

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

OP (RC) .No. 106 of 2015 (O)

AGAINST THE ORDER IN RCP 7/2007 of RENT CONTROLL COURT (MUNSIFF) ,
PATHANAMTHITTA DATED 31.10.2008

PETITIONER:

V.C.KRISHNAN ACHARY AGED 62 YEARS
S/O. CHELLAPPAN ACHARI, USHA BHAVAN, ANAPPARA
KOZHENCHERY TALUK, PATHANAMTHITTA.

BY ADVS.SRI.R.KRISHNA RAJ
SRI.BIJITH S.KHAN
SMT.E.S.SONI

RESPONDENTS:

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1. DR.T.A.GEORGE,S/O ABRAHAM,
THELLIRETHUR HOUSE, CHITTOOR MURI
PATHANAMTHITTA-689 663.
 2. T.A.ABRAHAM
S/O ABRAHAM, THELLIRETHU HOSUE, CHITTOOR MURI
PATHANAMTHITTA-689 663
REPRESENTED BY THE 1ST RESPONDENT DR.T.A.GEORGE
HIS POWER OF ATTORNEY HOLDER.
 3. DR. THOMAS ABRAHAM
S/O ABRAHAM, THELLIRETHU HOUSE, CHITTOOR MURI
PATHANAMTHITTA-689 663
REPRESENTED BY THE 1ST RESPONDENT DR.T.A.GEORGE
HIS POWER OF ATTORNEY HOLDER.
 4. NAWAS HAMID
S/O HAMIDKUTTY, SANTHI NIWAS, VALACODU MURI
PATHANAPURAM TALUK, KOLLAM-691 001.
 5. SAMEENA BEEVI
W/O SAMEENA BEEVI, SANTHI NIVAS, VALACODU MURI
PATHANAPURAM TALUK, KOLLAM-691 001.

R1 BY ADV. SRI.K.SHAJ (BY ORDER)
R1,R4,R5 BY ADV. SRI.K.SHAJ
R1,R4,R5 BY ADV. SRI.SAJJU.S
R4,R5 BY ADV. SRI.P.VISWANATHAN

THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON
15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (RC).No. 106 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: COPY OF THE ORDER IN RCP 7/2007 DATED 31.10.2008.

EXHIBIT P2: COPY OF IA NO.1021/2013 DATED 1.7.2013.

EXHIBIT P3: COPY OF THE OBJECTION TO IA NO.1021/2013 DATED 5.12.2013.

EXHIBIT P4: COPY OF IA NO.1439/2015 DATED 16.7.2015.

EXHIBIT P5: COPY OF THE OBJECTION FILED BY THE RESPONDENTS
DATED 4.8.2015.

EXHIBIT P6: COPY OF THE OBJECTION FILED BY THE RESPONDENTS
DATED 25.7.2015.

EXHIBIT P7: COPY OF IA NO.1728/2015 DATED 18.8.2015.

EXHIBIT P8: COPY OF THE OBJECTION FILED BY RESPONDENTS DATED 19.8.2015.

EXHIBIT P9: COPY OF THE COMMISSION REPORT DATED 20.8.2015.

EXHIBIT P10: COPY OF THE OBJECTION TO COMMISSION REPORT FILED BY
RESPONDENT 4 & 5 DATED 21.8.2015.

EXHIBIT P11: COPY OF THE AFFIDAVIT FILED BY THE 4TH RESPONDENT.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A.TO JUDGE

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P.N.RAVINDRAN & BABU MATHEW P. JOSEPH, JJ.

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O.P.(RC). No.106 of 2015

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Dated this the 15th day of October, 2015

JUDGMENT

P.N.Ravindran, J.

The petitioner is the tenant in R.C.P.No.7 of 2007 on the file of the Rent Control Court, Pathanamthitta. Respondents 1 to 3 herein instituted R.C.P.No.7 of 2007 praying for an order of eviction under section 11(4)(iv) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. The tenant opposed the prayer for eviction on various grounds. The contentions were overruled and Ext.P1 order of eviction was passed on 31.10.2008. The tenant carried the matter in appeal by filing R.C.A.No.14 of 2008 on the file of the Rent Control Appellate Authority, Pathanamthitta. The appellate authority dismissed the appeal by judgment delivered on 7.04.2011. The tenant thereupon filed R.C.R.No.190 of 2011 in this court. The said revision petition was heard and dismissed by a Division Bench of this court by order passed on 25.05.2011. The tenant did not rest there. He thereupon moved the Apex Court by filing SLP(C) No.22683 of 2011. The Special Leave Petition was dismissed by the Hon'ble the Supreme Court by order passed on 26.8.2011.

