

BEFORE THE COURT OF RENT CONTROLLER (MUNSIFF), PAYYANNUR

Present: Smt. Alshari.A, LL.B, Munsiff

Tuesday, the 9th day of April, 2019(19th day of Chaithra, 1941)**RENT CONTROL PETITION NO.24 OF 2005**

1. Madambillath Nelli Valappil Ameer Ali]
(Died), aged 50 years, S/o. Beepathumma,]
residing at South Trikarapur, Kasaragod]
District.]
2. Madambillath Nelli Valappil Moideen,]
S/o.Madambillath Nelli Valappil]
Beepathumma, aged 36 years, residing at]
South Trikarapur, P.O.South Trikarapur,]
Kasaragod District.]
3. Madambillath Nelli Valappil Mariyambi,]
aged 32 years, D/o.Beepathumma, residing]
at South Trikarapur, P.O.South Trikarapur,]
Kasaragod District.]
4. Kattoor Khadeeja, aged 60 years, residing at]
Payyannur amsom desom, P.O.Payyannur,]
Kannur District.] Petitioners
Legal representatives of deceased 1st]
petitioner Suppl.P5 to 9.]
Wife:-]
5. T.P.Fathima, aged 41 years, No occupation]
Children:]
6. T.P.Asrudhin, aged 23 years, student]
7. T.P.Aslam, aged 21 years, Student]
8. T.P.Haneesa, aged 19 years, No occupation]
9. T.P.Ajeer, aged 15 years, Minor, next friend]
mother 5th petitioner.]
Suppl. P 5 to 9 are residing at TP House,]
Vadakkumbad, Ramanthali amsom,]
P.O.Ramanthali.]
Suppl.P5 to P9 impleaded and amended as]
per Order in IA.770/2008 and IA.771/2008]
dated 6.6.2008.]
Suppl. P5 to 9 deleted as per order in]
IA.275/10 dated 25.5.2010.]

Vs.

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|---|---|-------------|
| 1. K.V.Damodaran, age not known, S/o.Devaki |] | |
| Amma, K.V.Damodaran Textiles, Main |] | |
| Road, Payyannur. |] | |
| <u>Suppl. R2 to 6:-</u> |] | |
| 2. Thayyil Purayil Fathima, aged 42 years, |] | |
| W/o.Late Madambillath Nelli Valappil |] | |
| Ameer Ali, Vadakkumbad, P.O.Ramanthali. |] | |
| 3. Asarudhin, S/o.Late Madambillath Nelli |] | Respondents |
| Valappil Ameer Ali, aged 24 years, |] | |
| Vadakkumbad, P.O.Ramanthali. |] | |
| 4. Muhammed Aslam, S/o.Late Madambillath |] | |
| Nelli Valappil Ameer Ali, aged 22 years, |] | |
| Vadakkumbad, P.O.Ramanthali. |] | |
| 5 Haneesa, D/o.Late Madambillath Nelli |] | |
| Valappil Ameer Ali, aged 20 years, |] | |
| Vadakkumbad, P.O.Ramanthali. |] | |
| 6 Muhammed Ajeer (Minor) aged 16 years, |] | |
| represented by his mother T.P.Fathima, |] | |
| Vadakkumbad, P.O.Ramanthali. |] | |
| <i>Suppl. R2 to 6 impleaded as per order in</i> |] | |
| <i>IA.2123/09 and amended as per Order in</i> |] | |
| <i>IA.2124/09 dated 25.5.2010.</i> |] | |

This Petition filed under Section 5 of the Kerala Building (Lease and Rent Control) Act.

Court Fee paid ₹ 2/- only.

This petition coming on the 1st day of April 2019 for hearing before me in the presence of S/Sri.K.Vijayakumar and K.R.Padmanabhan, advocates for the petitioners; of Sri.T.K.Muralidharan, advocate for the respondents No.1 and 5; of Smt.T.V.P.Thasleena, advocate appointed as Court guardian for the minor 6th respondent and respondents name called absent set exparte and having stood over to this day for consideration and the Court passed the following:-

ORDER

Petition filed under section 5 of the Kerala Building (Lease and Rent Control) Act (herein after referred as 'the Act') for fixation of fair rent.

