

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

RCRev..No. 155 of 2015 ()

AGAINST THE ORDER IN RCP 24/2012 of I ADDL.MUNSIFF (RENT CONTROL COURT),
TRIVANDRUM DATED 23-10-2013

AGAINST THE JUDGMENT IN RCA 4/2014 of I ADDL.RENT CONTROL APPELLATE
AUTHORITY-I, TRIVANDRUM DATED 28-02-2015

REVISION PETITIONER:

SAHITHYA, PRAVARTHAKA SAHAKARANA SANGHAM
KOTTAYAM, REPRESENTED BY ITS SECRETARY,
AJITH K. SREEDHAR, AGED 47 YEARS,
OFFICE OF THE SPCS, KOTTAYAM - 686 001.

BY ADVS.SMT.S.KARTHIKA
SMT.K.MEERA

RESPONDENTS:

SHIBU SETHUNATHAN
'VISHWANADAM, S.N.NAGAR, PETTAH P.O,
THIRUVANANTHAPURAM.

BY ADV. SRI.LAL GEORGE, CAVEATOR

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
01-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.**
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R.C.Rev.No.155 of 2015
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Dated this the 1st day of July, 2015

O R D E R

Ravindran, J.

The tenant of a commercial building situate in Thiruvananthapuram town, who was the sole respondent in R.C.P.No.24 of 2012 on the file of the Court of the Additional Munsiff (Rent Control Court), Thiruvananthapuram, has filed this revision petition under section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act' for short) challenging the judgment delivered by the Additional Rent Control Appellate Authority-1, Thiruvananthapuram on 28.02.2015 dismissing R.C.A.No.4 of 2014. By that judgment, the Rent Control Appellate Authority affirmed the order for eviction passed by the Rent Control Court on 23.10.2011 in R.C.P.No.24 of 2012. The brief facts of the case are as follows:-

2. The respondent purchased a parcel of land, 7 cents in extent and the building therein bearing door No.TC.26/82, situate at Statue Junction, Thiruvananthapuram, as per Ext.A2 sale deed dated 20.01.2011. The land and the building originally belonged to Sri.Parameswaran Nair. The revision petitioner was a tenant of a

portion of the said building under Sri.Parameswaran Nair. After purchasing the land and the building, the respondent instituted R.C.P.No.24 of 2012 under sections 11(2)(b) read with 11(4)(iv) of the Act on the ground that the rent is in arrears and that the building is in such a condition that it needs reconstruction. Upon receipt of notice the petitioner tenant entered appearance and filed written objections resisting the petition for eviction. On application filed by the landlord, the Rent Control Court appointed an Advocate Commissioner, who submitted Ext.C1 report and was examined as PW2. The Rent Control Court considered the rival contentions and the evidence on record and held relying on Ext.C1 report submitted by the Advocate Commissioner that the building needs re-construction. The Rent Control Court also found that the landlord has the ability to reconstruct the building and that the application is not a ruse for eviction. Rent Control Court also held that the rent is in arrears from 20.01.2011 till 13.01.2012, the date of institution of the Rent Control Petition. The Rent Control Court accordingly ordered the eviction and directed the petitioner to surrender possession of the building within three months. Aggrieved thereby, the revision petitioner filed R.C.A.No.4 of 2014 before the Rent Control Appellate Authority, Thiruvananthapuram. By judgment

delivered on 28.02.2015, the Rent Control Appellate Authority concurred with the Rent Control Court and dismissed the appeal, but with the observation that as per the third proviso to section 11(4)(iv) of the Act, the tenant will have the first option to have the reconstructed building allotted to him with liability to pay fair rent. The tenant has aggrieved thereby, filed this revision petition.

3. We heard Smt.Meera K, learned counsel appearing for the revision petitioner and Sri.Lal George, learned counsel appearing for the respondent who had lodged a caveat. Sri.Lal George, learned counsel appearing for the landlord submitted that a portion of the building has collapsed, that all the other tenants have surrendered possession of the building and that the building is in such a situation that it is likely to collapse at any time and therefore, unless the petitioner vacates the premises, it is even likely to result in danger to the persons employed in the book stall run by the petitioner. Learned counsel appearing for the revision petitioner submitted that the tenant has in its possession books worth approximately Rs.46,00,000/- that it is on the look out for another alternate accommodation to shift the books and therefore, having regard to the fact that the tenant is running a book stall, reasonable time may be granted to the tenant to

vacate the premises. Learned counsel appearing for the respondent landlord submitted that the tenant has already taken a building on lease and therefore, there is no reason why the indulgence of this court should be asked for.

4. The order passed by the Rent Control Court which was affirmed by the appellate authority discloses that the building is in a dilapidated condition. The Advocate Commissioner has in Ext.C1 report stated as follows:-

“that the exterior portion of the north-eastern corner of the petition scheduled building was seen detached due to rain water; that she could find the south-eastern wall and roof of the first room of the petition scheduled building in a wet condition; that the iron concrete bars were found exposed in the hall in the petition scheduled building; that the concrete roofs were found damaged and the iron bars exposed; that the wall around the door of the godown was found damaged; that the red bricks with which the partition wall of the godown was made were found detached; that the north-eastern room in the second floor was found in a wet condition; that the concrete roof in the hall in the second floor was found damaged and iron bars exposed; and that the walls of most of the rooms in the second floor and the concrete roofs were found damaged.”

5. It was having regard to the said factual situation that the Rent Control Court and the appellate authority held that the building is in such a situation that it needs re-construction. The Rent Control

Court as well as the Appellate Authority have also held that the landlord who is a non-resident Indian possesses the means to put up a new building. All the other tenants have vacated the building. A portion of the building has also collapsed. Such being the situation, we are not persuaded to hold that the attempt of the landlord is only a ruse to evict the petitioner. Though the Rent Control Court had not safeguarded the right of the tenant recognised in the third proviso to section 11(4)(iv) of the Act, the appellate authority had even while dismissing the appeal filed by the tenant held that the tenant will have the first option to have the reconstructed building allotted to him with liability to pay fair rent, after reconstruction. In such circumstances, we are not persuaded to hold that the impugned judgment/order suffer from any illegality.

6. It is not in dispute that the tenant is running a book stall in the petition schedule premises. The landlord has no case that all the books presently available in the stall have been sold out. Such being the situation, we are of the opinion that a reasonable time should be granted to the tenant to surrender vacant possession of the building to the landlord. In view of the fact that monsoons have set in, and the goods to be shifted are books, we are of the opinion that the

tenant should be granted at least a month's time from today to surrender vacant possession of the petition scheduled property, subject of course to the condition that the tenant should file an undertaking in the form of an affidavit in the Rent Control Court within a week from today undertaking to unconditionally surrender vacant possession of the petition schedule building to the landlord and also deposit the entire arrears of rent due till the date of such surrender.

We accordingly hold that no interference is called for with the impugned order/judgment. The revision petition fails and it is accordingly dismissed, but with the observation that the order for eviction shall not be executed for a period of one month from today in the event of the tenant filing an undertaking in the form of an affidavit in the Rent Control Court within one week from today to the effect that it will unconditionally surrender vacant possession of the petition schedule building to the landlord and also deposit the entire arrears of rent due till the date of such surrender. The tenant shall also undertake that it will not induct third parties into possession of the building. The tenant shall also state in the affidavit to be filed that it will have no claim whatsoever against the landlord in the

event of the building collapsing in the meanwhile and the employees in the establishment are injured or damage is caused to the books, fittings, fixtures and furniture therein.

P.N.Ravindran,Judge

Anu Sivaraman, Judge

sj