

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 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

OP (RC).No. 123 of 2015 (O)

AGAINST THE ORDER/JUDGMENT IN RCP 34/2014 of RENT CONTROLLER/MUNSIFF,
QUILANDY DATED 10.8.2015

PETITIONER(S):

P.RAGHAVAN AGED 55 YEARS
S/O.GOPALAN, RESIDING AT POOMKANDY HOUSE
MOODADI AMSOM, VELLARAKKAD DESOM, KOYILANDY TALUK
P.O. MOODADI, SILK BAZAR, KOZHIKODE.

BY ADVS.SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENT(S):

JANAKI
D/O.NARAYANI AMMA
RESIDING AT PADINHARE KAYALATT HOUSE, VIYYUR AMSOM
MAMMANGALAM DESOM, KOYILANDY TALUK P.O., MOODADY
KOZHIKODE.- 673307

THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON 08-10-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (RC).No. 123 of 2015 (O)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1.TRUE COPY OF THE RCP NO.34/2014 OF THE RCC, KOYILANDY
EXT.P2.TRUE COPY OF THE COUNTER AFFIDAVIT
EXT.P3.TRUE COPY OF THE REPORT AND SKETCH BY THE ADVOCATE COMMISSIONER
EXT.P4.TRUE COPY OF THE AFFIDAVIT AND PETITION FILED IN SUPPORT OF THE
APPLICATION
EXT.P5.TRUE COPY OF THE COUNTER STATEMENT OF THE RESPONDENT
EXT.P6.TRUE COPY OF THE ORDER OF THE LEARNED RENT CONTROLLER DATED
10/8/2015.

RESPONDENTS' EXTS:

NIL

//TRUE COPY //

P.S. TO JUDGE

**P.N. Ravindran &
Babu Mathew P. Joseph, JJ.**

O.P.(R.C.)No.123 of 2015

Dated this the 8th October, 2015

JUDGMENT

P.N. Ravindran, J.

The tenant in R.C.P.No.34 of 2014 on the file of the Rent Control Court, Koyilandy, has filed this original petition under Article 227 of the Constitution of India, challenging Ext.P6 order passed by the rent control court on 10.8.2015 dismissing I.A.No.231 of 2015 in R.C.P.No.34 of 2014, wherein he had prayed for remitting the report submitted by the Advocate Commissioner appointed by the rent control court and to call for a fresh report. The petitioner has also prayed for an order directing the rent control court to direct the Advocate Commissioner to inspect the petition schedule property with notice to him. The brief facts of the case are as follows:

2. The respondent/landlord instituted R.C.P.No.34 of 2014 on 29.8.2014 praying for an order evicting the tenant under sections 11(3), 11(4)(i), 11(4)(ii) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. The

landlord had in the rent control petition inter-alia averred that the tenant has ceased to occupy the building bearing door No.KM3/287 as also the leanto behind it and the leanto behind shop room bearing door No.KM3/288 for more than two years without reasonable cause. She had also made various other averments in support of the prayer for eviction under sections 11(3), 11(4)(i), 11(4)(ii) and 11(4)(v) of the Act. The landlord had, along with the rent control petition, filed I.A.No.1186 of 2014 praying for an order appointing an Advocate Commissioner to inspect the petition schedule buildings and to submit a plan and report. On that application the rent control court passed the following order on 29.8.2014 itself:

“Heard the petitioner. Perused the affidavit. I am satisfied that appointment of an urgent commissioner is absolutely necessary. Hence Advocate E. Prabhakaran is appointed as Commissioner. C.B. Rs.2,000/- shall be paid by the petitioner directly to the Commissioner. Commissioner is directed to inspect the petition schedule properties, note the matters which are stated in the affidavit filed along with this petition and file report by 27.9.14.”

3. The Advocate Commissioner thereupon inspected the petition schedule property and submitted a report dated 22.9.2014 accompanied by a sketch which were filed in court on the very same day. The Advocate Commissioner had, in the said report, stated that he had inspected the petition schedule shop rooms on 29.8.2014 and 17.9.2014 and that at the time of the first inspection the tenant was present, but on the second occasion, the wife of the tenant alone was present and that on both the occasions the shop room bearing door No.KM 3/287 was found closed. He had also stated that though in the shop rooms bearing door Nos.KM 3/288 and KM 3/289 he found stationery items, bakery products and condiments and spices and the tenant's wife was also present, the tenant did not open the shop room bearing door No.KM 3/287. He had also stated in the report that at 17 places on the shutter of the aforesaid room, there are openings of the size 10cm x 2 ½ cm. and when he viewed through the aforesaid openings, he found a table and pieces of timber inside the shop room. He had also stated that for want of light he could not ascertain with certainty the materials, if any, in the said shop room. He had also stated that he found a door frame on the eastern wall of the room, that there were cobwebs and dust above

the shutter and that he is of opinion that the shop room is lying closed for nearly three months.

