

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 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

RCRev..No. 223 of 2015 ()

AGAINST THE JUDGMENT IN RCA 111/2014 of RENT CONTROL APPELLATE AUTHORITY /
II ADDL. DISTRICT JUDGE, KOZHIKODE- II DATED 20-06-2015

AGAINST THE ORDER IN RCP 74/2012 of RENT CONTROL COURT/ADDL. MUNSIFF
CUORT-II, KOZHIKODE DATED 25.6.2014

REVISION PETITIONER/APPELLANT/RESPONDENT:

U.P.BHASKARAN, AGED 61 YEARS,
S/O.APPUTTY, UNNEERIPARAMBATH,
OLAVANNA AMSOM DESOM, KOZHIKODE TALUK.

BY ADV. SRI.P.K.RAMKUMAR

RESPONDENT/RESPONDENT/PETITIONER:

C.P.MOIDEENKOYA, AGED 60 YEARS,
S/O.MOHAMMEDKOYA, NAZEEMA MANZIL, CHARUVILAKAM PARAMBA,
OLAVANNA AMSOM DESOM, KOZHIKODE TALUK 673 001.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
14-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

VPV

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

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R.C.R.No.223 of 2015

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Dated this the 14th day of September, 2015

ORDER

P.N.Ravindran, J.

The tenant in R.C.P.No.74 of 2012 of the file of the Rent Control Court/Additional Munsiff-II, Kozhikode is the petitioner. The sole respondent is the landlord therein. By order passed on 25.6.2014, the rent control court ordered eviction of the petition schedule shop room under section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as "the Act" for short). On appeal filed by the tenant as R.C.A.No.111 of 2014, the Rent Control Appellate Authority-II, Kozhikode concurred with the rent control court and dismissed the appeal. Hence this revision petition.

2. We heard Sri.P.K.Ramkumar, learned counsel appearing for the petitioner. We have also gone through the pleadings and the materials on record including a copy of the commission report and plan made available by the learned counsel appearing for the petitioner. Shorn of details, the main thrust of the arguments raised by the learned counsel appearing for the petitioner/tenant is that the landlord had suppressed the fact that he has access to the site of the proposed building through a 9 feet wide pathway shown in green shade in Ext.C1

(a) sketch submitted by the Advocate Commissioner and therefore, by no stretch of imagination can it be said that the need put forward is bonafide. The purpose for which the eviction is sought is to provide direct access to a vacant parcel of land wherein the landlord proposes to put up a residential building. It has come out in evidence that though the tenant had pointed out three alternate pathways to the land wherein the landlord proposes to build a house, the report and sketch submitted by the Advocate Commissioner show that convenient access cannot be had to the vacant plot of land through any of the three accesses. As regards the first option namely through the yellow shaded portion in Ext.C1(a) sketch it has come out in evidence that it is only a pathway having a width of 88 centimeters at one end namely on the eastern side and one meter on the western side namely the point at which it enters the vacant plot of land where the house is proposed to put up. By no stretch of imagination can it be said that a pathway which is less than one meter wide is a convenient access to a residential building which is proposed to be put up in a parcel of land approximately 12 cents in extent.

3. The second option is through the green shaded portion shown in Ext.C1(a) sketch. It has come out in evidence that the said pathway does not open into the vacant parcel of land. It has also come out in evidence that the said alternate pathway which has a width of 9 feet is

really the ground floor of a building kept in common for the purpose of usage as a pathway to reach the shop rooms on either side of it. The landlord cannot even assuming that the wall at the western extremity of the pathway is demolished, use it as a pathway to his proposed house for the reason that he will have to share its enjoyment with the tenants who are occupying shop rooms on either side. In any case, the case now put forward that the pathway was blocked two days prior to the date on which the Advocate Commissioner visited the tenanted premises situate on the eastern side of the vacant land where the landlord proposes to put up a new building has not been established. The evidence tendered by the landlord who was examined as PW1 is in tune with the state of affairs that existed on the date on which the Advocate Commissioner inspected the adjacent tenanted building. In the light of the evidence on record, we find no reason to disagree with the trial court that the pathway having a width of 9 feet which is provided through the middle of a tenanted building and is the only access to the shop rooms on either side of the pathway should be used as a pathway to reach the vacant land where the landlord proposes to put up a new building.

