

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN  
&  
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

RCRev..No. 196 of 2015 (A)  
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AGAINST THE JUDGMENT IN RCA 68/2014 of RENT CONTROL APPELLATE  
AUTHORITY, KOZHIKODE DATED 29-11-2014

AGAINST THE ORDER IN RCP 4/2012 of RENT CONTROL COURT  
(PRL.M.C.KOZHIKODE-I) DATED 18-02-2014  
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REVISION PETITIONERS/APPELLANTS/RESPONDENTS:  
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1. M.C MOHANDAS ALIAS MOHANAN, AGED 57 YEARS  
S/O. M.C SUKUMARAN, PARTNER, M/S. SANKARAN STATIONERY  
7/793, S.M STREET  
KOZHIKODE 673 001 RESIDING AT SANKAR NIVAS  
PUTHIYARA, KOZHIKODE 673 004
2. M.C VINODKUMAR AGED 53 YEARS  
S/O. M.C SUKUMARAN, PARTNER, M/S. SANKARAN STATIONERY  
7/793, S.M STREET  
KOZHIKODE 673 001 RESIDING AT SANKAR NIVAS  
PUTHIYARA, KOZHIKODE 673 004
3. M.C MANOJKUMAR AGED 49 YEARS  
S/O. M.C SUKUMARAN, PARTNER, M/S. SANKARAN STATIONERY  
7/793, S.M STREET  
KOZHIKODE 673 001 RESIDING AT SANKAR NIVAS  
PUTHIYARA, KOZHIKODE 673 004

BY ADVS. SRI.R.SUDHISH  
SMT.M.MANJU

RESPONDENT/RESPONDENT/PETITIONER:  
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V. DORASWAMY, AGED 77 YEARS  
S/O. LATE N.V. CHETTYAR, RESIDING AT MINI PARADISE  
NAGARAM AMSOM, DESOM, KOZHIKODE 673 001

R1 BY ADV. SRI.V.SREENATH

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON  
07-12-2015, ALONG WITH RCR. 221/2015, THE COURT ON THE SAME DAY  
PASSED THE FOLLOWING:

**P. N. RAVINDRAN  
&  
BABU MATHEW P. JOSEPH, JJ.**

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R.C.R.Nos.196 & 221 of 2015  
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Dated this the 7<sup>th</sup> day of December, 2015

**ORDER**

**P. N. Ravindran, J.**

These revision petitions arise from the common judgment delivered by the Rent Control Appellate Authority, Kozhikode on 29.11.2014 in R.C.A.Nos.45 and 68 of 2014. They were therefore heard together and are being disposed of by this common judgment. The brief facts of the case are as follows:

2. The petitioners in R.C.R.No.196 of 2015 are the tenants in R.C.P.No.4 of 2012 on the file of the Rent Control Court, Kozhikode, a petition filed by the respondent landlord under section 5 of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as the "Act" for short, for fixation of fair rent in respect of the petition schedule building bearing door No.7/793 of Kozhikode Corporation. The petition schedule building, having an area of approximately 187 Sq. Ft., was let out to the predecessor-in-interest of the petitioners

herein on 04.09.1987 on a monthly rent of ₹400/- per mensem. There was a stipulation in the rent deed to the effect that there will be a quinquennial increase in the rent by 25%. The landlord had in the petition filed by him for fixation of fair rent, averred that in accordance with the said stipulation, as on the date of institution of the rent control petition, he was receiving ₹980/- per mensem by way of rent. He had contended that the rent which he is receiving is meagre and inadequate having regard to the tax liability and maintenance expenses and the rate of rent for similar buildings prevailing in the locality. He had in the petition filed by him for fixation of fair rent averred that the fair rent may be fixed at the rate of ₹50/- per Sq. Ft. with effect from 01.08.2011. He had also averred that though he had caused Ext.A1 registered notice to be issued to the tenants on 06.07.2010 and it was served on them, no reply was received.

