

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

RCRev..No. 20 of 2015 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 56/2013 of RENT CONTROL APPELLATE
AUTHORITY, KOZHIKODE DATED 12/11/14**

**AGAINST THE ORDER/JUDGMENT IN RCP 30/2011 of RENT CONTROL
COURT/ADDL.MUNSIFF-1 ,KOZHIKODE DATED 31/1/13**

REVISION PETITIONER(S)/2ND APPELLANT/2ND RESPONDENT:

**BROWN SHOOTERS CLUB,
REP. BY PUTHUKUDI GOPINATHAN, S/O.ACHUKUTTY
AGED 59 YEARS
THAZHECHERU MANGAD HOUSE, BROWN SHOOTERS CLUB
DOOR NO.1/3167, EAST HILL ROAD, KACHERI AMSOM DESOM
KOZHIKODE TALUK.**

BY ADV. SRI.AVM.SALAHUDIN

**RESPONDENT(S)/RESPONDENT & 1ST APPELLANT /PETITIONER & 2ND
RESPONDENT:**

- 1. T.K.SARASWATHI,, AGED 73 YEARS
D/O.CHEROOTTY, WOOD HOUSE, B.G.ROAD
KACHERI AMSOM, DESOM, KOZHIKODE TALUK-673 001.**
- 2. PUTHUKUDI GOPINATHAN,, AGED 59 YEARS
S/O.ACHUKUTTY, THAZHECHERU MANGAD HOUSE
BEHIND OF WEST HILL SUB REGISTRAR OFFICE
KACHERI AMSOM, DESOM, KOZHIKODE DISTRICT-673 001.**

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 03-
02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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R.C.R. No. 20 of 2015
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Dated this the 3rd day of February, 2015

O R D E R

Antony Dominic, J.

The 1st respondent filed RCP No.30/11 under Section 5 of the Kerala Buildings (Lease and Rent Control) Act, (hereinafter referred to as the Act for short). In the said petition, the 1st respondent sought fixation of the fair rent in respect of the premises occupied by the petitioner herein. The said premises was let out to the petitioner in 1987 for a rent of ₹100/- per month and the landlady sought its revision and payment @ ₹1,500/- per month. The Rent Control Court by its order dated 31st of January, 2013 allowed the petition as prayed for. That order was challenged by the petitioner before the Rent Control Appellate Authority, Kozhikode in RCA No.56/13. The Appellate Authority by its judgment dated 12th of November, 2014 dismissed the appeal. It is aggrieved by these proceedings, this revision is filed.

2. We heard the learned counsel for the petitioner and considered the submissions made.

3. The contention raised by the learned counsel for the petitioner is that in view of the provisions contained in Section 5 of the Act, the order now passed by the lower authorities is untenable. However, we are unable to accept this contention. Section 5 of the Act was held to be ultra vires the constitution in the judgment of this Court in Issac Ninan v. State of Kerala (1995 (2) KLT 848). Subsequently, in the judgment in Edger Ferus v. Abraham Ittycheria (2004(1) KLT 767, this Court reviewed the said judgment and enunciated the following principles, which should govern the fixation of fair rent in terms of Section 5(1) of the Act.

"1. S.5(1) would remain in the statute book enabling the Rent Control Court to fix fair rent.

2. The claim for payment of any premium by way of pakidi in consideration of grant, renewal or continuance of tenancy is immoral and opposed to public and any agreement entered in to for payment or receipt of pakidi in consideration of grant, renewal or continuance of tenancy would be unlawful and cannot be enforced through court of law in view for the decision in Aboobacker's case reported in 2003 (3) KLT 1029.

3. The construction of buildings and letting them out to the tenants would come within the ambit of business under Art.19(1)(g) of the Constitution of India and hence is a fundamental right. Total

prohibition in claiming enhanced rent would amount to unreasonable restriction and also would be violative of the fundamental rights of the landlords guaranteed under Art.21 of the Constitution of India.

4. S.116 of the Transfer of Property Act, if has the effects of imposing any restriction in revision of rent it would amount to unreasonable restriction affecting the fundamental rights guaranteed under Art.19(1)(g) and to the extent of its inconsistency the said provision would be void under Art.13(1) of the Constitution of the India so far as fixation of rent is concerned.

5. The judgment in John Zacharia's case, (1987 (1) KLT 156), holding that even beyond the period originally stipulated, till evicted under S.11 of the Kerala Buildings (Lease and Rent Control) Act only the agreed rent alone is payable by the tenant is not good law and to that extent it stands overruled.

6. Landlord or the tenant as the case may be, can approach the Rent Control Court for revision of rent quinquennially. Even if there is no provision for periodical revision of the rent in the rent deed even then the landlord can approach the Rent Control Court for revision of rent. We hold that the plea of continuous occupation by holding over or the protection as statutory tenant since those rights are subservient to the fundamental rights guaranteed to the landlord under Art.19(1)(g) and 21 of the Constitution of India.

7. Rent Control Court while fixing fair rent could take note of the inflation and resultant reduction in the purchasing power of money, variations in the

cost of living index in the area since commencement of the lease, demand for accommodation and availability of the buildings in the locality.

8. The cost of construction of the building including cost of labour and building materials, capital value of the entire premises in the enjoyment of the tenant inclusive of the value of the land under the actual enjoyment of the tenant whether immediately appurtenant to the building or otherwise, type of construction, locational importance, situations of the tenanted premises, ground floor, first floor etc. and other advantages and amenities, such as access to places of public importance like bus stand, railway station, educational institution, hospitals etc. would also be guiding factors.

9. The Rent Control Court will also take into consideration the prevailing rent in the locality for the same and similar accommodation. The type of construction, the amenities, general or special provided in the building, the open land attached to the building, whether residential or non- residential are also to be borne in mind.

10. Annual rental value of the building at the time of filing the application for fair rent may also be taken as a guiding factor along with others.

11. Revision or fresh imposition of municipal taxes, cess, rate in respect of other increase in the charge of electricity or water consumption by the tenant and also by the landlord and increase on account of sufficient repairs would also be taken note of by the Rent Control Court.

12. The Rent Control Court can while resolving any rent control dispute on a application either by the landlord or tenant examine whether the rent is static and requires revision and fix fair rent accordingly permitting the parties to adduce evidence.

13. The judgment of the learned Judge in George v. Narayani (1998 (1) KLT 239) fixing fair rent while reinduction under the third proviso to S.11(4)(iv) is affirmed."

4. Following this judgment and the guidelines issued by the Apex Court in ***Mohammad Ahmad v. Atma Ram Chauhan*** {2011(2) KLT S.N. 98 (Case No.120)}, the lower authorities have appreciated the case of the rival parties. In this context, it is relevant to note that in the RCA judgment, the Appellate Authority has appreciated the landlady herself and the prevailing rent in the area in para 9 of its order, which reads thus;

"9. In order to substantiate the case of the respondent, she examined one witness as PW1. He gave evidence in tune with petition averments. According to PW1, the petition schedule building is situated in a commercially important area. Westhill Polytechnic, Westhill Sub Registrar's Office, Indian Express etc; are situated within a radius of two hundred metres. Westhill Engineering College, Central School and Government Guest House are situated within a radius of five hundred metres. To substantiate the case of the respondent, a commission was taken out and the commissioner,

after inspecting the petition schedule building, filed Ext.CI report. In Ext.C1, the commissioner has reported that CSI B.E.M.school is situated opposite to the petition schedule shop room. Westhill Polytechnic, Westhill Sub Registrar's Office, Indian Express, Sterling Apartment, Crownhill Apartment etc; are situated within a radius of two hundred metres. Westhill Engineering College, Central School, Government Guest House etc; are situated within a radius of five hundred metres. The junction is situated about fifteen feet away from the petition schedule shop-room where it is a busy bazaar. The commissioner further stated that as demanded in the petition, she enquired with the neighbouring shops regarding the rate of rent and it was informed by V.R.Associates-Building Contractors that they are giving rent at the rate of Rs.2,500/- to their shop-room. She further stated that Praveen-one of the worker in that firm-shown her the rent agreement. She further stated that when enquired with Bindu, who is conducting a photostat shop, she stated that the rent is Rs.2,250/- per month. That shop is having a carpet area of 150 sq.ft. On inquiry with another adjacent business concern in the name and style 'Sree Docutech', she was informed that they are paying a rent of Rs.3,000/- per month. The commissioner further stated that the present rent in respect of the petition schedule shop-room is too low. The appellants and respondent did not file any objections to the commissioner's report. It is true that the respondent has failed to examine any of the tenants in the neighboring shop-rooms or to produce

any document showing the rate of rent of the neighbouring shop-rooms. But during evidence, RW1 categorically admitted that as per Kachit dated 12/11/1987, the rent was fixed at rupees hundred per month. For the last twenty five years, the appellants are paying the same rent. He further stated that they took the room on rent after seeing and verifying the amenities. He further stated that there is no document to show what is the rent of the neighbouring shop-rooms."

5. In the light of the principles laid down by this Court and the Apex Court, we do not think that the fixation of ₹1,500/- as fair rent payable to the premises in question is contrary to any one of the aforesaid principles or the provisions of the Act.

6. We do not find any reason to interfere with the order under challenge.

Revision is dismissed.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge