

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

RRev..No. 206 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA NO.153/2010 of THE RENT CONTROL
APPELLATE AUTHORITY, THALASSERY DATED 31-01-2015

AGAINST THE ORDER/JUDGMENT IN RCP NO. 144/2007 of THE RENT CONTROL
COURT, THALASSERY DATED 06-03-2010

REVISION PETITIONER(S)/RESPONDENT/RESPONDENT:

THAIPARAMBATH ABDUL GANI AGED 62 YEARS
S/O.LATE ABDULLA, SARVANA, CHETTAMKUNNU
THALASSERY, KANNUR DT.

BY ADVS.SRI.K.R.AVINASH (KUNNATH)
SRI.ABDUL RAOOF PALLIPATH
SRI.E.MOHAMMED SHAFI

RESPONDENT(S)/APPELLANT/PETITIONER:

M.P. JAMEELA, AGED 69 YEARS
W/O.LATE C.H.KHADER HAJI, STAR VIEW, P.O.CHOKLI
THALASSERY, KANNUR - 670 672.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
21-08-2015 ALONG WITH RCR NOS.207/2015, 208/2015,209/2015, 210/2015 &
211/2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

kkj

// TRUE COPY //

PA TO JUDGE

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

R.C.R. Nos. 206,207,208,209,210 & 211 of 2015

Dated this the 21st day of August, 2015

O R D E R

Surendra Mohan, J.

The tenants are in revision against the common judgment of the Rent Control Appellate Authority in RCA No.150 of 2010, 151 of 2010, 152 of 2010, 153 of 2010, 154 of 2010 and 155 of 2010. The common respondent in these revision petitions is the landlady. Originally, the building in question belonged to the husband of the respondent landlady. He had filed RCP Nos.80 of 2007, 143 of 2007, 144 of 2007, 145 of 2007, 164 of 2007 and 165 of 2007 before the Rent Control Court, Thalassery seeking orders of eviction against the respective tenants under Section 11(4) (iv) of the Kerala Buildings (Lease and Rent Control) Act, 1965, (hereinafter referred to as 'the Act' for short). During the pendency of the Rent Control Appeals, the original landlord passed away. Thereupon, the respondent has got

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herself impleaded as the sole legal representative.

2. The tenanted premises in all these revisions form part of a single building and are residential quarters, except the shop room in RCP.No.80 of 2007 from which RCP No.209 of 2015 is filed. From the said premises, the tenant is conducting a business in Cotton mattresses and other accessories. According to the landlord, the building is old and dilapidated and requires reconstruction. There are two buildings in the same plot, one on the road side and the other behind the building that abuts the road. The landlord has sought eviction from the building that is behind. The eviction of the tenant in RCP No.80 of 2007 has been sought for the purpose of providing a sufficiently wide passage to the proposed construction behind. All the tenants resisted the claim of the landlord. According to the tenants, the building was not old or dilapidated as contended by the landlord. The same was structurally sound and would continue to be habitable, for a number of years more, with proper repairs. It was further contended that, the landlord

did not possess a plan and licence or the ability to rebuild as required by Section 11(4)(iv) of the Act. The Rent Control Court tried the case on the above pleading and held that the landlord had not succeeded in numbering ground under Section 11(4)(iv). Therefore, all the Rent Control Petitions were dismissed. The landlord carried the matter in appeal before the Rent Control Appellate Authority. The Appellate Authority on a reappreciation of the evidence on record found that, the Rent Control Court had seriously erred in dismissing the Rent Control Petitions. According to the Appellate Authority, the landlord has established the ground under Section 11(4)(iv). Accordingly, eviction has been ordered. Directions have also been issued to complete the proposed construction within a period of one year and to put the tenants in possession of the portions of the reconstructed building, thereafter. The tenants who are before us in these revisions challenge the judgment of the Rent Control Appellate Authority.

3. The evidence in the case consists of Exhibits A1 to

A19 documents and the evidence of PW1 on the side of the landlord. On the side of the tenants, Exhibits B1 to B4 documents have been marked and RWs to 6 examined as witnesses. Exhibits C1 and C2 Commission Reports and Plans are marked as Court Exhibits and the Advocate Commissioner has been examined as CW1.

4. According to Sri Abdul Raoof who appears for the revision petitioners in these cases, the ingredients of Section 11(4)(iv) that are necessary to be made out by any landlord seeking eviction of a tenant invoking the said ground, have not been established in these cases. The landlady has not even pleaded that, she had the ability to rebuild. It is contended that, if the landlady does not rebuild after the tenants vacate the premises, they would suffer irreparable injury and loss. According to the counsel, the landlord has expired during the pendency of the appeal. The person who has been impleaded in his place is his wife. According to Muslim Law, she has only one fourth rights in the property of her husband. Therefore, she is only a co-

owner in respect of the property. In view of the above, it is contended that, no order of eviction could be passed without other co-owners being brought on the party array. It is pointed out by the counsel that, tenants would be left on the streets if the other co-owners object to the reconstruction proposed by the landlady. It is the further contention of the counsel that, the landlady has no plan and licence. The Appellate Authority has gone wrong in ordering evictin of the tenant in RCP No.80 of 2007 for the reason that, even according to the landlord, he has no intention to reconstruct the said building. The proposal is to demolish the building for the purpose of providing a passage to the construction, that is proposed to be undertaken. In view of the above, it is contended that, an order of eviction may be passed only under Section 11(3) of the Act. For the above reasons, the counsel seeks interference with the judgment of the Appellate Authority in revision.

