

**IN THE COURT OF THE RENT CONTROLLER,
KODUNGALLUR**

**Present:-Smt.Karthika.K.,Rent Controller.
Tuesday, the 6th day of January, 2026/16th Pousham, 1947 SE**

I.A.6/2024 IN R.C.P.26/2023

Petitioner

Rathi Hareesh Kumar, W/o. Poovathumkadavil
Hareesh Kumar, Eangandiyoor Village, Amsom &
Desom, Chavakkad Taluk, Thrissur District,
PIN-680 615.

By Adv.T.K.Prabhakaran

Respondent

Bijoy, Aged 50, S/o. Cherkkarathandayan
Satheesh Chandrabose, Vatanappilly Village,
Amsom & Desom, Chavakkad Taluk, Thrissur District,
Represented by Power of Attorney Holder,
Satheesh Chandrabose, Aged 79,
S/o.Narayanan.

By Adv.P.V.Shine

This petition coming on this day for hearing before me,
the court on the same day passed the following:-

ORDER

**This petition is filed by the respondent in the above
RCP to set aside the commission report and plan u/s 151 of
CPC.**

2. **The petition averments in brief is as follows:-** The
petitioner is the respondent in the above RCP.As per the order of
the court the advocate commissioner has inspected the plaint
schedule property and filed report and sketch before this court. As
per the custom of the locality wherein the petition schedule room
is situated without paying much importance in the square feet the

rent is decided based on the importance of the locality wherein the building is standing. The back side of the petition schedule room is used by the old building owner to enter into the petition schedule building through a shutter on the back side standing in the possession of the old owner. The said portion is not in the possession of the respondent. The respondent is not using the above said portion and the commissioner omitted to report the said fact. There is no car parking as reported by the commissioner. The road side of PWD road was misunderstood as a car parking area by the commissioner. There is no textile shop near to the petition schedule building. The commissioner has also erred in reporting that there is a motor vehicle showroom, sales center and Manappuram Finance and in the surrounding area of the building hospitals, temple and school are also reported by the commissioner. The commissioner has omitted to correctly report the distance between the hospital and school from the petition schedule building. It is incorrect that the first shop room on the southern side of the two storied building named 'Siva Lottery Agencies' has an area of 140 square meters with a varandha of 20 feet length and 4.3 feet width is not correct. The petitioner has filed RCP. 77/21 before the Chavakkad Munsiff Court against Shaji who is the lessee in the above shop room. So in order to adduce evidence towards that RCP the petitioner has made the

commissioner to report such facts before this court. As per the sketch it is evident that the petition schedule building has no car parking area and it is lying adjacent to the public road. Without reporting the actual length and width of the petition schedule room the commissioner has reported that around 800 square feet of room is in the possession of the respondent. Therefore the commission report and plan may be set aside.

3. **The respondent filed objection in this IA:-** The petition is not legally maintainable and devoid of merits and lacks bona fides. It is filed only with an intention to protract and prolong the trial of the case and final disposal of the case. All the allegations raised against the commissioner's report are false. When the commissioner came for inspecting the petition schedule room both respondent and petitioner were present at the premises. Till this date no objection is filed in the above commission report and there are no evidence to set aside the commission report and plan. Hence the petition may be dismissed.

4. Heard both sides.

5. Point for consideration:-

“Whether the petition can be allowed”?

6. **The Point:-** This petition is filed u/s 151 of the CPC to set aside the commission report and plan. The Kerala Building (Lease and Rent Control) Act 1965 is a special statute

and CPC is not applicable to the above case. As per Section 23 of the Act it is specifically stated that *“Subject to such conditions and limitations as may be prescribed, the Rent Control Court and the appellate authority shall have the powers which are vested in a court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters:-Section 23 (g) of the Kerala Building (Lease and Rent Control) Act 1965 deals with issuing commission for the examination of witnesses and for local inspection”*. There is no provision as to set aside the commission report and plan. Hence the petition filed u/s 151 of the CPC is defective in nature.

7. The respondent has raised so many allegations with respect to the commission report and plan. It is pertinent to note that the respondent did not file any objection in the commission report till this date. The case is filed on 5.12.2024. The commissioner has filed report and plan on 8.7.2024. But the respondent did not care to file any objection in the above commission report and plan. If the respondent wants to bring in the evidence in their favour and to prove the allegations raised in I.A.6/24 they might have filed a petition u/s 23 (1) (g) of the Kerala Building (Lease and Rent Control) Act. But they did not take any such steps. The suit was listed for evidence to 5.12.2024. On 20.11.2024 the petitioner filed I.A.4/24 to advance

the hearing along with I.A.6/24 to set aside the commission report and plan. On 9.12.24 the case is removed from the list and posted for hearing on this I.A till date. The respondent has still defaulted payment of the monthly rent. There is no prima facie evidence before this court to ascertain that the commission report and plan filed by the advocate commissioner is liable to be set aside for any material irregularity or grave errors. The respondent is at liberty to examine the commissioner during the time of evidence and bring in the discrepancies took place while preparing and filing the commission report and plan. For that it is not necessary to set aside the commission report filed by the advocate commissioner in this case. For the reasons stated above the petition stands dismissed.

In the result, the petition stands dismissed.

Dictated to the Confdl.Asst., transcribed by her, corrected by me and pronounced in open court on this the 6th day of January,2026.

Sd/-
KARTHIKA.K,
RENT CONTROLLER.

Appendix-NIL

Id/-
RENT CONTROLLER.
(By order)

//True copy//

Junior Superintendent

Copied by:KS
compared by: