

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

OP (RC).No. 31 of 2015 (O)

**(AGAINST ORDER DATED 14/1/15 IN IA NO.1050/2014 IN RCP NO.17/2012 ON THE FILES
OF THE RENT CONTROLLER (MUNSIFF) KALPETTA)**

PETITIONER(S):

**K.J.MEDICAL TRUST HOSPITAL
REPRESENTED BY ITS CHAIRMAN DR.K.J. ABRAHAM
S/O/K.A. JOSEPH, KALPETTA PO, KALPETTA AMSOM
DESOM, WAYANAD DISTRICT**

**BY ADVS.SRI.N.MANOJ KUMAR
SMT.JAYASREE MANOJ**

RESPONDENT(S):

**A.P.MOIDU
S/O. SOOPPY, CHEMBAKA ESTATE, GOODALAI
KALPETTA PO, KALPETTA VILLAGE
WAYANAD DISTRICT 673 121**

**THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON 27-02-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP (RC).No. 31 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE PETITION FILED BY THE RESPONDENT HEREIN
UNDER SECTION 11(3) OF KERALA BUILDING (LEASE AND RENT CONTROL)ACT.1965**

**EXHIBIT P2: TRUE COPY OF OBJECTION FILED BY THE PETITIONER HEREIN RCP NO.
17/12**

**EXHIBIT P3: TRUE COPY OF THE REPORT OF THE ADVOCATE COMMISSIONER
DATED 18.10.2014**

**EXHIBIT P4: TRUE COPY OF THE AFFIDAVIT DATED 8.11.2014 IN IA 1050/2014 IN RCP
NO.17/2012 FILED BY THE PETITIONER**

**EXHIBIT P5:TRUE COPY OF THE ORDER DATED 14/01/2015 IN IA NO.1050/2014 IN RCP
NO. 17/2012 OF THE RENT CONTROLLER (MUNSIFF),KERALA**

RESPONDENT(S)' EXHIBITS NIL

//True Copy//

PA TO JUDGE

Rp

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
=====

OP (RC) No. 31 of 2015
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Dated this the 27th day of February, 2015

J U D G M E N T

Antony Dominic, J.

Petitioner is the tenant against whom RCP No.17/12 on the file of the Rent Control Court, Kalpetta was filed by the respondent herein, the landlord. In the said RCP, on an application made by the petitioner/tenant, an Advocate Commissioner was appointed and Ext.P3 report was submitted. When Ext.P3 report was submitted, the petitioner/tenant filed IA No.1050/14. In that I.A., petitioner complained that the Commissioner did not ascertain the non availability of suitable buildings in the locality and the impracticability of shifting the equipments from the hospital. That IA was dismissed by the Rent Control Court by Ext.P5 order. Thereupon, challenging Ext.P5, this OP has been filed.

2. We heard the learned counsel for the petitioner and have also gone through the copy of the application, which led to the appointment of the Commissioner and pursuant to which, Ext.P3 report was submitted by the Advocate Commissioner.

3. As we have already stated, the complaint of the petitioner in Ext.P4, IA No.1050/14, was that the Commissioner did not ascertain the nonavailability of suitable buildings in the locality for shifting the hospital and the impracticability of shifting the hospital equipments that are installed in the tenanted premises.

4. On the first complaint that non availability of suitable buildings was not ascertained by the Commissioner, we notice from the copy of the application for appointment of the Commissioner, made available by the learned counsel for the petitioner, that there was no request to the Commissioner to ascertain the said fact. Petitioner also does not say that a work memo with such a request was submitted to the Commissioner. In the absence of such a mandate to the Commissioner to ascertain the said fact, nobody can find fault with the Commissioner on the ground that such a fact was not ascertained. Further, as rightly held by the Rent Control Court in Ext.P5 order, this order is a matter which can be established by the petitioner by adducing independent evidence.

5. In so far as the impracticability of shifting the hospital equipments is concerned, reading of Ext.P3 report shows that after noticing the details of the equipments that are available in the hospital building, the Commissioner has stated that it will be a herculean task to shift all the materials found in the hospital to another building. In our view, the Commissioner cannot be expected to conclude anything more than what she has stated in Ext.P3 on this issue.

6. In such circumstances, we do not think that the petitioner has any justification in seeking the prayer now made.

OP(RC) is dismissed.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge