

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

RCCRev..No. 53 of 2014 ()

AGAINST THE ORDER/JUDGMENT IN RCA 41/2012 of VI ADDL.DISTRICT COURT,
ERNAKULAM DATED 06-12-2013

AGAINST THE ORDER/JUDGMENT IN RCP 160/2010 of III ADDL.M.C.EKM (RENT
CONTROL) DATED 31-03-2012

REVISION PETITIONER(S)/RESPONDENT/PETITIONER:-:

K.MURALEEDHARAN NAIR, AGED 75 YEARS
S/O.KESAVA PANICKER, CHANIYIL PUTHEN MADAM
KULASEKHARAMANGALAM, VAIKOM.

BY ADVS.SRI.A.BALAGOPALAN
SRI.A.RAJAGOPALAN
SRI.M.S.IMTHIYAZ AHAMMED

RESPONDENT(S)/RESPONDENTS/APPELLANTS/RESPONDENTS:-:

1. UNION OF INDIA
REPRESENTED BY SENIOR SUPERINTENDENT
DEPARTMENT OF POSTS - INDIA
OFFICE OF THE SENIOR SUPERINTENDENT OF POSTS OFFICES
ERNAKULAM DIVISION, KOCHI - 682 011.

2. THE SENIOR SUPERINTENDENT,
DEPARTMENT OF POSTS - INDIA
OFFICE OF THE SENIOR SUPERINTENDENT OF POSTS OFFICES
ERNAKULAM DIVISION, KOCHI - 682 011.

R1 & 2 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
29-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JJ

K. SURENDRA MOHAN & MARY JOSEPH, JJ.

R.C.R. NO.53 OF 2014

Dated this the 29th June, 2015.

O R D E R

Surendra Mohan, J.

The landlord is in revision against the reversing judgment of the Rent Control Appellate Authority, Ernakulam in RCA 41/2012. The Rent Control Appellate Authority has by its judgment reversed the order of eviction granted by the Rent Control Court, Ernakulam in RCP 160/2010.

2. The landlord at the time of filing this revision was aged 75 years. The tenanted building is, according to the landlord, a residential one. The same is occupied by the respondents. The Panampilly Nagar Post Office is functioning in the said building. The landlord is suffering from a number of ailments. He is at present residing at a place called Kulasekharamangalam about 25 kms away from Ernakulam.

According to him, he requires periodic medical check ups and constant medical attention. For the convenience of his treatment at the Lourdes Hospital, Ernakulam he bonafide needs the building for his residence. He had filed the Rent Control Petition putting forward the said need. The respondents resisted the need that was put forward contending that it was only a ruse for eviction. It was also contended that as per the terms of the lease, they had an option for renewal, which they had exercised. The case of the landlord was that, the option had to be exercised at least three months before the expiry of the term of the lease. According to him, the tenants have not exercised their option within the said time limit that was stipulated.

3. The evidence in the case consists of Exts.A1 to A8 documents on the side of the landlord and the oral evidence of the petitioner as P.W.1. On the side of the tenants, Ext.B1 document was produced and R.Ws 1 and 2 were examined. Ext.C1 commission report was also marked. On a

consideration of the evidence on record, the Rent Control Court found that the landlord had succeeded in establishing the ground under Section 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965 (the 'Act' for short). Therefore, an order of eviction was granted. The aggrieved tenant challenged the order of the Rent Control Court before the Rent Control Appellate Authority, Ernakulam in RCA 41/2012. On a reappreciation of the evidence the Appellate Authority has reversed the findings of the Rent Control Court and has disallowed the claim of the landlord. It is against the said judgment of the Appellate Authority that this revision is filed.

4. According to Adv.A.Balagopalan who appears for the petitioner, the revision petitioner is a person who is now aged 77 years. Apart from the other ailments he was suffering from, he has developed a heart problem also. Exts.A3 to A5 documents are relied upon to point out that, he had undergone a major surgery under general anesthesia. The various ailments from which he suffers necessitates constant

medical attention and treatment. The follow up medical treatment is being done at the Lourdes Hospital, Ernakulam. For his convenience, it is necessary that he resides at Ernakulam. The above aspects have been missed by the Appellate Authority, according to the learned counsel. Therefore he seeks interference with the said judgment in revision.