2. Petition averments in brief are as follows:- The petitioner, Abdulla and Ashraf are the owners of the building which is occupied by the respondent. The 4th petitioner purchased the right of second and third petitioner as per document No.3371/2009 of S.R.O, Payyannur. Thereafter, the respondent No. 2 to 6 executed a document No.3064/2009 in favour of respondent No. 7. The petitioner do not admit that transaction.

3. The respondent No.1 is in occupation of seven rooms in the building owned by the petitioner bearing No.PM.XXII/772,773,775 and 790 situated in the ground floor, PM.XXII/776,777 and 778 situated in the first floor. The rent for ground floor is ₹.230/-, 230,465,325 respectively and for the first floor Rs.230/- one room and ₹.520/- for two other rooms. The rent paid by the respondent is meagre considering the commercial importance of the building in which the rooms are situated. The building situated in the heart of the Payyannur town and faces the Main Road. There is a private road in between the two buildings owned by the petitioner. The respondent is in occupation of the room in both the buildings which faces the private road. The building situates in the heart of Payyannur town and faces main road. The distance from Payyannur bus stand and Central Bazar to the said building is only about 100 metre. The building is in the middle of the prestigious business concerns in Payyannur. The percentage of floating population in front of the shop room is higher that anywhere else in Payyannur town. Gandhi Maidan all the Educational Institutions, Government offices and other establishments lies within a circumference of 250 metres from this building.

4. The respondent is conducting a textile shop in the name and style as K.V Damodaran Textiles in the petition schedule building as well as in the near by building. The respondent's Textile is ranked as one of the best textile shop in Kannur District. The respondent's monthly profit from the said business is more than nine lakhs. While considering the income from the said rooms and other circumstance the rent being paid by the respondent for the said rooms is very low. The rent prevailing for similar rooms in the same locality is more than twenty times of the rent being paid by the respondent. By considering all the circumstances the respondent liable to pay ₹.7,000/- each for room No.XXII/772, 773, ₹.5,000/-for XXII/776, 777, 778 and 790

and ₹.4,000/ for XXII/775. If the rooms are leased out at present it will fetch more than the above rent. The petitioner caused to sent notice to the respondent on 24.02.2005 requesting to pay for fixing fair rent of the building.

5. The 1st respondent filed a counter contending as follows: The respondent deny the entire contentions in the petition except those facts which are specifically admitted. It is admitted that the respondent is in occupation of seven rooms as mentioned in the petition. But all the averments in the petition including the plinth area of the building and importance of the locality and the monthly income stated in the petition are denied. The averment that there is road in between the two building is also denied. The averment that the rooms occupied by the respondent is spacious is denied.

6. It is admitted that the respondent is conducting a textile shop in the name an style as K.V Damodaran Textiles in the near by building is admitted. But is denied that it is one of the best textiles in Kannur. The claim made by the petitioner for increase in the rent is alarmingly exorbitant considering the prevailing rent in the locality. According to the respondent, the locality remains now totally abandoned as the activities of the old Bus Stand become stiff due to formation of new Bus Stand at Perumba. The Buses are rarely coming to the old bus stand and the public also eager to contain their activities to new Bus Stand. The rent now paid by the respondent and the prevailing rent in the locality is also similar. In the same locality there are rooms available for monthly rent of ₹.100/-.

7. There are several rooms available in the locality. In the very same building owned by these petitioners there are number of rooms which remained closed for want of occupants. Since there is no road access to the building nobody is ready to occupy these room and out of frustration the petition is filed. There is no general or special amenities available in the building and even a bicycle can not be parked near the building. There is no open space the premises is so congested and one can not have easy access to the building. So the rent presently paid is reasonable.

8. The respondent No.2 to 5 remained ex parte.

9. For the 6th respondent court guardian filed a counter contending as follows:- For obtaining the relief the petitioner has to prove all the relevant facts pleaded. So

this respondent pray for recording the counter and pass appropriate orders.

