

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

OP (RC).No. 140 of 2014 (O)

AGAINST THE ORDER IN EA.NOS.311/14, 230/14 & 51/14 IN EP 210/2003 of MUNSIF
COURT, CHERTHALA ARISING FROM RCP.34/90 OF RENT CONTROLLER, CHERTHALA

PETITIONER(S)/JUDGMENT DEBTOR/LANDLORD:

D.VIJAYAPPA KURUP AGED 58 YEARS
S/O.DAMODARA KURUP, BUSINESS
RESIDING AT ALUNKAL HOUSE
MARARIKKULAM MURI OF MARARIKKULAM NORTH VILLAGE
CHERTHALA, MARARIKKULAM P.O.-688 549.

BY ADVS.SRI.T.JAYAKRISHNAN
SRI.R.KRISHNAKUMAR (CHERTHALA)

RESPONDENT(S)/ADDL.DECREE HOLDERS & AUCTION PURCHASER:

-
1. SARASWATHY AMMA
W/O.LATE KOCHAPPAN NAIR, VADAKKEVELIYIL
PERUMTHURUTHU MURI OF MANNANCHERY VILLAGE
MANNANCHERY P.O., 688 538.
 2. USHA MOHANAN
D/O.LATE KOCHAPPAN NAIR, UBHAYAM, FROM VADAKKEVELIYIL
PERUMTHURUTHU MURI OF MANNANCHERY VILLAGE
MANNANCHERY P.O., 688 538.
 3. ULLAS
S/O.LATE KOCHAPPAN NAIR, UBHAYAM, FROM VADAKKEVELIYIL
PERUMTHURUTHU MURI OF MANNANCHERY VILLAGE
MANNANCHERY P.O., 688 538.
 4. SASIKUMAR, AGED 47 YEARS,
S/O.THANKAPPAN, COIR FACTORY WORKER
RESIDING AT JNANODAYAM VELIYIL, (SREEKRISHNAPURAM)
KALAVOOR P.O.
PERUNTHURUTHU MURI OF MANNANCHERY VILLAGE-688 546.

R1 -R 3 BY ADV. SMT.C.G.BINDU
R1 -R 3 BY ADV. SMT.C.G.AJITHA
R4 BY ADV. SRI.B.S.SIVAJI

THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON 27-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1A TRUE COPY OF COMMON ORDER PASSED IN RCP NOS.868 & 1020/1996 DATED 24/10/1996.
- EXT.P2A TRUE COPY OF NOTICE/PROHIBITORY ORDER ISSUED MY MARARIKKULAM NORTH PANCHAYATH DATED 56/3/2001.
- EXT.P3A TRUE COPY OF ORDER PASSED IN OP (RC) NO.2211/2011 DATED 10/8/2011.
- EXT.P4A TRUE COPY OF THE ORDER PASSED IN EP NO.210/2013 IN RCP NO.34/2013 DATED 10/09/2012.
- EXT.P5A TRUE COPY OF RCRP NO.1/2012 FILED BEFORE THE SUB COURT, CHERTHALA.
- EXT.P6A TRUE COPY OF EA NO.413/2012 DATED 22/11/2012 IN EP NO.210/2003.
- EXT.P7A TRUE COPY OF PROCLAMATION SCHEDULE DATED 1/10/2012 IN EP NO.210/2003.
- EXT.P8A TRUE COPY OF EA NO.51/2004 IN EP NO.210/2003 IN RCP NO.34/1990 DATED 18/2/2014.
- EXT.P9A TRUE COPY OF EA NO.195/2014 DATED 10/7/2014 IN EP NO.210/2003.
- EXT.P10.A TRUE COPY OF EANO.230/2014 DATED 19/08/2014 IN EP 210/2003 IN RCP NO.34/1990.
- EXT.P11.A TRUE COPY OF OF EA NO.311/2014 DATED 30/10/2014 IN EP NO.210/2003 IN RCP NO.36/1994 EXECUTED BETWEEN THANKAMMA AND THANKAPPAN.
- EXT.P12.A TRUE COPY OF RECEIPTS EVIDENCING PAYMENT OF BUILDING TAX FOR ROOMS 717, 718, & 719 IN THE NAME OF PETITIONER DATED 20/09/2012 ISSUED FROM MARARIKKULAM NORTH GRAMA PANCHYATH
- EXT.P13.A TRUE COPY OF RECEIPTS EVIDENCING PAYMENT OF BUILDING TAX FOR ROOMS 720, 721 & 722 IN THE NAME OF PETITIONER ISSUED FROM MARARIKKULAM NORTH GRAMA PANCHYATH DATED 20/09/2012.
- EXT.P14. A SKETCH SHOWING THE LIE AND LOCATION OF THE PROPERTY NOW STANDS OLD PREPARED BY A RETIRED SURVEYOR.
- EXT.P15. A PHOTOGRAPHS CAPTURING THE BUILDING AND PROPERTY SOLD
- EXT.P16. A TRUE COPY OF DISCHARGE SUMMARY ISSUED TO THE PETITIONER DATED 23/6/2014 ISSUED FROM LAKESHORE HOSPITAL.
- EXT.P17. A TRUE COPY OF DISCHARGE SUMMARY DATED 5/3/2013 ISSUED FROM LAKESHORE HOSPITAL.
- EXT.P18. A TRUE COPY OF SCAN REPORT OF THE PETITIONER DATED 26/09/2013.
- EXT.P19. A TRUE COPY OF DISCHARGE SUMMARY OF THE PETITIONER DATED 4/10/2013 ISSUED FROM THE PETITIONER DATED 4/10/2013 ISSUED FROM THE LAKESHORE HOSPITAL.
- EXT.P20. A TRUE COPY OF IMPATIENT SETTLEMENT RECEIPT AND DISCHARGE BILL DATED 3/1/2014.
- EXT.P21. A TRUE COPY OF AGREEMENT DATED 15/10/2014.

/TRUE COPY/

PS TO JUDGE

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

O.P(RC).No.140 of 2014

Dated this the 27th day of March, 2015

JUDGMENT

Antony Dominic, J.

1.In this original petition filed under Article 227 of the Constitution of India, this Court passed order dated 6.3.2015, which is extracted below for reference:

(1)This Original petition under Article 227 of the Constitution of India is filed by the Judgment Debtor in E.P.No.210/03 in RCP.No.34/90 on the file of the Munsiff Court, Cherthala.

(2)RCP.34/90 was filed by the petitioner landlord seeking eviction of the predecessor of respondents 1 to 3 under section 11(4)(iv) of the Kerala Buildings (Lease & Rent Control) Act, 1965. An order of eviction was passed which became final. The landlord sought for execution of the order by filing E.P.155/92. Certain orders passed in that execution petition gave rise to CRP.868/96. That CRP was heard along with CRP.1020/96 and was disposed of by this Court by Ext.P1 order.

(3)In that order, this Court held thus in paragraph 7:

"7. Learned counsel for the tenants pointed out that even with regard to another room in the same building the landlord had driven the tenant even to the Supreme Court and had refused to give up the reconstructed room until the last moment and thus ultimately had surrendered the room without grace. The evidence in that behalf available were brought to the notice of the court. Counsel therefore submitted that what the tenants were anxious about was that the landlord might not reconstruct the building as undertaken by him in which case they will be left with nothing for themselves. It is submitted that they are conducting trades in these rooms and their livelihood depends upon the income from the trade in these rooms. It can be seen that the respondent-tenant in C.R.P.1020 of 1996 is a barber by profession. I think that taking note of the second proviso to Section 11(4)(iv) of the Act, the proper course to adopt is to direct that the landlord will be liable to pay the tenant, the respondent in C.R.P.1020 of 1996 a sum of Rs.1000/- per month towards the rent that he may have to pay to get another building in that locality, after the expiry of the period contained in the bond for putting him in possession of the reconstructed building till the date he is put in possession of the reconstructed building. I also provide that in case the landlord fails to pay the compensation at the rate of Rs.1000/- per month, it will be open to the tenant to recover

