) ERNAKULAM DATED 14-11-2012

AGAINST THE ORDER IN RCP 112/2009 of III ADDL.MUNSIFF (RENT CONTROL) COURT,
ERNAKULAM DATED 21.3.2011

REVISION PETITIONER(S)/APPELLANT/RESPONDENT:

M.L.GANESH, AGED 35 YEARS, S/O.LAKSHMANAN
RESIDING AT SASTHA MANDIRAM
MAY FIRST ROAD THAMMANAM P.O., ERNAKULAM.

BY ADVS.SRI.T.A.SHAJI (SR.)
SRI.MANUEL VIVERA
SRI.M.A.ASIF

RESPONDENT(S)/RESPONDENT/PETITIONER:

RADESH BHATT, AGED 30 YEARS
S/O.RAJA GOPAL BHATT, RESIDING AT CC.40/7067
T.D.SANNIDHI ROAD, ERNAKULAM.

R1 BY ADV. SRI.P.A.ABDUL JABBAR

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
25-02-2015, ALONG WITH RCR. 185/2013 AND CROSS OBJECTIONS, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

R.C.R.No.182/13 & Cross Objection No.73/13
and
R.C.R.No.185/13 & Cross Objection No.74/13

Dated this the 25th day of February, 2015

O R D E R

Antony Dominic, J.

1. Though the revision petitioners, tenants of a building, are different persons, the respondent landlord is common in these two cases. The landlord filed RCP.Nos.112/09 and 113/09 on the file of the Rent Control Court, Ernakulam seeking eviction of the petitioner in RCR.182/13 and the petitioner in RCR.185/13 respectively, the tenants, urging grounds under sections 11(3) and 11(4)(iv) of the Kerala Buildings (Lease & Rent Control) Act, 1965. The tenants filed RCA.Nos.58/11 and 57/11 on the file of the Rent Control Appellate Authority, Ernakulam, Challenging the order of the Rent Control Court, requiring the landlord to construct the building in terms of Ext.A3 plan. Against the order recognising the benefit of the third proviso to section 11(4)(iv) to the tenants, the landlord filed cross objections in the appeals filed by the tenants. The appellate authority heard the appeals together and by a common judgment rendered on 14.11.2012, disposed of the

appeals. In modification of the order passed by the Rent Control Court, the Appellate Authority ordered that the tenants will be given the benefit of the third proviso to section 11(4)(iv) as and when the building is re-constructed in terms of Ext.A3 plan. These RCRs are filed by the tenants challenging the orders passed by the lower authorities and the landlord has also filed cross objection Nos.73/13 and 74/13 impugning the direction of the Appellant Authority giving the benefit of the third proviso to section 11(4)(iv) to the tenants.

2.We heard learned counsel for the petitioners tenants and the learned counsel appearing for the landlord.

3.In so far as cross objection Nos.73/13 and 74/13 are concerned, as rightly pointed out by the counsel for the tenants, in view of the principles laid down by the Division Bench of this Court in Susheela v. Balakrishnan [2014 (1) KLT 1004], such cross objections cannot be entertained by this Court nor such objections could have been entertained by the appellate authority. However, that does not mean

that the landlord cannot take advantage of the principles contained in Order XLI Rule 22 of the Code of Civil Procedure and canvass against the adverse findings on him. This right of the landlord has been recognised by the Division Bench of this Court in the judgment in Ganesh v. Varghese [2005 (1) KLT 282]. Therefore, the cross objections filed by the landlord cannot be entertained.

4.As we have already mentioned, the Rent Control Petitions were filed by the landlord under sections 11(3) and 11(4)(iv) of the Act. According to the landlord, the building needed re-construction and he bonafide needed the ground floor of the building for his occupation to start a restaurant business. It was on this ground, he sought for eviction of the tenants. The Rent Control Court and the Appellate Authority had accepted the case of bonafide need pleaded by the landlord. It was despite this that the Rent Control Court directed that the tenants be given the benefit of the first option for allotment of the re-constructed building as provided in the third proviso to section 11(4)(iv). It was on this

basis, the Rent Control Court ordered that the landlord should re-construct the building in terms of Ext.A3 plan and allot the tenants the building in terms of the third proviso. Though the bonafide need urged by the landlord under section 11(3) was confined to the ground floor of the building, the plan approved by the Corporation was for construction of an additional first floor also, to which, the bonafide need under section 11(3) did not extend. However, in the process, the Rent Control Court omitted to take into account the evidence of the landlord stating that though his plan approved is for a first floor also, on account of his financial constraints, he is unable to construct the first floor. In the appeals, taking note of the above, the appellate authority ordered that in the circumstances though the landlord cannot be compelled to construct the first floor also, if and when the land constructs the first floor, the tenants should be given the benefit of the third proviso to section 11(4)(iv).

5. Though the counsel for the landlord contended that the Rent Control Court and the appellate authority

having accepted his grounds under section 11(3), the tenants could not have been granted any benefit traceable to the third proviso to section 11(4)(iv), we are unable to accept the same. As we have already stated, the bonafide need of the landlord was confined to the ground floor of the re-constructed building. However, the plan contained provision for construction of the first floor also. Therefore, if the first floor of the building is constructed, even if it is at a later point of time, since the bonafide need of the landlord did not extend to that portion of the building, the tenants are entitled to the benefit of the third proviso to section 11(4)(iv) in that portion. It was therefore that the Rent Control Appellate Authority balanced the equities by holding that if the landlord constructs the first floor, the tenants should be given the benefit of the third proviso. We do not think that this direction of the Appellate Authority comes in any manner in conflict with its finding under section 11(3) of the Act.

6. In the aforesaid circumstances, we do not find any reason to interfere with the orders passed by the

Rent Control Court or the Appellate Authority, either at the instance of the tenants who have filed these revisions or the landlord who, taking advantage of the principles contained in Order XLI Rule 22 of the CPC, argued against the final relief moulded by the Rent Control Appellate authority.

7. At this stage, learned counsel for the petitioners requested for a reasonable time to surrender vacant possession of the building to the landlord. Though they requested for 12 months' time, this prayer was opposed by the counsel for the landlord. Taking note of the submissions made by both sides and also considering the fact that the tenants will have to shift their existing establishment, we direct that the tenants will be given 6 months' time from today to surrender vacant possession of the premises to the landlord. This shall, however, be subject to the condition that the tenants shall, within two weeks from today, file an affidavit unconditionally undertaking to surrender vacant possession of the rooms in question to the landlord. This affidavit shall be filed before the Rent Control

Court/execution court. The tenants shall also pay arrears of rent, if any, and shall continue to pay rent without default during the aforesaid period.

Revision petitions and cross objections are dismissed accordingly.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

k kb.

/True copy/

PS to Judge