10. The following points arise for consideration:

- 1) Whether the Rent Control Petition is maintainable in view of the transfer of interest of some of the co-owners in favour of 1st respondent during pendency of the proceedings?
- 2) Whether the petitioner is entitled to get fixation of fair rent of the building by enhancement of the present rent?
- 3) Whether all the guidelines provided by the Hon'ble High Court in 2004(2) KLT 767 can be taken into account in the absence of pleading regarding those guidelines in the petition for fixing fair rent?
- 4) Whether the rent presently paid by the respondent is fair and reasonable rent as contended by the respondent?
- 5) What is the fair rent to be fixed in respect of the rooms occupied by respondent?
- 6) What order as to reliefs and costs?

11. The evidence in this case consists of oral evidence of PW1, Ext.A12 to Ext.A17 and Ext.C2 to Ext.C4. Heard both sides.

12. **Point No.1 :-** The petitions allowed by this court on 30.10.2010. The aggrieved respondent herein had approached Hon'ble appellate authority and after hearing the appeal, the said appellate authority remanded the matter to this court vide judgment dated 23.03.2017 for fresh disposal. The application is filed under Section 5 for fixation of rent by all the co-owners of the buildings in which the rooms occupied by the respondent is situated. During the pendency of the proceedings the first petitioner died and his legal heirs were impleaded as Supp. Petitioners No.5 to 9. Subsequently, in the year 2009 the legal representatives of the 1st petitioner transferred their entire right in favour of 1st respondent. Consequently, the petitioners moved application for deleting the name of petitioner No. 5 to 9 and impleading them as supplemental petitioner No. 5 to 9 were deleted and they were impleaded as supplemental respondents No. 2 to 6. So admittedly the petition schedule buildings belongs to petitioners and respondents No. 2 to 6 jointly and they transferred the same in favour of respondent No. 1

13. It is basing upon this subsequent transfer after the filing of the Rent control Petition for fixation of fair rent, the respondent contended that the Rent Control Petition is not maintainable. The Hon'ble Supreme Court in **Pramod Kumar Jaiswal and others V. Bibi Husn Banu and Others AIR 2005 SC 2857** held that acquisition of rights of some of the co-owners by the lessee does not amount to extinguishment of tenancy by merger as postulated under Section 111(d) of Transfer of Property Act. More over the application is not for eviction of the tenant but for fixation of fair rent. It is not a matter of prejudicially affecting the respondent but in fact a matter enuring to the benefit of other co-owners. It is a delicate situation as far as the respondent is concerned because he purchased 2/18 share in respect of the entire building and at the same time he is the tenant in respect of seven rooms only in same building and fixation of fair rent of that rooms are also pending as RCP 21/2005, 22/05, 23/05 and 25/05 to 30/05. If rent is increased by fixing fair rent he will get 2/18 share in respect of all the rooms. At the same time, he will be liable to pay fair rent in respect of seven rooms occupied by him. Therefore, I find that the rent control petition originally filed by the landlord can not be dismissed on the ground that during the pendency of the proceedings some of the co-owners transferred their right in favour tenant. In view of the law laid down by the Hon'ble Supreme Court I do not find any merit in the contention of the respondent No.1 that the tenancy right is merged with ownership and the Rent Control Petition is not maintainable. So the point is fond in favour of petitioner.

14. **Point No.2 and 3:-** The case of the petitioner is that the building was let out to the respondents years back and the rent of the petition schedule room remained static and very meagre. Therefore, the fair rent of the building has to be fixed taking into account the relevant factors. Section 5 of the Rent Control Act deals with the provisions regarding the determination of fair rent in respect of building. The matter come up before the consideration of Hon'ble in Edger Ferus V. Abraham Ittycheria in 2004(1) KLT 767. The Hon'ble High Court after examining the fundamental right guaranteed of the land lord under article 19 (1) (g) and 21 of the Constitution of India held that the contention of continued occupation by tenant and the protection of

statutory is subject to the fundamental rights of the landlord. The Hon'ble High court has retained Sec 5 (1) in the statute book while struck down other provisions of Sec. 5 and necessary parameters are laid down for proper fixation of fair rent. It is therefore the present application moved before the court. The decision of the Hon'ble High Court in 2004 (1) KLT 767 is approved by the Hon'ble apex court in 2009 (4) KLT 673. So at present Sec. 5 (1) of the Rent Control Act remain in the statute book. Sec 5 (1) provided that “rent control court shall on application by the tenant or landlord of a building, fix the fair rent of such building after holding such enquiry as it thinks fit”.

