

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

OP (RC).No. 134 of 2015 (O)

AGAINST THE ORDER IN I.A. NO. 2000 OF 2015 I IN RCP 1/2015 of THE COURT
OF RENT CONTROLLER/MUNSIFF, PERUMBAVOOR DATED 21.10.2015

PETITIONERS:

1. THE MANAGING DIRECTOR AGED 53 YEARS
KERALA STATE BEVERAGES (MANUFACTURING & MARKETING)
CORPORATION
SASTHAKRIPA OFFICE COMPLEX, SASTHAMANGALAM
THIRUVANANTHAPURAM.
2. REGIONAL MANAGER
KERALA STATE BEVERAGES (MANUFACTURING & MARKETING)
CORPORATION
TRIPUNITHURA.

BY ADV. SRI.C.S.AJITH PRAKASH

RESPONDENT:

K.U.THOMAS
S/O. ULAHANNAN KUREEKKA VEEPPANATH
KIZHAKKAMBALAM VILLAGE, KIZHAKKAMBALAM KARA
ERNAKULAM-683562.

B/O. R BY ADV. SRI THOMAS GEEVARGHESE

THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON
09-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (RC).No. 134 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1- TRUE COPY OF THE RENT CONTROL PETITION R.C.P.NO. 1/2015.

EXHIBIT P2- TRUE COPY OF THE JUDGMENT OF THE RENT CONTROL COURT
DATED 28-7-2015 IN R.C.P.NO.1/2015 WITH LEGIBLE COPY OF THE ORDER.

EXHIBIT P3- TRUE COPY OF THE E.P.NO. 70/2015 IN R.C.P.NO. 1/2015 ON THE
FILE OF THE RENT CONTROL COURT, PERUMBAVOOR.

EXHIBIT P4- TRUE COPY OF THE ORDER IN IA 1462/15.

EXHIBIT P5- THE TRUE COPY OF THE COMMISSION APPLICATION DATED 19-10-
2015.

EXHIBIT P6- THE TRUE COPY OF THE ORDER DISMISSING THE I.A. DATED 21-10-
2015.

RESPONDENT(S)' EXHIBITS

NIL

ks.

True copy

P.S. (Hr.Gr.)To Judge

P.N. RAVINDRAN

&

BABU MATHEW P. JOSEPH, JJ.

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O.P.(RC)No. 134 of 2015

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Dated this the 9th day of November, 2015

JUDGMENT

P.N. Ravindran,J.

The petitioners are the tenants in R.C.P.No.1 of 2015 on the file of the Rent Control Court, Perumbavoor, a petition for eviction filed by the respondent/landlord under section 11(3) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. The petitioners are running an FL-I shop in the tenanted premises. Though the tenants were initially set ex parte, the order setting aside them ex parte was set aside and thereafter the tenants filed objections. Shortly after the objections were filed, the tenants filed I.A.No.2000 of 2015 under Order XXVI Rule 9 of the Code of Civil Procedure praying for an order appointing an Advocate Commissioner to conduct a local investigation and to submit a report to the Rent Control Court as regards the following matters:

- "1. to report the lie and nature of the Petition Schedule.*
- 2. to report whether the Building bearing Door Nos.KP3/202 A & KP.3/202B of Kizhakkambalam Panchayat which owned and occupied by the petitioner has separate ingress and egress with Boundary wall.*

- 3. To report number of rooms in the Building bearing Door No. KP3/202B of Kizhakkambalam Panchayath which owned and occupied by the Petitioner and its approximate measurement Carpet area of each room in the Building bearing Door No.KP 3/202 B of Kizhakkambalam Panchayath which owned and occupied by the Petitioner.*
- 4. to report whether there is any other suitable space or building available in the locality for 01st Respondent to carry on its business Kizhakkambalam Panchayath.*
- 5. Such other matters, which is likely to pointed out at the time of inspection.”*

2. I.A.No. 2000 of 2015 which was filed on 21.10.2015 was dismissed by Ext.P6 order passed on the same day on the ground that the appointment of an Advocate Commissioner is not necessary for arriving at a just decision in R.C.P. No. 1 of 2015. The said order is under challenge in this original petition filed under Article 227 of the Constitution of India.

3. We heard Sri. C.S. Ajith Prakash, learned counsel appearing for the petitioner and Sri. Thomas Geevarghese, learned counsel appearing for the respondent. Sri. C.S. Ajith Prakash, learned counsel appearing for the petitioner submitted that even assuming for the sake of arguments (it being not conceded) that the tenants are not entitled to the protection of second proviso to Section 11(3) of the Act, the tenants are certainly entitled to have the petition schedule building

inspected for the purpose of ascertaining whether the need for additional accommodation put forward by the landlord is bona fide. Inviting our attention to the first proviso to sub-section (10) of section 11 of the Act, learned counsel for the petitioner submitted that the Rent Control Court has to compare the hardship which may be caused to the tenant with the advantage if any to the landlord, while passing an order of eviction and therefore, for that purpose also an order appointing an Advocate Commissioner is really necessary in the case on hand. Learned counsel for the respondent submitted that the respondent has no objection to an Advocate Commissioner being appointed to inspect the premises and to submit a report as regards items 1 to 3 in I.A.No.2000 of 2015. Learned counsel appearing for the petitioner submitted that the petitioners will be satisfied if an Advocate Commissioner is appointed to inspect the premises and to submit report as regards items 1 to 3 in I.A. No.200 of 2015. In the light of the agreement between the parties and as the report and sketch to be submitted by the Advocate Commissioner will be helpful to the court for arriving at a just and fair decision, we are of the opinion that the impugned order can be set aside and I.A. No.2000 of 2015 allowed in the manner indicated above.

We accordingly allow this original petition, set aside the order passed by the Rent Control Court, Perumbavoor on 21.10.2015 on I.A.No.2000 of 2015 in R.C.P.No.1 of 2015, restore the said application to file and direct the Rent Control Court to pass fresh orders on the said application on the next posting date, appointing an Advocate Commissioner to inspect the petition schedule building and to submit a report and sketch in respect of items 1 to 3 in the application for appointment of an Advocate Commissioner.

Sd/-

**P.N. RAVINDRAN
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

ks.

True copy

P.S. (Hr.Gr.)To Judge

