

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

RCRev..No. 257 of 2014 ()

AGAINST THE JUDGMENT IN RCA 25/2011 of RENT CONTROL APPELLATE
AUTHORITY-I, THALASSERY DATED 10-07-2014

AGAINST THE ORDER IN RCP 7/2010 of RENT CONTROL COURT, KANNUR
DATED 26-10-2010

REVISION PETITIONER/RESPONDENT/PETITIONER:

M.K. AYISUMMA AGED 67 YEARS
D/O. ALIPPIKEYI HAJI, RESIDING AT 'AHIYANA'
NEAR S.N. COLLEGE, THOTTADA, KANNUR - 7.

BY ADVS. SRI. K. R. AVINASH (KUNNATH)
SRI. ABDUL RAOOF PALLIPATH

RESPONDENT/APPELLANT/RESPONDENT:

MAVIDACHAL HAJIRA, AGED 73 YEARS
W/O. HASSAINAR, BUILDING NO. MK 60
NEAR KOLLARAKKALPALLI, P.O. KANNUR CITY, KANNUR - 3.

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 30-07-2015, ALONG WITH RCR. 259/2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

AV

**K.SURENDRA MOHAN
&
MARY JOSEPH, JJ.**

R.C.R.Nos.257 & 259 of 2014

Dated this the 30th day of July, 2015

ORDER

K.Surendra Mohan, J.

Both these revisions are filed challenging the common judgment of the Rent Control Appellate Authority, Thalassery allowing Rent Control Appeal Nos.24/2011 and 25/2011. Both the appeals were filed by the tenants in R.C.P.Nos.5/2010 and 7/2010 of the Rent Control Court, Kannur.

2. The revision petitioner landlady had filed R.C.P.Nos.5/2010 and 7/2010 seeking eviction of the tenants in occupation of two different premises alleging grounds under Section 11(2)(b), Section 11(3) and Section 11(4)(ii) of the Kerala Building (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act' for short). The landlady alleged that, the rent was kept in arrears by both the tenants and that, they had converted the premises into residential accommodation thereby attracting Section 11(4)(ii) of the Act. Both the premises form part of a residential line building. The tenants are residing in their respective portions with their families. The need put forth under Section 11(3) was that, the landlady who was conducting a business in the manufacture of pickles and jams wanted to expand her business by starting a branch from the

tenanted premises. It was also stated in the Rent Control Petition that, though she had obtained orders of eviction in respect of two other rooms, the said rooms were required for her to stock the raw materials required for her business as well as her finished products. The Rent Control Petition was resisted by the tenants in both the petitions. The tenants contended that, the landlady was not conducting any business in pickles and jams as alleged and that, the need was put forward only as a protest for obtaining an order of eviction. According to the tenants, they have been in occupation of the respective premises from the year 1962 onwards. The tenant in R.C.P.No.7/2010 had a further contention that, he was the owner of the open space that was available behind the tenanted premises and that, his eviction from the tenanted premises would leave him with no means of access to his property. However, the above contention appears to have been ignored by both the authorities below.

3. Both parties adduced evidence in support of their respective contentions. The Rent Control Petitions were both tried together, treating R.C.P.No.5/2010 as the leading case. The evidence on the side of the landlady consists of Exts.A1 to A18 documents and her oral testimony as PW1. The evidence on the side of the tenants consists of Exts.B1 to B12 documents and the oral evidence of the respective tenants as RW1 and RW2. Ext.C1

Commission Report and Ext.C2 sketch have been marked as Court exhibits.

4. The Rent Control Court considered the respective contentions of the landlady and the tenants, in the light of the evidence available on record and found that, the landlady had not succeeded in making out the ground under Section 11(4)(ii) of the Act. However, the Rent Control Court found that, there was arrears of rent and that, the landlady had succeeded in establishing the ground under Section 11(3) of the Act. Therefore, an order of eviction was granted. Both the tenants challenged the order of eviction of the Rent Control Court in R.C.A.Nos.24/2011 and 25/2011. The appeals were considered by the Rent Control Appellate Authority, the evidence was appreciated afresh and it was found that, the order of eviction granted by the Rent Control Court under Section 11(3) was unsustainable. Therefore, the same has been set aside. In the meanwhile, the tenants had paid off the arrears of rent that was remaining unpaid and therefore, the ground under Section 11(2)(b) did not survive. In view of the above, the only question to be considered is whether the Rent Control Appellate Authority was right in reversing and setting aside the order of eviction granted by the Rent Control Court.

