

Varghese George vs George Thomas

Varghese George vs George Thomas

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Court : Kerala

Decided On : Jul-01-2019

Judge : Honourable Mr. Justice a.Hariprasad,Honourable Mr.Justice T.V.Anilkumar

Appeal No. : OP (RC)/41/2019

Appellant : Varghese George

Respondent : George Thomas

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.HARIPRASAD & THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR MONDAY, THE 01ST DAY OF JULY 2019 / 10TH ASHADHA, 1941 RCRev..No.200 of 2019 AGAINST THE JUDGMENT DATED 15.12.2018 IN RCA NO.2/2017 OF RENT CONTROL APPELLATE AUTHORITY(ADDITIONAL DISTRICT COURT & SESSIONS COURT - III), PATHANAMTHITTA AGAINST THE ORDER DATED 28.02.2017 IN RCP NO.1/2014 of RENT CONTROL COURT, THIRUVALLA

PETITIONER/RESPONDENT/RESPONDENT: V.K.THOMASKUTTY, AGED 51 YEARS, S/O.ABRAHAM KURIEN, VALIYAVEETIL PADIKKAL MANAYIL VEEDU, VALLAMKULAM PADINJARE MURI, ERAVIPEROOR VILLAGE, THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT. BY ADVS.SRI.P.M.JOSHI SMT.SIJI K.PAUL
RESPONDENT/APPELLANT/PETITIONER: GEORGE THOMAS, S/O.THOMAS, KURUSUMOOTIL VEEDU, PALIYEKKARA MURI, THIRUVALLA VILLAGE, THIRUVALLA TALUK, THIRUVALLA.P.O., PATHANAMTHITTA DISTRICT. BY ADV. JACOB P ALEX ,CAVEATOR
THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 01.07.2019, ALONG WITH OP (RC).40/2019, OP (RC).41/2019, RCRev..201/2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -:2:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.HARIPRASAD & THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR MONDAY, THE 01ST DAY OF JULY 2019 / 10TH ASHADHA, 1941 OP (RC).No.40 of 2019 AGAINST THE JUDGMENT DATED 15.12.2018 IN RCA 2/2017 of RENT CONTROL APPELLATE AUTHORITY(ADDITIONAL DISTRICT COURT NO.III), PATHANAMTHITTA PETITIONER/RESPONDENT: V.K.THOMASKUTTY, AGED 51 YEARS, S/O.ABRAHA KURIEN,VALIYAVEETIL PADIKKAL MANAYIL VEEDU,VALLAMKULAM PADINJARE MURI ERAVIPEROOR VILLAGE,THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT. BY ADVS.SRI.P.M.JOSHI SAHEER M SMT.ELIZABETH KOSHY
RESPONDENT/APPELLANT: GEORGE THOMAS, S/O THOMAS,KURUSUMOOTIL VEEDU, PALIYEKKARA MURI,THIRUVALLA VILLAGE, THIRUVALLA TALUK,THIRUVALLA.P.O, PATHANAMTHITTA DISTRICT-689101. BY ADVS.SRI.JACOB P.ALEX SHRI.MANU SANKAR P. SRI.JOSEPH P.ALEX THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 01.07.2019, ALONG

WITH RCRRev.200/2019, OP (RC).41/2019, RCRRev..201/2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -:3:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.HARIPRASAD & THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR MONDAY, THE 01ST DAY OF JULY 2019 / 10TH ASHADHA, 1941 OP (RC).No.41 of 2019 AGAINST THE JUDGMENT DATED 15.12.2018 IN RCA 3/2017 of RENT CONTROL APPELLATE AUTHORITY(ADDITIONAL DISTRICT COURT NO.III), PATHANAMTHITTA PETITIONER/RESPONDENT: VARGHESE GEORGE, AGED 60 YEARS, S/O.K.T. GEORGE, KALLOOR VEEDU, THUKALASSERY MURI, THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT BY ADVS.SRI.P.M.JOSHI SAHEER M SMT.ELIZABETH KOSHY SMT.SIJI K.PAUL RESPONDENT/APPELLANT: GEORGE THOMAS, S/O. THOMAS, KURUSUMOOTIL VEEDU, PALIYEKKARA MURI, THIRUVALLA VILLAGE, THIRUVALLA TALUK, THIRUVALLA P.O., PATHANAMTHITTA DISTRICT BY ADVS.SRI.JACOB P.ALEX SHRI.MANU SANKAR P. SRI.JOSEPH P.ALEX THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 01.07.2019, ALONG WITH RCRRev..200/2019, OP (RC).40/2019, RCRRev..201/2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -:4:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.HARIPRASAD & THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR MONDAY, THE 01ST DAY OF JULY 2019 / 10TH ASHADHA, 1941 RCRRev..No.201 of 2019 AGAINST THE JUDGMENT DATED 15.12.2018 IN RCA NO.3/2017 of RENT CONTROL APPELLATE AUTHORITY (ADDITIONAL DISTRICT COURT & SESSIONS COURT - III), PATHANAMTHITTA AGAINST THE ORDER DATED 28-02-2017 IN RCP NO.2/2014 of RENT CONTROL COURT, THIRUVALLA