the same charged on the building sought possession of and that belongs to the landlord and by sale of that building. The tenant, who is the respondent in C.R.P.868 of 1996 is seen to be conducting a textile shop in the building. It is stated that his net income would be not less than Rs.100/- per day. Taking an over all assessment of the situation I think that the compensation that may be made payable to that tenant could be at the rate of Rs.2000/- per month from the expiry of the period contained in the bond for putting him back in possession until the offer of the reconstructed room is made to the tenant so as to enable the tenant to meet the expenses for getting another accommodation in the locality, I feel that these directions are consistent with the power available to the court under Section 11(4)(iv) of the Act and could be made by me in the interests of justice in exercise of my jurisdiction under Article 227 of the Constitution of India which I have already invoked and also in exercise of my jurisdiction in these revisions filed under Section 115 of the Code of Civil Procedure. I feel that there will be no point in not permitting execution of the order for eviction for reconstruction and in directing the status quo to continue indefinitely. But at the same time, I also feel that the rights of the tenants must be protected and it is in that behalf that I have made the above directions. Obviously the tenant, the respondent in C.R.P.868 of

1996 will also be entitled to recover the amount so ordered, charged on the property that is the subject matter of eviction as in the case of the tenant respondent in C.R.P.1020 of 1996. It is made clear that the provision for payment of compensation in terms of the second proviso to Section 11(4)(iv) of the Act will also be without prejudice to the right of the Rent Controller to take appropriate other action under the provisos to Section 11(4)(iv) of the Act."

(4) The building was demolished and the landlord started re-construction. However, he could not continue re-construction on account of Ext.P2 stop memo issued by the Mararikkulam North Grama Panchayat on 5.3.2001. Though this order was challenged successfully, fresh order was again passed by the panchayat on 10.4.2003 confirming the stop memo. That was upheld by the statutory authorities and has also attained finality.

(5) As there was no progress in the matter of re-construction of the building, taking advantage of the liberty granted in CRP.868/96 (Ext.P1), the original tenant filed E.P.210/03 before the Munsiff Court, Cherthala for realisation of the compensation. Suffice it to say that in the execution proceedings, the landed property of the petitioner, where the building was originally situated, was brought to sale and was sold for ₹3,00,000/- to the 4th respondent, when the

decree debt, according to the original tenant, was ₹2,74,950/-. Though at that stage, a compromise was attempted between the parties, that did not materialise.

(6)The landlord filed Ext.P8 application for setting aside the sale. But, pending that application, the sale was confirmed in favour of the 4th respondent, the purchaser, on 16.12.2013. Thereafter, the 4th respondent filed Ext.P9 application to get delivery of the property and the petitioner made Ext.P10 application seeking review of the order confirming the sale. He also made Ext.P11 application to amend Ext.P8 application filed with the prayer to set aside the sale. Exts.P8, P9, P10 and P11 applications are pending consideration of the execution court. It is at that stage, this original petition is filed by the landlord essentially for consideration of his applications pending before the execution court and for keeping delivery of the property in abeyance.

(7)When this original petition came up for consideration of this court on 4.3.2015, we heard learned counsel for the parties at length. Although it is true that there are technical grounds available to the Legal Representatives of the tenant and also to resist the original petition filed by the landlord, still, we found that substantial justice entitled the landlord for an order saving his property and that this was an appropriate case to invoke the powers of this

Court under Article 227 of the Constitution of India. This was on account of the fact that proviso to section 11(4)(iv) confer certain rights against evicted tenant to seek further directions from the court, meaning thereby the Rent Control Court, and against the building from which he is evicted. This, precisely, is what is recognised in Ext.P1 order, paragraph 7 of which has been extracted in the earlier part of this order.

