

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 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

RCRev..No. 330 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 100/2012 of RENT CONTROL APPELLATE
AUTHORITY, THALASSERY DATED 31-07-2015

AGAINST THE ORDER/JUDGMENT IN RCP 217/2010 of RENT CONTROL COURT, KANNUR
DATED 31-01-2012

REVISION PETITIONER(S)/APPELLANTS/ RESPONDENTS:

1. THE REGIONAL MANAGER
THE KERALA STATE CIVIL SUPPLIES CORPORATION LTD
JAIL ROAD, CLALICUT

2. THE MANAGER
LABHAM MARKET, FORT LIGHT ANNEXURE-KANNUR

BY ADV. SMT.MOLLY JACOB, SC, SUPPLYCO

RESPONDENT(S):RESPONDENT: PETITIONER

K.T.HASHIM
S/O IBRAHIM, 50 YEARS, NO OCCUPATION, AMINA EBRAHIM MANZIL
P.O. THANA, KANNUR-670 012

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
11-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

R.C.R.No.330 of 2015

Dated this the 11th December, 2015

O R D E R

P.N. Ravindran, J.

The petitioners are the tenants in R.C.P.No.217 of 2010 on the file of the Rent Control Court, Kannur, a petition filed by the respondent/landlord 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 had in the petition for eviction averred that he is unemployed and that he needs the petition schedule building to run a margin free market. The tenants opposed the application by filing a counter statement wherein they contended, relying on section 11(11) of the Act that they are engaged in a class of employment notified by the Government as an essential service and therefore an order of eviction cannot be passed. The tenants also contended that the petition schedule premises has an area of only 600 square feet and that it is not fit to run a margin free market. It was further contended that the landlord is in possession of other vacant buildings in the same locality.

2. Before the rent control court the landlord examined himself as PW1 and the tenant of yet another room belonging to him as PW2 and produced and marked Exts.A1 to A11. On the side of the tenants the

Manager of the Supply-co outlet situate in the petition schedule building was examined as RW1 and Ext.B1 was produced and marked. On application filed by the landlord, an Advocate Commissioner was appointed to inspect the petition schedule building and the report submitted by her was marked as Ext.C1. The rent control court considered the rival contentions and held that the tenants are not entitled to the protection of section 11(11) of the Act. It was held that in the absence of a notification issued by the State Government declaring the Supply-co outlet run by the tenants as constituting an essential service, the tenants cannot seek the protection of section 11 (11) of the Act. The rent control court also held that the need put forward is bonafide. The contention of the tenants that the landlord is in possession of another room in the same building was repelled relying on Exts.A5 and A11 kachits. An order of eviction was accordingly passed on 31.1.2012 directing the tenants to surrender vacant possession of the petition schedule building within two months.

3. The tenants carried the matter in appeal by filing R.C.A.No.100 of 2012 on the file of the Rent Control Appellate Authority, Thalassery. By judgment delivered on 31.7.2015 the rent control appellate authority concurred with the rent control court and dismissed the appeal. The tenants have, aggrieved thereby, filed this

revision petition.

4. We heard Smt. Molly Jacob, learned standing counsel appearing for the petitioner. We have also gone through the impugned judgment/order and the pleadings and the materials on record. The tenants resisted the petition for eviction mainly on two grounds. The first ground raised was that they are entitled to the protection of section 11(11) of the Act. The second ground raised was that the landlord is in possession of other vacant rooms. Both the contentions were repelled by the rent control court as also the appellate authority. Apart from contending that the business run by them is an essential service, the petitioners have not produced a notification issued by the State Government in that regard. Such being the situation, no exception can be taken to the finding entered by the rent control court and upheld by the appellate authority that the tenants are not entitled to the protection of section 11(11) of the Act. Likewise, we also find no merit or force in the contention of the tenants that the landlord is in possession of other vacant rooms in the same building. The evidence in the case unmistakably establishes that the rooms pointed out by the tenants as rooms which are lying vacant, have been let out to other tenants. One of the rooms is in possession of PW2 to whom it has been let out as per Ext.A6 rent deed. Yet another room has been

leased out to Dhanalakshmi Bank. The rooms belonging to the wife of the landlord are also in possession of other tenants. Such being the situation, the tenants cannot successfully resist the petition for eviction on the ground that the landlord is in possession of other vacant rooms in the same locality. Though learned counsel appearing for the petitioners also contended that the need put forward is not bonafide, having regard to the pleadings and evidence in the case on hand, we are not persuaded to accept the said submission.

We accordingly hold that there is no merit in the revision petition. It fails and is dismissed. However, having regard to the fact that the petitioners are running a Supply-co outlet in the petition schedule building, we deem it appropriate to grant them time till 15.8.2016 to surrender vacant possession of the petition schedule building to the landlord subject to the following conditions:

- (a) The petitioners 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 landlord on 15.8.2016;
- (b) The petitioners shall also undertake that they will not induct strangers into possession of the petition schedule building or commit acts of waste therein;

(c) They shall also undertake to deposit the rent, if any, in arrears and to continue to pay the rent till the date of surrender;

(d) Needless to say, in the event of failure on the part of the petitioners to file an affidavit within the time limit stipulated above, it will be open to the landlord to forthwith execute the order for eviction.

(P.N. Ravindran, Judge.)

(Babu Mathew P. Joseph, Judge.)

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