4. The third alternative pointed out is that the landlord can demolish a portion of the compound wall shown as 'BM' in Ext.C1(a) sketch situate on the eastern side of the petition schedule shop room

and thereby have a wider access from the north. The rent control court as well as the appellate authority have after considering the report and plan submitted by the Advocate Commissioner and the evidence on record held that the tenant cannot compel the landlord to be satisfied with a less convenient way. The appellate authority has after considering the three alternate pathways suggested by the tenant held as follows:-

"8. Point No.1: There is no dispute regarding landlord-tenant relationship. What is shown in the petition schedule is a small shed, where the respondent runs a tea shop. The petition schedule shed faces Kaimpalam-Pallippuram public road. Admittedly, the petitioner is owner in possession of 12 cents of land situated just behind the petition schedule shed. The commissioner deputed in the matter filed the detailed sketch marking the petition schedule shed, vacant land and adjacent buildings belongs to the petitioner etc. The report was marked as Ext.C1 and the plan was marked as Ext.C1(a). The land where the petition schedule shed stands has been marked as plot 'ABML' in Ext.C1(a). The petition schedule shed has been shown in blue shaded portion in Ext.C1(a). The plot 'BMLAJHION' is the vacant land situated on the rear side of the petition schedule shed, where the petitioner proposes to construct a house for his son. The plot shown as 'BCDN' also belongs to the petitioner, where a three storied shopping complex is situated. According to the petitioner, there is no direct access to the plot 'BMLKJHION' and therefore he needs the petition schedule shed bonafide to demolish the same as to have a direct access from the public road on the northern side of the petition schedule shed.

9. There is no case for the respondent that the son of the petitioner is having a house of his own. There is also no case for the respondent that either the petitioner or his son is having any other vacant land to construct a house. RW1, in cross-examination has admitted that the wife and children of the petitioner consisting of 15 members are residing together at

Kaimpalam. Therefore, the desire of the petitioner to construct a house for his son cannot be termed as an irrational desire or fanciful wish. Then, the next question is whether there is any direct access to the plot where the petitioner proposes to construct the house and is it necessary to demolish petition schedule shed to provide the access. A close scrutiny of the commissioner's report would clearly show that there is no alternative way as contended by the respondent. The respondent has pointed out three alternative ways to the commissioner and the commissioner has marked the same also in Ext.C1(a) and stated about it in Ext.C1. The first way pointed out by the respondent is the way shown in green shade in Ext.C1(a). But it is evident that it is a space provided as a parking space and way for the three storied building belongs to the petitioner and situated on the eastern side of the petition schedule shed. On both sides of so called way there are rooms in the shopping complex. It is being used by the occupants of the rooms in the shopping complex as a parking area and also for access. It cannot be termed as an access to the vacant land where the petitioner proposes to construct the house. Moreover, the report would show that the access from the way to the vacant land has been blocked by constructing a wall. The second way shown by the respondent has been marked in yellow shaded portion in Ext.C1(a). It is also a vacant land situated in between the buildings of the petitioner and building of the daughter of the petitioner. In fact, it is an area left statutorily in between the two buildings. It is having only a width of one metre. It can never be used as a way to the proposed site. The third way suggested by the respondent is one shown in red colour in the sketch. On a mere looking at itself it is evident that the same cannot be used at all as a way. On the other hand, when the petition schedule shed is demolished, the petitioner can have direct access to the public road. When such a way is possible, the tenant cannot be compel the landlord to satisfy with less convenient and difficult ways suggested by him. It has come out in evidence from the admission of RW1 that the petitioner has even offered to the respondent alternative building if he vacates the petition schedule shed but the respondent was not amenable for the same. It shows that bonafides of the petitioner. From the entire evidence on record, I am satisfied that the petitioner

has succeeded in proving that he needs the building bonafide. The petitioner has succeeded in making out a case u/s.11(3) of the Act. No interference is called for on the said finding of the court below."

5. After hearing learned counsel appearing for the revision petitioner at length and after going through the finding entered by the rent control court and the appellate authority, we are not persuaded to hold that the impugned judgment/order suffers from any illegality. By no stretch of imagination can it be said that the claim put forward by the landlord is not bonafide or that it is only a ruse to evict the tenant. The tenant cannot as rightly held by the rent control court and the appellate authority, compel the landlord to be satisfied with a less convenient way and give up the option of having a convenient access from the main road to the residential building which he proposes to put up in a vacant plot of land.

We therefore find no good grounds to entertain the challenge to the impugned judgment/order. The revision petition fails and is accordingly dismissed *in limine*.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

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P.A. To Judge