

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

RCRev..No. 102 of 2015 ()

AGAINST THE JUDGMENT IN RCA 104/2011 of THE RENT CONTROL APPELLATE
AUTHORITY, THRISSUR DATED 12-01-2015

AGAINST THE ORDER/JUDGMENT IN RCP 5/2010 of THE RENT CONTROL COURT,
KODUNGALLUR DATED 24-05-2011

REVISION PETITIONER(S)/APPELLANT/ RESPONDENT:

DR.AJITH KUMAR
DENTIST, AISWARYA DENTAL CLINIC
S/O. THAZHATHUVEETIL ARAVINDAKSHA MENON
LOKAMALESWARAM VILLAGE, KODUNGALLUR TALUK

BY ADV. DR.AJITH KUMAR (PARTY IN PERSON)

RESPONDENT(S)/RESPONDENTS/PETITIONERS:

1. MARIYUMMA
W/O. LATE HYDROSE HAJI, PADIYATHU MANAPPATTU HOUSE
LOKAMALESWARAM VILLAGE, KODUNGALLUR TALUK 680 664
2. P.H. MOIDEEN
S/O. LATE HYDROSE HAJI, PADIYATHU MANAPPATTU HOUSE
LOKAMALESWARAM VILLAGE, KODUNGALLUR TALUK 680 664
3. P.H. MOHAMMED
S/O. LATE HYDROSE HAJI, PADIYATHU MANAPPATTU HOUSE
LOKAMALESWARAM VILLAGE, KODUNGALLUR TALUK 680 664
4. P.H. ZIAUDEEN
S/O. HYDROSE, PADIYATHU MANAPPATTU HOUSE
LOKAMALESWARAM VILLAGE, KODUNGALLUR TALUK 680 664

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
28-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

kkj

**K.SURENDRA MOHAN, J &
MARY JOSEPH, JJ.**

R.C.R. No.102 of 2015

Dated this the 28th day of May, 2015

O R D E R

Surendra Mohan, J.

The tenant in a petition for fixation of fair rent is the revision petitioner. The respondent had approached the Rent Control Court, Kodungalloor with RCP No.5 of 2010 seeking fixation of fair rent in respect of the tenanted premises. The petitioner is in occupation of the first floor portion of a building belonging to the respondents. He is conducting a Dental Clinic from the said premises, he being a Dental Surgeon. According to the petitioner, he had taken the premises on rent in the year 1989 on a monthly rent of ₹800/-. At that time, according to the petitioner, the building was not plastered and there were no amenities available. The building was not fit for the conduct of a Dental Clinic. He had invested money, completed all necessary construction works, made the premises fit for the

conduct of a Dental Clinic. He also provided glass partitions and other conveniences and started a modern Dental Clinic. It was considering the condition of the premises as well as the investment that the petitioner was expected to make that the rent was fixed at ₹800/-. Subsequently, on the request of the respondent, the rent was enhanced to ₹1500/-. According to the petitioner, the rent for an identical carpet area on the ground floor of the same building is ₹10400/-. The rent of the first floor would be substantially less and would be only ₹5/- or 6/- per square feet, according to the petitioner. In spite of the above, the Rent Control Court fixed the rent at ₹15/- per square feet. Therefore, the petitioner had challenged the order of the Rent Control Court in Rent Control Appeal, RCA No.104 of 2011. In the appeal, the Appellate Authority only gave a marginal reduction. The rent has been fixed at ₹12/- per square feet, which according to the petitioner is very high and does not represent the fair rent in respect of

the building. Allegations are also raised against the bonafides of the landlord in seeking fixation of fair rent pointing out that, he has been singled out, out of personal animosity. He is willing to pay a reasonable enhancement in rent. On the above grounds, the petitioner seeks interference with the order under revision.

2. This revision is posted before us for admission. The petitioner has appeared before us in person. We have heard the petitioner at length. We have also perused the order of the Rent Control Court as well as the judgment of the Appellate Authority.

3. We notice that the tenanted premises was given on rent in the year 1989 on a monthly rental of ₹800/-. Subsequently, the rent has been enhanced by mutual consent and the rent paid at present is ₹1500/- per month. The petitioner has a case that, initially the rent had been enhanced to ₹1150/- in the year 2000 and to ₹1500/- in the year 2006. The present enhancement sought according to

the petitioner is exorbitant and does not bear any relation to the actual rent prevailing in the locality. A perusal of the order of the Rent Control Court shows that, Exhibits A4 to A7 documents relate to the rent paid by other commercial institutions in the locality. Exhibit A6 shows that the ICICI Bank functioning from a nearby premises is paying a rent of ₹31,894/- for an area of 862 square feet. Exhibit A7 shows that for an area of 2100 square feet, an amount of ₹42,000/- is paid. On the basis of the above documents, the Rent Control Court has concluded that the rent in the locality is ₹20/- per square feet. However, considering the fact that the building occupied by the petitioner was a 26 year old one, the rent was reduced and fixed at ₹15 per square feet. The Appellate Authority has reduced the rent to ₹12/- per square feet.

According to the petitioner, the area occupied by him is 1025 square feet. He has examined RWs 2 and 3 to show that meagre rent is paid in respect of other rooms in the

area. RW3 has stated that she pays only an amount ₹489/- for the room in her possession. Bearing in mind, the principles laid down by this Court in **Edgar Ferus v. Abraham Ittycheria** [2004(1) KLT 767], it cannot be said that the judgment of the Appellate Court requires to be interfered with in revision. As already noticed above, the petitioner is admittedly in occupation of a carpet area of 1025 square feet on the first floor with an exclusive staircase for gaining access to the premises. The Appellate Authority has limited the rent to the carpet area occupied by him. It has been found that, the premises are located in the heart of Kodungalloor town. We do not find any grounds to arrive at a different conclusion. The petitioner has been conducting the Dental Clinic from the premises for the past twenty six years. It is not in dispute that he commands a good practice. It is only appropriate that a rent comparable to the rent paid by the other tenants in the area of similar premises is paid by the petitioner also. The

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Authorities below have compared the premises with other premises with respect to which evidence has been adduced. Proper reduction has been given considering the age of the building. Therefore, we do not find any grounds to interfere with the judgment against which this revision is filed.

For the above reasons, this revision is dismissed.

Sd/-
K.SURENDRA MOHAN,
JUDGE

Sd/-
MARY JOSEPH
JUDGE

kkj