

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

RCRev..No. 1 of 2014 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 130/2011 of II ADDL.DISTRICT COURT &
RENT CONTROL APPELLATE AUTHORITY, ERNAKULAM DATED 17-08-2013**

**AGAINST THE ORDER/JUDGMENT IN RCP 29/2010 of III ADDL MUNSIFF & RENT
CONTROL COURT, ERNAKULAM DATED 31-08-2011**

REVISION PETITIONER(S)/APPELLANTS/RESPONDENTS 1 & 2:

- 1. P.V.MOHANDAS
AGED 54 YEARS, S/O. LATE VELAYUDHAN, VAISHTALAYAM
OLD RAILWAY STATION ROAD, ERNAKULAM, KOCHI - 18.**
- 2. P.V. HARIDAS
AGED 64 YEARS, S/O. VELAYUDHAN, VAISHTALAYAM
OLD RAILWAY STATION ROAD, ERNAKULAM, KOCHI - 18.**

BY ADV. SRI.M.S.UNNIKRISHNAN

RESPONDENT(S)/RESPONDENTS/PETITIONER & R 2 TO R6:

- 1. P.M.JOSEPH
AGED 77 YEARS, S/O. MATHEW, POOTHULLIL HOUSE
THIRUNARAYANA AVENUE, OFF. NEW AVADI ROAD
KILPAUK GARDEN, CHENNAI - 600 010, TAMILNADU.**
- 2. LEELA
AGED 80 YEARS, W/O. LATE VELAYUDHAN, VAISHTALAYAM
OLD RAILWAY STATION ROAD, ERNAKULAM, KOCHI - 18.**
- 3. P.V. KALADHARAN
AGED 48 YEARS, S/O. LATE VELAYUDHAN, VAISHTALAYAM
OLD RAILWAY STATION ROAD, ERNAKULAM, KOCHI - 18.**
- 4. DR.P.V. UNNIKRISHNAN
AGED 46 YEARS, S/O. LATE VELAYUDHAN, VAISHTALAYAM
OLD RAILWAY STATION ROAD, ERNAKULAM, KOCHI - 18.**

5. P.V. RADHA

**AGED 44 YEARS, D/O. LATE VELAYUDHAN, VAISHTALAYAM
OLD RAILWAY STATION ROAD, ERNAKULAM
KOCHI - 18. (RESIDING AT KULANGARA HOUSE
VEDIPURA LANE, COLLECTORATE P.O., KOTTAYAM -2)**

**BY ADV. SRI.K.K.CHANDRAN PILLAI (SR.)
BY ADV. SRI.THOMAS JAMES MUNDACKAL
BY ADV. SMT.K.V.SHENU
BY ADV. SMT.S.AMBILY
BY ADV. SRI.ARUN ANTONY**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 10-03-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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R.C.R. No. 1 of 2014
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Dated this the 10th day of March, 2015

O R D E R

Antony Dominic, J.

The 1st respondent, the landlord of a building that was originally let out to the predecessor in interest of the petitioners and respondents 2 to 5, is now 84 years old. He filed the rent control petition seeking eviction of the tenants invoking ground under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 stating that he wants to shift his residence from Chennai, where he is now residing, to Kochi, where the tenanted building is situated. He filed RCP No.29/10 before the Rent Control Court, Ernakulam. The Rent Control Court by its order dated 31st of August, 2011 allowed the petition and that order of the Rent Control Court was confirmed by the Rent Control Appellate Authority, Ernakulam by dismissing RCA No.130/11. It is aggrieved by these orders, the tenants have filed this revision under Section 20 of the Act.

2. We heard the learned counsel for the petitioners and the learned senior counsel appearing for the 1st respondent landlord. The other respondents were represented by no counsel.

3. The 1st respondent is an Engineer by profession. He was employed in the Railways at Chennai. After retirement, he was practising as a Freelancing consultant in arbitration work and for that purpose, he settled down in Chennai where he has his own residential building, the first floor of which is occupied by his son and his family. As he grew old, he decided to shift his residence to Kochi where the tenanted premises is situated. According to him, the tenanted premises, which is now used as a godown for the storage of cement and steel, can be converted into a residential house. He therefore demanded surrender of vacant possession of the tenanted premises. On account of their refusal to do so, he filed the rent control petition urging ground under Section 11(3) of the Act which entitles the landlord to seek an order of eviction of the tenant if he *bona fide* needs the tenanted building for his occupation or the occupation of his dependents.

4. Before the Rent Control Court, the tenants, who are the legal heirs of the original tenant namely late Sri.P.C.Velayudhan, contested the petition by arguing that the need urged by the landlord is not a *bona fide* one. Though the tenants did not claim

the benefit of the provisos to Section 11(3) as such, the availability of two flats owned by the landlord was highlighted by them to question the *bona fides* of the claim made by the landlord that he wants to convert the tenanted building into a residential one and to occupy the same.

5. On an application made by the landlord, an Advocate Commissioner was appointed. The Advocate Commissioner inspected the tenanted premises and the other buildings owned by the tenants. Thereafter, report was submitted, which *inter alia* states that, on conversion, the building in question can be made use of as a residential one.

6. Before the Rent Control Court, landlord and the Advocate Commissioner were examined as PW1 and PW2. It is also seen that Exhibits A1 to A14 were marked on behalf of the landlord. As RW1, the 2nd respondent in the Rent Control Petition was examined and B1 was also marked. On conclusion of the trial, the Rent control Court by its order dated 31st of August, 2011 allowed the petition upholding the *bona fides* of the landlord and also in fact denying the benefit of the provisos to Section 11(3) to the tenants. It was this order, which was confirmed by the Rent

Control Appellate Authority by its judgment dated 17th of August, 2013 by dismissing RCA No.130/11.

