

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 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

RCRev..No. 238 of 2015 ()

AGAINST THE JUDGMENT IN RCA 60/2013 of RENT CONTROL APPELLATE AUTHORITY -
IV, KOTTAYAM DATED 09-06-2015

AGAINST THE ORDER IN RCP 5/2011 of MUNSIFF COURT, VAIKOM DATED 12-09-2013

REVISION PETITIONER/APPELLANT/RESPONDENT:

KHALID UMMER, AGED 52 YEARS,
S/O. UMMER, FIROS MANZIL, THALAYOLAPARAMBU KARA,
VADAYAR VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT.

BY ADVS.SRI.P.CHANDRASEKHAR
SRI.S.PRASANTH
SRI.SOORAJ T.ELENJICKAL
SRI.P.A.MOHAMMED SHAH
SMT.UMA
SRI.K.NANDAKUMAR
SMT.V.A.HARITHA
SMT.P.M.MAZNA MANSOOR

RESPONDENT/RESPONDENT/PETITIONER:

AFSAL, AGED 45 YEARS,
S/O. P.BAKER, RESIDING AT FIRDOUS HOUSE,
THALAYOLAPRAMBU KARA, VADAYAR VILLAGE, VAIKOM TALUK
KOTTAYAM DISTRICT - 686 605.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
28-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

VPV

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

R.C.R.No.238 of 2015

Dated this the 28th day of September, 2015

ORDER

P.N.Ravindran, J.

The petitioner is the tenant in R.C.P.No.5 of 2011 on the file of the Rent Control Court, Vaikom. The respondent is the landlord therein. The respondent instituted R.C.P.No.5 of 2011 for an order of eviction under sections 11(2)(b), 11(3) and 11(4)(iv) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as "the Act" for short). The substance of the averments in the rent control petition was that the rent is in arrears from October 2010, that the building is in such a condition that it needs reconstruction and that the landlord bonafide needs the reconstructed building for his own use to start a supermarket. The landlord had in the rent control court produced and marked as Ext.A6, the building permit issued from Thalayolaparambu Grama Panchayat as also a copy of the estimate and plan approved by the Thalayolaparambu Grama Panchayat as Ext.A7. He had also filed R.C.P.No.4 of 2011 praying for a similar order of eviction in respect of the remaining portions of the same building, which is admittedly situate in Thalayolaparambu town.

2. The petitioner opposed the application contending inter alia

that the need put forward is not bonafide and that the building does not require reconstruction. He also contended that he is entitled to the benefit of the second proviso to sub-section (3) of section 11 of the Act. Though the tenant had no contention in the counter statement that the landlord is in possession of other buildings in the same locality, town or village, an Advocate Commissioner was appointed for the purpose of ascertaining the said fact. The Advocate Commissioner after inspecting the petition schedule building as also the other buildings stated to be owned by the landlord, filed Ext.C1 report. The tenant or the landlord did not file objections to it.

3. Before the rent control court, the landlord examined himself as PW1, two other witnesses as PW2 and PW3 and produced and marked Exts.A1 to A17. The tenant examined himself as CPW1, two other witnesses CPW2 and CPW3 and produced and marked Exts.B1 to B3. The rent control court considered the rival contentions and held that the landlord has not succeeded in proving that the rent is in arrears. The rent control court also held that the building is in such a situation that it needs reconstruction. It also found that the need put forward by the landlord is bonafide. The rent control court repelled the plea of the tenant that the landlord has got other vacant buildings in his possession and therefore, in the absence of special reason, an

order for eviction cannot be passed. The contention based on the second proviso was also repelled. An order for eviction was accordingly passed under sections 11(3) and 11(4)(iv) of the Act. The appeal therefrom filed by the tenant as R.C.A.No.60 of 2013 was dismissed by the Additional Rent Control Appellate Authority-IV, Kottayam by judgment delivered on 9.6.2015. The tenant has, aggrieved thereby, filed this revision petition.

4. We heard Sri.P.Chandrasekhar, learned counsel appearing for the petitioner. The learned counsel appearing for the petitioner contended that it has come out in evidence and it has been admitted by the landlord when examined as PW1 that he owns two commercial buildings in the same village as also a residential building and therefore, the landlord is not entitled to an order for eviction in the absence of special reasons having regard to the first proviso to sub-section (3) of section 11 of the Act. Inviting our attention to the report submitted by the Advocate Commissioner, the learned counsel for the petitioner contended that the burden was on the landlord to prove the special reasons and in the absence of such special reasons, an order for eviction could not have been passed.

