

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

WEDNESDAY, THE 12<sup>TH</sup> DAY OF OCTOBER 2022 / 20<sup>TH</sup> ASWINA, 1944

RCREV. NO. 83 OF 2016

AGAINST THE ORDER IN RCA NO.165 OF 2012 ON THE FILE OF RENT  
CONTROL APPELLATE AUTHORITY/ADDITIONAL DISTRICT JUDGE, VATAKARA  
DATED 30TH JANUARY 2016 CONFIRMING THE ORDER IN R.C.P.NO.35/2011  
ON THE FILE OF RENT CONTROL MUNSIF COURT,  
NADAPURAM DATED 25.10.2012

REVISION PETITIONER/APPELLANT IN RCA/RESPONDENT IN R.C.P:

CHORAYIL KUNHIRAMAN  
S/O.ANDY, CHEKKIAD AMSOM,  
UMMATHUR DESOM,  
VATAKARA TALUK,  
KOZHIKODE DISTRICT.

BY ADVS.SRI.R.PARTHASARATHY  
SMT.SEEMA

RESPONDENT/RESPONDENT IN RCA/PETITIONER IN R.C.P:

SHARAFUL ISLAM MADRASSA COMMITTEE  
CHEKKIADD VILLAGE, KURUVANTHERI DESOM,  
VATAKARA TALUK, KOZHIKODE DISTRICT,  
REPRESENTED BY PRESIDENT,  
PONNORATH ALIYASSAN HAJI, S/O.AMMAD,  
AGED 61 YEARS, BUSINESS, CHEKKIYAD VILLAGE,  
KARUVANTHERI DESOM, VATAKARA TALUK,  
KOZHIKODE DISTRICT-673 101.

BY ADVS.SRI.M.DEVESH  
SRI.T.KRISHNANUNNI SR.  
SRI.K.C.KIRAN  
SMT.MEENA.A.  
SRI.SAJU.S.A  
SRI.VINOD RAVINDRANATH  
SRI.VINAY MATHEW JOSEPH

THIS RENT CONTROL REVISION HAVING COME UP FOR FINAL HEARING  
ON 12.10.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.B.SURESH KUMAR & C.S.SUDHA, JJ.**

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**R.C.R.No.83 of 2016**  
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**Dated this the 12<sup>th</sup> day of October, 2022**

**ORDER**

**C.S.Sudha, J.**

Is exemption granted to buildings under Section 25 of the Kerala Building (Lease and Rent Control) Act, 1965 (the Act) a privilege or benefit which the landlord of the said buildings can waive ? Or, is it a provision taking away the jurisdiction of the Rent Control Court (RCC) to entertain an application filed by the landlords of the building(s) exempted by the notification issued under Section 25 ? Let us examine these questions in the light of the scope and object of the Act and its various provisions.

2. This revision under Section 20(1) of the Act has been filed by the appellant in R.C.A.No.165/2012 on the file of the Rent Control Appellate Authority, Vatakara (RCAA), confirming the order dated 25/10/2012 in R.C.P.No.35/2011 on the file of the Rent Control Court (RCC), Nadapuram. The respondent herein is the petitioner-landlord in the R.C.P. and the respondent in the R.C.A. The parties in this revision will be referred to as described in the R.C.P.

3. The petitioner-landlord, a Madrassa, moved the RCC seeking

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eviction under Section 11(3) of the Act. The RCC by order dated 25/10/2012 allowed the R.C.P. The respondent-tenant filed R.C.A.No.165/2012 before the RCAA which in turn by judgment dated 30/01/2016 confirmed the order of eviction passed under Section 11(3). Aggrieved, the respondent-tenant has come up in revision. In the revision petition, it is alleged that the courts below have not properly appreciated the evidence or the law on the matter and hence the impugned judgment is liable to be reversed.

4. Heard Adv.R.Parthasarathy, the learned counsel for the revision petitioner and Adv.Aswin Sathyanath, the learned counsel for the respondent.

5. The first and the foremost argument advanced on behalf of the respondent-tenant is that the RCC had no jurisdiction to entertain the R.C.P. in the light of the notification issued under Section 25 of the Act by which Madrassas have been exempted from the provisions of the Act. Therefore, the remedy was to move a civil court and not the RCC. *Per contra*, it is argued on behalf of the petitioner/landlord relying on the decisions in **Lahoo Mal v. Radhye Shyam, AIR 1971 SC 2213, P.S.M.Nazeer alias P.M.Abdul Nazeer v. M.J.Company, 2000(2) Rent Control Reporter 205** and **V.Natarajan v. Saliyur Mahajana Sangam, 2004(2) Rent Control Reporter 402 (Madras)**, that the exemption granted under Section 25 of the Act is a privilege or benefit which can be waived by the landlord concerned.

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This argument is disputed by the respondent-tenant on whose behalf it is argued that Section 25 is not a privilege granted to the landlord but an exemption granted to certain buildings and as it is not a privilege or benefit granted to the petitioner-landlord, the latter cannot waive it. It is further pointed out that, as per notification No.SRO 769/1996 dated 30/10/1996, the Government in exercise of its powers under sub-section (1) of Section 25 of the Act has exempted buildings of all Madrassas from the provisions of Sections 4, 5, 7, 8, 11 and 13 of the Act. As Section 11 is not applicable to Madrassas, the RCC could not have entertained or ordered eviction in favour of the petitioner-landlord under Section 11(3) of the Act.