7. Before us, the contention raised by the learned counsel for the petitioners was only that the claim of the landlord that he wants to occupy the building after converting the same into a residential one lacked *bona fides*.

8. Before we examine the contentions of the learned counsel for the petitioners, we must take note of the fact that admittedly tenants are using the building in question as a godown for storage of cement and steel. They do not dispute the fact that in the Market Road, Ernakulam, they have their business establishment, in a three storied building owned by them, a portion of which is also used by them for storage of steel, a commodity dealt with by them. The Commission report indicates that the area of the portion occupied by them is 156 m². It has also come out that the turnover of the firm, which is carrying on the business is ₹4 to ₹5 crores per month. It is also reported that within the same compound in another building with an area of 910 sq.ft, tenants are carrying another business in the name and style "Auto Diesel and Engineering Works". They also own yet

another commercial complex by name “Leela Complex” at Edappally-Vyttila bye pass road. This building is a two storied building and the ground floor itself has 14 shutters. Some of these rooms are already let out and the Commission report states that a board has been exhibited in this building indicting that rooms are available for letting out to tenants. We have only indicated the above to highlight the fact that, in this case, we are not dealing with tenants who are depending on the tenanted premises for their livelihood or that the tenants are persons without any other alternate accommodation available for themselves.

9. In so far as the bona fides of the landlord, which is questioned by the counsel for the tenants is concerned, this contention is raised on the basis that the landlord is an Engineer retired from the Railway service and that he is now 84 years old and is suffering from ailments including shivering. It is also stated that the landlord has a residential building of his own in Chennai and that the first floor of the building is occupied by his son, who is residing there with his family. Reference is also made to the evidence of the landlord that he wants to shift to Kochi for a peaceful life hereafter. It is stated that the building in question,

which is situated in a commercial area of Kochi cannot give him a peaceful life and that the landlord like the 1st respondent is not going to occupy the building in question. It is therefore contended that the bona fide need urged by the landlord is only a ruse to get the tenants evicted.

10. First of all, we must clarify that whether to shift his residence to Kochi or not to shift his residence to Kochi is a matter which is entirely within the discretion of the landlord. Therefore, irrespective of old age or poor health, if he has decided to shift his residence to Kochi, such decision of the landlord cannot be questioned as one lacking in bona fides. Therefore, the fact that the landlord is 84 years old or that his hands were shivering cannot in any manner dilute the bona fides of the need urged by the landlord.

11. It is true that his son is occupying the first floor of the building owned by him in Chennai. But however, it has come out in evidence that his son is a businessman with factories at Chennai and at Bellari in Karnataka. On the other hand, the landlord's daughter is staying in a compound adjacent to the tenanted premises and it has also come out in evidence that he

has several relatives in and around Kochi. It was on account of the comparative advantages that he has in Kochi that the landlord seems to have taken a decision to move over to Kochi. Therefore, on appreciation of the evidence that is available in this case, we are unable to find any lack of bona fides on the part of the landlord in deciding to shift his residence to Kochi.

12. Yet another aspect which is highlighted by the learned counsel for the petitioners/tenants to impugn the bona fide of the landlord is that he has two flats in Eliza apartments, constructed in a plot of land adjacent to the tenanted premises. It is true that the landlord owns two such apartments. One apartment is occupied by his daughter and another by another lady. The landlord has given his reasons for not opting to occupy these apartments. According to him, at this old age, he does not like to occupy anything other than a residential building and that too situated in the first and second floors of the apartment complex. He has also stated that he is interested in having a garden in the compound of the building. These reasons stated by the landlord can certainly be genuine and according to us, it is not for the tenants to dictate to the landlord that he should be contented with a flat in the first

or second floor of the apartment complex. We, therefore, do not agree with the counsel that the availability of the flat or the refusal of the landlord to occupy the flat indicates any lack of bona fides on his part.

13. One another aspect to which our attention was drawn by the counsel for the petitioners was that the landlord in his evidence has stated that he wants to come to Kochi for a peaceful living. According to the learned counsel for the petitioners, the building in question is situated in the old railway station road, which is a commercial area and the road in front, even according to the landlord, is a busy one. Therefore, it is stated that he will not have a peaceful living as desired by him. First of all, peaceful living is a relative concept. Going by the address in the petition, it is seen that the landlord is living in a commercially important place in Chennai. Therefore, as compared to that location, in his assessment, the old railway station road in Kochi could be a more peaceful area. Apart from that, we are also informed that the tenants themselves are residing in the very same road. Therefore, the tenants cannot now say that the tenanted premises is unfit for

a residential purpose or for peaceful living sought to be achieved by the landlord.

14. In such circumstances, we are unable to differ from the conclusions of the Rent Control Court or the appellate authority in this case. We, therefore, confirm the orders of eviction passed by the Rent Control Court and the appellate authority.

15. RCR is dismissed.

At this stage, learned counsel for the petitioners sought reasonable time to surrender vacant possession of the tenanted premises to the landlord. We heard the learned counsel for the landlord also on this request. While we do agree with the learned counsel for the petitioners that a reasonable time is required to shift their occupation to a new premises, we cannot agree with the reasons of the counsel that he should be given one year period especially when the tenants themselves are in possession of several commercial buildings and also taking into account the fact that the landlord is a 84 year old man who wants to settle down in his life. In such circumstances, considering all pros and cons, claims and counter claims, we allow the tenant six months' time to surrender vacant possession of the premises to the

landlord. This shall, however, be subject to the condition that the petitioners shall file an affidavit before the Rent Control Court/Execution Court unconditionally undertaking to surrender vacant possession of the building to the landlord on or before the expiry of the six months' period allowed by us and their continuing to pay the rent without default.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge