

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

RCRev..No. 213 of 2015 ()

**AGAINST THE JUDGMENT IN RCA 126/2013 of RENT CONTROL APPELLATE AUTHORITY,
KOZHIKODE DATED 30-08-2014**

**AGAINST THE ORDER IN RCP 117/2012 of RENT CONTROL COURT, KOZHIKODE DATED
30-09-2013**

REVISION PETITIONER/APPELLANT/PETITIONER:

**SHERIFF P, AGED 42 YEARS,
S/O ABDURAHIMAN, RESIDING AT SHARMINA MANZIL,
VENGERI AMSOM AND DESOM, PO. VENGARI,
KOZHIKODE TALUK, KOZHIKODE DISTRICT.**

**BY ADVS.SRI.K.SANEESH KUMAR
SMT.V.B.SANTHINI**

RESPONDENT/RESPONENT/RESPONDENT:

**P. VALSALA, AGED 72 YEARS,
D/O KRISHANA, RESIDING AT HOUSE.NO.33/3888, 'ASHIANA',
GOLF LINK ROAD, CHEVARAMBALAM
CHEVAYOOR AMSOM AND DESOM, KOZHIKODE TALUK
KOZHIKODE DISTRICT-673 017.**

BY ADV. SRI.SRINATH GIRISH

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 17-11-2015
ALONG WITH RCR NO.214 OF 2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

VPV

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

R.C.R.Nos.213 & 214 of 2015

Dated this the 17th day of November, 2015

ORDER

P.N.Ravindran, J.

The common petitioner in these revision petitions is the tenant of a room in the ground floor of a commercial building situate at Palayam within the local limits of Kozhikode Corporation. The respondent is the owner of the said building. She had let out the petition schedule shop room to the tenant on 1.5.2002 on a monthly rent of ₹675/- per mensem. While matters stood thus, the landlord filed R.C.P.No.10 of 2009 on the file of the Rent Control Court, Kozhikode praying for an order of eviction under section 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. The said petition was dismissed after trial by order passed on 3.8.2009. The landlord thereupon filed R.C.A.No.90 of 2009 on the file of the Rent Control Appellate Authority, Kozhikode. By judgment delivered on 19.7.2011, the appellate authority allowed the appeal and passed an order of eviction under section 11(3) of the Act. The tenant (the petitioner herein) thereupon filed R.C.R.No.414 of 2011 before this court. By order passed on 21.2.2012, a Division Bench of this

court allowed the revision petition and set aside the order of eviction passed by the appellate authority. Taking note of the fact that the petition schedule shop room is situate in a commercially important area of Kozhikode Corporation and the rent being paid is only ₹675/- per mensem, this court directed that till fair rent is fixed by the rent control court on application filed by either party, the tenant shall pay rent at the rate of ₹3,000/- per mensem. The relevant portions of the order passed by this court in R.C.R.No.414 of 2011 read as follows:

"6. At the same time we notice another aspect of the matter. The building in question situated in commercially a very important area of Kozhikode Corporation having a size of about 550 sq. feet is fetching to the landlady a monthly rent of Rs.675/- only. We are sure that the building if rent out today, the same will fetch much more than Rs.675/-. We are therefore inclined to revise the rent payable by the revision petitioner with effect from 1.3.2012 at Rs.3,000/- per mensem. Till fair rent is fixed by the Rent Control Court on application filed by either party, the revision petitioner shall pay rent to the respondent at the rate of Rs.3,000/- per mensem.

7. Subject to the fixation of rent as above, we allow the revision petition and vacate the order of eviction passed under section 11(3) of the Act by the Rent Control Appellate Authority. Parties are directed to suffer their respective costs."

2. Shortly after the aforesaid order was passed, the tenant filed R.C.P.No.117 of 2012 on 9.8.2012 under section 5 of the Act with a prayer that the fair rent of the petition schedule shop room may be fixed at ₹1,000/- per mensem. He had in the petition filed by him under section 5 of the Act averred that the shop room has an area of

only 15.30 square meters (corresponding to 165 square feet), that it is part of an old tiled building consisting of 6 rooms in the ground floor and 3 rooms in the first floor, that the locality where the building is situate has not undergone any development, that there are no large business establishments or centres of commercial activity in and around the building of which the petition schedule shop room is a part, that the other shop rooms in the very same building owned by the respondent or her near relations have been let out on a monthly rent which is well below ₹675/- and that taking into consideration the prevailing rate of rent for other similar buildings in the locality, the petition schedule shop room would not fetch more than ₹1,000/- per mensem as rent. He had further averred that this court had fixed the rent at ₹3,000/- per mensem on the erroneous assumption that the shop room has an area of 550 square feet.

