

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. 381 of 2013

AGAINST THE ORDER/JUDGMENT IN RCA 91/2008 of THE RENT CONTROL
APPELLATE AUTHORITY, THALASSERY DATED 14-12-2012

AGAINST THE ORDER/JUDGMENT IN RCP 190/2006 of THE ADDITIONAL RENT
CONTROL COURT, KANNUR DATED 17-06-2008

REVISION PETITIONER(S)/RESPONDENT/PETITIONER:

CHALKANDY PUTHIYAPURAYIL ANWAR SADATH
S/O.MUSTAFA HAJEE, C.K.HOUSE, PADUVILAYIL
VENGAD
KANNUR DISTRICT. REP. BY POWER OF ATTORNEYHOLDER ABDUL AZEEZ
S/O.AHAMMED, ANJARAKANDY, MAMBA
KANNUR DISTRICT.

BY ADVS.SRI.K.V.SOHAN
SRI.K.BABU

RESPONDENT(S)/APPELLANT/RESPONDENT:

K.P.K. ABDUL MAJEED
S/O.HUSSAIN KUNHI, AHAMEED STORE, CW-2016
CAMP BAZAR, KANNUR - 670 001.

R1 BY ADV. SRI.C.P.PEETHAMBARAN
R1 BY ADV. SRI.P.K.MOHAN NAMBIAR

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

kkj

**K.SURENDRA MOHAN, J &
MARY JOSEPH, JJ.**

R.C.R. No.381 of 2013

Dated this the 26th day of June, 2015

O R D E R

Surendra Mohan, J.

The landlord is in revision before us challenging the judgment of the Rent control Appellate Authority, Thalassery in RCA No.91 of 2008. The appeal was filed by the tenant aggrieved by the order of eviction passed by the Rent Control Court, Kannur in RCP No.190 of 2006. The landlord had filed the Rent Control Petition seeking eviction of the tenant under Section 11(2), 11(3) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act' for short). It is submitted by both sides that, only the ground under Section 11(3) survives at present. Therefore, the submissions advanced before us were also confined only to the ground under Section 11(3). For the above reason, we shall proceed to consider only the said ground.

2. The need alleged by the landlord was that, he wanted to demolish the tenanted shop room for the purpose of providing a proper, wide access or road to a lodge that he was conducting from a property behind the tenanted shop room. The name of the lodge is "Brothers Lodge". The building does not have a proper access. The present access being narrow, permits the entry of only two wheelers and three wheelers. Therefore, the landlord wants to provide a way and provide vehicular access to his lodge. According to the landlord, if the tenanted shop room is demolished, such a passage could be provided. It is contended that, the Advocate Commissioner has reported, testifying to the feasibility of the proposal. According to the Advocate Commissioner, without damaging the structure of the building or the roof thereof, such a passage could be provided by demolishing the tenanted shop room.

3. The tenant disputed the bonafides of the need put forward. Both parties let in evidence, both documentary as

well as oral. The evidence in the case consists of Exhibits A1 to A10 documents and the oral evidence of PW1, on the side of the landlord. On the side of the tenant, Exhibits B1 to B3 documents were produced and RWs 1 and 2 were examined as witnesses. Exhibits C1 Commission Report and C2 Plan were marked as Court Exhibits.

4. On a consideration of the evidence on record, the Rent Controller found that, the landlord had succeeded in establishing the ground under Section 11(3) and therefore ordered eviction. Aggrieved by the order of eviction, the tenant filed RCA No.91 of 2008, challenging the same. Before the Rent Control Appellate Authority, the tenant filed an application for deputing an Advocate Commissioner in the case to make a second local inspection and to submit a report. The said report has been marked as Exhibit C3 and the plan submitted by him is marked as Exhibit C4. On a re-appreciation of the evidence on record, the Appellate Authority found that the landlord had not made out the

ground under Section 11(3). Accordingly, the order of eviction granted by the Rent control Court has been set aside. The landlord has filed this Revision against the judgment of the Appellate Authority.