5. We have considered the submissions made at the Bar by learned counsel appearing for the petitioner. We have also gone

through the impugned judgment/order and the objections filed by the petitioner/tenant to the rent control petition and Ext.C1 report submitted by the Advocate Commissioner. A reading of the objections filed by the tenant discloses that he had no case therein that the landlord is in possession of other vacant buildings in the same city, town or village. He had, apart from contesting the claim for eviction under sections 11(2)(b), 11(3) and 11(4)(iv) of the Act, contended that he is entitled to the protection of the second proviso to subsection (3) of section 11 of the Act. He had contended that he is depending for his livelihood mainly on the income derived from the petition schedule building and that no other suitable building is available in the locality. Ext.C1 report discloses that he had filed a memo before the Advocate Commissioner to take note of two buildings owned by the landlord and situate about 2 kms away from the petition schedule building. The Advocate Commissioner has in Ext.C1 report stated as follows:

"11. ഹർജ്ജിപട്ടിക മുറിയിൽ നിന്നും ഉദ്ദേശം 2 കി.മീ. വടക്ക് കിഴക്ക് മാറി വൈക്കം - എറണാകുളം - തൊടുപുഴ റോഡിന്റെ തെക്കുവശം ചേർന്ന് ഹർജ്ജിക്കാരന്റെ വക വീടിനോട് ചേർന്ന് റോഡിന് അഭിമുഖമായി ഷട്ടറോടുകൂടിയ നിരവധി മുറികളുള്ള ഹർജ്ജിക്കാരന്റെ വക രണ്ട് കെട്ടിടങ്ങൾ കാണുന്നില്ലേയെന്ന് പരിശോധിച്ച് റിപ്പോർട്ട് ചെയ്യണം. ടി ഷട്ടർ മുറികളുടെയും മറ്റ് മുറികളുടെയും കെട്ടിടങ്ങളുടെയും സാമാന്യം വീതിയും നീളവും

തിട്ടപ്പെടുത്തണം.

തലയോലപ്പറമ്പ് - തൊടുപുഴ റോഡിൽ ഹർജ്ജിക്കാരന്റെ വീടിരിപ്പ് ഭാഗത്തിനോട് ചേർന്ന് പടിഞ്ഞാറുത്തായി പടിഞ്ഞാറുദിശയിൽ മൂന്ന് നിലകളോടുകൂടിയതും അടിവശം ഷട്ടറും പിടിപ്പിച്ച പീടികമുറികളായും മുകൾഭാഗം രണ്ട് നിലകൾ ജനലും വാതിലും പിടിപ്പിച്ച താമസ സൗകര്യത്തിനായി ഉപയോഗിക്കാവുന്ന വിധമുള്ള ഒരു കെട്ടിടം കാണുന്നു. ടി കെട്ടിടത്തിന്റെ താഴത്തെ മുറികളിൽ ഹർജ്ജിക്കാരൻ വക ഏബിൾ ഓട്ടോ സ്പെയർ പാർക്ക് എന്ന സ്ഥാപനം പ്രവർത്തിക്കുന്നു. ടി കെട്ടിടത്തിന്റെ തെക്കുവശമായി നാല് കടമുറികൾ മുൻ വശം ഷട്ടർ പിടിപ്പിച്ച നിലയിൽ കാണുന്നു. ആയതിലും ഹർജ്ജിക്കാരൻ വക ഏബിൾ ഓട്ടോ സ്പെയർ പാർക്ക് എന്ന പേരിലുള്ള സ്ഥാപനം പ്രവർത്തിക്കുന്നതായി കാണുന്നു. ടി കെട്ടിടമുറികൾക്ക് എല്ലാം ശരാശരി 15 അടി നീളവും 15 അടി വീതിയും വരുന്ന വിധത്തിലാണ് ആയവ നിർമ്മിച്ചിരിക്കുന്നത്. ടി കെട്ടിടമുറികൾ ഷട്ടർ പിടിപ്പിച്ചിട്ടുണ്ട് എങ്കിലും ഇടഭിത്തിയില്ലാതെ ഒരു ഹാളായാണ് ടി കെട്ടിടത്തിലും സ്ഥാപനം പ്രവർത്തിക്കുന്നത്.

