

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

RCRev..No. 253 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 81/2010 OF RENT CONTROL APPELLAT
AUTHORITY, THRISSUR DATED 10-09-2015

AGAINST THE ORDER/JUDGMENT IN RCP 123/2007 of RENT CONTROLLER, THRISSUR
DATED 29-09-2010

REVISION PETITIONER(S):APPELLANT/RESPONDENT

K.K.VIJAYAN AGED 68 YEARS
S/O.LATE KARUPPUNNI, KUTTIKATTUPARAMBIL VEEDU
TC 25/93, PUTHEN NADAKKAVU VAZHI, KAINOOR
THRISSUR DISTRICT.

BY ADV. SMT.P.K.PRIYA

RESPONDENT(S):RESPONDENT/PETITIONER

K.B.RAHULAN
S/O.K.V.BALAN, KONDUVARAVALAPPIL HOUSE, SAW MILL ROAD
KOORKENCHERY VILLAGE AND DESOM
THRISSUR DISTRICT AND TALUK-680 001.

R1 BY ADV. SRI.MILLU DANDAPANI

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
16-10-2015 ALONG WITH RCR 255/2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

**P.N. Ravindran &
Babu Mathew P. Joseph, JJ.**

R.C.R.Nos.253 and 255 of 2015

Dated this the 16th October, 2015

ORDER

P.N. Ravindran, J.

These revision petitions arise from the common judgment delivered by the Rent Control Appellate Authority, Thrissur on 10.9.2015 in R.C.A.Nos.80 and 81 of 2010. R.C.R.No.253 of 2015 arises from the judgment in R.C.A. No.81 of 2010 and R.C.R.No.255 of 2015 arises from the judgment in R.C.A.No.80 of 2010. The common respondent in these revision petitions who is the landlord of two shop rooms situate in Thrissur town, instituted R.C.P.Nos.119 of 2007, 120 of 2007, 121 of 2007 and 123 of 2007 praying for an order evicting four of his tenants from a very old commercial building. He contended that the building is situated in a parcel of land having an area of 3.5 cents, that in the year 2002 he purchased 6 cents of land lying adjacent to the tenanted premises, that his father is running a lodge under the name and style “Sribudha Lodge” in the adjacent land, that he is also a partner in the said business, that two of his sons have

completed their studies, that they are without any employment and that with a view to provide a means of income to them, he has decided to construct a lodging house in the tenanted premises and in the adjacent 6 cents of land. The landlord contended that the other tenants have already vacated the building, that he has got a permit and plan duly approved by the Thrissur Corporation, that the proposed building will be put up as an extension of the lodge owned by his father and that he has given permission for the same. On these averments, the landlord prayed 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 landlord also contended that the rent is in arrears from January 2007 and on that ground, he prayed for an order of eviction under section 11(2) (b) of the Act as well. The landlord had further averred that the building is in a dilapidated condition and is likely to collapse at any moment.

2. The tenants including the petitioners herein opposed the petitions for eviction by filing counter statements. They denied the bonafide need put forward as also the financial capacity of the landlord

to put up a building. They also claimed the protection of the second proviso to section 11(3) of the Act.

3. The rent control petitions were jointly tried. Before the rent control court, the landlord was examined as PW1 and his son as PW2. He also produced and marked Exts.A1 to A42. The petitioners herein were examined as RWs 3 and 4 and the other tenants were examined as RWs.1 and 2. On application filed by the landlord, the very same Advocate Commissioner was appointed in the four rent control petitions and the report submitted by him were marked as Exts.C1 to C4. The rent control court considered the rival contentions and held that the need put forward by the landlord is bonafide. The contention of the tenants that they are entitled to the protection of the second proviso to section 11(3) of the Act was repelled. As regards arrears of rent, the rent control court held that the tenants in R.C.P.Nos.120 of 2007 and 121 of 2007 are liable to be evicted for non payment of rent. An order for eviction was accordingly passed under section 11(3) of the Act in all the cases and under section 11(2)(b) of the Act as well in R.C.P. Nos.120 and 121 of 2007. Two among the tenants, viz. the

petitioners herein carried the matter in appeal by filing R.C.A.Nos.80 and 81 of 2010. The tenants in R.C.P.Nos.120 and 121 of 2007 did not carry the matter in appeal. The appellate authority considered the rival contentions and dismissed the appeals by judgment delivered on 10.9.2015. The said judgment is under challenge in these revision petitions.