PETITIONER/RESPONDENT/RESPONDENT: VARGHESE GEORGE, AGED 60 YEARS, S/O.K.T.GEORGE, KALOOR VEEDU, THUKALASSERY MURI, THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT. BY ADVS.SRI.P.M.JOSHI SMT.ELIZABETH KOSHY SMT.SIJI K.PAUL PETITIONER/RESPONDENT/RESPONDENT: GEORGE THOMAS, S/O.THOMAS, KURUSUMOOTIL VEEDU, PALIYEKKARA MURI, THIRUVALLA VILLAGE THIRUVALLA TALUK, THIRUVALLA.P.O, PATHANAMTHITTA DISTRICT. BY ADV. JACOB P ALEX ,CAVEATOR THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 01.07.2019, ALONG WITH RCRev..200/2019,OP (RC).40/2019, OP (RC).41/2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -:5:- A.HARIPRASAD & T.V.ANILKUMAR, J J. = = = = =

- - - - - Dated this the 1st day of July,2019 C O M M O N O R D E R

A.HARIPRASAD, J.

Heard the learned counsel for the revision petitioners and respondent.

2. The revision petitioners filed two original petitions also, challenging two orders passed in R.C.A Nos.2 of 2017 and 3 of 2017 before the Rent Control

Appellate Authority, Pathanamthitta.
petitions as well.

3. Revision petitioners are the tenants under the

common landlord, who filed an application under Section 5 of the Kerala Buildings(Lease and Rent Control) Act, 1965(in short 'the Act'). Case of the landlord is that, the petition schedule buildings is part of a larger

building, consisting of three rooms.

fixed long before and it doesn't reflect the market -:6:- rent in the locality. The building is situated in a prominent place in Thiruvalla Municipality. The landlord would contend that new buildings in the locality would fetch a rent of Rs.40/- to Rs.50/- per sq.feet. It is therefore, contended that the tenants are liable to pay Rs.45/- per sq.feet. It is also contended by the landlord that another tenant in the same building is paying Rs.8,500/-, as monthly rent for a room of the same dimension. Ext.A16 is the document relied on to establish this fact.

4. The tenants/revision petitioners opposed the petition mainly contending that the rent claimed by the landlord is exorbitant. According them, this is an old building constructed in the year 1990 and it is

situated in an unimportant part of Thiruvalla Municipality. It is also contended that the building is opposite to a fish market and for the same reason, there are no takers for this building due to foul smell in the area. That apart, the building is by the side of a sharp bend in M.C.road and the building lies nearly 1 feet lower in level than the road. There is no

drainage in between the building and road, so that water enters the room during rainy season and causes difficulties. Moreover, the landlord is not doing any periodical repairs to the building and his claim for enhancement is without any basis. The revision petitioners/tenants, therefore, requested to dismiss -:7:- these revision petitions.

5. The Rent Control Court, after considering

Exts.A1 to A21 and testimony of PWs.1 to 4 on the side of the respondent/landlord and testimony of DWs.1 and 2 on the side of the revision petitioners/tenants and also Exts.C1 and C2 series Commissioner's sketch and report dismissed the applications. Aggrieved by the dismissal of the rent control petitions, the landlord approached the Appellate Authority with two appeals,

which were disposed of by a comm

entitled to claim Rs.30/- per sq.feet as rent, if he does the repair works mentioned in the judgment within three months and till then, the liability of the tenants was

only to pay rent at the rate of Rs.15/- per sq.feet. Both sides complained against each other for not completing the repairs in the stipulated time. Landlord would say that the tenants are not allowing him to effect the repairs, whereas the tenants would blame the landlord for the situation. However, the tenants are not happy with the rate fixed by the Rent Control Appellate Authority and hence, they are in revision.

