

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

OP (RC).No. 30 of 2015 (O)

AGAINST THE ORDER IN E.P.752/13 IN RCP 34/1998 of MUNSIF COURT, HOSDURG
DATED 28-01-2015

PETITIONER(S)/RESPONDENT/JUDGEMENT DEBTOR:

T.GOPALAN AGED 68 YEARS
S/O. KANNAN
RESIDING AT BELLIKOTH IN AJANOR VILLAGE
HOSDURG TALUK, P.O.AJANOR, KASARAGOD DISTRICT.

BY ADV. SRI.T.K.VIPINDAS

RESPONDENT(S)/PETITIONER/DECREE HOLDER:

CHEENAMMADATH ZUBAIDA, AGED 48 YEARS
D/O. MOILAKIRIYATH MAMMADKUNHI
RESIDING AT BELLIKOTH IN AJANOR VILLAGE
HOSDURG TALUK, P.O.AJANOR
KASARAGOD DISTRICT - 671 531.

THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON
24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (RC).No. 30 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - TRUE COPY OF THE FINAL ORDER IN R.C.REV 186/2011 DT. 11.7.13.
- P2 - THE SKETCH SHOWING THE OVERLAPPING OF THE PLOT AND THE NORTHERN BOUNDARY PLOT.
- P3 - TRUE COPY OF THE EXECUTION PETITION AS EP NO. 752/2013 BEFORE THE COURT OF MUNSIF OF HOSDURG.
- P4 - THE PLAN OF THE BUILDING PROPOSED TO BE RE-CONSTRUCTED PRODUCED BY THE RESPONDENT BEFORE THE EXECUTION COURT.
- P5 - TRUE COPY OF THE COUNTER FILED BY THE PETITIONER DT. 18.9.14.
- P6 - TRUE COPY OF THE EA NO. 22/2015 IN EP 752/13.
- P7 - TRUE COPY OF THE ORDER IN EP 752/13 ON THE FILE OF THE MUNSIF COURT, HOSDURG DT. 28.1.15.

/True copy/

PS to Judge

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

O.P(RC).No.30 of 2015

Dated this the 24th day of February, 2015

O R D E R

Antony Dominic, J.

1. The respondent landlord filed RCP.34/98 before the Rent Control Court, Hosdurg seeking eviction of the petitioner tenant for the purpose of re-construction of the building as provided under section 11(4)(iv) of the Kerala Buildings (Lease & Rent Control) Act, 1965. That petition was allowed and the appeal filed by the tenant was dismissed. This Court, while dismissing RCR.186/11 filed by the tenant, ordered that the Panchayat, while considering the approval of the plan, will verify whether there is any overlapping of the northern side of the approved plan as of now. It was also ordered that if any overlapping is found, it will be open to the landlord to submit a revised plan. Ext.P3 is the execution petition filed by the landlord and Ext.P4 is the plan approved by the Panchayat and the permit issued under the building rules. Before the execution court, the petitioner filed Ext.P5 objection to Ext.P3 and he also filed Ext.P6, E.A.22/15, praying to permit him

to summon and examine the witness cited in the annexed applications, the Secretary of Ajanur Grama Panchayat and also to produce the file leading to Ext.P4. According to the petitioner, E.A.22/15 is pending and the court has passed Ext.P7 order directing delivery of the property. It is in these circumstances, the OP is filed challenging Ext.P7 and seeking a direction to the execution court to consider Ext.P6.

2. We heard the learned counsel for the petitioner and considered the submissions made.

3. As we have already mentioned, in Ext.P1, while confirming the orders passed by the Rent Control Court and the appellate authority, this Court directed that the Panchayat will consider the issue relating to overlapping contended by the petitioner. It was subsequent to that order that the plan was approved and Ext.P4 permit was issued by the Panchayat. As at present, we have nothing to infer that the Panchayat did not comply with the directions in Ext.P1. Once the Panchayat has issued Ext.P4

building permit, if the petitioner had a case that the permit was issued or plan was approved in disobedience of the directions in Ext.P1, the remedy available to him was under the Panchayat Raj Act itself. That has not been done. If that be so, an enquiry, as sought to be now undertaken by the execution court, cannot be permitted. We are not inclined to think that at this stage, the petitioner is entitled to any order from this Court interdicting the execution court from proceeding with Ext.P7 or an order requiring consideration of Ext.P6.

In the aforesaid circumstances, we are not inclined to entertain this original petition. It is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

k kb.