

(2004) 10 KL CK 0038

High Court Of Kerala

Case No: Writ Petition No. 24372 of 2004

Abdul Hakeem Haji

APPELLANT

Vs

Nandagopalan

RESPONDENT

Date of Decision: Oct. 5, 2004**Acts Referred:**

- Kerala Buildings (Lease and Rent Control) Act, 1965 - Section 5

Citation: (2004) 3 KLT 797**Hon'ble Judges:** K.S. Radhakrishnan, J; K. Thankappan, J**Bench:** Division Bench

Advocate: A.P. Chandrasekharan, Prabha R. Menon and M. Krishna Kumar, for the Appellant; P.S. Sreedharan Pillai, K.B. Sajeesh, Gayathri Vijayan, C.S. Sunil and P.R. Sreejith, for the Respondent

Judgement

K.S. Radhakrishnan, J.

This Writ Petition has been filed under Article 227 of the Constitution of India seeking a declaration that proceedings u/s 5 of the Kerala Buildings (lease and Rent Control) Act for fixation of fair rent pending before Civil Courts should in view of the decision of this Court in [Edger Ferus Vs. Abraham Ittycheria](#), be transmitted suo motu by the Civil Courts themselves to the concerned Rent Control Courts so as to enable to Rent Control Courts to continue the proceedings.

2. Writ petitioner is the owner of a commercial building consisting of five shop rooms. At the time of entrustment, he was only getting Rs. 350/- per month towards rent. Considering the importance of the locality, he sought for enhancement of the rent which was not acceded to by the tenant. Consequently he filed O.S. No. 24 of 2003 before the Sub Court, Manjeri for fixation of fair rent in the light of the decision of this Court in George v. State of Kerala (2000 (2) KLT 933). Tenant had also kept rent in arrears. Consequently petitioner was constrained to file petition for eviction on the ground of arrears of rent before the Rent Control Court, Manjeri as R.C.P. No.

3 of 2003. The Civil Court however held that O.S. No. 24 of 2003 is not maintainable in view of the decision in [Edger Ferus Vs. Abraham Ittycheria](#), wherein it has been held that the jurisdiction of the Civil Court would stand ousted and only the Rent Control Court could fix fair rent.

3. Sri. A.P. Chandrasekharan, counsel appearing for the petitioner submitted that the Civil Court did not take any steps to transfer the case to the Rent Control Court, Manjeri. The Court only returned the plaint without any direction for representation. Counsel submitted that since the return of the plaint is not under Order VII, Rule 10 of the CPC or any other provisions thereof, petitioner can only file a fresh application and consequently the Rent Control Court has to proceed with the case afresh. Counsel therefore submitted that a general direction be given to all the Civil Courts to transmit all the cases to the respective Rent Control Courts so that the litigant public would not be put to difficulties. We find force in the contention of the counsel. In paragraph 15 of the decision in Edger Ferus's case, supra, this Court had stated as follows:

"15. Issac Ninan's case and George's case paved the way for filing several suits before Civil Courts. Several applications u/s 1.1 (2)(b) on the basis of rent refixed unilaterally by landlords were filed before the Rent Control Courts. Some of the applications for fixation of fair rent filed before Rent Control Courts are also pending consideration before the Rent Control Courts or Appellate Authorities and even before this Court. So far as cases in which decision has already been taken by Civil Court and fair rent has already been fixed finally those matters would not be reopened. Those cases where applications are already pending before Rent Control Court or Appellate Authority or before this Court the same would be disposed of in the light of Section 5(1) of the Act following the principles enunciated by us. As regards matters pending before Civil Courts they can be made over to Rent Control Courts/Appellate Authorities in which event necessary court fees refund orders can also be passed by the Courts."

When such a direction has been given, we are of the view that Civil Court is duty bound to make over the suits pending before the Civil Court to the respective Rent Control Court so that litigant public would not be put to difficulties. Civil Court is also bound to transmit all the records including the evidence taken so that the proceeding could be continued by the Rent Control Court with the evidence already on record or to be adduced by the parties. Counsel therefore submitted that so far as this case is concerned, petitioner preferred R.C.P. No. 3 of 2003 before the Sub Court, Manjeri but the same was dismissed for default and he has taken steps to restore the petition. Considering the entire facts and circumstances of the case we are inclined to allow this Writ Petition by issuing general direction to all the Civil Courts to suo motu transmit all the civil suits pending for fixation of fair rent to the respective Rent Control Courts along with the records. Rent Control Courts would proceed with the case in accordance with law. The Writ Petition is disposed of as

above.