3. Upon receipt of summons, the tenants entered appearance and filed a counter statement resisting the petition for fixation of fair rent. They contended that the rent which they are presently paying is in excess of the fair rent; that the petition schedule building is situate

400 metres away on a bye-lane leading from S.M.Street and that it does not enjoy the advantages of a shop room on S.M.Street. They also contended that four out of the six rooms in the building of which petition schedule room is a part, are lying vacant as nobody is willing to occupy the shop rooms.

4. Before the rent control court, the landlord examined himself as PW1 and produced and marked Exts.A1 to A3. On application filed by him, an advocate commissioner was appointed to inspect the petition schedule building and the report submitted by her was marked as Ext.C1. The rent control court after considering the rival contentions, fixed the fair rent payable in respect of the petition schedule building at ₹3,000/- per mensem with effect from 04.01.2012, the date of institution of the rent control petition. The rent control court also held that the landlord will be entitled to 10% enhancement of the fair rent every year. In arriving at the said conclusion, the rent control court placed reliance on Ext.A2 order passed in R.C.P.Nos.74 and 76 of 2010 in respect of two other shop rooms of similar size situate in the very same building, whereby the

fair rent had been fixed with effect from 20.07.2010 at the rate of ₹3,000/- per mensem with 10% enhancement every year. Aggrieved by the quantum of fair rent fixed by the rent control court, the landlord filed R.C.A.No.45 of 2014 and challenging the order fixing the fair rent, tenant filed R.C.A.No.68 of 2014. By a common judgment delivered on 29.11.2014, the Rent Control Appellate Authority, Kozhikode dismissed both the appeals. The tenant has aggrieved thereby filed R.C.R.No.196 of 2015 and the landlord has aggrieved thereby filed R.C.R.No.221 of 2015.

5. We heard Sri.R.Sudhish, learned counsel appearing for the tenants and Sri.V.Sreenath, learned counsel appearing for the landlord. Sri.R.Sudhish, learned counsel appearing for the tenants raised two main contentions. The first is that the rent deed provided for 25% enhancement of the contract rent once in five years and therefore, the petition under section 5(1) of the Act for fixation of fair rent is not maintainable. He also contended that there is no material before the rent control court justifying the fixation of fair rent at ₹3,000/- per mensem. Learned counsel also placed reliance on the

decision of the Division Bench of this Court in **Edger Ferus v. Abraham Ittycheria** [2004 (1) KLT 767] in support of his contentions. Per contra, Sri.V.Sreenath, learned counsel appearing for the landlord submitted that there is no embargo/stipulation in section 5 of the Act to the effect that if the rent deed provides for revision of rent, the landlord or the tenant, as the case may be, cannot invoke the jurisdiction of the rent control court under section 5 of the Act for fixation of fair rent. Learned counsel also submitted that this court has not in **Edger Ferus v. Abraham Ittycheria** (supra) held that if there is a provision for periodical revision of the rent in the rent deed, the landlord cannot approach the rent control court for fixation of fair rent. Learned counsel also contended that the guidelines laid down by this court in **Edger Ferus v. Abraham Ittycheria** (supra) are only illustrative and not exhaustive and therefore, there is no merit or force in the contention of the tenants that as the rent deed in the instant case contains a stipulation to the effect that the rent shall be increased by 25% once in every five years, the landlord is not entitled to prefer an application for fixation of fair rent. Learned counsel also submitted

that in respect of the building bearing door No.7/794 which is situate to the west of the petition schedule shop room, the rent control court has by Ext.A2 order fixed the fair rent at the rate of ₹3,000/- per mensem with effect from 20.07.2010; that the said building has an area approximately 193.75 sq. ft.; that the petition schedule shop room enjoys the very same facilities and amenities, but in the instant case, the rent control court did not, while fixing the fair rent, give proportionate enhancement on the reasoning that there is no inflation and resultant depreciation in money value. Learned counsel also submitted that Ext.A2 order was confirmed by the appellate authority by Ext.A3 judgment and by this court by orders passed on 26.05.2015 in R.C.R.Nos.262 and 263 of 2013.

