

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 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

RCRev..No. 257 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 6/2012 of RENT CONTROL
APPELLATE AUTHORITY I, KOTTAYAM DATED 07-08-2015

AGAINST THE ORDER/JUDGMENT IN RCP 23/2010 of RENT CONTROL
COURT (PRL.MUNSIFF), KOTTAYAM DATED 30-09-2011

PETITIONERS/APPELLANTS

1. NIRMALA RAJAN, AGED 56 YEARS
W/O.RAJAN VARGHESE, PANACKAMUTTATHU HOUSE
NATTAKOM VILLAGE, NATTAKOM P.O, KOTTAYAM
DISTRICT.
2. VIMALA NINAN, AGED 53 YEARS,
D/O.LATE P.O.NINAN, PRASANTH HOUSE,
NATTAKOM, KOTTAYAM DISTRICT, REPRESENTED
BY IST PETITIONER, NIRMALA RAJAN,
W/O.RAJAN VARGHESE, PANACKAMUTTATHU HOUSE,
NATTAKOM VILLAGE, NATTAKOM P.O
KOTTAYAM DISTRICT AS GUARDIAN AND NEXT FRIEND.
3. ANILA NINAN, AGED 51 YEARS,
D/O.LATE P.O.NINAN, PANACKAMUTTATHU HOUSE,
NATTAKOM, KOTTAYAM DISTRICT

BY ADV. SRI.TOM K.THOMAS

RESPONDENT/RESPONDENT/PETITIONER

MAYAMMA JOSE, AGED 67 YEARS,
W/O.JOSE PHILIP, THEKKANATTU HOUSE
CHELLIYOZHUKKAM ROAD, KOTTAYAM DISTRICT. 686 001.

BY ADV. SRI.P.B..KRISHNAN (CAVEATOR)

THIS RENT CONTROL REVISION HAVING COME UP FOR
ADMISSION ON 12-10-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

kp/-

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

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R.C.R. No.257 of 2015

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Dated this the 12th day of October, 2015

ORDER

P.N.Ravindran, J.

The petitioners are the tenants in R.C.O.P.No.23 of 2010 on the file of the Rent Control Court (Principal Munsiff), Kottayam. The sole respondent is the landlord therein. The respondent landlord initially instituted R.C.O.P.No.5 of 2005 praying for an order of eviction under sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act' for short). She contended therein that the rent is in arrears from 1980 and that she bona fide needs the building to start a consultancy business. It was contended that she is a qualified Civil Engineer and was formerly in Government service. Though the tenants were served they did not enter appearance with the result all of them were set ex-parte. Consequently by Ext.A8 order passed on 21.12.2006 the Rent Control Court passed an order of eviction under sections 11(2)(b) and 11(3) of the Act. When that order of eviction was put in execution, it was contended that tenants 2 and 3 (petitioners 2 and 3 herein) are mentally and physically challenged persons, that no guardian had been appointed for them and therefore, the order of eviction is a nullity.

2. Though the landlord attempted to get over that hurdle by filing E.A.No.407 of 2008, wherein she prayed for the appointment of the first respondent in the Rent Control Petition as the guardian and next friend of the other respondents. That application was dismissed by order passed on 6.1.2010 on the ground that the order of eviction is a nullity and it is not executable and therefore, no purpose will be served by allowing the application at this stage. The landlord thereupon filed R.C.O.P.No.23 of 2010 praying for an order of eviction under sections 11(2)(b) and 11(3) of the Act. She had in the petition contended that the counter petitioners 2 and 3 (petitioners 2 and 3 herein) are mentally and physically challenged persons and they are represented by the first counter petitioner, their guardian and next friend. She also contended that the rent is in arrears from June, 2010 and that she bona fide needs the petition schedule premises to start a consultancy business.

3. The tenants opposed the application by filing a counter statement wherein it was contended that the present petition for eviction is barred by res judicata in view of Ext.A8 order. They also contended that they have perfected title to the petition schedule property by adverse possession and limitation, that the need put forward is not true or genuine, that they are solely depending on the

income derived from the business carried on in the petition schedule property for their livelihood and that no other suitable buildings are available in the locality and therefore, the landlord is not entitled for an order of eviction. Before the Rent Control Court the landlord was examined as PW1 and Exts.A1 to A14 were produced and marked on her side. On the side of the tenants, the first counter petitioner before the Rent Control Court was examined as RW1 and Exts. B1 to B5 were produced and marked. The Rent Control Court considered the rival contentions and held that as the cause of action for the instant rent control petition is different from the cause of action which led to the filing of R.C.O.P.No. 5 of 2005, the present petition is not barred by res judicata. The plea of adverse possession and limitation was also repelled.