5. The Assistant Solicitor General appears for the respondents. According to the learned counsel, the Post Office is functioning in the tenanted building. It is difficult to find suitable premises for shifting the same. It is also contended that, there are other hospitals near to the place of residence of the petitioner where also, he would be in a position to get proper medical attention. Therefore, it is not an absolute necessity that the petitioner should shift to Ernakulam for the purpose of proper health care. Since he has not established that his need was imminent, according to the learned counsel the Appellate Authority was justified in

setting aside the order of eviction. Therefore it is contended that no interference with the judgment of the Appellate Authority is called for.

6. Heard. We have gone through Exts.A3 to A5, the medical records relating to the treatment of the petitioner. Ext.A3 shows that the petitioner had been admitted to the Fortis Hospital, Bangalore on 15.6.2010 and that he was treated as an inpatient there for ulcers on his left leg. Ext.A3 shows that he had been initially treated at some other nursing homes and had been referred to the Fortis Hospital for specialised treatment. The said record shows that he has a history of Hypertension for 20 years. He has also been described as a case of Chronic Renal Insufficiency. He had undergone a surgical procedure on general anesthesia on 16.6.2010. He is seen to have been discharged with directions for further follow up treatment. Ext.A4 is another discharge summary issued from the Fortis hospital. It shows that he had been under treatment as an inpatient from

4.8.2010 to 12.8.2010. The said document shows that he has a Pancreatic Mass with Renal Dysfunction , a history of Hypertension, apart from Bronchial Asthma. He had been admitted to the hospital with complaints of Renal Dysfunction. He is seen to have undergone a further surgical procedure. Ext.A5 is the discharge summary issued by the Lourdes Hospital, Ernakulam. He appears to have been admitted to the hospital with fever, cough, breathing difficulty, ulcer over left leg, swelling over left leg, etc.

7. It is clear from a perusal of the medical records of the petitioner referred to above that apart from his age, he is a person who is suffering from various ailments. Therefore, his case that he requires constant medical attention and treatment is fully justified. The Appellate Authority does not seem to have properly taken note of the medical condition of the petitioner. It is stated by the Appellate Authority that there is no reference to a major surgery in any of the medical records produced. It is elementary that any surgery

undertaken under general anesthesia is a major surgery. Whatever might have been the surgical procedure that was performed on the petitioner, we notice that on two occasions he has undergone such procedure under general anesthesia. The indication is unmistakable that the surgery was a major one. It has been further stated by the Appellate Authority that there is no evidence as to whether he had ever visited a doctor after Ext.A4. It cannot be presumed that a person who is suffering from so many diverse health conditions would not have visited a doctor after Ext.A4. Since Ext.A5 shows that he had been under treatment at the Lourdes hospital his desire to continue his treatment at the said hospital, is only natural. Therefore we find that the need put forward by the petitioner is bonafide, as found by the Rent Control Court.

8. With respect to the contention of the learned Assistant Solicitor General of India that he could obtain medical treatment at some place close to his house, our answer is only that it is for the landlord to decide where he

would prefer to have his ailments treated. Since the petitioner is found to be suffering from so many ailments, he cannot be found fault with for wanting his treatment to be done at the Lourdes hospital. Ext.A5 shows that he had earlier been treated there. There is absolutely no evidence or circumstances to warrant a conclusion that the need put forward is a ruse for eviction, as contended.

9. For the foregoing reasons, the judgment of the Appellate Authority is held to be unsustainable. The same is accordingly set aside and the order of eviction granted by the Rent Control Court is restored.

10. The learned Assistant Solicitor General as a last submission, sought for the grant of some time to surrender to vacant possession of the premise. According to the learned counsel, though advertisements had been made inviting tenders from prospective landlords they have not been able to find any suitable premises to shift. According to the counsel, they require a sufficiently long period of time to vacate the

premises. We notice that this Rent Control Petition was filed in the year 2010. Already five years have elapsed. It is only appropriate that the respondents identify a suitable building and shift, without further delay. However, we feel that it is necessary to grant time up to 31.12.2015, to do so.

In the result, this RCR is ordered as follows:

i) This revision is allowed. The judgment of the Appellate Authority is set aside. The order of eviction granted by the Rent Control Court in RCP 160/2010 is restored.

ii) The tenants are granted time up to 31.12.2015 to surrender vacant possession of the premises to the landlord on condition that they pay rent without any delay or default to the landlord upto the date on which they surrender vacant possession of the premises. In order to avail the benefit of the time granted to surrender vacant possession of the premises the Senior Superintendent of Post Offices, Ernakulam Division shall file an affidavit before the Rent Control Court,

Ernakulam in RCP 160/2010 undertaking to vacate the premises on the said date within a period of two weeks of the date of receipt of a copy of this order.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
MARY JOSEPH
Judge

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/True copy/

