

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

RCRev..No. 240 of 2015 ()

AGAINST THE JUDGMENT IN RCA 173/2012 of RENT CONTROL APPELLATE AUTHORITY,
VATAKARA DATED 22-07-2015

AGAINST THE ORDER IN RCP 106/2011 of RENT CONTROL COURT, VATAKARA
DATED 22-08-2012

PETITIONERS/RESPONDENTS 2 TO 5/RESPONDENTS 2 TO 5:

1. SUBAIR AGED 53 YEARS
S/O.LATE HASSANKUTTY, KALLARAKKAL HOUSE, BEACH ROAD
VATAKARA AMSOM/DESOM, VATAKARA TALUK
KOZHIKODE DISTRICT.
2. MAHAMOOD AGED 60 YEARS
S/O.LATE HASSANKUTTY, KALLARAKKAL HOUSE, BEACH ROAD
VATAKARA AMSOM/DESOM, VATAKARA TALUK
KOZHIKODE DISTRICT.
3. KALLARAKKAL LATHEEF, AGED 52 YEARS
S/O.LATE HASSANKUTTY, KALLARAKKAL HOUSE, BEACH ROAD
VATAKARA AMSOM/DESOM, VATAKARA TALUK
KOZHIKODE DISTRICT.
4. KALLARAKKAL SAFIYA AGED 47 YEARS
D/O.LATE HASSANKUTTY, KALLARAKKAL HOUSE, BEACH ROAD
VATAKARA AMSOM/DESOM, VATAKARA TALUK
KOZHIKODE DISTRICT.

BY ADVS.SRI.LAWRENCE D'CUNHA
SRI.K.MADHUSOODANAN
SRI.MATHEW BONSTANE
SRI.T.G.PAUL
SRI.K.C.JOY
SRI.MATHEW JACOB (KUNNATHU)

RESPONDENT/APPELANTS/PETITIONERS :

1. CP.KUNHAMI @ KUNJHIMARIYAM, AGED 77 YEARS
W/O.VIYOTTI ABOOBACKER, HIBAMAHAL HOUSE
THAMBULAM ROAD, PARAPPANANGADI AMSOM, DESOM
THIROORANGADI TALUK, MALAPPURAM DISTRICT-676 505.

2. FATHIMA, AGED 58 YEARS
W/O.MOHAMMED, KUNDOOR HOUSE, BEACH ROAD
PARAPPANANGADI AMSOM, DESOM, THIOORANGADI TALUK
MALAPPURAM DISTRICT-676 505.
3. RASIYA C.P., AGED 53 YEARS
W/O.M MOHAMMED SHUHAIID, KALAPPADAN HOUSE
PATTARKADAVU POST, PANAKKAD VILLAGE
PATTARUKADAVU DESOM, MALAPPURAM DISTRICT-676 505.
4. MAHABOOB C.P., AGED 48 YEARS
S/O.VIYOTTI ABOOBACKER, VIYOTTI HOUSE
PARAPPANANGADI AMSOM, DESOM
THIROORANGADI TALUK, MALAPPURAM DISTRICT-676 505
5. KADEEJA C.P., AGED 43 YEARS
W/O.KHADER, KIZHAKKINIYAKATH HOUSE, BLOCK ROAD
TANOOR AMSOM, DESOM, THIROORANGADI TALUK
MALAPPURAM DISTRICT-676 505.

R BY ADVS. SRI.B..KRISHNAN (CAVEATOR)
SRI.R.PARTHASARATHY (CAVEATOR)

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
30-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

"C.R."

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

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R.C.R.No.240 of 2015

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Dated this the 30th day of September, 2015

ORDER

P.N.Ravindran, J.

The petitioners are the tenants in R.C.P.No.106 of 2011 on the file of the Rent Control Court, Vatakara. The respondents/landlords instituted R.C.P.No.106 of 2011 praying for an order of eviction under sections 11(2)(b), 11(3) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as "the Act" for short. The case set out in the rent control petition was that the rent is in arrears from 15.6.2011, that the tenants have not paid the fair rent fixed by the Rent Control Appellate Authority, Vatakara in R.C.A.No.58 of 2010 with effect from 15.7.2002, that the fourth petitioner in the rent control petition who has lost his employment, bonafide needs the petition schedule building to start a business in furniture, that the tenants have sublet the building and that they have come by possession of another building in the same locality.