4. The Rent Control Court thereafter proceeded to consider the question whether the need put forward is bona fide and held that the need put forward by the landlord is bona fide. The contention of the tenants that they have immunity from eviction by virtue of the provisions contained in section 11(11)(ii) of the Act was repelled. Their contention that they are entitled to the protection of the first and second provisos to section 11(3) of the Act was also repelled. As regards the prayer for eviction on the ground that the rent is in

arrears, the rent control court held that as the landlord has no consistent case regarding the date on which the rent fell in arrears, she is not entitled to an order of eviction under section 11(3) of the Act. Consequently an order for eviction under section 11(3) of the Act was passed on 30.9.2011. Aggrieved thereby the tenants carried the matter in appeal by filing R.C.A.No.6 of 2012 on the file of the Rent Control Appellate Authority, Kottayam. By judgment delivered on 7.8.2015, the rent control appellate authority concurred with the rent control court and dismissed the appeal. Hence this revision petition.

5. We heard Sri. Tom K. Thomas, learned counsel appearing for the petitioners and Sri. P.B. Krishnan, learned counsel appearing for the respondent landlord who had lodged a caveat. We have also gone through the impugned judgment and order. It is evident from the materials on record that on more or less similar averments the landlord had earlier filed R.C.O.P.No.5 of 2005 wherein Ext.A8 ex-parte order of eviction was passed. Though notices were served on the tenants, who are three sisters, they did not enter appearance and were set ex-parte. When the order for eviction was sought to be executed an objection was raised to the executability of the order of eviction on the ground that tenants 2 and 3 (counter petitioners 2 and 3 in R.C.O.P.No.5 of 2005) are mentally and physically challenged

persons, but no guardian had been appointed for them. The attempt made by the landlord to get a guardian appointed for them was not accepted by the execution court. Consequently the landlord was constrained to file the instant petition for eviction on the same grounds, but founded on a different cause of action.

6. The Rent Control Court as well as the Appellate Authority have on an analysis of the evidence held that the need put forward is bona fide. It has come out in evidence that the landlord has already obtained possession of the adjacent room which was the subject matter of R.C.O.P No.6 of 2005 for the very same purpose. The Rent Control Court as well as the Appellate Authority have taken note of the fact that the landlord possesses masters degree in engineering and therefore, the mere fact that she is a pensioner is not a reason to hold that the need put forward viz; to start a consultancy business is only a ruse to evict the tenants. It is not in dispute that the order for eviction passed in R.C.O.P.No.6 of 2005 has been upheld by the Rent Control Appellate Authority, Kottayam in R.C.A.No.33 of 2007 and by this court in R.C.R.No.237 of 2009 which was dismissed by order passed on 21.10.2009. In the light of the decision of this court in R.C.R.No.237 of 2009 wherein the same bona fide need has been upheld though in respect of the adjacent room, we find no merit or

force in the contention of the tenants that the need put forward is not bona fide. The rent control court as well as the appellate authority have also considered and rejected the claim of the tenants that they are entitled to the protection of the second proviso to section 11(3) of the Act. The rent control court and the appellate authority have on analysis of the testimony tendered by the first counter petitioner who was examined as RW1 found that she has not even made enquiries as to whether other suitable buildings are available in the locality. The rent control court has also held relying on the evidence on record, more particularly the admission made by RW1 that the tenants are not mainly depending on the income derived from the institution run in the petition schedule building for their livelihood. On an elaborate consideration of the pleadings and the materials on record, we are not persuaded to hold that the impugned judgment/order suffer from any infirmity or illegality warranting interference in exercise of the revisional jurisdiction of this court under section 20 of the Act. The revision petition fails and is accordingly dismissed. No costs.

7. After the revision petition was dismissed, Sri. Tom K. Thomas, learned counsel appearing for the petitioners/tenants sought time till 31.7.2016 to surrender vacant possession of the petition schedule premises to the landlord. Learned counsel submitted that as

the petitioners are running an institution in the petition schedule premises and the course presently being conducted will come to an end only by July, 2016, the tenants may be granted time till 31.7.2016 to surrender vacant possession, as otherwise, the students undergoing the course will be put to serious prejudice. Learned counsel appearing for the respondent very fairly did not oppose the said request. In such circumstances, even while dismissing the revision petition, we deem it appropriate to grant to the petitioners/tenants time till 31.7.2016 to surrender vacant possession of the petition schedule premises subject to the following conditions:

- i. The first petitioner shall within three weeks from today file an undertaking in the form of an affidavit in the rent control court on her on behalf and on behalf of petitioners 2 and 3, undertaking to surrender vacant possession of the petition schedule premises to the respondent/landlord on 31.7.2016.
- ii. She shall deposit or pay to the landlord, the arrears of rent if any and undertake in the affidavit to be filed as directed above that she will continue to pay the rent till the date of surrender.
- iii. She shall in the said affidavit also undertake that she or the other tenants will not induct third parties into possession of the petition schedule premises or commit acts of waste therein.

- iv. In the event of failure on the part of the first petitioner/first tenant to file an affidavit within the time limit stipulated above, 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**

kp/-