(8) In so far as this case is concerned, facts reveal that the building has already been demolished and therefore, it is not available to be proceeded against in terms of the proviso. If so, execution could not have been initiated against the landed property of the defaulter landlord. Secondly, E.P.210/03 filed by the Legal Representatives of the tenant is before the Munsiff Court, Cherthala which is different from the court, viz., the Rent Control Court, mentioned in the proviso to section 11(4)(iv) of the Act. Further, we found that the technical default on the part of the landlord in proceeding with the construction occurred on account of the stop memo issued by the Panchayat and therefore, the landlord could not have been faulted for not completing the construction and attracting the penalty clause imposed by this Court in Ext.P1 order. Therefore, for all these reasons, the very execution petition launched prima facie was not maintainable and it is despite this that without noticing jurisdictional legal defects in the

proceedings, the matter was proceeded with, property has been sold and the sale has been confirmed.

(9) In such circumstances, we asked the counsel for the landlord willingness to discharge the liability due in terms of the execution petition and also to compensate the 4th respondent purchaser suitably. Counsel for the Decree holder was agreeable to accept payment of the amount claimed. But the counsel for the purchaser wanted to get instructions from his client. It is accordingly that the case is posted today.

(10) Today, we heard the learned counsel for the parties. Counsel have obtained instructions and all are agreeable to the course suggested by us.

(11) In the light of the above, as agreed by the parties, we pass the following orders;

(1) The petitioner will pay to respondents 1 to 3 an amount of ₹2,74,950/- by demand draft on or before 26.3.2015 and obtain proper acknowledgement.

(2) The petitioner will pay ₹1,00,000/- to the 4th respondent by demand draft on or before 27.3.2015, which shall be towards ₹18,000/- spent by him for stamp duty, ₹40,000/- as interest on deposit of ₹3,00,000/-, ₹10,000/- towards expenses

and the balance ₹32,000/- towards compensation.

(3) If payments are made as above, it would be open to the 4th respondent to apply and get ₹3,00,000/- deposited by him at the Munsiff Court, Cherthala, refunded.

(4) If the aforesaid directions are complied with, consequential orders will be passed by this Court on the next date of posting.

Post on 27.3.2015.

2. As ordered above, the case was called today and we heard the counsel for the petitioner, learned counsel appearing for respondents 1 to 3 and the counsel for the 4th respondent.

3. In so far as the three directions in the aforesaid order are concerned, the first one was that the petitioner should pay an amount of ₹2,74,950/- by Demand Draft to respondents 1 to 3 on or before 26.3.2015 and obtain proper acknowledgement. Today, counsel for the petitioner produced photocopy of the Demand Draft obtained from the State Bank of India,

Kalavoor Branch, dated 20.3.2015, for ₹2,74,950/-, in the name of respondents 1 to 3 and also receipt dated 23.3.2015 issued by the counsel for respondents 1 to 3. This, therefore, means that the first direction in the order has been complied with.

4. The second direction in the order was to pay an amount of ₹1,00,000/- to the 4th respondent. In so far as this direction is concerned, the counsel for the petitioner produced photocopy of the Demand Draft dated 20.3.2015, obtained from the State Bank of India, Kalavoor branch, in the name of the 4th respondent and receipt dated 23.3.2015 issued by the counsel, Adv.S.Sivaji, acknowledging receipt of the Demand Draft on behalf of the 4th respondent. In court, the counsel has also confirmed the receipt of the Demand Draft as above. Hence the second direction is also complied with by the petitioner.

5. Now that directions 1 and 2 have been complied with, the claim of the decree holder in E.P.210/13 on the file of the Munsiff Court, Cherthala has been satisfied and it is also open to the 4th respondent,

purchaser of the property, to apply for refund of ₹3,00,000/- deposited by him as ordered in direction No.3 in the above order.

6.In the light of the above, this original petition is disposed of setting aside the sale of the property of the petitioner in E.P.210/13 in RCP.34/90 on the file of the Munsiff Court, Cherthala, held on 16.12.2013, and it is ordered that with the payments thus made by the judgment debtor, the petitioner herein, the decree stands satisfied. The Munsiff Court, Cherthala will, on the production of a copy of this judgment, pass appropriate orders in the EP and will also issue necessary communication to the SRO, Mararikkulam for incorporating necessary changes in the records of that office.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

k kb.