

Kerala High Court

Karakkandathil Bharathan vs C.K.Rukhiya on 18 October, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

RCRev..No. 144 of 2010()

1. KARAKKANDATHIL BHARATHAN,
... Petitioner

Vs

1. C.K.RUKHIYA, W/O.LATE MAMMU HAJI,
... Respondent

2. C.K.NAZEEMA, D/O.LATE MAMMU HAJI,

3. C.K.RAZIYA, D/O.LATE MAMMU HAJI,

4. C.K.NAZEER, S/O.LATE MAMMU HAJI,

5. C.K.SUBAIR, S/O.LATE MAMMU HAJI,

6. C.K.REHMANTH, D/O.LATE MAMMU HAJI,

7. C.K.ZEENATH, D/O.LATE MAMMU HAJI,

8. C.K.SAMEER, S/O.LATE MAMMU HAJI,

For Petitioner :SRI.GRASHIOUS KURIAKOSE

For Respondent :SRI.V.R.KESAVA KAIMAL

The Hon'ble MR. Justice PIUS C.KURIAKOSE

The Hon'ble MR. Justice P.S.GOPINATHAN

Dated :18/10/2010

O R D E R

PIUS C.KURIAKOSE & P.S.GOPINATHAN, JJ.

RCR.Nos. 144 & 145 OF 2010

Dated this the 29th day of November, 2010

O R D E R

Pius C.Kuriakose, J.

Under challenge in these revisions is a common judgment of the Rent Control Appellate Authority ordering eviction against the revision petitioners tenants under sub section (3) of Section 11 reversing the order of the rent control court dismissing the application finding that the need is bona fide and that the rent control petitions are liable to fail by virtue of the first proviso to sub section (3) of Section 11.

2. In these revisions various grounds have been raised assailing the judgment of the appellate authority. Sri. Grashious Kuriakose, learned counsel for the revision petitioners, addressed arguments on the basis of those grounds. All the arguments of Grashious Kuriakose were stiffly opposed by Sri.V.R.K.Kamal, learned counsel for the respondents.

3. Having considered the rival submissions addressed before us, we feel that the question, whether the rent control petitions are liable to fail by virtue of the first proviso to sub section (3) of Section 11, needs to be reconsidered by the rent control appellate authority. There is stiff controversy between the parties as to whether the entire upstairs portion of the larger building, portions of which are the petition schedule buildings, is remaining vacant.

4. Under the above circumstances, we are inclined to interfere with the orders passed by the statutory authorities and relegate the issue back to the appellate authority. But we notice another aspect of the matter. The revision petitioners are paying rent only at the rate of Rs.550/- per month for these buildings. Having regard to the commercial importance of the locality an important area of Chakkarakkal town near Kannur, we feel that the rent, which is being paid presently, is below the rent which the building may fetch if the same is let out today. We are inclined to refix the rent tentatively at Rs.1,000/- per month with effect from 1st December 2010.

5. The result of the above discussion is as follows;

i). The revision petitions are allowed.

ii) The judgment of the appellate authority and the order of the rent control court are set aside.

Iii). The RCAs are remanded to the appellate authority. The appellate authority is directed to decide the question whether the rent control petitions are liable to fail by virtue of the first proviso to sub section (3) of Section 11. The appellate authority will permit both sides to adduce documentary evidence (including commissioner's reports) on the above question under the 1st proviso to sub section (3) of Section 11.

iv). The finding that the need is bona fide is confirmed.

v). The appellate authority will complete further enquiry and pass revised judgment at the earliest and at any rate within three months of parties entering appearance before the appellate authority pursuant to this order.

vi). The rent payable by each of the revision petitioners is fixed tentatively with effect from 1st December 2010 at Rs.1,000/- per month. This refixation is tentative and it is open to either party if aggrieved, to approach the rent control court by filing regular application under Section 5 (4) for fixation of fair rent . Till such time fair rent is fixed, the revision petitioners shall pay rent at the rate of Rs.1,000/- per month.

The parties shall enter appearance before the appellate authority on 20/12/2010.

PIUS C.KURIAKOSE,JUDGE P.S.GOPINATHAN, JUDGE dpk