6. Learned counsel for the revision petitioners/ tenants submitted that there is no basis for the fixation of fair rent at the rate of Rs.30/- per -:8:- sq.feet by the Appellate Authority. According to him, the evidence produced in this case was not properly considered by the Appellate Court. In answer to this contention, learned counsel for the landlord would argue that apart from oral evidence, the Commissioner's

report will also probabalise his case to find a reasonable market rent prevailing in the locality at the time of filing the petition. Exts.A3 to A15 are the documents produced by the landlord to show the rate of rent prevailing in the area at the material time and according to the learned counsel for the landlord, they

would probabalise the claim of th

increase in the land value over a period of time in Thiruvalla Municipality, according to the learned counsel for the landlord. It is also argued that increase in the land value will have a direct bearing on the fair rent to be fixed in respect of a building because it will reflect the return from the property.

7. We have gone through the oral evidence in this case. PW.1 (the landlord) when examined specifically mentioned about Exts.A3 to A15. As observed by the lower Appellate Court, there was no effective cross-examination on the veracity of these documents. It is also seen from the testimony of DW.1 that he feigned ignorance in respect of the prevailing market -:9:- rent and also the escalation in land value. These factors prompted the Appellate Court to arrive at a

conclusion that the claim of the landlord for

enhancement can be justified.

8. Learned counsel for the respondent relied on Mohd. Ahmad v. Atma Ram Chauhan [(2011) 7 SCC 755], where the Supreme Court in paragraph 21 made some observations regarding the determination of prevalent market rate. It reads as follows: 20. xxx xxx xxx

21. According to our considered view majority of these cases are

filed because the landlords do not get reasonable rent akin to market rent, then on one ground or the other litigation is initiated. So before saying omega, we deem it our duty and obligation to fix some guidelines and norms for such type of litigation, so as to minimise landlord-tenant litigation at all levels. These are as follows:

(i) The tenant must enhance the rent according to the terms of the

agreement or at least by ten per cent, after every three years and enhanced rent should then be made payable to the landlord. If the rent is too low (in comparison to market rent), having been fixed almost 20 to 25 years back then the present market rate should be worked out either on the basis of valuation report or reliable estimates of building rentals in the surrounding areas, let out on rent recently.

(ii) Apart from the rental, property tax, water tax, maintenance

charges, electricity charges for the actual consumption of the tenanted premises and for common area shall be payable by the tenant only so that the landlord gets the actual rent out of which nothing would be deductible. In case there is enhancement in property tax, water tax or maintenance charges, electricity charges then the same shall also be borne by the tenant only.

(iii) The usual maintenance of the premises, except major repairs -:10:- would be carried out by the tenant only and the same would not be reimbursable by the landlord.

(iv) But if any major repairs are required to be carried out then in

that case only after obtaining permission from the landlord in writing, the same shall be carried out and modalities with regard to adjustment of the amount spent thereon, would have to be worked out between the parties.

(v) If the present and prevalent market rent assessed and fixed

between the parties is paid by the tenant then the landlord shall not be entitled to bring any action for his eviction against such a tenant at least for a period of 5 years. Thus for a period of 5 years the tenant shall enjoy immunity from being evicted from the premises.

(vi) The parties shall be at liberty to get the rental fixed by the official valuer or by any other agency, having expertise in the matter.

(vii) The rent so fixed should be just, proper and adequate, keeping

in mind the location, type of construction, accessibility to the main road, parking space facilities available therein etc. Care ought to be taken that it does not end up being a bonanza for the landlord.

