

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE
&**

THE HONOURABLE MR. JUSTICE P.Q.BARKATH ALI

TUESDAY, THE 30TH JUNE 2009 / 9TH ASHADHA 1931

RCRev..No.195 of 2004(B)

**RCA.135/2001 of I ADDL.DISTRICT COURT, KOZHIKODE
RCP.22/1998 of ADDL.M.C./RENT CONTROL,KOZHIKODE-II**
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REVISION PETITIONER/APPELLANT/RESPONDENT

**T.REVATHY, D/O.MANI, AGED 65,
23/1912, NEW 26/1546, KAMPITTA, VALAPPIL HOUSE,
PANNIYANKARA AMSOM AND DESOM, KOZHIKODE TALUK.**

**BY ADV. SRI.R.SUDHISH
SMT.MANJU SUDHISH**

RESPONDENT(S): RESPONDENTS.

- 1. P.K.NIRMALA, W/O.LATE P.K.RADHAKRISHNAN,
AGED 55 YEARS, SREEDEEPAM, PANNIYANKARA AMSOM
AND DESOM, KOZHIKODE TALUK.**
- 2. V.T.DEEPA AJITHKUMAR, AGED 34 YEARS,
VALAPPIL THENNIKUNNATH HOUSE, KALATHIKUNNU,
AMSOM AND DESOM, KOZHIKODE TALUK.**
- 3. P.R.KRIA, D/O.LATE P.K.RADHAKRISHNAN,
AGED 31 YEARS, SREEDEEPAM, PANNIYANKARA AMSOM
AND DESOM, KOZHIKODE TALUK.**
- 4. P.R.SUBHA, D/O.P.K.RADHAKRISHNAN,
AGED 30 YEARS, SREEDEEPAM, PANNIYANKARA AMSOM
AND DESOM, KOZHIKODE TALUK.**

ADV. SRI.JACOB ABRAHAM FOR R1 TO 4

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD
ON 30/06/2009, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

**PIUS C. KURIAKOSE &
P. Q. BARKATH ALI, JJ.**

R. C. R. No.195 of 2004

Dated this the 30th day of June, 2009

ORDER

Pius C. Kuriakose, J

The tenant is in revision against order of eviction concurrently passed under Section 11(4)(ii) of Act 2 of 1965. The allegation of the landlord was that the tenant has unauthorisedly removed an attached bathroom and attached latrine which existed on the plaint schedule building at the time of lease. The further allegation was that in their place a separate bathroom was constructed near to a well which existed on the compound of the schedule building. The Rent Control Court and the Appellate Authority on appreciating the evidence which was adduced by the parties concluded that the tenant has unauthorisedly

removed the attached bathroom and the attached latrine and in their place constructed, that too unauthorisedly, a new bathroom near to the well. According to both the authorities the removal of the attached bathroom and the attached latrine amounts to reduction in the value and utility of the building materially and permanently.

2. We have heard the submission of Sri.R.Sudhish, the learned counsel for the revision petitioner and those of Sri.Jacob Abraham, learned counsel for the respondent/landlord. Drawing our attention to Ext.C1, Sri.Sudhish submitted that it was relying on Ext.X1 report submitted by authorised officer attached to the Land Tribunal in an O.A. which was filed by the tenant claiming kudikidappu right over the property that the courts below found that there

existed an attached bathroom as well as an attached latrine. But in Ext.C1 report the Commissioner appointed by the court on an application filed by the landlord has clearly reported that he is unable to see any sign of any latrine or any attached bathroom having existed in the building. Counsel argued that the preference of Ext.X1 to Ext.C1 which is part of the records in this case was highly improper. The order of the Rent Control Court and the Appellate Authority is tainted by impropriety and hence, the learned counsel's request that the orders be set aside.

3. Sri.Jacob Abraham, learned counsel for the landlord would justify the order of the Rent Control Court and the Appellate Authority. He reminded us of the contours of this Court's jurisdiction under Section 20 of Act 2 of 1965.

4. In reply Sri.Sudhish, the learned counsel for the revision petitioner would submit that the Commissioner's Report is to the effect that no well exists in the compound of the petition schedule building and it has been so reported by the Advocate Commissioner. However, when we enquired about the counsel as to whether the tenant has no objection in this court's deputing a Commissioner from this Court for immediate inspection of the property for ascertaining the existence of a well, the counsel was not so enthusiastic.

5. In this jurisdiction under Section 20, we are not ordinarily expected to re-appraise the evidence and substitute our conclusions for conclusions of fact already entered into by the fact finding authorities under the statutes by our own findings. Under the

statutory scheme the Appellate Authority is the final authority of facts. The learned counsel for the revision petitioner may be right when he submits that construction of a new bathroom in the compound of the petition schedule building unauthorisedly though it may be, will not result in reduction in the value and utility of the building. But we notice that it is not because of the unauthorised construction of the new bathroom near to the well that the authorities have found that ground under Section 11(4)(ii) is attracted. It is because of the removal of the existing bathroom/latrine that the finding has been entered. We have no doubt in our mind that removal of an existing bathroom/latrine will amount to reduction in the value and utility of the existing building materially and permanently. In this way, we do not find any

impropriety, illegality or irregularity in the findings concurrently entered into by the Rent Control Court and the Appellate Authority.

6. As his last submission Sri.Sudhish, the learned counsel for the petitioner sought for six months time to surrender the petition schedule building. Sri.Jacob Abraham, the learned counsel for the landlord opposed the request very stiffly. However, we feel that there is justification for granting time till the end of this year. Accordingly, even as we dismiss this RCR, there will be direction to the execution court not to order and effect delivery of the petition schedule building till 31/12/09 on condition that the revision petitioner files an affidavit before the execution court or the Rent Control Court, as the case may be, within three weeks from today undertaking to peacefully surrender the building

to the landlord on or before 31/12/09. It shall also be undertaken that the entire arrears of rent due as per the present rate shall be discharged within one month and that occupation charges at the rate equal to the present rent rate shall be paid as and when the same falls due.

PIUS C. KURIAKOSE
JUDGE

P. Q. BARKATH ALI
JUDGE

kns/-