2. The tenants opposed the petition for eviction by filing a counter statement wherein they denied and disputed the case set out

by the landlords that they bonafide need the building so as to enable the fourth petitioner in the rent control petition to start a business in furniture. They also contended that they are entitled to the protection of the first and second provisos to section 11(3) of the Act. The tenants contended that the landlords have, before the rent control petition was filed, sold a building in their possession.

3. The fourth petitioner before the rent control court was examined as PW1 and Exts.A1 to A4 were produced and marked on the side of the landlords. The second respondent before the rent control court (the second petitioner herein) was examined as RW1 and Exts.B1 to B3 were produced and marked on the side of the tenants. The rent control court considered the rival contentions and held that the need put forward is bonafide. The rent control court repelled the contention of the tenants that the landlords have sold a building before the institution of the rent control petition and therefore, they are not entitled to an order of eviction. Though the rent control court held that the tenants have proved the ingredients of the first limb of the second proviso to section 11(3) of the Act, it held that the tenants have not discharged their burden to prove the ingredients of the second limb of the second proviso to section 11(3) of the Act. Though such a contention had not been raised in the counter statement filed by the tenants, during the course of arguments, the learned counsel

appearing for the tenants contended relying on the decision of the Apex Court in **Mohammad Ahmad & Another v. Atma Ram Chauhan & Others** (AIR 2011 SC 1940) that once the fair rent is assessed and fixed, the tenant cannot be evicted for a period of five years from the date of the order fixing the fair rent. Referring to Ext.A1 judgment delivered by the Rent Control Appellate Authority, Vatakara on 27.7.2011 in R.C.A.No.58 of 2010 whereby the fair rent of the petition schedule building was fixed, it was contended that the period of five years stipulated by the Apex Court in the aforesaid decision has not expired and therefore, the instant rent control petition which was filed on 15.10.2011 is liable to be dismissed as premature. The rent control court accepted the said contention and dismissed the rent control petition by order passed on 22.8.2012. The landlords carried the matter in appeal by filing R.C.A.No.173 of 2012 on the file of the Rent Control Appellate Authority, Vatakara. The rent control appellate authority considered the rival contentions and allowed the appeal by judgment delivered on 22.7.2015 and ordered eviction under section 11(3) of the Act. The rent control appellate authority held that the tenants have not discharged their burden to prove the ingredients of the first limb of the second proviso to section 11(3) of the Act and as the tenants have to prove the ingredients of both the limbs of the second proviso and have failed in that regard, they are not

entitled to the protection of the second proviso to section 11(3) of the Act. As regards the contention that once the fair rent is fixed, an order of eviction cannot be passed for a period of five years, the rent control appellate authority held referring to Ext.A1 judgment delivered by it on 27.7.2011 in R.C.A.No.58 of 2010 that the fixation of fair rent by that judgment was with effect from 15.7.2002 and that the period of five years stipulated by the Apex Court expired long before the rent control petition was instituted. The tenants have, aggrieved thereby, filed this revision petition under section 20 of the Act.

4. We heard Sri.K.Madhusoodanan, learned counsel appearing for the petitioners and Sri.R.Parthasarathy, learned counsel appearing for the respondents, who have lodged a caveat. Sri.K.Madhusoodanan, learned counsel appearing for the petitioners contended relying on the decision of the Apex Court in **Mohammad Ahmad & Another v. Atma Ram Chauhan & Others** (supra), more particularly the guidelines laid down by the Apex Court in the said decision that once the fair rent is fixed, the landlord is not entitled to bring an action for eviction against the tenant atleast for a period of five years, that in the instant case, the fair rent was fixed by Ext.A1 judgment delivered by the Rent Control Appellate Authority, Vatakara on 27.7.2011 in R.C.A.No.58 of 2010 and therefore, the instant petition for eviction which was filed on 15.10.2011 is liable to be dismissed on that short

ground and was rightly dismissed by the rent control court. The learned counsel contended that interpretation placed by the appellate authority on the guidelines framed by the Honourable the Supreme Court is not tenable and is liable to be set aside.