2. The tenant however surrendered vacant possession of the petition schedule building only on 31.7.2013. After the order of

eviction attain finality, respondents 1 to 3 (the landlords) transferred the petition schedule premises to respondents 4 and 5 and another. When the transferees did not commence reconstruction, the tenant filed I.A.No.1021 of 2013 in R.C.P.No.7 of 2007 joining the transferees also in the party array and praying for permission to repossess and reconstruct the building. The original landlords and transferees thereupon entered appearance. The transferee landlords contested the application by filing Ext.P3 objections. While I.A.No.1021 of 2013 was pending, the transferee landlords completed the construction of the building. Thereafter, on the allegation that they have refused to allot a shop room to him, the tenant filed I.A.No.1439 of 2015 for an order directing the transferee landlords to put him in possession of the reconstructed building with all the advantages, facilities and conveniences he had in the demolished building. Respondents 1 to 3 and the transferees filed separate objections to the application. While I.A.No.1439 of 2015 was pending, the tenant filed I.A.No.1728 of 2015 complaining that the transferee landlords are attempting to induct a third party into possession of the shop room which is to be allotted to him after reconstruction and therefore, they should be restrained from inducting strangers into possession in the south western portion of the reconstructed building having an area of 210 sq.feet, facing Kozhencherry-Pathanamthitta main road on the south

and the municipal road on the west. Along with the said application he filed I.A.No.1729 of 2015 praying for the appointment of an Advocate Commissioner to identify the shop room to be allotted to him in the reconstructed building.

3. An Advocate Commissioner was appointed on that application and after inspecting the reconstructed building he filed a report. The transferee landlords filed objections to I.A.No.1728 of 2015 as also objections to Commission's report. The instant original petition was thereafter filed on 24.8.2015 praying for an order of injunction restraining the respondents from inducting third parties into the space pointed out by the Advocate Commissioner in his report till the disposal of I.A.Nos.1439 and 1728 of 2015 in R.C.P.No.7 of 2007. This original petition is filed on the averment that taking advantage of the delay in the disposal of aforesaid applications, the transferee landlords are taking hasty steps to induct third parties into the space earmarked by the Advocate Commissioner.

4. When this original petition came up before us on 31.8.2015 we directed the Registry to call for a report from the Rent Control Court, Pathanamthitta as regards the time frame within which, I.A.Nos.1439 and 1728 of 2015 in R.C.P.No.7 of 2007 can be heard and disposed of. The Presiding Officer has submitted a report dated 2.9.2015 to the effect that the Advocate Commissioner filed his report

on 22.08.2015, that the respondents in I.A.Nos.1439 and 1728 of 2015 have filed their objections, that the applications stand posted to 10.9.2015 and that within two months therefrom, the applications can be heard and disposed of. In view of that report we admitted the original petition and issued notice to the respondents by special messenger at the petitioner's expense. The original petition thereafter came up before us for hearing on 17.9.2015. On that day after hearing arguments for sometime it was adjourned to 18.9.2015. On 18.9.2015 both sides addressed arguments at length. During the course of arguments to a query from us as to whether the landlords have any other building in the same locality and whether they are willing to let out adequate space in that building to the tenant and a query to the learned counsel for the tenant as to whether in that event, the tenant is willing to accept the space in another building belonging to the very same landlord, learned counsel on both sides submitted that the parties will try to work out an amicable settlement. We accordingly adjourned the original petition to 1.10.2015 so as to enable the parties to arrive at an amicable settlement out of court.

5. This Original petition thereafter came up before us on 1.10.2015, 6.10.2015, 7.10.2015 and 9.10.2015. The original petition was not taken up on those days and was ultimately adjourned to today. Today when the original petition came up before us, learned

counsel appearing for the petitioner submitted that pursuant to the order passed by this court on 18.9.2015, talks were held and during the course of the talks the tenant had expressed his willingness to take on rent a room in the adjacent building belonging to the transferee landlords and that the only question that now remains is to fix the rent for that building. Per contra, learned counsel appearing for the transferee landlord submitted that apart from the fact that there was no agreement on the rate of rent, there was a dispute regarding the area to be rented out and therefore, a final decision has not been arrived at. Learned counsel on both sides submitted that the parties could not arrive at a settlement regarding allotment of space in the reconstructed building also. During the course of arguments learned counsel on both sides submitted that I.A.Nos.1439 and 1728 of 2015 in R.C.P.No.7 of 2007 stand posted for hearing today. After hearing learned counsel on both sides at length, we are of the opinion that as the parties have not arrived at an amicable settlement as on today, the proper course would be to direct the rent control court, where I.A.Nos.1439 and 1728 of 2015 are pending to dispose of the said applications expeditiously and in a time bound manner. If in the meanwhile the parties are able to arrive at an out of court settlement, such settlement can be brought to the notice of the rent control court where the aforesaid applications are pending.

We accordingly dispose of this original petition with a direction to the Rent Control Court, Pathanamthitta to hear and dispose of I.A.Nos.1439 and 1728 of 2015 in R.C.P.No.7 of 2007 expeditiously and in any event within one month from the date on which a certified copy of this order is produced by either of the parties. The contentions of both sides on the merits are kept open.

**P.N.RAVINDRAN
JUDGE**

**BABU MATHEW P. JOSEPH
JUDGE**

kp/-