

Antony Parapilly vs Dr. Thomas Kalliath

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Court : Kerala

Decided On : Jun-08-2023

Judge : Honourable Dr. Justice a.K.Jayasankaran Nambiar,Honourable Mr.Justice Mohammed Nias C.P.

Appeal No. : RCRev./96/2023

Appellant : Antony Parapilly

Respondent : Dr. Thomas Kalliath

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR & THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P. THURSDAY, THE 8TH DAY OF JUNE 2023 / 18TH JYAISHTA, 1945 RCREV. NO. 96 OF 2023 AGAINST THE ORDER/JUDGMENT IN RCA 13/2011 OF ADDITIONAL DISTRICT COURT, THRISSUR RCP 87/2006 OF PRINCIPAL MUNSIF COURT,THRISSUR REVISION PETITIONER/APPELLANT/4TH RESPONDENT: ANTONY PARAPILLY S/O.KOCHANTONY, PARAPILLY HOUSE, HOUSE NO. 27/35, STANLEY COMMERCIAL INSTITUTE, CHEMBUKAVU, THRISSUR-20 BY ADVS. JOSE THOMAS (PALA) SHAJI THOMAS PORKKATTIL

MATHAI M PAIKADAY(SR.)(M-130) RESPONDENT/PETITIONER:

1 DR. THOMAS KALLIATH KALLIATH HOUSE, MISSION QUARTERS, THRISSUR VILLAGE, THRISSUR TALUK. REP. BY POWER HOLDER GEORGE KALLIATH, S/O.LATE JACOB KALLIATH, KALLIATH HOUSE, GANDHI NAGAR, CHEROOR ROAD, PEINGAVU DESOM, CHEMBUKAVU VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT, PIN - 680020 2 WILLIAMS PARAPILLY, S/O.KOCHANTHONY, PARAPILLY HOUSE, HOUSE NO. 27/35, STANLEY COMMERCIAL INSTITUTE, CHEMBUKAVU, THRISSUR - 20, THRISSUR TALUK, THRISSUR DISTRICT, PIN - 680020 3 STANLEY PARAPILLY, S/O.KOCHANTHONY, PARAPILLY HOUSE, HOUSE NO. 27/35, STANLEY COMMERCIAL INSTITUTE, CHEMBUKAVU, THRISSUR - 20,

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 05.06.2023, THE COURT ON 08.06.2023 DELIVERED THE FOLLOWING: A.K. JAYASANKARAN NAMBIAR & MOHAMMED NIAS C.P., JJ Dated this the 8th day of June, 2023

ORDER

Mohammed Nias.C.P.J This revision is filed challenging the order in RCA No.13 of 2011 on the files of the Rent Control Appellate Authority III, Thrissur, which affirmed the fixing of fair rent by order dated 20.8.2010 in RCP No.87 of 2006 of the Rent Control Court, Thrissur.

2. The revision petitioner is the tenant/4th respondent in RCP No.87 of 2006, which was one instituted by the first respondent herein-the landlord under Section 5(i) of the Kerala Building (Lease and Rent Control)Act

(hereinafter referred to as 'the Act'). The landlord contended that the petition schedule room was taken on lease by one Baby Antony, the wife of respondent

No.1 in the rent control petition from Jacob Kalliath, the father of the petitioner as per a rent deed dated 1.7.1962 for a monthly rent of Rs.55/- excluding electricity charges. The original tenant died and after her death, the respondents are in occupation as legal heirs. Earlier, fair rent was fixed at Rs.1156/- with effect from 1.8.1997, in proceedings initiated by the landlord that reached upto this Court. The landlord contends that the petition schedule property is situated in 4 cents in building No.27/35 of Thrissur Corporation and that the respondents would be earning an income of Rs.1,00,000/- from the business carried on in the property. The building is situated in a very important commercial centre in Thrissur town, where the prevailing rent is up to Rs.40/- per Sq.ft. The tenant is occupying a building having a plinth area of 750 Sq.ft., which according to the landlord will fetch a monthly rent of Rs.30,000/-. It is also contended that there are several commercial centres like Kalyan Silks, Josco Jewellers, Biju and Co., Paint shop, Fashion Paints, and Pulimoottil textiles, etc situated adjacent to the building in question. The Thrissur Municipal North bus stand is also in the vicinity of the building. Apart from all these Bhima Jewellers, Joy Alukkas Jewellery, etc. have come up in the area.

3. The 4th respondent in the rent control petition alone filed a counter

contending that there is no ground for enhancing the rent fixed and that the building is in a by-lane which is narrow. It is also their contention that the building was taken for starting a typewriting institute. The landlord never effected periodical affairs and therefore the tenant had to do it using their funds.

4. Before the trial court on the side of the petitioner PW1 and PW2 were examined and Exts.A1 to A6 were marked and on the side of the respondents the 4th respondent was examined as RW1 and no exhibits were produced.