22. xxx xxx xxx

9. Learned counsel for the respondent also placed

reliance on *Edger Ferus v. Abraham Ittycheria* [2004(1) KLT 767], to argue that the Rent Control Court while fixing fair rent could take note of the inflation and resultant reduction in the purchasing power of money, variation in the cost of living index in the area since commencement of the lease, demand for accommodation and

availability of the buildings in the locality. According to him, these factors, if taken into account, would indicate that the rent fixed by the lower Appellate Court is modest at any rate. -:11:-

10. Learned counsel for the revision petitioners contended that the Commissioner has specifically stated that the buildings mentioned in the chief-affidavit of

the landlord cannot be compared with

fetch Rs.40/- to Rs.50/-per sq.feet. Another tenant in the disputed building, as per Ext.A16 pays Rs.8,500/- per mensum and the amount on calculation will come to Rs.47.22 per sq.feet. It has come out in evidence that height of the floor of the room occupied by the other tenant has been increased and apart from maintenance work, some beautification work has also been done. It is an indisputable case that the rooms in question are in a state of disrepair. Walls are cracky and floor is not in a good condition. Percolation of water affects the business, according to the revision petitioners. It

is therefore, the Rent Control Appellate Authority, considering the relevant inputs, directed the landlord to effect repairs as in the case of the other tenant to

claim a monthly rent of Rs.30/-per

interference in fixation of the rent. -:12:-

11. Two Interlocutory Applications filed by the

landlord in two appeals, seek

Petitions.

12. According to the landlord, when he went to the shop rooms in the possession of the revision petitioners for effecting repairs to make the buildings more useful, the tenants resisted. That is why he approached the Appellate Court itself for getting the assistance of the Court. Learned counsel for the revision petitioners would contend that the Appellate

Court should not have ventured to execute its own order

by deputing the Commissioner. We find some force in the contention raised by the revision petitioners in this regard. The Appellate Court should have directed the

landlord to approach the Munsiff Court for executing the order instead of trying to do it by itself.

13. Having found that the rent fixed by the Appellate Court needs no interference, we modify the Appellate judgment in the following terms:

The original petitions will stand disposed of by the disposal of these revision petitions: The fixation of fair rent at a maximum rate of Rs.30/- per sq.foot for each room is confirmed. If there is any dispute between the parties, the landlord is free to approach the Munsiff Court concerned for directions to carry out necessary -:13:-

repairs to make the petition schedule building comparable with the building occupied another tenant under the same landlord in the same building. The revision petitioners shall surrender the keys of the building before the Munsiff Court concerned on 15.07.2019 and remove all their articles from the room, so that the landlord can do necessary repairs within a period of 15 days therefrom. It is made clear that the landlord should finish the entire repair work, as in the case of the room mentioned in Ext.A16, within a period of 15 days and deposit the key back in the Munsiff Court on 30.07.2019. Thereafter, the revision petitioners shall pay rent at the rate of Rs.30/- per sq.foot. In case the tenants do not vacate as stipulated in this order, the landlord need not effect any repair; but the liability of the tenants to pay enhanced rent from 01.08.2019 will be attracted. If the landlord so requests the Munsiff Court, a commission shall be deputed for supervising the repair works at the expense of the landlord. In the above manner, the revision petitions and original petitions stand disposed of.

Sd/- A.HARIPRASAD JUDGE Sd/- T.V.ANILKUMAR JUDGE DST -:14:-
APPENDIX OF OP (RC) 40/2019 PETITIONER'S EXHIBITS: EXHIBIT P1 THE TRUE COPY OF THE JUDGMENT IN RCA NO.2/17 EXHIBIT P2 THE TRUE COPY OF THE COMMISSION APPLICATION IN I.A.NO.50/2019 IN RCA

NO.2/2017 DATED 12.1.2019. EXHIBIT P3 THE TRUE COPY OF THE OBJECTION IN I.A.NO.51/19 IN RCA.NO.2/2017 DATED 25.01.2019. EXHIBIT P4 THE TRUE COPY OF NOTICE DATED 15-02-2019 ISSUED BY THE ADVOCATE COMMISSION RESPONDENTS' EXHIBITS:NIL //True copy// P.A.To Judge -:15:- APPENDIX OF OP (RC) 41/2019 PETITIONER'S/S EXHIBITS: EXHIBIT P1 THE TRUE COPY OF THE JUDGMENT IN RCA NO.3/17 EXHIBIT P2 THE TRUE COPY OF THE COMMISSION APPLICATION IN I.A.NO.51/2019 IN RCA NO.3/17 DATED 12.1.2019 EXHIBIT P3 THE TRUE COPY OF THE OBJECTION TO I.A.NO.51/19 IN RCA NO.3/17 DATED 25.1.2019 EXHIBIT P4 THE TRUE COPY OF THE NOTICE DATED 15.2.2019 ISSUED BY THE ADVOCATE COMMISSIONER RESPONDENTS' EXHIBITS:NIL //True copy// P.A.To Judge

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