12. ഹർജ്ജിക്കാരന്റെ വീടിന്റെ എതിർവശമായി റോഡിനോട് ചേർന്നും, റോഡിന് അഭിമുഖമായും ഹർജ്ജിക്കാരന്റെ ഭാര്യ വകയും, തലയോലപ്പറമ്പ് പോലീസ് സ്റ്റേഷൻ പ്രവർത്തിച്ചിരുന്നതുമായ ഒരു കെട്ടിടം ഇല്ലേയെന്ന് പരിശോധിച്ച് ടി കെട്ടിടത്തിന്റെയും, കെട്ടിടമിരിപ്പ് സ്ഥലത്തിന്റെയും ഒരു സാമാന്യവിവരണം തിട്ടപ്പെടുത്തണം.

ഹർജ്ജിക്കാരന്റെ വീടിന്റെ എതിർവശം തലയോലപ്പറമ്പ് - തലപ്പാറ റോഡിന്റെ പടിഞ്ഞാറുവശമായി പഴയ പോലീസ് സ്റ്റേഷൻ പ്രവർത്തിക്കുന്നതും താമസ സൗകര്യത്തിന് പണിതതുമായ ഒരു കെട്ടിടം കാണുന്നു. ആയത് കോൺക്രീറ്റ് ചെയ്തതും ചുറ്റുമതിൽ ഉള്ളതും മുൻ വശം ഗെയ്റ്റോടു കൂടിയതാകുന്നു. ടി കെട്ടിടത്തിന്റെ മുൻവശം ഗെയ്റ്റ് പൂട്ടിയിട്ടിരുന്നതിനാൽ വസ്തുവിൽ കയറി പരിശോധിക്കുന്നതിനോ കെട്ടിടത്തിന്റെ വിശദവിവരം പരിശോധിക്കുന്നതിനോ സാധിച്ചിട്ടില്ലാത്തതാകുന്നു. ടി കെട്ടിടം നിലവിൽ താമസം ഇല്ലാതെ കിടക്കുന്നതായി സ്ഥലത്തെ ലക്ഷ്യങ്ങൾ കൊണ്ട് മനസ്സിലാകുന്നു. ടി

കെട്ടിടം ഹർജ്ജിക്കാരനോ ഭാര്യയ്ക്കോ അവകാശപ്പെട്ടതല്ലായെന്ന്
സ്ഥലത്തുവെച്ച് ടിയാൻ പറയുകയുണ്ടായി.”

6. The Advocate Commissioner has in Ext.C1 report referred to the existence of two commercial buildings situate about 2 kms away from the petition schedule building and the fact that they are owned by the landlord. The Advocate Commissioner has also reported that one of the two buildings is a three storied building, that the ground floor of the said building is put to commercial use by the landlord who is running a business therein under the name and style “Able Auto Spare Parts” and that in the adjacent building also he is running the very same business. The Advocate Commissioner has also reported that the first and second floor of the first building is constructed for residential occupation. The Advocate Commissioner has also referred to the existence of a residential building allegedly owned by the landlord's wife in paragraph 12 of the report.

7. It is evident from the materials on record that the landlord is not in vacant possession of any commercial building in the same city, town or village. In the commercial building in his possession he is running a business under the name and style “Able Auto Spare Parts”. The spare parts business is being done going by the report and plan submitted by the Advocate Commissioner in both the buildings namely

in the ground floor of the three storied building and in the building adjacent to it. The petitioner has not filed objections to the commission report and stated that the Commissioner has not referred to the existence of any other building. Such being the situation, as the evidence in the case on hand discloses that the landlord is not in possession of any commercial building but the evidence is to the effect that he is running a business under the name and style "Able Auto Spare Parts", we are of the opinion that the tenant cannot contend that in view of the first proviso to sub-section (3) of section 11 of the Act, an order for eviction could not have been passed. Apart from the fact that such a case had not been pleaded, the evidence available in the case on hand establishes beyond doubt that the landlord is not in possession of any vacant building in the same city, town or village.

We therefore find no good grounds to entertain the challenge to the impugned judgment/order. The revision petition fails and is accordingly dismissed. However having regard to the request made by the learned counsel appearing for the petitioner/tenant, we deem it appropriate to grant the tenant four months' time from today to vacate the premises subject to the condition that he shall within two weeks from today file an undertaking in the form of an affidavit in the rent control court, undertaking to surrender vacant possession of the

petition schedule building to the landlord within four months from today. He shall in the affidavit also undertake to pay the rent in arrears and to continue to pay the rent till the date of surrender. He shall also undertake that he will not induct strangers into possession of the petition schedule building or commit acts of waste therein. Needless to say, in the event of failure on the part of the petitioner/tenant in filing an affidavit within the time limit stipulated above, it will be open to the landlord to forthwith execute the order for eviction.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

/true copy/

P.A. To Judge

vpv