5. The trial court found that the lease was in the year 1962 fixing a monthly rent of Rs.55/- and later fair rent was fixed at Rs.1156/- as per A6

order of the Rent Control Court dated 12.4.1991. Though the said order was

set aside by appellate authority as per Ext.A8, the High Court as per A9

order dated 10.02.2004 set aside the appellate order and restored the order

of the Rent Control Court. The trial court relying on the judgment in Edger Ferus v. Abraham Ittycheria [2004 (1) KLT 767 (DB)] that stated the principles for fixing the fair rent including the prevailing rent in the locality for similar accommodation, found that the respondent is also running a commercial institute and that there were several important commercial enterprises including jewellerys, Thrissur Sahithya Academy, Thrissur Town Hall, Ramanilayam Public Library, Mini Civil Stationetc. situated in the area and the Swaraj round is situated just 75 meters from the petitioner schedule building. Thus taking into account the locational advantage and considering the evidence of PW1 as well as PW2, who was the owner of the YMCA building and office, who had let out a portion of their building for rent to

Josco Jewellers on 28.5.2005. The said building measuring 2550 Sq.ft building on the first floor was let out for Rs.2,65,000/- per month apart from 10% increase in the rent. The fair value fixed by the Government for the area in question is Rs.14,00,000/- per cent. Thus, after meticulous consideration of the evidence available both oral and documentary, and taking into account the depreciation of the building, the trial court found that it was just and reasonable to hold that the petition scheduled building would have got a rent of Rs.6,000/- per month as on the date of the petition and accordingly, they fixed the fair rent of the petition schedule building as Rs.6000/-. Accordingly, the petition was allowed declaring that the fair rent of the petition schedule building id Rs.6000/- per month with effect from 1.6.2010 onwards and Rs.6600/- with effect from 1.8.2008 onwards which shall stand enhanced to Rs.7260/- on 1.10.2010 and then by enhancement by 10% in every two years thereafter.

6. Aggrieved by the order of the Rent Control Court, the 4th

respondent in the rent control petition preferred an appeal. The appellate court also discussed the evidence adduced in the case and also the locational

advantage of the building and relied on the judgment in Edger Ferus (supra) and the directions therein as well as the judgment in K.S.Khader Pillai v. Govan Travels [2014 (4) KLT 593] found that several buildings of commercial importance are situated in the locality and that the evidence of both PW1 and RW1 suggests that the petition schedule building is situated in a prominent location and in a commercially important area. The appellate court also took judicial notice of the inflation, reduction in purchasing power of money, and the variations in the cost of living index in the area and dismissed the appeal affirming the order of the trial court.

7. Before us, in revision challenging the orders of the courts below,

the learned senior counsel Sri.Mathai M. Paikkadey instructed by Sri. Shaji Thomas submits that both authorities had erred in fixing a fair rent several times higher than the fair rent fixed earlier. Learned senior counsel further contends that the authorities below did not take into account the fact that the petition schedule building is an old tiled one and that no repairs were ever carried out by the landlord and the tenant had to spend money for the repairs. It is also his submission that the fixation is completely contrary to Section 5(2) of the Act which mandates the fixing of fair rent reckoning the annual letting value. It is the submission that in the absence of any such

records, the courts below erred in fixing a fair rent of Rs.6000/- per month as on the date of the petition. He also argued that though the building is situated near Swaraj Round and several business establishments are adjacent to the petition schedule building, since the petition schedule building is situated in a by-lane, the same standards should not be adopted while fixing the fair rent comparing the commercial establishments situated on the roadside.

8. Having heard the learned senior counsel for the petitioner and

perusing the available records, we are not in a position to accept the arguments made by the learned senior counsel for multiple reasons. Firstly, the reliance on Section 5(2) of the Act is completely misplaced as by the

**judgment in Issac Ninan v. State of Kerala [1995(2) KLT 848].
Sections 5,**

6, and 8 of the Act were declared ultra vires the Constitution of India and

**held to be void and violative of Articles 14 and 19(1)(g) of the
Constitution of**

India. Later, reviewing the said judgment in Edger Ferus (supra), the Division Bench restored Section 5(1) alone in the Act and also laid down certain principles for fixing the fair rent under Section 5(1) of the Act. Around 16 principles were enunciated in the said judgment which included a direction to take note of the inflation and the resultant reduction in the purchasing power of money, variations in the cost of living index in the area since the commencement of the lease, demand for accommodation and availability of the buildings in the locality, the capital value of the entire premises in the enjoyment of the tenant inclusive of the value of the land under the actual enjoyment of the tenant whether immediately appurtenant to the building or otherwise and other advantages and amenities such as access to places of public importance like bus stand, railway station, educational institution, hospital, etc. and also the prevailing rent in the locality for a similar accommodation. Of course, the annual rental value of the building at the time of filing the application for fair rent may also be taken as

a guiding factor along with others. The revision or fresh imposition of municipal taxes and cess were factors noted by the Division Bench while fixing the fair rent. In the instant case, both the rent control court and the appellate authority have taken into account the principles mentioned in the

**judgment in Edger Ferus (supra) and we find nothing wrong in
the approach**

of the authorities below in fixing the fair rent of Rs.6000/- as on the date of petition. It is to be noted that, admittedly, even at the time of letting by lease deed dated 1.7.1962, the monthly rent was Rs.55/- excluding the electricity charges and this certainly is indicative of the prominence of the area. The appellate authority had

applied the principles pointed out by this Court in Edger Ferus (supra) as well as in State Bank of India v. Prasannakumari

and others [ILR 2019 (2) 265], K.S.Khader Pillai (supra) while fixing the fair rent. We do not think that there is anything illegal, irregular, or improper in the orders impugned before us that calls for interference under Section 20 of the Act. The revision petition fails and is accordingly dismissed. Sd/-A.K. JAYASANKARAN NAMBIAR, JUDGE Sd/-MOHAMMED NIAS C.P., JUDGE dlk/6.6.2023

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