6. The Rent Control Act is a piece of social legislation and is meant mainly to protect the tenants from frivolous evictions. At the same time, in order to do justice to the landlords and to avoid placing such restrictions on their right to evict the tenant as to destroy their legal right to property, certain statutory provisions have been made by the legislature which have given relief to the landlord. In so far as the social legislation, like the Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. Tenants and landlords are to be given equal treatment. The courts have to adopt a reasonable and balanced approach while interpreting rent

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control legislations and assume that equal treatment has been meted out to both, the tenants and the landlords. Although Rent control statutes lean in favour of tenants, courts must lean in favour of landlords while interpreting those provisions that take care of landlord's interest (**Jogindar Pal v. Naval Kishore Behal, AIR 2002 SC 2256**).

6.1. Rent control legislation is to balance the interests of two interest groups, i.e., the landlords and the tenants and it shall be interpreted in such a way as to achieve the object of enabling the landlord to evict tenant where the statute so provides (**Bega Begum v. Abdul Ahad Khan, AIR 1979 SC 272**). It is not a sound principle of statutory construction to place more restriction on the rights of the parties than what is provided for, in the statute itself (**Muhammed v. Abdul Rahman, 1983 KHC 197**). While constructing the provision of a social legislation, the law must strike a balance between rival interests and it should try to be just to all (**Francis v. Sreedevi Varassiar, 2003 KHC 397**). It is also pertinent to note that the Act is a welfare legislation and not entirely a beneficial enactment for the tenant but also for the benefit of landlord. In that view of the matter, balance has to be struck while interpreting the provisions of the Act (**Nasiruddin v. Sita Ram Agarwal, AIR 2003 SC 1543**).

7. With the aforesaid principles in mind, we will now consider the scope of Section 25(1) of the Act which says that, notwithstanding anything

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contained in the Act, the Government may, in public interest or for any other sufficient cause, by notification in the Gazette, exempt any building or class of buildings from all or any of the provisions of this Act. The object of the Section is to empower the Government to exempt any building or class of buildings from the application of the Act for protecting the interest of the State by encouraging people to invest in buildings, thus increasing the building stock in the rental market. As observed by the Apex Court in **Lachoo Mal's** case (*Supra*), while dealing with an exemption clause, that is, Section 1-A under the U.P. (Temporary) Control of Rent and Eviction Act, 1947, somewhat similar to Section 25(2) of the Act, that the makers of the Act must have felt that the Act may cut-down the rate of new construction and in order to overcome that eventuality and to give incentive to the landlords to construct new buildings, this Section has been introduced. The Act was enacted for controlling rent and restricting unreasonable eviction of tenants. The investment in housing became naturally less remunerative. The legislature after taking everything into consideration and to encourage people with money to provide more residential and other accommodation to the tenants, exempted certain buildings from the rigors of the Act.

8. Section 1(2) of the Act says that it extends to the whole of State of Kerala. As per Section 1(3), the Act applies to the areas mentioned in the Schedule and the Government may by notification in the Gazette, apply all

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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. Admittedly, the tenanted premises in this case is situated in Nadapuram, which is not included in the Schedule to the Act. Thereafter, the area was brought within the purview of the Act by way of a notification issued under Section 1(3) of the Act. When the notification under Section 1(3) was issued, the area in which the tenanted premises is situated, came under the purview of the Act. The Act is a legislation placing restrictions on the right of a landlord to secure eviction of the tenants. After the notification under Section 1(3), a notification under Section 25 has been issued by the Government by which certain building or class of buildings have been taken out of the purview of the Act. Therefore it is a benefit or privilege that has been extended or given to the landlords or owners of such buildings, which they are free to waive. Section 25 is not a provision by which the jurisdiction of the RCC has been taken away, on the other hand by the same, certain buildings have been exempted, the effect of which is to give the owners of the buildings a privilege or a benefit. Therefore the argument that the R.C.C. had no jurisdiction to entertain the R.C.P. and that the same is not maintainable, is incorrect. Further, no such contention is seen raised before

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the RCC or before the RCAA or even in the revision petition filed before this Court. It is only during the course of arguments, this contention has been advanced. After having subjected himself to the jurisdiction of the RCC and after having suffered an adverse order, at this point of time the respondent-tenant cannot raise a contention that the R.C.P. is not maintainable in view of Section 25 of the Act.

9. This Court under Section 20 is not expected to reappraise the evidence adduced by the parties, in exercise of its revisional jurisdiction and the limited question that falls for consideration is whether the procedure followed by the RCC and the RCAA is illegal, irregular or improper. The petitioner alleges *bona fide* need under Section 11(3) which is denied by the respondent-tenant. The RCC after analysing the oral and documentary evidence let in by the petitioner, allowed the R.C.P., finding that the petitioner has been able to substantiate his allegations in the petition. In the appeal, the RCAA is also seen to have gone into the matter, reappraised the evidence, findings and conclusions of the RCC and concluded that the appeal is devoid of merit and confirmed the order of eviction of the RCC. Both the RCC and the RCAA have considered all the aspects of the case in detail and held that the petitioner-landlord is entitled to an order of eviction under Section 11(3) of the Act. The findings rendered by the aforesaid courts are findings on facts. There is nothing in the impugned order by which this



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Court can conclude that there is any irregularity, illegality or impropriety warranting an interference by this Court.

In the result, this rent control revision is found to be without any merits and hence dismissed. Taking into account the facts and circumstances in this case, we deem it appropriate and reasonable to grant the respondent-tenant six months' time to vacate the building on condition that he files an undertaking before the RCC on or before **12/12/2022** to vacate the tenanted premises within a period of six months from today and also on condition that the respondent-tenant shall pay the arrears of rent if any, on or before 12/12/2022 and also continue to pay the monthly rent on or before the 10<sup>th</sup> day of every succeeding month till he vacates the building.

Interlocutory applications, if any pending, shall stand closed.

Sd/-

**P.B.SURESH KUMAR  
JUDGE**

Sd/-

**C.S.SUDHA  
JUDGE**

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