

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

RCRev..No. 315 of 2013 ()

AGAINST THE JUDGMENT IN RCA 17/2011 of RENT CONTROL APPELLATE
AUTHORITY, ERNAKULAM

AGAINST THE ORDER IN RCP 68/2009 of RENT CONTROL COURT

REVISION PETITIONER(S):

G.SYAMSUNDER
S/O.LATE GOPALAKRISHNAN EMBRANTHIRI
KOLLASSERY MADHOM, RAVIPURAM, ROAD
ERNAKULAM, KOCHI 682 016.

BY ADVS.SRI.C.K.GOVINDAN
SRI.L.P.ARAVINDAKSHAN

RESPONDENT(S)/APPELLANTS:

1. VIMALA BHASKARAN, AGED 63 YEARS
W/O.LATE BHASKARAN, 'SREESAILAM', EZHUTHULLIL LANE
ALAPPAT CROSS ROAD, ERNAKULAM, KOCHI 682 015.
2. MAYA, AGED 43 YEARS
D/O.LATE BHASKARAN, 'SREESAILAM', EZHUTHULLIL LANE
ALAPPAT CROSS ROAD, ERNAKULAM, KOCHI 682 015.
3. MINI, AGED 38 YEARS
D/O.LATE BHASKARAN, 'SREESAILAM', EZHUTHULLIL LANE
ALAPPAT CROSS ROAD, ERNAKULAM, KOCHI 682 015.

R1-R3 BY ADV. SRI.SREELAL N.WARRIER

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
26-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.Surendra Mohan & Mary Joseph, JJ.

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R.C.R No.315 of 2013

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Dated this the 26th day of June 2015.

ORDER

Surendra Mohan,J

The landlord is in revision challenging the judgment of the Rent Control Appellate Authority, Ernakulam in R.C.A No.17 of 2011 vacating the order of eviction granted by the Rent Control Court in R.C.P No.68 of 2009. The landlord had filed the Rent Control Petition seeking eviction of the tenant alleging grounds under Sections 11(4)(i), 11(4)(v) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act', for short). According to the revision petitioner/landlord, the room occupied by the tenants was originally taken on rent from his father by the original tenant, Sri.Bhaskaran. After his death in the year 2007, the present respondents, his wife and children are in occupation of the shop room. Initially, they had kept the shop room

locked for a period of more than seven months. Later on, according to the landlord, the shop room was sub-let to another person. For the said reason the landlord had sought eviction under Section 11(4)(i) and 11(4)(v) of the Act.

2. The contentions of the landlord were disputed by the tenants. They denied that there was sub-letting of the premises. According to them, they had kept the shop room locked only for a period of one month after the death of Sri. Bhaskaran. Thereafter, they have been conducting a business from the shop room in all types of cassettes. A telephone coin box is also there in the premises. According to the tenant, the income from the business is their only source for livelihood.

3. An Advocate Commission was taken out at the instance of the landlord. The report has been marked as Ext.C1. The landlord produced Ext.A1 to A5 documents and examined himself as P.W.1. P.W.2 is the Advocate Commissioner. The tenant examined the first respondent as R.W.1. R.W.2 is the Accommodation Controller. They have also produced Exts.B1 to B5 documents.

4. On a consideration of the evidence on record, the Rent Control Court found against the landlord on the grounds under Section 11(4)(i) and 11(4)(v) of the Act. However, eviction was ordered under Section 11(8) of the Act, finding that the landlord required the tenanted premises as additional accommodation for his business. The tenant challenged the order of eviction in R.C.A No.17 of 2011. The appeal has been allowed by the Appellate Authority, setting aside the order of eviction. It is against the said judgment that the tenant has invoked the revisional jurisdiction of this Court.

5. According to Sri.C.K.Govindan, who appears for the revision petitioner, the Appellate Authority has been carried away by the fact that the Advocate Commissioner had reported the existence of the shop room in the line building of the tenanted premises. It is the contention of the counsel for the revision petitioner that, the consistent case of the landlord was that he owned three rooms in the line building of which two rooms were in his possession. He was conducting a pharmaceutical business from the rooms in the premises. He had sought for an order of eviction since he required

additional accommodation for his business. What the Advocate Commissioner has reported is only that there were altogether six rooms in the line building. However, according to the learned counsel, Exts.A1 and A2 documents clearly show that the petitioner has title only to three shop rooms. Therefore, it is contended that the judgment of the Appellate Authority requires interference in revision. According to the learned counsel for the petitioner, the tenants had not disputed the fact that the petitioner was conducting business in the adjacent two rooms. Though they had disputed that the space presently occupied by him was sufficient for a business, there is no evidence to support the above contention. It is also pointed out by the learned counsel that, the Advocate Commissioner had reported regarding the availability of other shop rooms in the locality. Therefore, on the question of comparative hardship also a finding in favour of the landlord was inevitable.