4. After a copy of the report was served on the parties, the tenant filed a counter statement dated 10.12.2014 resisting the petition for eviction. In paragraph 14 thereof, he put forward a contention that on both the occasions the inspection by the Advocate Commissioner was done when he had gone home to take lunch and that the inspection was deliberately done in his absence at the instance of the landlord. He did not, however file a separate objection to the report submitted by the Advocate Commissioner or file an application to set aside or remit it to the Advocate Commissioner. He had in the counter statement averred that he is running a business in cement in the shop room bearing door No.KM3/287. A few months later, to be exact, on 20.2.2015 he filed I.A.No.231 of 2015 wherein he prayed that the report and sketch submitted by the Advocate Commissioner may be remitted to the Commissioner and he may be directed to inspect the petition schedule premises afresh and to submit a report, having regard to the averments in the affidavit filed in support of the said application. The landlord opposed the application by filing a counter affidavit dated 6.3.2015

wherein she inter-alia contended that at the time of the inspection, the petitioner did not deliberately open the shop room bearing door No.KM3/287. She also contended that even if the key of the room was at the residence of the tenant, as the tenant's house is situate very near to the petition schedule shop room, he could have gone over and taken the key, so as to enable the Advocate Commissioner to inspect it on the date of the first inspection itself.

5. The rent control court considered the rival contentions and dismissed I.A.No.231 of 2015, by Ext.P6 order passed on 10.8.2015. The rent control court held that the report submitted by the Advocate Commissioner reveals that he had inspected the petition schedule building twice, that the notice of inspection was served on the tenant, that it was in his presence that the Commissioner inspected the building, that on the second inspection the petitioner's wife was present, but they were reluctant to open the shop room bearing door No.KM 3/287 and therefore, no grounds have been made out to remit the report submitted by the Advocate Commissioner. The said order is under challenge in this original petition filed under Article 227 of the Constitution of India.

6. We heard Shri P.A. Harish, learned counsel appearing for the petitioner. We have also gone through the pleadings and the materials on record as also the records which have been called for from the rent control court. The main ground raised in the original petition and urged by the learned counsel appearing for the petitioner is that the inspection by the Advocate Commissioner was without notice to the tenant at a time when he had gone to his house for lunch, that it was deliberately done by the landlord and therefore, the rent control court ought to have remitted the report to the Advocate Commissioner, to enable him to inspect the room afresh after opening the shutter. It was contended that the reasons stated by the rent control court in Ext.P6 order to decline the relief prayed for in I.A.No.231of 2015 are not tenable and therefore, the impugned order is liable to be set aside.

7. In our considered opinion, the contentions raised are without any merit. The Advocate Commissioner has, in his report, stated that it was with notice to the tenant that he inspected the petition schedule premises on 29.8.2014. It is also stated that the tenant was present in person at the time of the first inspection 29.8.2014. The Advocate Commissioner has further stated that at the time of the second

inspection on 17.9.2014, the tenant's wife was present and that on both the occasions the tenant and his wife declined to open the shop room bearing door No.KM3/287. The contention raised in the instant original petition as also in the counter statement filed in the rent control court is that the landlord had deliberately scheduled the time of inspection in such a manner that the Commissioner visited the shop room at the time when the tenant had gone to his house to have the lunch. In our opinion, the said plea cannot be countenanced, having regard to the notice of inspection given by the Advocate Commissioner which contains an acknowledgment by the tenant on 29.8.2014. The notice of inspection discloses that it was at 3.45 pm. on 29.8.2014 that the Advocate Commissioner inspected the petition schedule building on the first occasion. The tenant has acknowledged receipt of that notice. Such being the situation, it cannot be said that the first inspection on 29.8.2014 was without notice to the tenant. If the tenant was desirous of having the shop room bearing door No.KM3/287 inspected, he could have gone to his house, if at all the key was in the house, taken the key of the shop room and opened the room and requested the Advocate Commissioner to inspect the shop room. The report submitted by the

Advocate Commissioner discloses that the Advocate Commissioner had inspected the interior of the other two shop rooms which are also subject matter of the rent control petition. In such circumstances, we find no merit or substance in the contention raised in I.A.No.231 of 2015 that the Advocate Commissioner had not given notice to the tenant or that the tenant was in any way disabled from opening the shop room bearing door No.KM3/287 and requesting the Advocate Commissioner to inspect the interior of the said shop room. From the conduct of the tenant and the attendant circumstances including the fact that it was only two months after the counter statement in the rent control petition was filed that I.A. No.231 of 2015 was filed, it is evident that his present attempt is without any bonafides. He could have, between the date of the inspection by the Advocate Commissioner and the date on which I.A.No.231 of 2015 was filed, procured a consignment of cement and kept it in the shop room. The report submitted by the Advocate Commissioner discloses that he saw a table inside the shop room through the 17 openings on the shutter. If the tenant had a stock of cement with him, it would have been certainly visible through the openings on the shutter. We are therefore satisfied

that the claim made in I.A. No.231 of 2015 is without any bonafides. The tenant ought to have, on the date of the first inspection itself, been fair enough to open the room and requested the Advocate Commissioner to inspect the interior of the shop room. He has explained away his omission in that regard on the flimsiest of reasons. Having regard to the aforesaid conduct of the tenant who had notice of inspection, we are of the opinion that the request now made by him was rightly rejected by the rent control court.

For the reasons stated above, we hold that there is no merit in the instant original petition. It fails and is accordingly dismissed.

(P.N. Ravindran, Judge.)

(Babu Mathew P. Joseph, Judge.)

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