3. Upon receipt of notice, the respondent/landlord entered appearance and filed a counter statement contending that having regard to the importance of the locality, she is entitled to get the fair rent fixed at ₹8,000/- per mensem. She contended that this court did not, when it fixed the rent at ₹3,000/- per mensem, rely only on the area of the building, that it was having regard to the importance of the locality that this court fixed the rent at ₹3,000/- per mensem. She had further averred that the petition schedule shop room is situate

between Malabar Christian College and English Church having direct road frontage to Kannur road and that many important commercial establishments and other institutions are situate within its vicinity. She had specifically averred that room in the upstairs portion of the building owned by Mrs.Vineetha has been let out on a monthly rent of ₹4,000/- and that the prevailing rent in the locality for similar shops is ₹50 per sq. ft. The landlord also filed R.C.P.No.155 of 2012 under section 5 of the Act raising the same grounds and praying for an order fixing the fair rent at ₹8,000/- per mensem.

4. Before the rent control court, the tenant examined himself as PW1. The landlord examined herself as RW1 and produced and marked Exts.B1 and B2. On application filed by the tenant, who was the petitioner in R.C.P.No.117 of 2012, an Advocate Commissioner was appointed. The report submitted by her was marked as Ext.C1 and the sketch accompanying it as Ext.C1(a). The rent control court considered the rival contentions and dismissed R.C.P.No.117 of 2012. By the very same order it allowed R.C.P.No.155 of 2012 in part and fixed the fair rent at ₹3,500/- per mensem with an increase in the rent at the rate of 10% per year. Aggrieved thereby, the tenant filed R.C.A.Nos.126 and 127 of 2013 on the file of the Rent Control Appellate Authority, Kozhikode. By a common judgment delivered on 30.8.2014, the appellate authority concurred with the rent control court and dismissed

the appeals. The tenant has, aggrieved thereby, filed these revision petitions.

5. We heard Sri.Saneesh Kumar K., learned counsel appearing for the petitioner and Sri.Srinath Girish, learned counsel appearing for the respondent. We have also gone through the pleadings and the materials on record including the judges papers in R.C.R.No.414 of 2011 on the file of this court. The fact that the petition schedule shop room is situate on the ground floor of a building which abuts Kannur road is not in dispute. It is situate between Malabar Christian College on the south and English Church on the north. It has come out in evidence that a eleven storied residential apartment is situate close-by and that besides the video cassette library run by the tenant in the tenanted premises, other business establishments like a tailoring shop, auto gas shop, etc., are situate in the locality. The tenant, who was examined as PW1, has in his cross-examination admitted the fact that Nadakkavu Bazar is only 70 meters away from the petition schedule building. The rent control appellate authority has, after independently analysing the evidence on record, held differing from the rent control court that the petition schedule property is situate in a commercially important locality. The impugned order discloses that it was relying on the report submitted by the Advocate Commissioner and the admitted fact that the petition schedule shop room is situate in a commercially

important locality that the rent control court fixed the fair rent for the petition schedule premises at ₹3,500/- per mensem. The rent control court has in its order specifically referred to the fact that both sides have not adduced any evidence to prove the prevailing rent in respect of similar shop rooms situate in the locality and that the only evidence before it is the report submitted by the Advocate Commissioner. The report submitted by the Advocate Commissioner discloses that many rooms in the main building of which the petition schedule shop room is a part, are remaining vacant. It has also come out in evidence that the rent which the other landlords are receiving is below ₹1,000/-. It has also come out in evidence that a room in the upstairs portion of the building had formerly been let out on a monthly rent of ₹4,000/-.

6. Having regard to the totality of the aforesaid circumstances, we are of the opinion that the rate of rent fixed by this court namely the sum of ₹3,000/- can justifiably be said to be the fair rent for the petition schedule shop room. Likewise, we are also of the opinion that the order passed by the rent control court and affirmed by the appellate authority that the fair rent shall stand revised by 10% every year cannot be sustained. As noticed by the rent control court and the appellate authority though the building of which the petition schedule shop room is a part does not have any defects or shortfalls, it is a building which is more than 50 years old and is not a modern building.

Having regard to the aforesaid circumstances, we are of the opinion that the fair rent fixed in respect of the petition schedule shop room should be revised only once in three years by 10% instead of it being revised at 10% per annum as directed by the rent control court.

We accordingly allow these revision petitions in part and fix the fair rent payable in respect of the petition schedule shop room namely premises bearing door No.3/978 of Kozhikode Corporation at ₹3,000/- per mensem with effect from the date on which R.C.P.No.155 of 2012 was filed. The fair rent thus fixed shall stand revised by 10% once in three years. The parties shall bear their respective costs.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

/true copy/

P.A. To Judge

kav/vpv