6. We have considered the submissions made at the Bar by learned counsel on either side. We have also gone through the pleadings and the materials on record. Exhibit C1 report submitted by the advocate commissioner discloses that the petition schedule building is situate by the side of a bye-lane which originates from S.M.Street which is admittedly a commercially important locality in

Kozhikode. The petition schedule shop room has rolling shutters and electric connection. The bye-lane leading to S.M.Street from the petition schedule building has a width ranging from 2.30 metres to 4.15 metres. Ext.C1 report also discloses that light motor vehicles can be conveniently taken through the bye-lane to the petition schedule building. The advocate commissioner has also reported that the landlord in the instant case is getting ₹4,752/- per mensem as rent from shop room bearing door No.7/794C, ₹4,752/- per mensem as rent from shop room bearing door No.7/794C1, ₹6,480/- per mensem as rent from shop room bearing door No.7/794D, ₹6,048/- per mensem as rent from shop room bearing door No.7/794E and ₹6,048/- per mensem as rent from shop room bearing door No.7/794F; that the monthly rent of the adjacent buildings belonging to others is the range of ₹7,500/- to ₹8,682/- and that the petition schedule building is situate within 300 metres from the Kozhikode Railway Station and 500 metres from Mananchira junction. It has also come out in evidence that by Ext.A2 order passed on 25.02.2012, the very same rent control court has fixed the fair rent payable in respect of the shop room

bearing door No.7/794 at ₹3,000/- per mensem with effect from 20.07.2010. That order was upheld by the appellate authority by Ext.A3 judgment and by this court by orders passed on 26.05.2015 in R.C.R.Nos.262 and 263 of 2013. A Division Bench of this court has while affirming Ext.A2 order and Ext.A3 judgment held that having regard to the importance of the locality and the market rent prevailing in the locality, the fair rent fixed, namely ₹3,000/- per mensem, in the case of one building and ₹ 7,500/- per mensem for the other, cannot be said to be exorbitant or excessive. This court also held that the tenant is enjoying common facilities like security guard, common toilet, parking as well as various other facilities and also earning considerable amount as profit from the business carried on by him elsewhere, using the petition schedule building as a warehouse.

7. The facts in the instant case are identical. The tenants in these instant revision petitions are running their business within close proximity of the petition schedule building, namely on S.M.Street. Without the petition schedule building, they cannot run their business in the buildings situate on S.M.Street. It has also come out in evidence

that light motor vehicles can be taken to the petition schedule building and it is situate 300 metres from Kozhikode Railway Station and 500 metres from Mananchira junction. Having regard to the commercial importance of the locality, we are not persuaded to hold that the sum of ₹3,000/- fixed by the rent control court as fair rent is exorbitant or excessive. The entrustment in the instant case was in the year 1987 on a monthly rent of ₹ 400/- per mensem. The rent was increased with effect from September 1992 to ₹500; in September 1997 to ₹625/-; in September 2002 to ₹780/- and in September 2007 to ₹980/- per mensem. It was after the petition for fixation of fair rent was filed that the next revision took place and the rent was increased to ₹1,225/- per mensem with effect from September, 2012. As on date on which the impugned order was passed by the rent control court, more than 25 years had passed after the entrustment. Having regard to the interval of the time that had elapsed between the date of entrustment and the date on which the petition for fixation of fair rent was filed, by no stretch of imagination can it be said that the sum of ₹3,000/- fixed as monthly rent is excessive.

