

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

RCRev..No. 5 of 2014 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 3/2009 of RENT CONTROL APPELLATE
AUTHORITY (ADDL. DISTRICT COURT), TIRUR DATED 30-08-2013**

**AGAINST THE ORDER/JUDGMENT IN RCP 14/2007 of MUNSIFF-MAGISTRATE COURT,
PONNANI DATED 20-12-2008**

REVISION PETITIONER(S)/APPELLANT/ RESPONDENT :

**C.KUMARAN, AGED 76 YEARS.,
S/O KARAPPAN, CHEMBRA HOUSE, ALAMKODE AMSON
PANTHAVOOR P.O, MALAPPURAM DISTRICT 679575**

BY ADV. SRI.P.RAMACHANDRAN

RESPONDENT(S)/RESPONDENT/ PETITIONER :

**K.V.MUHAMMED, AGED 73 YEARS
S/O KADAVILVALAPPIL HASSANKUTTY HAJI
KOLALOMBU AMSOM, AYILAKKAD DESOM, AYILAKKAD P.O
MALAPPURAM DISTRICT 679575**

**R1 BY ADV. SRI.K.RAMAKUMAR (SR.)
BY ADV. SRI.T.RAMPRASAD UNNI
BY ADV. SRI.S.M.PRASANTH
BY ADV. SRI.M.MANOJKUMAR (CHELAKKADAN)
BY ADV. SMT.ASHA BABU
BY ADV. SMT.AMMU CHARLES**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 23-02-
2015 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

RCR NO.5/14

APPENDIX

REV.PETITIONER'S EXHIBITS

ANNEXURE I: CERTIFIED COPY OF THE SALE DEED
NO.828/1989 OF SRO EDAPPAL.

ANNEXURE II: CERTIFIED COPY OF THE SALE DEED
NO.287/2007 OF SRO EDAPPAL.

ANNEXURE III: CERTIFIED COPY OF THE SALE DEED NO.288/07
OF SRO EDAPPAL.

//True Copy//

PA to Judge

Rp

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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R.C.R. No. 5 of 2014
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Dated this the 23rd day of February, 2015

O R D E R

Antony Dominic, J.

Heard the learned counsel for the petitioner and the learned senior counsel appearing for the respondent.

2. The respondent landlord filed RCP No.14/07 on the file of the Rent Control Court, Ponnani seeking eviction of the petitioner tenant under Section 11(2)(b) of the Kerala Buildings (Lease and Rent Control) Act. The Rent Control Court tried the case along with RCP Nos.12 and 13/07 filed by the same landlord against the other two tenants in the very same building. The Rent Control Court disposed of the cases by a common order rendered on 20th of December, 2008, ordering eviction as prayed for.

3. The petitioner herein challenged the order of eviction passed by the Rent Control Court before the Rent Control Appellate Authority, Tirur in RCA No.3/09. The appellate authority heard the said RCA along with RCA No. 2/09 filed against RCP No.12/07. The appellate authority by a common order rendered on 30th of August, 2013 dismissed the RCAs. It is in these circumstances, the petitioner

has filed this revision petition. We are told that, in the meanwhile, arrears of rent have been paid and the findings of the Rent Control Court under Section 11(2)(b) of the Act has been vacated.

4. In so far as the ground under Section 11(4)(iv) of the Act enabling the landlord to seek eviction of the tenant for reconstruction of the building is concerned, counsel for the revision petitioner states that Ext.A5 notice demanding vacant possession of the room was issued on behalf of the landlord on 26/11/2006. At that time, the landlord had owned 1 acre and 44 cents of land in R.S.No.236/2 of Alamcode Village and that the scheduled room and the building was situated in a portion of the said land. It is stated that subsequently and before the RCP was filed, by Annexure II sale deed No.287/2007 dated 18/1/07 of SRO Edappal, 42 cents of land was sold by the respondent landlord to Sri.Aboobacker Haji, his wife and his children. It is also stated that, on 18/1/2007 itself, the landlord executed document No.288/2007 of SRO Edappal, in favour of Sri.Aboobacker Haji, whereby, 39 cents and 54.5 cents were also sold. According to the learned counsel, going by the description of the property sold by Annexures II and III mentioned above, no more land is left with

the landlord to construct the building as claimed by him in the rent control petition. Therefore, according to the counsel, the ground under Section 11(4)(iv) is no longer available to the respondent landlord to seek eviction of the tenant.

5. However, on behalf of the respondent landlord, learned senior counsel points out that the fact that a portion of the property has been sold by the landlord does not in any manner dilute the *bona fides* of the need for reconstruction urged by the landlord in a rent control proceedings. It is stated that eviction sought is from the petition scheduled premises, which is the room let out to the petitioner. It is pointed out that even if the extent of the property covered by Annexures II and III are deducted from the total extent of 1 acre 44 cents held by the landlord, still, the landlord is left with more than 8 cents of property, which can easily accommodate a building, for the construction of which the landlord has obtained A6 and A7, plan and permit.

6. Learned senior counsel also brings to our notice evidence of PW1, the landlord, where he has conceded that a portion of the property has been sold but asserted that he is still left with about 10 cents of land. We also notice from the evidence

of PW1 that in cross examination not even a suggestion was put to the landlord by the counsel for the petitioner herein that the building proposed to be constructed by the landlord cannot be accommodated in the land, if any, that is still owned by the landlord. In such circumstances, we cannot straightaway accept the case of the tenant that the landlord is not left with any land to reconstruct the building as proposed by him.

7. At this point of time, learned counsel for the petitioner tenant submitted that the permit obtained by the landlord which is the requirement of Section 11(4)(iv) of the Act has expired on 23/6/11 and that therefore, in the absence of a valid building permit, the landlord cannot get delivery of the property. In support of this, he also relied on the judgments of this Court in **Jose v. Thomas** [1992 (1) KLT 158], **Chakolas Silk House v. A.S.Ismail Sait** [1999 (1) KLJ 116] and the Apex Court judgment in **Harrington House School v. S.M.Ispahani** (AIR 2002 SC 2268).

8. We agree with the learned counsel for the revision petitioner that possession of plan and permit is a requirement of Section 11(4)(iv) of the Act, under which eviction has been

ordered by the Rent Control Court. It is also true that going by A6, the building permit dated 24/6/2008, the period thereof has expired on 23/6/11. In such circumstances, we direct that the Execution Court will give delivery of the property only if the landlord produces a valid building permit enabling him to proceed with the construction of the building as proposed in the Rent Control Petition filed against the petitioner tenant.

Subject to the above, the RCR is disposed of.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge