

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

RRev..No. 83 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 30/2013 of ADDL.RENT CONTROL
APPELLATE AUTHORITY IV, KOTTAYAM DATED 30-01-2015

AGAINST THE ORDER IN RCOP 19/2010 of ADDL.RENT CONTROLLER, KOTTAYAM
DATED 08-03-2013

REVISION PETITIONER/RESPONDENT/RESPONDENT:

KURIAKOSE
S/O.PONNOSE, EDATHUMKADAVIL, KURICHI
KOTTAYAM. NOW RESIDING AT KODIMATHA, KOTTAYAM.

BY ADVS.SRI.C.P.PEETHAMBARAN
SMT.MINI.V.A.

RESPONDENT(S) /APPELLANT/PETITIONER:

KOTTARATHIL SANKUNNI MEMORIAL TRUST
KODIMATHA, KOTTAYAM
REPRESENTED BY THE SECRETARY K.MADHAVAN UNNI
S/O.NARAYANAN UNNI, KANJIRAKKATTU MADOM, PAKKARA
NATTAKOM VILLAGE, KOTTAYAM TALUK, KOTTAYAM DISTRICT.

BY ADV. SRI.MATHEW JOHN(CAVEATOR)

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
11-09-2015, ALONG WITH RCR. 93/2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

kp/-

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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R.C.Rev.Nos.83 & 93 of 2015

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Dated this the 11th day of September, 2015

ORDER

P.N.Ravindran, J.

These revision petitions filed under section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 arise from a common judgment delivered by the Court of Additional Rent Control Appellate Authority, Kottayam on 30.1.2015 in R.C.A.Nos.30 and 31 of 2013 respectively. They were therefore heard together and are disposed of by this common order. The brief facts of the case are as follows:

2. The respondent herein instituted R.C. (O.P).Nos.18, 19 and 20 of 2010 on the file of the Additional Rent Control Appellate Authority, Kottayam seeking eviction of three rooms in the ground floor of a three storied building situate at Kodimatha in Kottayam. The petitioners are two among the tenants in occupation of the said shop rooms. The respondent landlord had sought eviction of the shop rooms for the purpose of starting an art gallery to exhibit the paintings in its possession and to start classes in mural painting, classical arts such as Theyattu, Koothu, Koodiyattom etc. The tenants opposed the petition by filing written objections contending inter alia that the bona fide need put forward is only a ruse to evict them and to let out the rooms for higher rent.

3. Before the Rent Control Court, the Acting Secretary of the landlord trust was examined as PW1 and Exts. A1 to A9 were produced and marked on its side. On application filed by the landlord, an Advocate Commissioner was appointed to inspect the petition schedule building as also the remaining portions thereof. The reports submitted by him were marked as Exts.C1 and C2. The Advocate Commissioner was examined as PW2 and the tenants were examined as CPW1, CPW2 and CPW3 respectively. The tenants also produced and marked Ext.B1 series of receipts. The Rent Control Court considered the rival contentions and dismissed the rent control petitions by a common order passed on 8.3.2013 mainly relying on Ext.A9(b) minutes as also certain statements occurring in page 17 of the minutes book, which had not been marked in evidence. The Rent Control Court held that the need put forward is not bona fide. Aggrieved thereby, the landlord trust filed R.C.A 29, 30 and 31 of 2013 on the file of the Court of the Additional Rent Control Appellate Authority, Kottayam. By a common judgment delivered on 30.1.2015, the Rent Control Appellate Authority held that the need put forward is bona fide. The Rent Control Appellate Authority also held that as the tenants have no case that the landlord is in possession of any other building, they cannot rely on the first proviso to sub section (3) section 11 of the Act. As regards the

second proviso to sub section (3) of section 11 of the Act, the Rent Control Court held that though the tenants have established the ingredients of first limb of the second proviso to sub section (3) of section 11 of the Act, they have failed to prove the second limb of the second proviso. An order for eviction was accordingly passed. Two among the tenants have aggrieved thereby filed these revision petitions.

4. We heard Sri. C.P. Peethambaran, learned counsel for the petitioner in R.C.Rev.No.83 of 2015, Sri. Philip T. Varghese, learned counsel for the petitioner in R.C.Rev.No.93 of 2015 and Sri. Mathew John, learned counsel for the respondent landlord. A reading of the order passed by the Rent Control Court discloses that the rent control petition was dismissed mainly relying on Ext.A9(b) minutes and the statement occurring in page 17 of the very same book which admittedly had not been marked in evidence. The appellate authority reversed the finding entered by the Rent Control Court on the ground that the tenants have not pleaded or proved that the need put forward has materialised and therefore nothing turns on the recitals in Ext.A9 (b) minutes. The records disclose that the need put forward by the landlord was to start an art gallery to exhibit paintings in its possession and to start classes in mural painting and classical arts. The tenants

have no case that the landlord has commenced an art gallery and has also started classes in mural paintings and classical arts either in petition schedule building or elsewhere. They have not pleaded or proved that the need put forward no longer subsists and that by the time the case had come to trial, the classes had commenced elsewhere. On the other hand, the report submitted by the Advocate Commissioner who was examined as PW2 establishes the fact that the state of affairs which obtained when a decision was taken to evict the tenants continues to exist.

5. In such circumstances, as the need put forward still subsists and the reports submitted by the Advocate Commissioner disclose that several paintings are stored in the building due to lack of space, we are in agreement with the court below that the need put forward by the landlord is bona fide. We are also in agreement with the court below that the reasons given by the Rent Control Court to non suit the landlord cannot be sustained. After hearing the learned counsel appearing on both sides and on going through the impugned judgment we are not persuaded to hold that the order for eviction passed by the appellant authority is illegal or irregular or that on the evidence in record such an order was not called for. As regards the benefit of the first and second provisos to the sub section (3) of section 11 of the

Act, the Rent Control Appellate Authority has held that the tenants have not succeeded in establishing the ingredients of the first proviso and that they have also not succeeded in establishing the second limb of the second proviso to sub section (3) of section 11 of the Act. Examined as CPW1, the tenant in R.C.(O.P) No. 18 of 2010 had admitted the fact that other alternative buildings are available in the locality. As rightly held by the Rent Control Appellate Authority, as the evidence in the case on hand shows the availability of other alternative building in the locality, the tenants cannot claim the benefit of the second proviso to section 11(3) of the Act. The finding entered by the Rent Control Appellate Authority that the need put forward by the landlord is bona fide and that the tenants are not entitled to the benefit of first and second provisos to sub section (3) of section 11 of the Act does not in our considered opinion warrant any interference.

We accordingly hold that there is no merit in these revision petitions. These revision petitions fail and are accordingly dismissed. However, having regard to the fact that the revision petitioners-tenants have been carrying on business in the petition schedule building for more than two decades, we deem it appropriate to grant them six months' time from today to surrender vacant possession of the petition schedule building, subject to the condition that they shall

within one month from today, file an undertaking in the form of an affidavit in the Rent Control Court undertaking to surrender vacant possession of the petition schedule building on the expiry of the period of six months from today. The said affidavit shall also contain an undertaking to the effect that they will not cause any material alteration to the shop rooms in their possession or induct strangers into possession thereof. The tenants shall along with the affidavit deposit the arrears of rent, if any and undertake in the affidavit that they will pay the rent till the date of surrender. In the event of failure on the part of the tenants in filing an affidavit as directed above, it will be open to the landlord to execute the order for eviction.

**P.N.RAVINDRAN
JUDGE**

**ANU SIVARAMAN
JUDGE**

kp/-