5. According to Adv.Sri.Abdul Raoof.P who appears for the revision petitioner landlady, the Appellate Authority had seriously

gone wrong in upsetting the order of eviction granted by the Rent Control Court. The case pleaded by the landlady was that, she had been conducting a business in pickles and jams right from the year 1977 onwards. She had also produced documentary evidence in support of her contentions. According to the learned counsel, what the Appellate Authority had to consider was whether the need that was put forward by the landlady was *bonafide* or not. If the intention to start the business is found to be *bonafide*, then eviction has to be ordered on the said ground. Previous experience in conducting a business is not necessary for starting a business. The landlady had produced the documents in her possession only because of the fact that, she had been conducting her business from 1977 onwards. The Appellate Authority has found that, though there were documents to show that she had been conducting the business from 1977 onwards, there was no evidence to show that, she had been conducting the business at the time of filing of the Rent Control Petition, the crucial year being 2009. The learned counsel draws our attention to Ext.A18 document, a certificate issued by the local authority, which is to the effect that, the landlady's license had been renewed for the said year also. Therefore, according to the learned counsel, the said finding rendered, without taking into account one of the documents that is already part of the record, is unsustainable and liable to be set

aside. It has been further found by the Appellate Authority that, the landlady had already got orders of eviction in respect of two other shop rooms. There was no evidence regarding the dimensions of the said shop rooms or the suitability thereof for satisfying the need that has been put forward in the present case. In the absence of specific evidence regarding the said aspects, according to the Appellate Authority, no eviction under Section 11(3) could be granted. The contention of the learned counsel for the landlady is that, the fact that orders of eviction had been obtained in respect of two other shop rooms had been disclosed in the Rent Control Petition itself. It has also been pleaded that, the said rooms were required by the landlady for storing her raw materials and finished products. For the above reasons, it is contended that, the said finding is also unsustainable.

6. Learned Senior Counsel Sri.Grashious Kuriakose who appears for the tenant in R.C.R.No.259/2014 seriously disputes the contentions of the learned counsel for the landlady. According to the learned Senior Counsel, Ext.A18 document on which the counsel for the landlady wants this Court to place reliance, is not a document that has been properly proved by examining the person who had issued the same. Therefore, there is no proof regarding the contents of the said document. Apparently for the above reason, it is pointed out that, neither the Rent Control Court nor the

Appellate Authority has adverted to the same in any detail. It is the contention of the learned Senior Counsel that, the premises have been in occupation of the tenant from the year 1962 onwards. The premises are very small and are not suitable for the business that is contemplated by the landlady. It is further pointed out that, the tenant in R.C.P.No.7/2010 is the owner of the vacant property that lies behind the tenanted premises. Therefore, dispossession of the tenant from the premises occupied by him would leave him with no means of access to his property behind. According to the learned Senior Counsel, the landlady has failed in proving that she had been conducting her business continuously from 1977 onwards. Though she has stated when examined as PW1 that there were other documents to evidence that the business had been functioning, no document has been produced. The learned Senior Counsel also takes objection to the fact that, Ext.A18 had been marked, after the evidence was closed in both the cases. The said document was marked after reopening the evidence. It is contended by the learned Senior Counsel that, the Appellate Authority has considered all the contentions in the proper perspective and that, no interference therewith is called for in revision.

7. Heard. We have been taken through the records of the case in detail. A perusal of the Rent Control Petition shows that, the landlady had pleaded in paragraph 3 of her petition that, she had

already obtained orders of eviction in respect of two other shop rooms, but that, the said shop rooms were required by her for storing the raw materials of her business as well as her finished products. We find from the counter statement filed by the tenants that, there is no specific denial of the above statement, therein. Therefore, there was no further burden on the landlady to have adduced evidence regarding the dimensions of the said shop rooms or to have let in evidence to show that, the said shop rooms were insufficient for the need that has been put forward by her in the Rent Control Petitions. We notice that, even assuming that she was in vacant possession of the shop rooms, the special reasons put forward by her in the Rent Control Petitions have not been denied by the tenants. The evidence in these cases is to the effect that, though she has obtained orders of eviction in respect of the said shop rooms, she has not obtained vacant possession of the said rooms. Therefore, in the absence of possession, the first proviso to Section 11(3) is also not attracted. The above being the position, we find that the observations and findings of the appellate authority on the above aspect are without any basis. They are therefore, unsustainable.

