

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

OP (RC).No. 160 of 2015 (O)

AGAINST THE ORDER/JUDGMENT IN IA NO.11856/2015 IN RCP 140/2011 of
MUNSIFF COURT,CHAVAKKAD DATED
PETITIONER(S)/RESPONDENT:

MUHAMMED KASIM, AGED 63 YEARS
S/O. MANJILINGAL BAPPUTTY
KUNNAMKULAM VILLAGE AND DESOM, THALAPILLY TALUK
THRISSUR DISTRICT.

BY ADVS.SRI.T.U.ZIYAD
SRI.K.B.ARUNKUMAR

RESPONDENT(S)/PETITIONER:

DAVIS, AGED 58 YEARS,
S/O. KUTHOOR PAVUNNY, CHOWANNUR VILLAGE
PARAMBADOM DESOM, THALAPPILLY TALUK
THRISSUR - 680 517.

THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON 22-12-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (RC).No. 160 of 2015 (O)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1-TRUE COPY OF THE RENT CONTROL PETITION
P2-TRUE COPY OF THE OBJECTION TO THE R.C.P.
P3-TRUE COPY OF THE PHOTOGRAPHS EVIDENCING THE PRESENT NATURE OF THE BUILDING
P4-TRUE COPY OF THE RECEIPT ISSUED BY THE KUNNAMKULAM MUNICIPALITY TOWARDS THE FEE PAID FOR THE RENEWAL OF LICENCE 2015-16
P5-TRUE COPY OF THE LICENCE ISSUED BY THE FOOD AND SAFETY STANDARD AUTHORITY OF INDIA TO THE PETITIONER
P6-TRUE COPY OF THE AFFIDAVIT IN LIE OF CHIEF EXAMINATION FILED BY THE RESPONDENT HEREIN.
P7-TRUE COPY OF THE APPLICATION NUMBERED AS I.A. 11856/2015.
P8-TRUE COPY OF THE ORDER DATED 15/12/2015 IN I.A 11856/2015 IN R.C.P 140/2011 ON THE FILE OF THE MUNSIF COURT, CHAVAKKAD.

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY //

P.S. TO JUDGE

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

O.P.(RC) No.160 of 2015

Dated this the 22nd December, 2015

JUDGMENT

P.N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.140 of 2011 on the file of the Rent Control Court, Chavakkad, a petition filed by the respondent/landlord for an order of eviction under sections 11(3) and 11(8) of the Kerala Buildings (Lease & Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. The landlord had in the petition for eviction averred that he bonafide needs the petition schedule building (which is a room in the ground floor of a hotel building where the landlord is running a hotel) for the purpose of expanding his business after converting the hotel into a three star hotel. It appears, he has filed a petition for evicting two other tenants as well on the same averments.

2. Upon receipt of notice the petitioner/tenant entered appearance and filed a counter statement on 22.8.2012. The trial of the rent control petition commenced long thereafter. After the evidence on the side of the landlord was closed, the tenant filed I.A.No.11856 of 2015 in R.C.P.No.140 of 2011 praying for the appointment of an Advocate Commissioner to inspect the petition schedule building for the purpose of ascertaining the following:

- (i) The area of the rooms in the hotel building including bath rooms;
- (ii) Whether the hotel building is situate close to the road margin;
- (iii) Whether a fish market is situate adjacent to the hotel building and whether the bad odour is emanating from the fish market reaches the hotel;
- (iv) Whether by repairing the rooms in the upstairs portion of the building, the area of the rooms cannot be increased; and
- (v) whether the landlord is letting out the rooms in the hotel building on rent.

3. The aforesaid application which was filed on 15.12.2015 was dismissed on the same day itself. The said order is under challenge in this original petition. The impugned order reads as follows:

"This petition is filed u/O 26 Rule 9 CPC after closing the evidence of petitioner. RCP is under Section 11(3) of the Act. If the respondents vigilant to substitute his contention, this application would have been filed earlier. Listed 3 times earlier and further the RCP was allowed 3 times. The order passed was set aside on 3 occasion on the applications of the respondent. The intention of the respondent is some how drag the proceedings. There is no merit in the application. It is

highly belated. Therefore dismissed however without costs.”

4. The impugned order discloses that the tenant had been set ex-parte and orders of eviction passed on three occasions. But on applications filed by him, the ex-parte orders of eviction were set aside. The impugned order also discloses that I.A.No.11856 of 2015 which was dismissed by the impugned order, was filed after the evidence of the landlord was closed. The rent control court has also observed that the application is only another attempt to drag the proceedings. The rent control petition was instituted in the year 2011. The tenant entered appearance and filed a counter statement on 22.8.2012. More than three years have passed thereafter. The tenant could have even before the trial of the rent control petition commenced, filed an application for the appointment of an Advocate Commissioner for the purpose of ascertaining the facts referred to in I.A.No.11856 of 2015. For reasons best known to him, he waited till the evidence of the landlord was closed, to come forward with such an application. He was earlier set ex-parte on three occasions. In such circumstances, we find no reason to disagree with the rent control court that the instant application is only an attempt to further delay the disposal of the rent control petition. That apart, on the merits also we find no reason to grant the relief prayed for in I.A.No.11856 of

2015. The need put forward by the landlord is to expand his business by converting the hotel into a three star hotel. It necessarily involves repairs and modifications. Even assuming that the hotel is situate by the side of a road, that by itself cannot be a reason to hold that the landlord cannot expand his hotel after renovation. It is only for a reconstruction that he will have to provide further set back. Even assuming that a fish market is situate adjacent to the hotel, that cannot also be a reason to hold that the need put forward is not bonafide. The present application is, in our opinion, an abuse of the process of the court and rightly rejected by the rent control curt.

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

(P.N. Ravindran, Judge.)

(Babu Mathew P.Joseph, Judge.)

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