

T.K. Bhaskaran Vs. Parakkandy Thaha

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Court : Kerala

Decided On : Apr-06-2010

Judge : Pius C. Kuriakose and; C.K. Abdul Rehim, JJ.

Appeal No. : R.C. Rev. No. 72 of 2010

Appellant : T.K. Bhaskaran

Respondent : Parakkandy Thaha

Advocate for Def. : V. Premchand, Adv.

Advocate for Pet/Ap. : V.R. Kesava Kaimal, Adv.

Judgement :

ORDER

Pius C. Kuriakose, J.

1. Under challenge in these revision petitions filed by two tenants in possession of two rooms in a larger building belonging to the respondent Sri Thaha is the judgment of the Rent Control Appellate Authority remanding the rent control petitions to the Rent Control Court. Eviction was sought on the ground of reconstruction under Section 11(4)(iv). The Rent Control Court dismissed the rent control petition on various reasons. The Appellate Authority made a thorough reappraisal of the evidence and formulated the following points as points arising

for decision in the appeal

1. Whether the landlord bonafide requires re- construction of the petition schedule building?
2. Whether the landlord has satisfied the court that he has the ability to rebuild the building as proposed by him?
3. Whether IA. Nos. 1562/07, 909/08 and 1608/09 are allowable?
4. Whether the order of the Rent Control Court requires interference?
5. Whether the landlord is entitled to eviction under Section 11(4)(iv) of the Act?

On the basis of the appreciation of the evidence on record the Appellate Authority answered point No. 1 in favour of the landlord and found that the condition of the building is such that the same requires reconstruction. But as regards point No.2 whether the landlord has the ability to reconstruct the Appellate Authority found that the evidence presently available falls short of holding that the landlord has proved his ability to carry out the reconstruction. The point No. 3 considered was regarding one interlocutory application filed by the tenant and two interlocutory applications filed by the landlord. The tenant revision petitioner through I.A.1562/07 wanted the Appellate Authority to accept the certified copy of the order in RCP No. 117 of 2008 passed by the Rent Control Court during the pendency of the appeal. IA. Nos. 909/08 and 1608/09 were filed by the landlord for the reception of certain documents which will prove that the landlord has the financial ability to carry out the reconstruction. The Rent Control Appellate Authority dismissed both these three applications. Point Nos. 4 and 5 were answered by the Appellate Authority by setting aside the order of the Rent Control Court and passing an order of remand to the Rent Control Court for considering the question whether the landlord has the ability to carry out the reconstruction.

2. In these revisions identical grounds challenging the judgment of the Appellate Authority have been raised and we have heard the submissions of Sri VRK Kaimal, learned Counsel for the petitioner and those of Sri V. Premchand, learned Counsel for the respondent landlord. Even though Mr. Kaimal addressed

arguments on all the grounds raised in the memorandum of revision he would lastly request that we enlarge the scope of the order of remand passed by the Appellate Authority making the order an open remand so that the Rent Control Court can decide all relevant points arising in the case afresh after giving opportunity to both sides to adduce whatever further evidence they want to. The above request is opposed by Mr. Premchand. Petitioners are aggrieved by the order dismissing I.A. 1562/07. According to them, the certified copy of the order in RCP No. 117/08 has considerable implication. The landlord's wife who was examined as PW-1 in that RCP confessed that she and her husband have no intention whatsoever to reconstruct the building in question. By dismissing the IA the Appellate Authority shut out a very vital piece of evidence. The submissions of Mr. Kaimal were resisted by Mr. Premchand. Mr. Premchand also however, submitted that the landlord is aggrieved by the order of the Appellate Authority dismissing the two IAs filed by him. We have very anxiously considered the rival submissions addressed at the Bar. We have scanned the judgment of the Rent Control Appellate Authority.

3. We are not inclined to leave all the relevant issues in the case open to be decided afresh by the Rent Control Court. According to us, the finding of the Appellate Authority under point No. 1 raised by that authority that the building in question requires reconstruction is a correct finding based on evidence. The building, going by the Commissioner's Report is one in which dilapidation has set in. The building is situated in a commercially very important area of Kannur Municipal Town. That being so, we are of the considered opinion that there is no warrant for interfering with the Appellate Authority's finding under point No. 1 formulated in its judgment. We do not think that the landlord can have any legitimate grievance against the Appellate Authority's order dismissing IA Nos. 909/08 and 1608/09. Even though those IAs by which the landlord sought reception of documents which will prove the landlord's ability were dismissed since the question of ability has been left open to be decided by the Rent Control Court the Rent Control Court will certainly permit the landlord to produce the document which the landlord wanted to produce before the Appellate Authority. But it appears to us that there are elements of genuineness in the grievance of the revision petitioners that I.A. No. 1562/07 has been dismissed without giving

opportunity to the revision petitioners for producing documents before the Rent Control Court.

4. We feel that the implications of the order in RCP.117/08 which was sought to be produced by the revision petitioners is also an aspect to be considered by the Rent Control Court. We are therefore of the view that the impugned judgment of the Appellate Authority warrants modification to the extent of permitting the revision petitioners tenants to produce the certified copy of the order in RCP No. 117/08 also as an additional item of evidence in the RCP. To that extent the scope of the remand order passed by the Appellate Authority will stand enlarged. In all other respects findings of the Appellate Authority will stand confirmed. That is to say that the issues to be decided by the Rent Control Court are: (1) the ability of the landlord to carry out reconstruction (2) the possibility of the landlord to re-induct all the evicted tenants in terms of the third proviso to Section 11(4)(iv) after reconstruction and (3) the implications of the order in RCP No. 117 of 2008 on the landlord's entitlement to get eviction order under Section 11(4)(iv).

RCRs. Are disposed of as above.

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