4. We heard Smt. Priya P.K., learned counsel for the petitioners and Smt.Sumathi Dandapani, learned Senior Advocate appearing for the respondent. We have also gone through the impugned judgment/order as also the contents of the affidavit dated 15.10.2015 sworn to by the landlord and the documents accompanying the same. The fact that the landlord is the owner of six cents of land adjacent to the petition schedule premises and that the site of the tenanted premises has an area of 3.5 cents is not in dispute. The landlord's father is the owner of the adjacent building wherein he, in partnership with the landlord, is running a lodging house under the name and style “Sribudha Lodge”. The need put forward in the petitions for eviction is that the landlord needs the petition schedule premises for the purpose

of putting up a lodge, so as to settle his two sons who are unemployed. It is also stated that the proposed building will be put up in such a manner that it is an extension of the lodging house already being run by the landlord in partnership with his father in the neighbouring property. The landlord had also produced before the rent control court a copy of the approved plan and permit issued by the Thrissur Corporation. The rent control court, after examining the rival contentions, held that the need put forward is bonafide. The appellate authority concurred with the said finding. After hearing learned counsel on both sides and after going through the pleadings and the materials on record, we are not persuaded to hold that the said finding is in any way perverse or that the need put forward is only a ruse to evict the tenants. In such circumstances, we find no reason to interfere with the finding entered by the rent control court and the appellate authority that the need put forward is bonafide. The rent control court and the appellate authority have also held that the tenants have not succeeded in proving the ingredients of the second limb of the second proviso to section 11(3) of the Act. A reading of the impugned judgment discloses that the

contention of the tenants was that no other suitable building is available within 25 metres of the petition schedule premises. They had no case before the rent control court or the appellate authority that no other suitable building is available in the locality. We therefore find no good grounds to interfere with the order of eviction passed by the rent control court and upheld by the appellate authority. That apart, the landlord has, in the affidavit dated 15.10.2015 filed in this court averred that the petitioners are the only tenants who are in possession of the tenanted premises, that the petitioner in R.C.R.No.255 of 2015 is the brother-in-law of the petitioner in R.C.R.No.253 of 2015 and that it is at the instance of the petitioner in R.C.R.No.255 of 2015 that the petitioner in R.C.R.No.253 of 2015 has come forward with the revision petition. He has also averred that the roof of the building has collapsed, that the room occupied by the petitioner in R.C.R.No.255 of 2015 which is in the upstairs portion of the building has collapsed, that he has not been using it for the past few years and that the room occupied by the petitioner in R.C.R.No.253 of 2015 is in a dilapidated condition. Learned counsel for the revision petitioners does not

seriously dispute the said submissions. The landlord has, along with the affidavit dated 15.10.2015, produced the photographs showing the present condition of the building. Having regard to the said aspect also, we are of the opinion that no exception can be taken to the finding entered by the rent control court and upheld by the appellate authority that the petitioners are liable to be evicted from the petition schedule premises.

We accordingly hold that there is no merit in these revision petitions. The revision petitions fail and are accordingly dismissed. However, having regard to the fact that the tenants are in occupation of the premises for the past several years, we deem fit appropriate to grant the petitioners three months time from today to surrender vacant possession of the premises in R.C.P.Nos.119 and 123 of 2007 subject to the following conditions:

- i) The petitioners herein shall file separate affidavit in the respective rent control petition within three weeks from today, undertaking to unconditionally surrender vacant possession of the petition schedule premises on the expiry of the said period of

three months;

- ii) They shall, within one month from today, deposit in the rent control court, the entire arrears of rent, if any, payable in respect of the petition schedule premises. They shall, in the affidavit to be filed as directed above, give an undertaking to that effect and to continue to pay the rent payable by them till the date of surrender;
- iii) They shall also undertake that they will not induct third parties into possession of the petition schedule premises;
- iv) In the event of failure on the part of the tenants to file an affidavit within the time limit stipulated above, or in depositing the arrears of rent, if any, payable in respect of the tenanted premises, it will be open to the landlord to forthwith apply for execution of the order of eviction.

(P.N. Ravindran, Judge.)

(Babu Mathew P. Joseph, Judge.)

kav/