15. The question is whether the rent control court which is approached by landlord for fixing fair rent can refuse to look into the parameters laid down by the Hon'ble High Court stating that the parameters are not pleaded by the petitioner. According to me, the answer is certainly negative. The statute only provides that fair rent has to be fixed by the court by making such enquiry as it thinks fit. Whenever the petition is filed for fixing fair rent either by the landlord or by the tenant automatically the court is bound to adjudicate the question by considering the parameters laid down by the Hon'ble High Court notwithstanding whether those guidelines are pleaded or not. Otherwise it should an abdication of the responsibility of the court to follow the guidelines provided by the Hon'ble High Court.

16. So I find that the landlord is entitled to get fixation of fair rent in the absence of pleading regarding the guidelines is of no consequence and the court is bound to adjudicate and fix the fair rent by considering all the guidelines provided by the Hon'ble High Court 2004 (1) KLT 767. So these points are found in favour of petitioner.

17. **Point No.4:-** According to the petitioner, the present rent paid by the respondent is very meagre and considering the present rate of inflation, cost of living and importance of the locality the rent is liable to be re-fixed by increasing the rent. The respondent contend that the present rent paid him is fair rent. Before getting into the fixation of fair rent in respect of different rooms occupied by the respondent No.1. I may first deal with the guidelines provided by the Hon'ble High Court for fixation of fair rent and what are the evidence available before the court with respect to these guidelines to ascertain whether the present rent is the fair rent or required upward

revision as contended by the petitioner.

18. The petitioner also submitted an argument note and some additional material in the form of computer print out document to prove the fixation of fair rent. All the rooms are situated in same building which faces main road and the rooms of respondent faces the passage provided on the eastern side and the rooms of are on the ground floor and some of the rooms are on the first floor. Different yardstick and principal will apply while fixing the fair rent of the room which are in the ground floor and those in the first floor. Like wise there have to be difference regarding the rooms which are facing the passage on the eastern side. Apart form that the inflationary aspect, commercial importance of the locality, availability of accommodation and demand for accommodation etc. are common in respect of all rooms.

19. Now I may briefly examine the guidelines and the evidence available before the court. The first aspect to be considered by the court is the inflation and the resultant reduction in purchasing power of money, variation in the cost of living index in the area since commencement of lease, demand for accommodation and availability of the building in the locality. No one dispute the fact that there is inflation in India resulting in reduction in purchasing power of money and the cost of living also considerably increased over the years. To what extent the inflation has affected the purchasing power of money and increased the cost of living has to be considered by the court. According to the counsel for the petitioner rate of inflation in India is on average of 8% since 1980, which is supported by the print out of a speech made by Dr. Y.V.Reddy under th Title “ Indian Economy: A Retrospect and Prospects” produced by the petitioner. The copy of the speech is taken from the website of Reserve Bank of India. In the Article produced by the petitioner the author mentioned that India maintained an impressive record of maintaining an average annual inflation rate as measured by the increase in WPI (on average basis) at 8% during the period. In the very same article under the special title Post Reform Performance the author mention that the inflation rate was an average at a high of 10.7 % per annum in the first five years which come down the 8.75 % in reform years but still higher than inflation avarage rate of 8% in the eighties. The petitioner also produced monetary policy statement for 2009-2010 issued by Dr.D.Subharao Governor of Reserve Bank of India.

This print out is also taken from the website of Reserve Bank of India. The inflation rate mentioned in the statement is 9.8 % in September 2008, 8% in March 2009, 11.7% in September 2009. So the average which can be taken into the consideration by the court is 8 %.

20. Relying on Sec.57 of the Indian Evidence Act also in matters of public history, literature, science and art the court may resort to the appropriate books or documents of reference. So court can take into account the inflation rate in India is on an average 8% basing upon the financial record of Reserve Bank of India in view of Section 35 and 57 of Indian Evidence Act.