5. According to Sri. K.V.Sohan the counsel for the petitioner, the Rent Control Court has considered the issue in the proper perspective. Though it is true that small strips of land belonging to private parties as well as the Kannur Municipality are located between the landlord's property within which his lodge is situate and the tenanted shop rooms, the said strips of land are being used by the local people as a way. The counsel has referred to the report of the Advocate Commissioner Exhibit C1 to point out that, the Commissioner had at the time of his inspection noticed the said state of affairs. Though strips of private properties were located between the petitioner's lodge property and the tenanted shop room, since such property was remaining as a public way, there is no impediment in

the petitioner utilizing the said property also to provide a means of access to his lodge. It is contended that the above crucial aspect has been missed by the Appellate Authority while denying the bonafide need of the landlord. According to the counsel, apart from the above fact, the land is only a very small extent, in so far as the property of the private parties is concerned, the same is below the eaves of the building of the petitioner. Therefore, according to the counsel, there would not be any obstruction or impediment in utilizing the said property as part of the means of access proposed by him to his lodge.

6. The counsel for the respondent tenant, Sri. P.Peethambaran stoutly opposes the contentions of the counsel for the Revision Petitioner. According to the counsel, it is clear from the Advocate Commissioner's report that, the need of the petitioner to provide a motorable way to his lodge would not fructify for the reason that, properties owned by a private party as well as the

Municipality were located in between. There is no evidence on record to justify a conclusion that the title owners of the said plots would have no objection to the proposal of the landlord, as contended. Therefore, according to the learned counsel, the Appellate Authority has rightly declined the bonafide need that is put forth by the landlord.

7. Heard. As already noticed above, the contention of the landlord is that, he wants to demolish the tenanted shop room for the purpose of providing a motorable means of access to his property from which he is conducting a lodge. Reliance has been placed by both sides on Exhibit C2 plan. A perusal of the plan shows that, the property of the petitioner from which he is conducting his lodge is located on the southern side of the tenanted premises. The tenanted shop room faces the road on the north. It is possible to provide a means of access to the southern boundary of the tenanted shop room, if the same is demolished. It may also possible to do so, without causing

any damage to the rest of the building. Here it is necessary to point out that, the tenanted premises is part of a larger building consisting of a row of shop rooms. However, beyond the southern boundary of the tenanted shop room, there is a strip of land which is shown by the Advocate Commissioner as private land. Beyond the said private land, further south there is another property which is shown as Municipal land. Another small strip of land has been shown by the Advocate Commissioner as located further south of the property of the Municipality which is shown as vacant land. There is no evidence regarding the identity of the owner of the said property. Therefore, the fact remains that the need put forward by the revision petitioner landlord could fructify only if it is assumed that he would be able to utilise the private lands as well as the Municipal land that lies between his properties and the road, for the purpose of providing a motorable way to his lodge. It is true that, the Advocate Commissioner has reported that the said

intervening strips of land were being used by the people of the locality for passing and repassing. However, that does not give rise to a presumption that the public have perfected a right of way over the said property. Nor is it proper on our part to presume so, in the absence of any evidence on the above aspect. We also notice that, neither the Municipality nor the owners of the intervening properties are parties to these proceedings. Therefore, any order denying to them their ownership rights, behind their back is impermissible. In the above state of affairs, the only conclusion possible is that, the need put forward by the landlord cannot fructify, in the absence of evidence to show either that he has acquired a right of easement over the said properties or that the owners of the said properties have no objection to the petitioner laying open a road through their properties. In the above case, there is absolutely no evidence on the above aspects. The Appellate Authority has therefore rightly concluded that, the landlord

had not succeeded in establishing the need put forward. We find no grounds to interfere with the said finding.

The counsel for the revision petitioner has placed reliance on the decision of the Supreme Court in **Kunhamma v. Akkali Purushothaman** [(2007) 11 SCC 181] to contend that, a bonafide need for the purpose of utilising the space occupied by a building, after demolishing the same as a pathway or road is permissible. However, the said decision has no application to the facts of the present case, in view of the fact that, the petitioner is not the owner of the property over which he proposes to cut open the road.

In the result, this revision is dismissed.

**K.SURENDRA MOHAN,
JUDGE**

**MARY JOSEPH
JUDGE**