

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

RCRev..No. 108 of 2015 ()

AGAINST THE JUDGMENT IN RCA 97/2013 of RENT CONTROL APPEALTE
AUTHORITY, KOZHIKODE DATED 18-10-2014

AGAINST THE ORDER IN RCP 8/2006 of RENT CONTROL COURT, QUILANDY DATED
29-07-2013

REVISION PETITIONER(S) :

1. MARUTHIYATT MOIDEEN KOYA AGED 72 YEARS
S/O ALI, KUNIYIL HOUSE, NADUVANNUR AMSOM
DESOM, KOYILANDY TALUK
2. WIFE THODUVAYIL CHEKKIANGAL KUNHHIMARIYAM
D/O THARUVAYIKUTTY, KUNIYIL HOUSE, NADUVANNUR AMSOM
DESOM, KOYILANDY TALUK

BY ADVS.SRI.R.PARTHASARATHY
SMT.SEEMA PARTHASARATHY

RESPONDENT(S) /APPELLANT/ PETITIONER:

THAZHE KALATHERI MOIDEEN KUTTY
RUBI HOTEL, KOTALIDA TOWN, KUNIYIL HOUSE
NADUVANNUR AMSOM, DESOM, KOYILANDY TALUK- 673 305

R1 BY ADV. SRI.SANTHARAM.P

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
07-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.Surendra Mohan & Mary Joseph, JJ.

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R.C.R No.108 of 2015

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Dated this the 7th day of July, 2015.

ORDER

The landlords are before us in revision. The landlords had filed R.C.P No.8 of 2006 before the Rent Control Court, Koyilandy seeking an order of eviction against the tenant on the ground under Section 11(4)(iv) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act', for short). Though the petition was resisted by the respondent/tenant, eviction was ordered on 22.11.2006. The order of eviction was confirmed in appeal. Thereafter, on 16.08.2008 the tenant vacated the premises occupied by him by handing overing key to the landlords. However, the landlords did not reconstruct the building.

2. In the above circumstances, the tenant filed I.A No.732 of 2009 seeking a direction to put him back in possession of the premises. He also filed I.A No.1032 of 2009 for a direction to

reconstruct the building since the landlords were not reconstructing the same. It is necessary to note here that as soon as the landlord obtained vacant possession of the premises, he had demolished the building that was in existence. The petitions filed by the tenant were resisted by the landlords contending that, it was not due to any wilful default on their part that the building could not be reconstructed. It was contended that, his wife who was a cancer patient required to be treated, incurring considerable expenses resulting in depletion of his financial resources. Consequently, he is in a situation where it is not possible for him to reconstruct the building though he had obtained vacant possession on the strength of orders obtained from the Rent Control Court.

3. The Rent Control Court considered the contentions of both the parties and found that the remedy of the tenant was to seek damages from the landlords. Since no petition was filed for the purpose, no relief was granted. The aggrieved tenant challenged the order of the Rent Control Court in R.C.A Nos.97 of 2013 and 98 of 2013 before the Rent Control Appellate Authority, Kozhikode. The Appellate Authority considered the contentions of the parties afresh,

found that the landlord had wilfully neglected to reconstruct the building and allowed the appeals. Accordingly, the landlords were directed to submit necessary application to renew the plan and licence, to reconstruct the building in accordance with the approved plan and licence and in the event of failure on their part to do so, permitted the tenant to undertake the reconstruction. It is against the said judgment that this revision is filed. Though the counsel for the petitioner has been at considerable strain to convince us that the reconstruction could not be undertaken because of unforeseen circumstances, we are not prepared to accept the said contentions. It is admitted by the landlord that his wife had been suffering from cancer right from the year 2002 onwards. The Rent Control Petition was filed only in the year 2006. Though reliance is placed on the coercive proceedings initiated by the State Bank of India against the landlord as evidenced by Ext.B9, a perusal of the said document shows that the loan had been in default from the year 2004 onwards. In short, the evidence clearly shows that the landlord was facing all the problems that are projected by him now, even when they filed the Rent Control Petition. The above being the position, we are not

satisfied that any interference with the directions issued by the Rent Control Appellate Authority is called for in revision. However, the counsel for the landlords assures us that the landlords would themselves reconstruct at least the ground floor that was occupied by the tenant, within a stipulated time and offer the same to the tenant, subject of course to payment of rent in respect of the premises as stipulated by Section 11(4)(iv) of the Act. In view of the above submission, we are of the view that it is necessary to grant one further chance to the landlords to honour their commitment and to undertake the reconstruction by themselves. This revision is, in the above circumstances, disposed of with the following directions.

- i) The landlords are granted three months time from the date of receipt of a copy of this judgment to obtain a proper plan and licence from the local authority concerned for undertaking the construction that was proposed.
- ii) On obtaining such plan and licence, the landlord shall produce them before the Rent Control Court, Koyilandy in R.C.P No.8 of 2006.

- iii) If the Rent Control Court, Koyilandy satisfied that the plan and licence obtained by the landlords are in order, shall pass appropriate orders fixing the time limit within which the landlords shall undertake and complete the construction of the ground floor portion that was occupied by the tenant and offer the same to the tenant.
- iv) If the landlords do not comply with any of the conditions stipulated above, the tenant shall be at liberty to enforce the directions of the Rent Control Appellate Authority in R.C.A Nos.97 of 2013 and 98 of 2013 and to undertake reconstruction of the building as directed therein.

Sd/-
K. Surendra Mohan, Judge.

Sd/-
Mary Joseph, Judge.

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