



OP (RC) NO. 154 OF 2024

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2024:KER:89068

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 25TH DAY OF NOVEMBER 2024 / 4TH AGRAHAYANA, 1946

OP (RC) NO. 154 OF 2024

AGAINST THE ORDER DATED 03.10.2024 IN RCP NO.18 OF 2022 OF MUNSIF
COURT, KUTHUPARAMBA

PETITIONER(S)/PETITIONER IN IA/RESPONDENTS IN RCP:

KOORANTAKATH KAMALUDEEN
AGED 67 YEARS
S/O.KUNHALI MASTER, RESIDING AT PUTHIYA PURAYIL, SIVAPURAM,
MATTANNUR, KANNUR DISTRICT, PIN - 670702

BY ADVS.
R.PARTHASARATHY
B.KRISHNAN

RESPONDENT(S)/RESPONDENT IN IA/PETITIONER IN RCP:

KANNYAATH DIVAKARAN,
AGED 77 YEARS
S/O. RAMUNNI BALAKANDY HOUSE, IRITTY PO., KANNUR DISTRICT,
PIN - 670604

BY ADV Nisha George

OTHER PRESENT:

SRI GEORGE POONTHOTTAM SR ADV

THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON 25.11.2024,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT****Amit Rawal, J.**

The present revision petition is directed against the order dated 3.10.2024 of the Rent Controller rejecting the application bearing No.11 of 2024 filed by the petitioner-tenant for dismissing the RCP No.18 of 2022 and connected RCP No.60 and 81 of 2022 for want of jurisdiction.

2. Respondent-landlord had filed three rent petitions on various grounds. At this stage, regarding non availment of the remedy of revision against the common order in rent control petition Nos. 60 and 81 of 2022, counsel for the petitioner submitted that the revision petition may be treated against all the pending RCPs. We do not accept this argument for the reason that even if the order is common in three (3) revision petition required to be filed as similar applications have been considered in the other rent petitions. Faced with the situation counsel for the petitioner seeks the indulgence of this Court for treating the decision of the application in RCP No.18 of 2022 with a liberty to file separate revision petitions. Ordered accordingly.

3. Respondent-landlord instituted the rent petition bearing No.18 of 2022 against the petitioner for seeking eviction on the



various grounds. On appearance, the petitioner-tenant submitted an application challenging the jurisdiction of the Rent Controller on the ground that the area where the scheduled building is situated at earlier point of time was falling within the jurisdiction of Chavassery Panchayath which was covered under the provisions of Kerala Building (Lease and Rent Control) Act, 1965 owing to the notification dated 30.6.1970.

4. In the year 2015 ie., with effect from 1.11.2015, a new Municipality called Iritty Municipality was formed and the area falling with the Chavassery Panchayath was included thereafter, no fresh notification much less any saving clause in the Act protecting the applicability of the previous notification viz-a-viz the Iritty Municipal Corporation. In support of the contentions relied upon the judgment of this Court in *Biyyathu v. Abdurahimankutty (1995 KHC 95) and Karam Veettill Parukutty Amma v. Muhammedkutty [2013 (1) KHC 56]*.

5. On the other learned Senior counsel for the respondent countered the aforementioned argument on the ground that this is a mixed question of fact and law and cannot be adjudicated in the manner and mode and at the best, Rent Controller ought to have framed the issue of maintainability as preliminary issue and decided by giving one-one effective opportunity of hearing to the



parties in support of their respective stands. Even otherwise as per the judgments noted by the learned Rent Controller, no case is made out warranting interference under Article 227 of the Constitution of India owing to the fact that previous notification caused in 1970 would have an applicability to the same area which has now merged into Irritty municipal area.

6. We have heard the learned counsel for the parties and appraised the paper book. Section 1(3) of the 1965 Act reads as under:

1(3) It applies to the areas mentioned in the Schedule and the Government may by notification in the Gazette, apply all or any of the provisions of this Act to any other area in the State with effect from such date as may be specified in the notification, and may, by like notification, cancel or modify such notification or withdraw the application of all or any of the provisions of this Act from any area mentioned in the Schedule: Provided that no such notification shall be issued unless it is supported by a resolution passed by the local authority or authorities if any, of the areas affected by the notification.

7. It clearly says that the Act would be applicable to the area mentioned in the schedule and the Government may by notification in the Gazette, apply all or any of the provisions of this Act to any other area in the State with effect from the date as may be specified or cancel or modify the notification. Concededly, the scheduled building at earlier point of time, ie.,



prior to 2015 was falling within the jurisdiction of Chavassery Panchayath and as per the notification of 1970 ie., 30.6.1970 the provisions of Kerala Building (Lease and Rent Control) Act, 1965 was made applicable. However in 2015 ie., with effect from 1.11.2015, the aforementioned Panchayath had been included in the Iritty Municipality and there is no fresh notification regarding the applicability of the Act. Needless to say, the rent petition has been filed only on 2022. The landlord has not been able to place on record any fresh notification in support of the case qua the maintainability/jurisdiction of the rent controller to try and deal with the issue raised in the pending rent petition. The judgments noted by the learned Rent controller while dismissing the application were pertaining to the case of delimitation whereas the case law cited before us in paragraph 10 and 11 of the *Karam Veettil Parukutty Amma* and 4 and 5 of the *Biyyathu v. Abdurahimankutty*.

8. The aforementioned ratio decidendi is squarely applicable to the facts and circumstances of the case as it is a simple case of taking out the jurisdiction of one of the Panchayath to form into a Municipality without any fresh notification viz-a-viz the applicability of the Rent Act. In such situation, the remedy for the landlord is to file a suit for



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possession. Accordingly we set aside the order and original petition is allowed. Resultantly, I.A No.11 of 2021 filed in RCP No.18 of 2022 is allowed. Rent petition No.18 of 2022 is ordered to be dismissed with the liberty as aforementioned.

Sd/-**AMIT RAWAL
JUDGE****Sd/-**

sab

**EASWARAN S.
JUDGE**



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APPENDIX OF OP (RC) 154/2024

PETITIONER EXHIBITS

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| Exhibit-P1 | TRUE COPY OF THE RENT CONTROL PETITION
FILED IN RCP.NO.18/2022 BEFORE THE
MUNSIFF COURT, KUTHUPARAMBA DATED
16.02.2022 |
| Exhibit-P2 | TRUE COPY OF THE COUNTER STATEMENT DATED
20.10.2022 FILED BY THE PETITIONER, IN
RCP.NO.18/2022 BEFORE THE RENT CONTROL
COURT, KUTHUPARAMBA |
| Exhibit-P3 | TRUE COPY OF THE I.A.NO.11/2024 FILED BY
THE PETITIONER |
| Exhibit-P4 | TRUE COPY OF THE ORDER IN I.A. 11/2024
IN RCP. NO.18/2022, 60/2022, AND 81/2022
DATED 03.10.2024 PASSED BY THE MUNSIFF'S
COURT, KUTHUPARAMBA |