6. The counsel for the respondents seriously opposes the contentions of the counsel for the landlord. According to the learned counsel, the case pleaded by the petitioner in the Rent

Control Petition is that, the tenanted shop room was part of a building having only three rooms. At the same time, the Advocate Commissioner has reported that the line building has six rooms. Beyond the three rooms referred to in the Rent Control Petition, there is a passage, beyond which the other three rooms are situate. There is no evidence regarding the persons who are in occupation of the said shop rooms. The above discrepancy has been taken note of by the Appellate Authority and eviction has been disallowed for the said reason. According to the counsel, there is absolutely no evidence in this case regarding the quantity of stock that is in the possession of the landlord. There is also no evidence regarding the comparative hardship. Though the Advocate Commissioner has reported that there are vacant rooms available in the locality, no details regarding the rent and other terms subject to which the availability of the said rooms would depend, are available. Therefore, it is contended that this revision is only to be dismissed.

7. Heard. The Rent Control Petition shows that, what the landlord has stated therein is that "he is the owner in possession of

building bearing Kochi Corporation No.39/3952 situated on the eastern side of the Ravipuram road facing the said road. There are three rooms in the said numbered building, which is part of a line building.” It is clear from the above that, what the landlord has stated is that he is the owner in possession of a building bearing the number stated in the petition, comprised of three rooms, which is part of the line building. It is true that there is no averment regarding the total number of rooms in the line building. It is stated that out of the said building the southern most room which is described in the schedule to the Rent Control Petition was rented out to Mr.Bhaskaran. The objection to the above statement contained in paragraph 4 of the objections of the tenant is that, the building of which the schedule rooms form part is having six rooms, three rooms with shutters on the ground floor. Rooms in the first floor are used as a lodge. Out of the six rooms, three rooms had been taken on rent by Sri.Bhaskaran from the father of the present landlord. The case of the tenant is that out of the three rooms, two rooms had been surrendered voluntarily to the landlord retaining only one room

in their possession. What the Advocate Commissioner has reported in Ext.C1 document is that, the line building in question is a double storied one. The tenanted shop room is a part of the said building. It has been reported that there are six rooms on the ground floor of the said building. The landlord is conducting his business by name 'Krishna Pharmaceutical' on the northern portion of the said building. The building on the southern side of the room occupied by the landlord was the tenanted shop room. A perusal of Ext.A3 notice which is dated 20.05.2009 also shows that the case of the landlord therein is that he is the absolute owner of the building bearing Kochi Corporation No.39/3952 situate on the eastern side of the Ravipuram road facing the said road. There are three rooms in the said "number building" out of which, the southern most room was the tenanted shop room. We do not find any confusion in the above description of the tenanted shop room or the building of which the shop room occupied by the tenant is part of. The Appellate Authority has obviously been under a confusion that the reference made by the landlord was to the entire building. The fact remains that the

landlord has not put forward a claim of ownership regarding the entire building. His claim of ownership is limited to the three shop rooms which are identified by the same building number. There is absolutely no confusion regarding the identity of the building, as sought to be made out by the Appellate Authority in paragraph 12 of its judgment. It is only on the basis of the finding that the landlord had no consistent case regarding the identity of the rooms that the Appellate Authority had interfered with the order of eviction granted by the Rent Control Court. Since the landlord has limited his claim of ownership to only three rooms, it was not incumbent on his part to have explained the possession of the other three rooms in the line building. The Commission Report Ext.C1 refers to the conditions under which the the pharmaceutical business of the revision petitioner is being conducted. It has been stated that there was paucity of space at the time of inspection by the Advocate Commissioner. Of course there has been a suggestion in the cross examination of P.W.2 that the articles could have been placed there to stage manage the situation, just before the inspection was

conducted. However, there is absolutely no evidence to support the above allegation.

8. On the question of comparative hardship, we find that the Rent Control Court has considered the same in the proper perspective. There is absolutely no evidence regarding the income that is obtained from the business conducted by the tenants. There is no evidence that the tenants are depending on the income from the business for their livelihood. There is evidence to show that other vacant buildings are available in the locality. It is true that there is absolutely no evidence regarding the terms subject to which the buildings would be available for rent. It was for the tenant to have adduced evidence regarding the said aspect. The need that is put forward by the landlord for additional accommodation is bona fide and cannot be found fault with, in the light of the evidence available in this case. There is no evidence to justify a conclusion that the hardship suffered by the tenant would outweigh that of the landlord.

For the foregoing reasons, this revision is allowed. The judgment of the Rent Control Appellate Authority in R.C.A No.17 of 2011 is set aside. The order of eviction granted by the Rent Control Court in R.C.P No.68 of 2009 is confirmed.

Sd/–
K. Surendra Mohan, Judge.

Sd/–
Mary Joseph, Judge.

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