8. That takes us to the question whether the landlord is entitled to have the fair rent fixed by the rent control court enhanced relying on Ext.A2 order passed by the rent control court in R.C.P.No.76 of 2010. The rent control court and the appellate authority have declined to take the fair rent fixed in R.C.P.No.76 of 2010 with effect from 20.07.2010 as the basis for fixing the fair rent in view of the fact that the petition schedule shop room has a lesser area than the shop room involved in R.C.P.No.76 of 2010. The difference in the area is only 4 Sq. Ft. which in our opinion is too negligible having regard to the commercial importance of the locality. The fair rent in R.C.P.No.76 of 2010 was fixed with effect from 20.07.2010. The instant rent control petition for fixation of fair rent was filed on 04.01.2012. Having regard to the fact that one year has passed thereafter and Ext.A2 order provides for 10% increase per annum, we are of the opinion that the rent control court ought to have fixed the fair rent payable in respect of the petition schedule building which is situate adjacent to the petition schedule building in R.C.P.76 of 2010 and enjoys the same common facilities and has same advantages, at ₹3,300/- per mensem,

with effect from 04.01.2012.

9. We shall now consider the question whether in view of the stipulations in the rent deed which provides for 25% increase once in every five years, the landlord is disentitled to file an application for fixation of fair rent. Though the learned counsel appearing for the petitioners relied on the decision of the Division Bench of this court in **Edger Ferus v. Abraham Ittycheria** (supra), we find nothing in the said decision which stands in the way of the landlord from filing a petition for fixation of fair rent even in cases the rent deed contains clause for enhancement of rent periodically. The Apex Court has in **Mohammad Ahmad v. Atma Ram Chauhan [AIR 2011 SC 1940]** held that if the rent is too low in comparison with the market rent having been fixed almost 20 to 25 years back, then the present market rate should be worked out and the fair rent fixed. The entrustment in the instant case was in the year 1987. More than 28 years have passed thereafter. Section 5(1) of the Act does not contain a stipulation to the effect that where the rent deed provides for periodical revision of rent, the landlord will not be entitled to file a

petition for fixation of fair rent. The provision in section 5 of the Act can be invoked not only by the landlord but also by the tenant. Even in cases where there is provision for periodical revision of rent, the tenant can apply to the rent control court to have the fair rent fixed. If that be so, we find no reason why the landlord cannot invoke section 5 of the Act and move the rent control court to have the fair rent fixed notwithstanding the fact that the rent deed contains a stipulation regarding periodical revision of rent. We also find nothing in the decision of this court in **Edger Ferus v. Abraham Ittycheria** (supra) which supports the stand taken by the tenant. This court has not in the said decision held that where there is a provision for periodical revision of rent in the rent deed, the landlord cannot approach the rent control court for revision of rent. This court has in **Edger Ferus v. Abraham Ittycheria** (supra) held that the rent control court has to 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 while fixing the fair rent. This court has also

held that the expenses to be incurred by the landlord for effecting repairs have also to be taken into account. We therefore find no reason to hold that the stipulations in the rent deed regarding periodical revision of rent would disentitle the landlord from filing a petition for fixation of fair rent. We accordingly overrule the said contention as well.

10. Though the learned counsel appearing for the tenants contended that the order passed by the rent control court which grants increase in the fair rent by 10% per annum should be set aside and the landlord's entitlement restricted to 10% increase once in two years, we find no reason to grant the said relief as well. The Division Bench of this court has not, while upholding Ext.A2 order and Ext.A3 judgment which also contained a similar stipulation, interfered with the said direction. We therefore find no reason to interfere with that part of the impugned order.

For the reasons stated above, we hold that there is no merit in R.C.R.No.196 of 2015. It fails and is accordingly dismissed. We allow R.C.R.No.221 of 2015 in part and refix the fair rent payable in respect

of the petition schedule building in R.C.P.No.4 of 2012 at ₹3,300/- per mensem with effect from 04.01.2012. The landlord will also be entitled to 10% increase in the fair rent thus fixed every year. The first of such revisions shall be with effect from 04.01.2013. The parties shall suffer their costs in this court.

Sd/-  
**P. N. RAVINDRAN**  
**JUDGE**

Sd/-  
**BABU MATHEW P. JOSEPH**  
**JUDGE**

kns/-

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P.A. TO JUDGE