21. In view of Sec 35 and 57 of the Evidence Act, the court can consider those documents when those matters are relevant to the issue before the court. The Reserve Bank of India is an Apex body which monitor the inflationary pressure in India and publish periodic report under the authority of the Government of India. When the documents of report under the authority of the Government of India. When the documents of Reserve Bank of India regarding inflation rate is produced before the court. This court can not say that this documents has to be rejected because it was not marked in evidence. When the court is to depend upon such social aspects like inflation reduction in purchasing power of money certainly the relevant materials provided by the statutory authorities like Reserve Bank of India can be of great assistance to the court in arriving at a conclusion. Certainly a Rent Control Court dealing with a petition under section 5 is not expected to insist that the landlord has to adduce evidence by examining Expert in the field of Economics to prove that there is inflation. The nature of jurisdiction conferred upon the Rent Control Court also do not contemplate such an enquiry.

22. It is also relevant in this context to note that though the respondent contended that the present rent is fair and no fixation of fair rent by upward revision is required except challenging the testimony of PW1, the respondent had not entered the box to deny any of the aspects regarding inflation or the consequent reduction in purchasing power of money. The rate of inflation as published by the Reserve Bank of India can certainly be accepted and corroborated by the evidence of PW1. Increase in the price of various commodities and the consequent increase in the living cost can be

felt by a common man and therefore the evidence of PW1 that there is increase in the cost of living and price of the property can not be brushed aside. Though he is not aware of the technical aspects of inflation and reduction in purchasing power of money he Can speak about the increase in the cost of living and the increase in the value of property which can felt in every day life. That may be the reason, respondent chosen not to enter the witness box at all. The contention of the respondent in the pleading is unsupported by evidence.

23. Section 5 contemplate that both the landlord as well as tenant can approach the Rent Control Court for fixation of fair rent. The parameters are laid down by the Hon'ble High Court for fixing the fair rent. When an application is filed before the court by the landlord stating that the present rent is very merge and fair rent has to be fixed there can not be a unilateral burden upon the landlord to prove all the aspects but the purpose and the duty is to bring out the relevant aspect before the court coming under these guidelines. If the landlord shows that there is inflation and consequent reduction in the purchasing power of money and tenant contend that there are no inflationary pressure and it is not felt by the tenant he can prove those aspects before the court. I am of the view that the court can take into account of the fact that there is inflation in India at least at the rate of 8% per annum and secondly there is a variation in the purchasing power of money and the cost of living is increased manifoldly from 1980 to 2010 in view of the material and evidence of PW1 in the absence of rebuttal evidence on the part of respondent.

24. The guidelines also provides that the nature of demand for accommodation availability of the building in the locality also has to be considered. According to PW1, the petition schedule building is situated in the heart of the town and availability of accommodation in the locality is very scarce. The respondent's contented that several buildings has come out in the locality and many of the rooms are remaining vacant. The respondent contended that just behind the petition schedule building a huge complex was constructed by fourth petitioner and due to non availability of tenants he was constrained to sell the building. PW1 had not deposed that the building constructed by the 4th petitioner was sold due to non availability of the tenants. What is deposed by him is that the 4th petitioner had constructed a building with so many

rooms near the petition schedule building and after completion of the work of the building he had sold it to third party. If those rooms are available in the locality it is for the respondents to prove that there was no demand for accommodation in the locality it is for the respondents to prove that there was no demand for accommodation in the locality it is for the respondents to prove the same by adducing documentary evidence. The burden is on the respondents to prove that there was no demand for accommodation in the locality in which the petition schedule building is situated. Respondent contend that rooms are available in the locality even for a rent of Rs.100/- per month but not supported that pleading with evidence. Since the prayer in the petition is only for fixation of fair rent the tenant can certainly make a contention that other rooms are available and if the petition is for eviction certainly he would have contended that no other rooms are available. The absence of any evidence on the part of respondent strengthen the case of petitioner that demand for accommodation is high in the locality and there is no merit in the contention of tenant that several rooms are remaining vacant in the locality. So I find that the demand for accommodation is also very high in the locality.

