

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 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

RCRev..No. 260 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 99/2014 of I ADDL.DISTRICT COURT, AND
RENT CONTROL APPELLATE AUTHORITY, KOZHIKODE DATED 25-07-2015

AGAINST THE ORDER/JUDGMENT IN RCP 30/2009 of RENT CONTROL COURT/MUNSIF
QUILANDY DATED 30-06-2014

REVISION PETITIONER(S)/APPELLANT/RESPONDENT:

KOLLARUKANDY ASHOKAN AGED 47 YEARS
S/O.KELUKUTTY, VADAKKE VEETIL, POONOOR VILLAGE
UNNIKULAM (P.O), KOYILANDY, KOZHIKODE DISTRICT.

BY ADVS.SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P

RESPONDENT(S)/RESPONDENT/PETITIONER:

KADIRI HAJI M.K, AGED 73 YEARS
S/O.ALI HAJI, MAILAKKATTUKANDI, UNNIKULAM VILLAGE
POONOOR DESOM, KOYILANDY, KOZHIKODE DISTRICT
PIN - 673 574.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
14-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

R.C.R. NO.260 of 2015

Dated this the 14th October, 2015

ORDER

P.N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.30 of 2009 on the file of the Rent Control Court, Koyilandy. The respondent/landlord instituted R.C.P.No.30 of 2009 praying for an order evicting the tenant under sections 11(2) and 11(4)(iv) of the Kerala Buildings (Lease & Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. The landlord contended that the rent is in arrears from January, 2009, that he had entrusted the petition schedule building to the tenant on a monthly rent of Rs.1,200/- as per Ext.A6, that the tenant is not in the habit of paying the rent regularly and that rent at the rate of Rs.1,200/- per month is due from January, 2009 onwards. The landlord had, in the rent control petition, averred that as on the date of institution of the rent control petition, viz. December, 2009, the sum of Rs.14,400/- being the rent for 12 months is in arrears. The landlord had, in the petition for eviction, further averred that the petition schedule building

is a one room building bearing door No.U.P.2/188, that it is constructed with laterite stones with a sheet roofing, that the tenant is carrying on an industrial undertaking there, that on account of the existence of the building, the surrounding land is lying waste and that he intends to construct a multi storied building at the site of the petition schedule building and in the appurtenant land. He had also contended that the building is very old and it needs reconstruction, that by demolishing the existing building, a multi storied building can be constructed, that he has the ability to re-build the existing building and that he has applied for a plan and licence for the construction of a new building.

2. The tenant opposed the petition for eviction by filing a counter statement wherein he contended that the entrustment was on 21.2.1994 on a monthly rent of Rs.150/-, that rent upto and inclusive of May 2009 has been paid and that thereafter the landlord declined to accept the rent though it was tendered by him. He also contended that the building does not need reconstruction, that the need put forward is only a ruse to evict him, that a new building can be constructed after demolishing the adjacent building belonging to the landlord wherein a flour mill is

being run and that the attempt of the landlord is to somehow or other, evict him. He had also made various other averments in the counter statement.

3. Before the rent control court, the landlord examined himself as PW1 and produced and marked Exts.A1 to A6. The tenant examined himself as RW1 and produced and marked Exts.B1 to B5. On application filed by the landlord, an Advocate Commissioner was appointed to inspect the petition schedule building and to submit a plan and report. The plan and report submitted by the Advocate Commissioner were marked as Exts.C1 and C2 respectively. After the evidence on both sides was recorded, the tenant filed an application to send Ext.A6 rent deed produced by the landlord at the time when he was examined as PW1, to a handwriting expert for comparison of the signature of the tenant occurring therein with his admitted signatures, on the averment that Ext.A6 is a forgery. Such an attempt was made for the purpose of substantiating the contention of the tenant that the rent fixed is Rs.150/- per month and not Rs.1,200/- as claimed by the landlord. Though the report received from the Forensic Science Laboratory was marked as Ext.X1, the rent control court did not place

any reliance on the said report for the reason that the expert who had prepared the report was not examined. For that reason, the rent control court held that Ext.X1 cannot be treated as a substantive evidence. In that view of the matter, the rent control court held that the tenant is liable to pay rent only at the rate of Rs.150/- per month as stipulated in Ext.B2 rent agreement dated 21.2.1994 entered into between the parties. The rent control court also held that the rent at that rate is in arrears from May 2009 and an order for eviction was passed on that ground. As regards the prayer for eviction under Section 11(4)(iv) of the Act, the rent control court held, on an analysis of the pleadings and the evidence on record, that the proposal for reconstruction is not a ruse for eviction. Accordingly, the rent control court passed an order for eviction under section 11(4)(iv) of the Act as well. Aggrieved thereby, the tenant filed R.C.A. No.99 of 2014 on the file of the Rent Control Appellate Authority, Kozhikode. By judgment delivered on 25.7.2015, the appellate authority concurred with the rent control court and dismissed the appeal. The memorandum of cross objections filed by the landlord regarding the rate of rent payable was also dismissed. The tenant has, aggrieved thereby, filed this revision petition.

4. We heard Shri R.Bindu Sasthamangalam, learned counsel for the petitioner. We have also gone through the impugned judgment/order and the pleadings of either side. It is evident from the materials before us that the landlord has already obtained the requisite plan and licence from the local authority for the purpose of putting up a commercial building. The contention of the landlord that he possesses the requisite funds for putting up a commercial building, is not in dispute. The main contention of the tenant is that the building does not need reconstruction and that the landlord has not taken steps to demolish the building wherein a flour mill is being run and that the said conduct indicates that the present attempt is only a ruse to somehow or other evict the tenant. It has come out in evidence that the flour mill is being run by one Shri Moosakoya. The report submitted by the Advocate Commissioner discloses that the said Moosakoya had informed the Advocate Commissioner that he is prepared to surrender the building in his possession at any time to the landlord. PW1 had also given evidence in that regard. It is evident from the materials before us that the apprehension entertained by the tenant that the landlord has not taken steps to obtain vacant possession of the building wherein the

flour mill is being run, is misplaced. In such circumstances and having regard to the fact that the landlord has the means to put up a commercial building and the petitioner will be entitled for allotment of a room in the reconstructed building, subject of course to payment of fair rent to be fixed by the rent control court, we are of opinion that no prejudice will be caused to the petitioner in the event of an order of eviction being passed. The tenant has no case that a new building cannot be put up in the vacant land available with the landlord. He does not also challenge the validity of the plan and licence obtained. He has no case that the requisite set back has not been provided for the proposed building. In such circumstances, we find no reason to interfere with the concurrent findings on facts arrived at by the rent control court and the appellate authority and hold that the landlord has not made out a case for eviction under section 11(4)(iv) of the Act. Though learned counsel appearing for the petitioner contended that the rent control court and the appellate authority had not fixed the time limit within which the landlord has to complete the reconstruction and put him in possession of a room in the reconstructed building, it is not, in our opinion, a reason to entertain the revision petition. The tenant

can, after surrendering the building to the landlord through the court or simultaneous with it, move an appropriate application before the rent control court to fix a time limit for reconstruction of the building.

We accordingly hold that there is no merit in the revision petition. It fails and is dismissed with the observation that it will be open to the tenant to move the rent control court after surrendering vacant possession of the petition schedule building or simultaneous with it, to fix a time limit for reconstruction of the building.

(P.N. Ravindran, Judge.)

(Babu Mathew P. Joseph, Judge.)

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