5. These revisions are posted before us for

admission. We have been taken through the order of the Rent Control Court as well as the judgment of the Appellate Authority. We have considered the contentions advanced by the counsel for the revision petitioners, carefully and anxiously.

6. The tenants in these revisions are all occupying portions of an old building that is being used separately by each of them as their living quarters. The Advocate Commissioner who has inspected the building has reported that, the building is old and that the plastering has peeled off at places. Some cracks have also been noted. According to the landlord who has been examined as PW1, the Engineer has advised in favour of reconstruction of the building. It is true that, the Advocate Commissioner has opined that the building could be maintained in its present condition, by conducting suitable repairs. However, it is settled law that, a building need not be in a dangerous condition, for ordering eviction under Section 11(4)(iv) of the Act. It is sufficient that, the building is sufficiently old

as to require reconstruction. The further requirement is that the landlord should have a bonafide intention to reconstruct the same. In the present case, the landlord has expressed his intention to reconstruct the building in very clear terms. According to him, he was acting on the opinion of the Engineer who has told him that the building requires reconstruction. It is not in dispute that the Advocate Commissioner who inspected the building is not a technically qualified person, competent to assess the structural soundness of a building. According to the Advocate Commissioner the building is constructed using laterite stones with cement flooring. Therefore, the desire of the landlord to reconstruct the same as a modern building cannot be found fault with. Therefore, we do not find any infirmity in the findings of the Appellate Authority that the building requires reconstruction.

7. Though it is contended by the learned counsel for the revision petitioners that, the landlord does not have a plan and licence to undertake the construction, the

Appellate Authority has found that, Exhibit A19 plan and permit issued by the Thalassery Municipality has permitted the landlord to undertake the construction. The above document is attacked by the counsel for the petitioners on two grounds. In the first place, it is contended that the landlord had not obtained the said licence on the date of filing of the Rent Control Petitions. We are not satisfied that, the said contention is sustainable. The landlord has admittedly obtained the necessary plan and licences and produced them before the Rent Control Court, at the time of evidence. The same has also been marked. Secondly, it is pointed out by the counsel that, the plan and licence have expired during the pendency of these proceedings. The said contention cannot be accepted for the reason that, nothing prevents the landlady from getting the plan and licence renewed. It shall be sufficient that, the Execution Court satisfies itself of the validity of the plan and licence, before ordering the delivery.

8. Another contention put forward by the counsel for

the revision petitioners ithat, the landlord has no intention to reconstruct the building that is abutting the main road. If the landlady's desire were genuine, according to the learned counsel, she ought to have reconstructed the said building. We do not find that, the above contention also could be accepted for the reason that it is for the landlord to decide whether he should reconstruct his building or not. He also has the freedom to decide which of the two buildings should be reconstructed. He cannot be found fault with, for having decided to reconstruct the building that is behind. He may have his reasons for the said decision.

9. Another contention raised is that, under Muslim Law a widow is entitled to only one fourth rights in the property of her husband. Therefore, she is not entitled to an order of eviction without the other co-owners on the party array. The above contention has to be rejected for more reasons than one. In the first place, it is settled law that a petition for eviction by one of the co-owners is

perfectly maintainable for the reason that a co-owner can represent the other co-owners also. Secondly, this contention is being raised for the first time in revision. The landlady has got herself impleaded claiming that she was the sole legal representative of her husband. The tenants did not object to the said claim of hers. Therefore, the contention that is now put forward lacks bonafides. Absolutely, no material or evidence has been placed before us to warrant a conclusion that there are any co-owners in respect of the property, as alleged.

10. We notice from the judgment of the Appellate Authority that, the said authority has taken care to order reallocation of one of the rooms, in the building that is proposed to be reconstructed, after reconstruction to the tenant in RCP No.80 of 2007 also. Other tenants have also been directed to be reallocated portions of the proposed construction. Regarding the ability of the landlord to reconstruct, the Appellate Authority has found that his ability has not been seriously disputed by the tenants. Even

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according to RW1, he is a person who was owning a lodge, that he has disposed of. Necessarily therefore, he would be in possession of the funds received from such sale. The above being, the factual scenario, we find no grounds to interfere with the judgment of the Appellate Authority.

For the above reasons, these RCRs are dismissed.

Sd/-
K.SURENDRA MOHAN
JUDGE

Sd/-
MARY JOSEPH
JUDGE

kkj