8. On the question as to the *bonafide* need that was put forward by the landlady, the documents produced by her show that she had been conducting business in pickles and jams, for a long

period of time. Exts.A10 to A18 documents relate to the business that is being conducted by her. It is true that, documents to show that she had been conducting the business continuously since 1977, are not available. However, no evidence to show that, she had stopped the business at any time is also not available on record. She is conducting her business, as evidenced from the records, within Edakkad Grama Panchayath. She has produced the licences of her business as well as documents like labels, invoices, delivery notices, etc. Copies of licence fee receipts for the year 1997 are also produced. She has spoken to her case when examined as PW1. Though she has been cross examined at length, as rightly found by the Rent Control Court, nothing has been brought out to discredit her testimony or to cast a shadow of doubt on the need that has been put forward. Therefore, the Rent Control Court has found on an overall examination of the entire evidence both documentary and oral available in the case, that the need that was put forward by the landlady was *bonafide*.

9. The Appellate Authority has upset the above finding on the ground that, the landlady had not produced the licence in respect of her business for the year 2009, during which year the Rent Control Petitions were filed. Ext.A10 is dated 10.08.2010. The above finding cannot be sustained in view of Ext.A18 certificate issued by the Secretary of Edakkad Grama Panchayath to the effect that, the

petitioner had been issued with a valid licence for the year 2009. The evidentiary value, as already noticed the above, has been seriously questioned by the learned Senior Counsel who appears for the tenant. It is true that, the Secretary who had issued Ext.A18 has not been examined in the present case. But what is clear from a perusal of the records of the case is that, Ext.A18 had been produced on 13.10.2010, after the evidence in the cases had been closed. Thereafter, the evidence appears to have been reopened and Ext.A18 is seen to have been marked, "on consent". It is clear from the above that, there was no dispute regarding the admissibility or the evidentiary value of Ext.A18, at the time when it was marked by the Rent Control Court. Had the marking of the said document been objected to, the contentions of the learned Senior Counsel would have been germane. Since the document was marked on consent, the present contention that, the said document should not be relied upon, is untenable. Therefore, the said contention is also liable to be rejected. We do so.

10. The result of the above discussion is that, there is sufficient evidence available to show that, the need that has been put forward by the landlady is genuine and *bonafide*. Exts.A10 to A18 documents show that, she had been conducting a business in pickles and jams at Edakkad Grama Panchayath, as contended by her at least during 2009-10. The other documents as well as her

oral evidence show that, she is a person who had been conducting the business for a long period of time in the past. Therefore, her aim to start a new branch of her business from the tenanted premises, cannot be found fault with. Since the Appellate Authority has set aside the findings of the Rent Control Court without considering the effect of Ext.A18 document, the said finding is unsustainable and liable to be set aside.

11. The learned Senior Counsel for the tenant has put forward a grievance that, the vacant land lying behind the tenanted shop room belongs to the tenant in RCP.No.7/2010 and that, the tenant would be left with no means of access to the said property, if he is evicted. However, we find from a perusal of the order of the Rent Control Court as well as the judgment of the Appellate Authority that, no such contention had been raised before the said authorities. It is true that, the tenant has raised such a contention in his counter statement to the Rent Control Petition. He has also testified to the said fact when he was examined as a witness. However, there is absolutely no documentary evidence produced to show that the tenant had any rights over the vacant property. When PW1 was examined as a witness, she was questioned on the above aspect. What she has stated is that, the vacant land behind the tenanted premises belongs to her. To a pointed question as to whether the space beyond the land owned by her was not that of the tenant, she

had pleaded ignorance. Therefore, there is absolutely no evidence to show that, the tenant has any rights in respect of any vacant land lying behind the tenanted premises. Apart from the above, the said contention does not arise in the Rent Control Petition where the questions that arise for consideration are totally different. The rights, if any, that the tenant may have in respect of the other vacant property would have to be adjudicated before the appropriate Civil Court in a properly framed civil suit. Therefore, we are not satisfied that, the said contention has any relevance in so far as the issues in these revisions are concerned.

For the above reasons it is ordered as follows :

- (1) These revision petitions are allowed.
- (2) The common judgment dated 10.07.2014 of the Rent Control Appellate Authority, Thalassery in Rent Control Appeal Nos.24/2010 and 25/2010 are set aside.
- (3) The common order dated 26.10.2010 of the Rent Control Court in R.C.P.Nos.5/2010 and 7/2010 is restored.

Sd/-

K.SURENDRA MOHAN, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AV

/True Copy/

P.A to Judge