

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

OP (RC).No. 10 of 2015 (O)

RCOP 7/2013 of RENT CONTROL BOARD (PRL.MUNSIFF COURT), KOLLAM

PETITIONER(S)/PETITIONER :

K.MANJULA DEVI
W/O. ALWAR, KUMAR GARDENS, OPPOSITE KSRTC BUS STAND
HARIPPAD, ALLEPPEY DISTRICT.

BY ADVS.SRI.BECHU KURIAN THOMAS
SRI.S.SREEDEV

RESPONDENT(S)/RESPONDENTS :

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1. RADHAKRISHNA REDDIAR
SRA REDDIAR & COMPANY, LEKSHMI NADA, KOLLAM 691001..
 2. THE ACCOMMODATION CONTROLLER
KOLLAM TALUK (TAHSILDAR, KOLLAM), KOLLAM DISTRICT 691001.

R1 BY ADV. SRI.R.SATISH KUMAR
R2 BY SR GOVT PLEADER SRI.M.K.ABOOBACKER

THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON 23-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (RC).No. 10 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : COPY OF THE PETITION FOR EVICTION FILED AS RC.OP 7/2010 ON THE FILES OF RENT CONTROL BOARD, KOLLAM.

P2 : COPY OF THE OBJECTION FILED BY THE 1ST RESPONDENT IN RC.OP 7/2010.

P3 : COPY OF THE LETTER DTD.3.5.2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

P4 : COPY OF THE REPLY LETTER DTD.7.5.2014 (WRONGLY TYPED AS 7.6.14) ALONG WITH THE POSTAL RECEIPT.

P5 : COPY OF THE ORDER DTD.20.12.2014 NUMBERED AS B2-8960/14 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS:

EXT.R1(a): TRUE COPY OF THE PETITION FILED BY THE 1ST RESPONDENT BEFORE the 2ND RESPONDENT UNDER SECTION 17(2) OF THE KERALA BUILDING (LEASE AND RENT CONTROL) ACT.

EXT.R1(b): TRUE COPY OF I.A.NO.606/2015 IN RC(OP) NO.7/2013 FILED BY THE 1ST RESPONDENT BEFORE THE RENT CONTROL COURT, KOLLAM.

EXT.R1(c): TRUE COPY OF I.A.NO.4284/2013 IN RC(OP) NO.7/2013 FILED BY THE 1ST RESPONDENT BEFORE THE RENT CONTROL COURT, KOLLAM.

EXT.R1(d): TRUE PHOTOGRAPH OF THE DAMAGED PORTION OF THE ROOF OF PETITION SCHEDULE SHOP ROOM.

/True copy/

PS to Judge

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

OP(RC).No.10 of 2015

Dated this the 23rd day of March, 2015

JUDGMENT

Antony Dominic, J.

1. Heard the counsel for the petitioner and the learned counsel appearing for the first respondent.
2. In this Original Petition, challenge is against Ext.P5, an order passed by the second respondent, the Accommodation Controller, requiring the petitioner to repair building Nos.MC 457 and 463. It is the admitted case that RC(OP).7/13 filed by the landlord under sections 11(3) and 11(4)(iv) of the Kerala Buildings (Lease & Rent Control) Act, 1965 is pending consideration of the Rent Control Court, Kollam. It was during the pendency of the RCP, the tenant filed Ext.P3 to the Accommodation Controller, stating that a portion of a building has collapsed and therefore, the landlord should be required to repair the same. Though the landlord objected to Ext.P3 by filing Ext.P4, the Accommodation Controller treated the application as one made under section 17(2) of the Act and passed Ext.P5 order.

3.The contention raised in this OP is that during the pendency of the RCP before the Rent Control Court under section 11(4)(iv), the Accommodation Controller is devoid of any power to entertain an application under section 17(2). This contention is supported by the judgment of this Court in Mable v. Haris [1998 (2) KLT 559] and Davis v. Taluk Accommodation Controller [2003 (1) KLT 501]. This legal position is conceded by the counsel appearing for the first respondent also. However, learned counsel for the first respondent tenant submits that realising the above, he has filed Ext.R1(b) under section 17(2) in RC(OP).7/13 along with Ext.R1(c), a commission application. His request is that the Rent Control Court may be directed to consider Exts.R1(b) and R1 (c) on an expeditious basis.

4.Taking note of the above, this original petition is disposed of with the following directions:

(1)Ext.P5 order passed by the second respondent exercising power under section 17(2) of the Act is set aside.

(2)The Rent Control Court which is in seizin of RC(OP).7/13 will pass orders on Ext.R1(b) in accordance with law and after affording an opportunity of hearing to the petitioner landlord also. This shall be done within a period of three months from the date of production of a copy of this judgment.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

k kb.