25. The next guidelines provide regarding the cost of construction of the building and capital value of the premises including the value of land under actual enjoyment of tenant including appertinent land type of construction, locational importance, advantage of amenities such as access to place of importance like educational institution and hospital. According to the petitioner, the entire building is situated in the heart of the town near to the Payyannur bus stand. Regarding the importance of the locality the court has the report of the Commissioner together with the plan marked as Ext.C1 to Ext.C1(b). The Commissioner undertaken the job of visiting entire locality and drawn two plan, one showing the situation of each of the rooms in the building and another showing all the institution and establishment in and around the petition schedule building. Certainly, the Commissioner had undertaken cumbersome task and the index in the plan itself is 52 in number and the entire Payyannur town and the several areas are found in the Ext.C1(b) plan submitted by the Commissioner. Admittedly the petition schedule building is facing the Payyannur main road known as Payyannur-Railway Station road. According to the commission

report, this bus stand is just 109 meters away from the petition schedule building. The respondent contended that the importance of this bus stand is diminished considerably since new bus stand has come out which is shown as index No.41 in the plan which is about 743.5 meter away form the petition schedule building. According to PW1, there is no new bus stand but only bus Bay. The Commissioner mentioned it as a temporary bus stand and PW1 gave evidence that only long root buses are coming in the temporary bus Bay and all other buses still comes to the Bus stand near the petition schedule building. There is no evidence before the court and the Commissioner also not reported that the entire activities of bus stand is shifted to new bus stand. In fact commissioner referred to it as temporary bus stand and no contra evidence is adduced by the respondent to show that this bus stand is now the main bus stand and the bus stand near the petition schedule building is abandoned.

26. Likewise on the opposite side of the petition schedule building at about 54 meters away Gandhi Park is situated, the bus stand is about 109 metres away, St. Mary's School is 310.5 metres away and GVHSS Payyannur is about 233 metres away from the petition schedule building. The Payyannur Co-Operative Hospital is about 206 metres away from the building and there is another hospital namely B K M Hospital which is about 410 metres away from the petition schedule building. Athulya College is about 213.5 metres and Bharathiya Vidya Bhavan about 270 metres away. There are also banks near petition schedule building, the Indian Oversease Bank is about 434 away, Vijaya bank is about 115 metre, Federal Bank is 135 metre away from petition schedule building. There also other complex near the petition schedule building as revealed from the report of the Commissioner. Regarding this report of the Commissioner, the respondent had not filed any objection to the report or the distance noted in Ext.C1 plan. So the evidence available before the court make it clear that the petition schedule building occupied by respondent is situated facing the Payyannur Railway Station, Main Road very near to the present Bus Stand and there are several Educational institutions, Hospitals etc. giving commercial importance to the building.

27. The respondent contend that the importance of locality is diminished and as a result actually his business has come down. When the petitioner proved that the building is situated in the heart of the town and there is commercial importance to the

building and the respondent contended that in fact the commercial importance of the building is reduced and the business has come down, this can be a factor which is within the special knowledge of the respondent. He can very well produce documents regarding the business in the past as well as in the present to show that the volume of the business done by him to show what was actual business in the past and what is the reduction in the business at present. That evidence of PW1 also remains unchallenged.

28. The respondent contended that there is no parking allowed in front of the building and it is one way traffic. One way traffic can not be permanent as per the legal provisions. Considering the convenience of traffic from time to time the authority can notify a particular route as one way. There is no evidence before the court to show that when the main road in front of the petition schedule building was notified a one way traffic and whether it is permanent or temporary nature. The mere fact that parking is not allowed on the public road can not be considered to be a factor which affects the business done in the petition schedule building. It depends upon the nature of business done and one can not generally say that in the absence of parking facilities the business is affected especially in the absence of any evidence before the court to show that there was reduction in the volume of business done by the tenant over the years. So the mere admission of PW1 that parking is not allowed in the public road in front of the petition schedule building will not be a factor showing that the importance of the building is reduced.

29. As far as cost of construction of the building there is no evidence and it is admitted fact that it is an old building. But when we come to the capital value of the premises we have some evidence in the form of a transfer deed effected by some of the shares in favour of the respondent during pendency of this proceedings. In the year 2009 some of the shares transferred their 2/18 share in favour of tenant for an amount of ₹.4,80,000/-. In that capital value is taken into account the total value of the premises come to ₹.43,20,000/-. At the same time, the rent paid by all the tenants including respondent as revealed from connected Rent Control Petitions is less than ₹.8,500/-. So the capital value and the rent derived by the landlord show the inadequacy of the rent. As stated earlier the construction of building and letting out to the tenant is a business of the landlord as held by the Hon'ble High Court. The

purpose of every business is to have some profit to make out lively hood. No one can deny the fact that a landlord who owns a building with capital value of nearly ₹.43,00,000/- should be satisfied by a rent of less than ₹.8,500/- from the entire building. So the mere look at the capital value and the present rent collected by the landlord from the tenants will show the huge disparity between the two and the necessity of fixation of fair rent by an increase in the rent.

30. The next guidelines provided by the Hon'ble High Court is to be taken into account is the prevailing rent in the locality for the same and similar accommodation. The landlord has produced two documents marked as Ext.A3 and Ext.A4 to show the prevailing rent in the locality. The one document is in respect of Catholic Syrian Bank building situated above 800 metres from Payyannur twon. Another document Ext.A4 is with reference to the rent paid by Syndicate Bank, Payyannur which is about 40 metres away from the Main Road. According to the landlord, the rent per square feet for the ground floor paid by Catholic Syrian Bank is Rs.37/- and for the first floor is Rs.10 as proved by Ext.A3. The rent per square feet of Syndicate Bank building is Rs.19/-. These two building occupied the bank is situated away from the petition schedule building and there is no convenience like the petition schedule building. One of the bank is situated in a pocket road still they are paying Rs.37/- per square feet as rent.

31. The two documents marked as Ext.A3 and Ext.A4 are the information collected by the petitioner from the bank under the provisions of Right to Information Act. Except mentioning the square feet area and the rent there is nothing in Ext.A3 and Ext.A4 to show what are the amenities provided by the landlord in respect of those building. There is no satisfactory evidence before the court to show what are the amenities provided by the landlord to the banks for fixing the rent. So the rent of those building can not be adopted in the case of petition schedule building. PW1 also during cross-examination admits that he cannot say on what basis the banks had fixed the rent. He also deposed that there is some facility for parking infront of the bank mentioned in Ext.A3 and Ext.A4 during cross-examination.

32. As far as guidelines No.10 and 11 are concerned there is no evidence. The landlord has not produced document showing annual rental value of the building.

There is no case that annual rental value is exceeding the present rent collected by the landlord. Ext.A4 and Ext.B5 produced by the tenant shows the annual rental value of building. Annual value of the building alone cannot be a criteria, especially in view of the fact restricting placed upon court by subsection of Sec. 5 are struck down. There is also no evidence to show that there is revision or fresh imposition of Municipal Tax, Cess, Rate in respect of electricity or water consumption. Certainly, there is increased in the charge of electricity but the same is discharged by the tenant and cannot be taken into account. There is also no evidence to show that any repairs has been carried out by the petitioner to the building recently. The landlord himself had no case that he has made any repair recently spending huge amount. Therefore, guidelines No.10 and 11 cannot be taken into account for fixing fair rent of this buildings.

33. So appreciation of the entire evidence, I find that the rent of the building which remained static for last several years need revision considering guidelines No.7 to 9 provided by the Hon'ble High Court. The rent presently paid by the respondent is not at all fair and reasonable and fair rent has to be fixed by increasing the rent. So the point is found in favour of petitioner.

34. **Point No.5:-** In view of the finding on point No. 1 to 4, the rent of the building occupied by the tenant is liable to be increased by fixing the fair rent. Now the question is what is reasonable fair rent entitled by the petitioner for each room. The guiding factors and the importance of the locality as well the inflationary aspects are already considered and decided by me. While discussing the rent of similar rooms in the locality I had also found that Ext.A3 and A4 cannot be taken in to account as the amenities provided in the building covered by Ext. A3 and A4 being not proved and the same can not be adopted as such. The Hon'ble appellate authority remanded the matter for fresh disposal by a finding that the Ext.A3 and Ext.A4 are not reliable for fixing the fair rent. After the remand, both parties appeared before this court. But on the day posted for evidence, the respondent was not ready to cross examine the petitioner who was examined as PW1. Hence, the respondent was set ex parte. The Petitioner present was examined as PW1, who had filed affidavit in lieu of chief examination and marked Exts.A12 to Ext.A17 and Ext.C2 to Ext.C4 apart form the documents already marked. The affidavit along with documentary evidence marked as

Ext.A12 to Ext.A17 and Ext.C2 to Ext.C4 proved the case of the petitioner with respect to the reasonable fair rent to which they are entitled to as per the petition as these documents and the evidence of PW1 on the aspect was not challenged by the respondents. The further examination of PW1 and Ext.A12 to Ext.A17 and Ext.C2 to Ext.C4 proves the fact that the petitioner is entitled for the fair rent to be reasonable as prayed for in the absence of any contra evidence and also the further evidence adduced on this aspect remains unchallenged. Therefore I find in view of the above discussions that the petitioner is entitled for the reasonable fair rent as prayed for in respect of each petition schedule room as the reasonable rent entitled to by the petitioner is not challenged or disproved by any contra evidence.

36. **Point No.6 :-** In view of the finding on point No.1 to 5 petition is allowed and the fair rent of room no.12/772 and 773 is fixed as ₹.7,000/- each and the fair rent of room No.12/775 is fixed as ₹.4,000/- and that of room No.12/790 is fixed as ₹.5,000/-.

The fair rent of Room No.12/776 to 778 is fixed as ₹.5,000/- each. The respondent is directed to pay the fair rent with effect from the date of the petition with cost of this petition.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 9th day of April, 2019).

RENT CONTROLLER/MUNSIFF

Petitioner's Witness:-

PW1 : Kattoor Aboobacker

Petitioner's Exhibits:-

A1.	.	:	Power of Attorney executed by Kattoor Khadeeja
A2.	9.8.2009	:	Certified copy of Jenm deed
A3	7.9.2009	:	Registration copy of the Jenm deed
A4	01.09.2010	:	Information from Catholic Syrian Bank to Kattoor Aboobacker through Public Information Officer.
A5	8.9.2010	:	Receipt of Information from Syndicate Bank, Kannur to Kattoor Aboobacker

A6	28.2.1979	: Kachit executed by K.V.Damodaran in favour of Beepathumma and Khadeeja
A7	9.6.1983	: Kachit executed by K.V.Damodaran in favour of Beepathumma and Khadeeja
A8	20.8.1987	: Kachit executed by K.V.Damodaran in favour of Beepathumma and Khadeeja
A9	18.5.1987	: Kachit executed by K.V.Damodaran in favour of Beepathumma and Khadeeja
A10	24.2.2005	: Copy of lawyer notice
A11	24.2.2005	: Reply notice
A12	07.09.2016	Certified copy of Common Judgement in RCAs of Rent Control Appellate Authority, Thalassery.
A13	31.07.2017	Certified copy of Judgement in RC.Rev.76 of 2017 of Hon'ble High Court of Kerala.
A14	31.07.2017	Certified copy of Common Judgement in RCP.35 to 39 of 2011 of Rent Control Court (Munsiff), Payyannur
A15	14.11.2014	Copy of Kerala Gazette
A16	. .	Fair value of land issued by Dept. of Registration.
A17 a)	26.09.2017	Demand notice issued by Payyannur Municipality (Bldg.Id.30220010022218)
A17 b)	26.09.2017	Demand notice issued by Payyannur Municipality (Bldg.Id.30220010022222)
A17 c)	26.09.2017	Demand notice issued by Payyannur Municipality (Bldg.Id.30220010022231)
A17 d)	26.09.2017	Demand notice issued by Payyannur Municipality (Bldg.Id.30220010022235)
A17 e)	26.09.2017	Demand notice issued by Payyannur Municipality (Bldg.Id.30220010022239)
A17 f)	26.09.2017	Demand notice issued by Payyannur Municipality (Bldg.Id.30220010022241)
A17 g)	26.09.2017	Demand notice issued by Payyannur Municipality (Bldg.Id.30220010022368)

Respondent's Witness:- : Nil

Respondent's Exhibits:-

B1	22.03.2005	: Copy of reply notice
B2	22.03.2005	: Postal receipt
B3	23.03.2005	: Postal Acknowledgement card

