

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

RCCRev..No. 11 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 83/2010 of D.C. & SESSIONS COURT, THRISSUR
DATED 28-11-2014

AGAINST THE ORDER/JUDGMENT IN RCP 27/2009 of MUNSIF COURT, KODUNGALLUR DATED
25.9.2010

REVISION PETITIONER(S)/APPELLANTS/RESPONDENTS:

- 1. ABDUL MAJEED AGED 82 YEARS**
S/O. KADAMBOTT KOCHU MOIDEEN, ERIYAD DESAM
KODUNGALLUR - 680 666.
- 2. MUHAMMED HANEEFA AGED 54 YEARS**
S/O. KADAMBOTT MUHAMMADALI, MADAVANA DESAM
ERIYAD VILLAGE, KODUNGALLUR TALUK -680 666.
- 3. MUHAMMED SIDDIQUE AGED 52 YEARS**
S/O. KADAMBOTT MUHAMMADALI, MADAVANA DESAM
ERIYAD VILLAGE, KODUNGALLUR TALUK -680 666.
- 4. MUHAMMED RASHEED AGED 50 YEARS**
S/O. KADAMBOTT MUHAMMADALI, MADAVANA DESAM
ERIYAD VILLAGE, KODUNGALLUR TALUK -680 666.
- 5. ASMABI AGED 57 YEARS**
D/O. KADAMBOTT MUHAMMADALI, MADAVANA DESAM
ERIYAD VILLAGE, KODUNGALLUR TALUK -680 666.
- 6. AISHABI AGED 57 YEARS**
D/O. KADAMBOTT MUHAMMADALI, MADAVANA DESAM
ERIYAD VILLAGE, KODUNGALLUR TALUK -680 666.
- 7. RAMLATH AGED 51 YEARS**
D/O. KADAMBOTT MUHAMMADALI, MADAVANA DESAM
ERIYAD VILLAGE, KODUNGALLUR TALUK -680 666.
- 8. JASMI AGED 44 YEARS**
D/O. KADAMBOTT MUHAMMADALI, MADAVANA DESAM
ERIYAD VILLAGE, KODUNGALLUR TALUK -680 666.

BY ADVS.SRI.K.A.SHAMSUDEEN
SRI.K.J.MOHAMMED ANZAR
SMT.BHAMA G. NAIR

RESPONDENT(S)/RESPONDENT/PETITIONER:

SREENARAYANA DHARMA SABHA MADAVANA DESAM
ERIYAD VILLAGE, KODUNGALLUR, REP. BY LEGAL OFFICER
SHANMUGHAN, S/O. VALIYAPARAMBIL SUBRAMANIAN
AZHIKKODE VILLAGE, DESAM - 680 666.

BY ADV. SRI.P.RAMAKRISHNAN, CAVEATOR

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 16-01-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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R.C.Rev.No. 11 of 2015

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Dated this the 16th day of January, 2015

ORDER

ANTONY DOMINIC, J.:

The petitioners herein are the legal heirs of one deceased Nabeesa. The deceased was the licensee of ARD No.48 of Kodungallur Taluk. The petition schedule building was taken on lease from the respondent herein, the landlord. After the expiry of Nabeesa, though the petitioners are the legal heirs, licence was issued to them and the shop is found to be attached to another ARD.

2. In the meantime, the respondent landlord sought vacant possession of the building for their own use. That demand was not acceded to and thereupon, the respondent filed R.C.P.No.27/2009 in the Rent Control Court, Kodungallur, seeking eviction under Sec. 11(3) of the Act. In the petition, they stated that they wanted to utilize the room as an office of a project under the name and style, "Gramasree Project", the purpose of which was to provide assistance to the weaker section of the society.

3. The Rent Control Court, by its order dated 25th September, 2010, ordered eviction under Sec.11(3). That order was challenged by the petitioners before the Rent Control Appellate Authority by filing R.C.A.No.83/2010. By judgment dated 28th November, 2014, the appeal was dismissed. It is in this background, the revision is filed.

4. Heard the learned counsel for the petitioners and considered the submissions made.

5. The first submission made by him was that the bona fide need urged is only a ruse to get the room vacated. However, the lower authorities have concurrently found that the respondent has undertaken the project by name "Gramasree Project" and it was to accommodate their office, surrender of room was sought for. This concurrent finding of fact, by both the authorities based on the evidence adduced by the respondent, does not suffer from any illegality. It was contended before us that the landlord has several rooms in their possession. This contention had been addressed by both the authorities and we find from the orders that only the case set up was that room No.208 is vacant. Referring to Ext.X-1 the assessment register of Eriyad Grama Panchayat prepared for the

period 1993-94, the courts have found that though the room was initially vacant, it is occupied by Rajeevan. Therefore, apart from this, there is no other evidence to come to the conclusion that the landlord had any room in their possession. Insofar as the benefit of the proviso to Sec.11(3) claimed by the tenants are concerned, there also, referring to the evidence, it has been concurrently found that there is no evidence to prove that the tenants are depending on the income from the business in question. That apart, the business itself is now not being conducted by the tenants. Further the courts have also found that there are other rooms available in the locality and that even if ARD licence is ultimately restored to the petitioners, they will be able to conveniently accommodate their business. In the light of the above evidence and findings, we are unable able to find fault with either the order of the Rent Control Court or the Appellate Authority.

6. At this stage, the learned counsel for the petitioners referred us to paragraph 19 of the judgment of the Rent Control Appellate Authority and pointed out that licence has been issued in their name and he sought a reasonable time to surrender vacant possession of the room to the landlord. Taking note of the

submission so made, we direct that the tenants will be given three months' time from today to surrender vacant possession of the building to the landlord, subject to the condition that the tenants shall file an affidavit before the Rent Control Court unconditionally undertaking to surrender the room in question to the landlord on the expiry of the period allowed by us. They shall also continue to pay the rent without default.

Sd/-

ANTONY DOMINIC, JUDGE

Sd/-

ALEXANDER THOMAS, JUDGE

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///True copy///

P.S. to Judge