

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 FEBRUARY 2015/8TH PHALGUNA, 1936

RCRev..No. 50 of 2014 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 28/2010 of RENT CONTROL APPELLATE
AUTHORITY OF THRISSUR DATED 05-09-2013**

**AGAINST THE ORDER/JUDGMENT IN RCP 24/2007 of RENT CONTROL COURT,,
KODUNGALLUR DATED 08-04-2010**

REVISION PETITIONER/1ST APPELLANT/1ST RESPONDENT:

**SULOCHANA
W/O. SAMBAJI SAIT, 'LAKSHMI NIVAS'
LOKAMALESWARAM VILLAGE AND DESOM, KODUNGALLUR TALUK
PIN-680664.**

**BY ADVS.SRI.M.P.MADHAVANKUTTY
SRI.GOKUL DAS V.V.H.**

**RESPONDENTS/1ST RESPONDENT & APPELLANTS 2 TO 4/PETITIONER &
RESPONDENTS 2 TO 4:**

- 1. MUHAMMED HASEEM
S/O. PADIYATH MANAPPATTU, ABDUL SALAM, ERIYAD VILLAGE
DESOM, KODUNGALLUR TALUK, PIN-680666.**
- 2. DHANANJAYAN
S/O. SAMBAJI SAIT, 'LAKSHMI NIVAS'
LOKAMALESWARAM VILLAGE AND DESOM, KODUNGALLUR TALUK
PIN-680664.**
- 3. MANOHARAN
S/O. SAMBAJI SAIT, 'LAKSHMI NIVAS'
LOKAMALESWARAM VILLAGE AND DESOM, KODUNGALLUR TALUK
PIN-680664.**
- 4. SREEDEVI
D/O. SAMBAJI SAIT, 'LAKSHMI NIVAS'
LOKAMALESWARAM VILLAGE AND DESOM, KODUNGALLUR TALUK
PIN-680664.**

**R1 BY ADV. SRI.T.KRISHNAN UNNI (SR.)
R1 BY ADV. SRI.SAJU.S.A
R1 BY ADV. SRI.K.C.KIRAN
R2,R3,R4 BY ADV. SRI.S.RANJIT KAIMAL**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 27-02-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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R.C.R. No. 50 of 2014
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Dated this the 27th day of February, 2015

O R D E R

Antony Dominic, J.

The first respondent/landlord filed RCP No.24/07 on the file of the Rent Control Court, Kodungallur seeking eviction of the petitioner and respondents 2 to 4 under Section 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act. That was allowed by order dated 8th of April, 2010. The petitioner and respondents 2 to 4 filed RCA No.28/10 before the Rent Control Appellate Authority, Thrissur. The appellate authority by its judgment dated 5/9/13 dismissed the appeal. It is in these circumstances, the petitioner has filed this revision.

2. We heard the learned counsel for the petitioner and considered the submissions made.

3. The case of the landlord is that the tenant, the petitioner herein, is occupying a room in his building, the area of which is 150 sq.ft and is conducting a jewellery shop. According to the landlord, who runs a restaurant by name "Diners Restaurant" in another portion of the building itself, in order to expand his business, he

wanted to reconstruct the building utilising the adjacent properties owned by his mother and cousin. His proposal is to occupy the ground floor of the newly constructed building. It was upholding this *bona fide* need urged by the landlord that eviction was ordered by the Rent Control Court and which was confirmed by the Appellate Authority as per the impugned orders.

4. Learned counsel for the petitioner points out that Ext.A6 is the permit and Ext.A6(a) is the plan of the proposed building approved by the Municipality, which were produced in the Rent Control Court and relied on by the landlord. It is stated that as per the permit and plan produced by the landlord, the building consists of a cellar area, ground floor and first floor, each with an area of 456.42m². According to the tenant, going by the case pleaded, the *bona fide* need of the landlord is to occupy only the ground floor of the building and to expand his restaurant business there. According to counsel, even if the said need is satisfied, the cellar portion and the first floor portion of the building is still free. It is stated that in such a case, the landlord should have pressed into service Section 11(4)(iv) at least in respect of the area in excess of his own requirements and the

tenant should have been conceded his right under the third proviso to section 11(4)(iv) for allotment of a room in the reconstructed building, subject to payment of fair rent. In support of this contention, learned counsel relied on the principles laid down by the Division Bench of this Court in **George Thomas v. T.N.Menon & Ors.** (2011 (1) KLT 266).

5. We have considered the submissions made.

6. It is a fact that in this case, the landlord has invoked Section 11(3) of the Act. Section 11(4)(iv) of the Act provides for eviction on the ground of reconstruction. If that section is pressed into service, the tenant who is evicted from the building on the ground of reconstruction is entitled to first option for allotment in the reconstructed building in terms of the third proviso to the said section. However, as we have stated above, in so far as this case is concerned, the ground that was pressed into service by the landlord is section 11(3) which recognises the entitlement of the landlord for eviction of the tenant from the building for his own occupation or for the occupation of his dependents.

7. The peculiarity of this case is that going by the case pleaded and argued before the Rent Control Court and the

appellate authority, the proposal of the landlord is to construct the building in terms of Ext.A6 building permit and Ext.A6(a) plan approved by the Municipality. The landlord did not have a case that either at present or in future, he will not be constructing the entire building. The landlord also did not have a case that no portion of the building, other than the ground floor, is owned by him and that other part of the building is not available for allotment to the tenant.

8. The plan shows that it consists of a cellar, ground floor and first floor and that the plinth area of each of these floors as indicated in the plan is 456.42 m². The need urged by the landlord is to expand his restaurant, known as 'Diners Restaurant' and to occupy the ground floor of the reconstructed building. Therefore, even if that need projected by the landlord is satisfied, there is still the cellar and the first floor vacant. In such a situation, going by the principles laid down by the Division Bench in the judgment referred to above, Section 11(3) cannot extend to the excess area and in respect of that part of the building. Otherwise, the statutory right of a tenant under the proviso to Section 11(4)(v) would be easily defeated in all such cases.

9. However, from the pleadings, evidence and the issues considered by the Rent Control Court and the appellate authority, we find that the case was not considered in this perspective. But, since, on the admitted facts and in the light of Exts.A6 and A6(a) and the need urged by the landlord, we do not think that the tenant should be denied the benefit of allotment of room in the reconstructed building, which can, in this case, be easily done, without affecting the need of the landlord. In such circumstances, we deem it appropriate that the above claim of the tenant should be considered by the Rent Control Court.

10. Therefore, while we confirm the finding of the Rent Control Court and the appellate authority under Section 11(2)(b) and 11(3), we remit the matter back to the Rent Control Court for passing orders on the claim of the tenant for allotment of room in the excess area in the building proposed to be constructed. The Rent Control Court will allow the parties to effect necessary amendments to the pleadings, frame additional issues and if necessary, allow the parties to adduce oral or documentary evidence. On that basis, finding will be rendered by the Rent Control Court. The orders of the Rent Control Court and the

appellate authority will stand set aside for the aforesaid limited purpose.

11. Parties are directed to appear before the Rent Control Court, Kodungallur on 25/3/15 and the Rent Control Court will dispose of the case, as expeditiously as possible, thereafter.

RCR is disposed of as above.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

The word 'owned' occurring in the last sentence of paragraph 7 of the final order dated 27/02/2015 in R.C.R.50/2014 is corrected and read as "proposed to be occupied" as per order dated 15/09/2015 in R.P.552/2015.

Sd/-
Registrar (Judicial)