5. Per contra, Sri.R.Parthasarathy, learned counsel appearing for the respondents/landlords submitted that the Rent Control Appellate Authority, Vatakara has in Ext.A1 judgment delivered by it on 27.7.2011 in R.C.A.No.58 of 2010 fixed the fair rent with effect from the date of the petition for fixation of fair rent namely 15.7.2012, that the period of five years stipulated by the Apex Court expired on 15.7.2007 and therefore, by no stretch of imagination can it be said that the instant petition for eviction which was filed on 15.10.2011 is within the period of five years after the fair rent was fixed. The learned counsel invited our attention to the decision of a Division Bench of this court in **George v. Saidu Muhammed** [2013 (2) KLT 513] and submitted that an order fixing the fair rent is to be treated as operative from the date of filing of the application and therefore, no exception can be taken to Ext.A1 judgment fixing the fair rent with effect from the date of the petition for fixation of fair rent namely, 15.7.2012. The learned counsel submitted that as the bonafide need has been concurrently found in favour of the landlords and the tenants have signally failed to prove the ingredients of the first and the second

provisos to section 11(3) of the Act, an order of eviction ought to have followed and was rightly passed by the rent control appellate authority.

6. We have considered the submissions made at the Bar by learned counsel appearing on either side. We have also gone through the pleadings and the materials on record as also the decisions referred to and relied on by learned counsel appearing on either side. It is not in dispute that an order fixing the fair rent is to be treated as operative from the date of filing of the application. In any case, we are bound by the decision of the Division Bench of this court in **George v. Saidu Muhammed** [supra] which lays down the said proposition. After having gone through the said judgment we are in respectful agreement with the opinion expressed therein. Ext.A1 judgment delivered by the Rent Control Appellate Authority, Vatakara on 27.7.2011 in R.C.A.No.58 of 2010 discloses that the landlord's suit (O.S.No.128 of 2002) wherein he had prayed for fixation of fair rent was dismissed by the Munsiff Court, Vatakara by decree and judgment dated 28.6.2003, that he had filed an appeal before the Additional District Court, Vatakara as A.S.No.94 of 2003 and that it was renumbered as R.C.A.No.58 of 2010 pursuant to the decision of a Division Bench of this court in **Edger Ferus v. Abraham Ittycheria** (2004 (1) KLT 767). Ext.A1 judgment discloses that the contract rent of Rs.350/- which was fixed in the year 1976 and was refixed as

Rs.525/- in the year 1996 was enhanced to Rs.1,575/- per mensem with effect from the date of the plaint in O.S.No.128 of 2002 namely, 15.7.2002. The operative portion of Ext.A1 judgment is extracted below:

"14. The commissioners report Ext.C1 goes to show that plaint schedule building is very substantial building having 11 rooms and varandah in the ground floor marked R1 to 12 in Ext.C2 plan and 8 rooms in the first floor marked as R13 to 20 in Ext.C3 plan. The Commissioners report also goes to show that Vatakara beach post office is about 75 metres away and Gujarathi Senior Basic School is near the plaint schedule building and several business establishments are seen situated near the plaint schedule building. Commissioner has also opined that the place named Thazheangadi is business place where comparatively good business is carried on and considering the importance of the place and the business conditions subsisting in Thazheangadi the rent for the plaint schedule building seems to be very low. The Commissioners report also goes to show that several similar buildings in the locality are fetching fairly good rent. PW1 has stated in the proof affidavit that there are 11 rooms and varandah in the ground floor and 8 rooms in the upstairs of the building and has a plinth area of 1345 Sq.feet. This is a plinth area of the building stated in the proof affidavit is not disputed by the respondent. DW1 who is the 2nd defendant in O.S.128/02 as admitted that the petition schedule building has a plinth area of 1346 Sq.feet. To the question as to whether the backward latrine etc. has 3962 Sq.feet in extent DW1 pleads ignorance. DW1 admits that he is doing furniture business in the plaint schedule building. He also admits that a flour mill near the petition schedule building is fetching rent to Rs.1700/-. Considering the above facts and the plinth area of the building and the fact that at the time of entrustment of the building long back in the year 1976 rent was Rs.350/- per month and thereafter over the years cost of living and the general price index has risen more than 5 times and the fact that in the year 1996 the rent was refixed to Rs.525/- I am of the view that at least a three fold increase can be given and the fair rent can be fixed to Rs.1575/- per month (525 x 3). Hence I fix the rent for the plaint schedule building at Rs.1575/- with effect

from the date of plaint namely 15.7.2002.

