

IN THE HIGH COURT OF KERALAAT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

RCRev..No. 167 of 2014 ()

AGAINST THE JUDGMENT IN RCA 60/2011 of I ADDL.DISTRICT COURT (RENT
CONTROL APPELLATE AUTHORITY) PALAKKAD DATED 31-01-2014

AGAINST THE ORDER IN RCP 94/2010 of PRL.MUNSIFF COURT (RENT CONTROL
COURT) PALAKKAD DATED 27.8.2011

REVISION PETITIONER(S)/RESPONDENT:

SENIOR SUPERINTENDENT OF POST OFFICES
PALAKKAD DIVISION, PALAKKAD.

BY ADV. SRI.S.KRISHNAMOORTHY, CGC

RESPONDENT(S)/APPELLANT/PETITIONER:

V.M.RADHAKRISHNAN, AGED 52 YEARS
S/O.VELAYUDHAN NAIR, SURYA TOWERS
KUNNATHURMEDU PALAKKAD, RESIDING AT NINETTITA
DPO ROAD, PALAKKAD - 678014.

R1 BY ADV. SRI.T.KRISHNAN UNNI (SR.)
R1 BY ADV. SRI.BINOY VASUDEVAN
R1 BY ADV. SMT.P.G.BABITHA

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
25-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

R.C.R.No.167 of 2014

Dated this the 25th day of February, 2015

O R D E R

Antony Dominic, J.

1. Heard the learned counsel for the petitioner tenant and the learned senior counsel appearing for the respondent landlord.
2. The respondent filed RCP.94/10 on the file of the Rent Control Court, Palakkad seeking eviction of the petitioner under sections 11(3) and 11(8) of the Kerala Buildings (Lease & Rent Control) Act, 1965. The Rent Control Court, by its order dated 27.8.2011, dismissed the petition. That order was challenged by the landlord in RCA.60/11 on the file of the Rent Control Appellate Authority, Palakkad. The appellate authority, by its judgment dated 31.1.2014, confirmed the findings of the Rent Control Court in so far as section 11(3) is concerned. As regards section 11(8) pressed into service, the appellate authority found that the landlord was entitled to eviction under that section. The appellate authority further held that the tenant was not eligible for the benefit of the

first proviso to section 11(10) which provides that the landlord shall not be granted eviction under section 11(8) if the court is satisfied that the hardship which may be caused to the tenant by granting eviction will outweigh the advantage to the landlord. It is in these circumstances, the tenant has filed this revision.

3. Before us, learned counsel for the petitioner contended that the finding of the appellate authority that the tenant is not eligible for the benefit of the first proviso to section 11(10) is illegal. According to the tenant, despite their best efforts as explained in the objection and in the proof affidavit, the petitioner was unable to find out a building to shift the Post Office and that the Post Office being an essential service, should be allowed the benefit of the said proviso.

4. However, from the objections filed before the Rent Control Court, we find that the benefit of the proviso now pressed into service by the counsel was

not claimed there by the petitioner. This was conceded in the cross examination of RW1 before the Rent Control Court also. In the absence of such a plea or evidence attracting the first proviso to section 11(10), the tenant could not have now claimed the benefit of the proviso. Therefore, the landlord was entitled to an order of eviction under section 11(8). Further the difficulty in finding out a building cannot, by itself, attract the proviso also.

5. That apart, from the pleadings, we also notice that even according to the tenant, the lease expired in 2007 and on account of their inability to find a new place to shift the Post Office, they requested the landlord for renewal of the lease by another five years and that the said request of the tenant was not accepted. This, therefore, means that even if the request made for renewal was accepted by the landlord, the extended period would also have expired in 2012. This also means that the tenant cannot hold on to the premises even at this distance of time.

6. At this stage, counsel for the petitioner sought for a reasonable time to surrender vacant possession to the landlord. On that request, we heard the learned senior counsel for the landlord also. Considering the submissions made by both sides and also taking into account the fact that the premises in question is being used for a Post Office and that considerable time would be needed to locate a new premises and shift the establishment, we feel that a reasonable time should be given to the tenant as otherwise, functioning of a Post Office, which is a service essential to the society, would be affected. Therefore, we allow the tenant a period of two years from today to surrender vacant possession of the premises in question to the landlord. This shall however be subject to the condition that within 4 weeks from today, the petitioner shall file an affidavit before the Rent Control Court, unconditionally undertaking to surrender vacant possession of the building to the landlord on the expiry of the two year period allowed to it. The tenant should also have to pay rent at the agreed

rates during this period without any default.

Subject to the above, this revision is dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

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/True copy/

PS to Judge