In the result, appeal is allowed and the fair rent for the plaint schedule building fixed Rs.1575/- with effect from the date of the plaint namely 15.7.2002. Under the circumstances of the case parties are directed to suffer their respective costs."

7. Ext.A1 judgment has admittedly attained finality. By that judgment, the fair rent was fixed at Rs.1,575/- per mensem with effect from 15.7.2002. In the light of the decision of the Division Bench of this court in **George v. Saidu Muhammed** [supra] no exception can be taken to the said judgment. In any case, as Ext.A1 judgment has not been subjected to challenge and has attained finality, it governs the rights of the parties. Such being the situation, we are not persuaded to hold that the instant petition for eviction which was filed on 15.10.2011 is liable to be thrown out on the ground that it is one filed within five years from the date of fixation of the fair rent. In any view of the case, such an interpretation cannot be placed on paragraph 21(iii) of the decision of the Apex Court in **Mohammad Ahmad & Another v. Atma Ram Chauhan & Others** (supra). The appellants before the Apex Court were the tenants of a commercial building. The landlord filed an application for eviction under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 praying for release of two of the shop rooms in his favour. The tenants were at that point of time paying Rs.40/- and Rs.20/- respectively for the shops in their possession. The prescribed authority passed an order of eviction in

respect of two shop rooms in the possession of the appellants before the Apex Court. That order was upheld in appeal. In a writ petition filed before the High court challenging the aforesaid orders, a learned single Judge of the High Court passed interim orders enhancing the rate of rent in respect of the shop room initially to Rs.600/- per month and later to Rs.2,100/- per month. Challenging that order, the tenants moved the Apex Court. While dismissing the appeal, the Apex Court laid down the guidelines and norms to minimise the landlord/tenant litigation on the reasoning that the majority of the cases are filed because the landlords do not get reasonable rent akin to market rent and that for that reason on one ground or the other, litigation is initiated. All that is stipulated in the guidelines framed by the Apex Court in the said decision is that if the present and prevailed market rent assessed and fixed between the parties is paid by the tenant, then the landlord shall not be entitled to bring any action for eviction against such a tenant atleast for a period of five years. The Apex Court has not held in the said decision that the period of five years will commence from the date of the order fixing the fair rent either by the original authority or the appellate authority. The guidelines framed by the Apex Court are only to the effect that the tenant who is paying the fair rent should enjoy immunity from being evicted for a period of five years. The fair rent in the instant case was fixed with effect from

15.7.2002. The period of five years computed in accordance with the decision of the Apex Court would in our opinion, as rightly held by the appellate authority, expire on 15.7.2007. We are not therefore persuaded to hold that in view of the decision of the Apex Court in **Mohammad Ahmad & Another v. Atma Ram Chauhan & Others** (supra) the instant petition for eviction is liable to be dismissed as one brought prematurely within the period of five years. We accordingly hold that there is no merit in the instant revision petition. It fails and is dismissed, but without any order as to costs.

8. After the revision petition was dismissed, learned counsel appearing for the petitioners/tenants sought six months' time to surrender vacant possession of the petition schedule building. Having regard to the fact that the rent control petition was instituted on 15.10.2011 and the further fact that the need put forward is to enable the fourth petitioner in the rent control court to start a business, we are of the opinion that grant of six months' time at this stage would seriously prejudice the rights of the landlords. However having regard to the fact that the tenants are running a business concern in the petition schedule premises, we deem it appropriate to grant them four months' time from today to surrender vacant possession of the petition schedule building subject to the following conditions:

- i. The petitioners/tenants shall within one month 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 respondents/landlords on the expiry of the said period of four months.

- ii. The tenants shall deposit or pay to the landlords, the arrears of rent if any till 15.9.2012 within one month from today and undertake in the affidavit to be filed as directed above that, they will continue to pay the rent at the rate fixed in Ext.A1 judgment, till the date of surrender.
- iii. The tenants shall also undertake that they will not induct third parties into possession of the petition schedule building or commit acts of waste therein.
- iv. In the event of failure on the part of the petitioners/tenants to file an affidavit within the time limit stipulated above, it will be open to the landlords to forthwith execute the order of eviction.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

/true copy/

P.A. To Judge