

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

RCRev..No. 37 of 2012 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 7/2010 of RENT CONTROL APPELLATE
AUTHORITY, MAVELIKKARA DATED 25-07-2011**

**AGAINST THE ORDER/JUDGMENT IN RCP 6/2007 of RENT CONTROLLER,
KAYAMKULAM DATED 23-12-2009**

PETITIONER/RESPONDENT/PETITIONER:

**ABDUL KALAM AZAD AGED 54 YEARS
S/O MUHAMMED KUNJU LEBBA, AZAD BUILDING
CHIRAKKADAVOMMURI, KAYAMKULAM VILLAGE.**

**BY ADVS.SMT.SUMATHY DANDAPANI (SR.)
SRI.MILLU DANDAPANI**

RESPONDENT/APPELLANT/COUNTER PETITIONER:

**ANIL, AGED ABOUT 33 YEARS
S/O. ANANDAN, ANANDABHAVANAM, CHIRAKKADAVOMMURI
(PO) KAYAMKULAM-690502. KAYAMKULAM VILLAGE.**

**BY ADV. SRI.SAJJU.S
BY ADV. SMT.REXY ELIZABETH THOMAS
BY ADV. SRI.PRAVEEN THOMAS ABRAHAM
BY ADV. SRI.T.KRISHNAN UNNI (SR.)**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 29-01-
2015, ALONG WITH RCR. 38/2012, RCR. 39/2012, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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R.C.R. Nos. 37, 38 & 39 of 2012
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Dated this the 29th day of January, 2015

O R D E R

Antony Dominic, J.

These revision petitions are filed by the landlord who filed RCP Nos.5, 6 and 7/07 on the file of the Rent Control Court, Kayamkulam. The said petitions were filed seeking eviction of the tenants who are respondents therein on the ground of arrears of rent as contemplated under Section 11(2)(b) of the Kerala Buildings (Lease and Rent Control) Act, (hereinafter referred to as the Act for short) and *bona fide* need for own occupation under Section 11(3) of the Act.

2. The cases were jointly tried and the Rent Control Court by its common order rendered on 23rd of December, 2009 allowed the petition under Section 11(3) of the Act. Here, we also note that, the tenants had in the meantime, deposited the arrears of rent and therefore, there was no enquiry with respect to that ground.

3. The tenants filed RCA Nos. 7, 8 and 9/10 against the order passed by the Rent Control Court and the Rent Control Appellate Authority, Mavelikkara by its common order rendered on 25th of July,

2011, allowed the appeals and dismissed the rent control petitions. It is aggrieved by this common order of the appellate authority, the landlord has filed these revision petitions.

4. We heard the learned senior counsel for the revision petitioner and the learned senior counsel appearing for the respondent tenants.

5. As we have already stated, the ground on which the eviction was allowed by the Rent Control Court is under Section 11(3) of the Act. According to the landlord, he was employed for more than thirty years in Kuwait. He lost his employment and came back to his native place and was remaining unemployed. He decided to start a hyper market utilising the rooms in question and the portion of the building in his possession. It was for the above purpose, according to him, he *bona fide* needed the building. However, this case pleaded by the landlord was resisted by the tenants by questioning the *bona fide* need urged by the landlord. It was their case that the landlord had other buildings in his possession, which could be made use of by him for the business in question. They also claimed the benefit of the first and

second provisos to Section 11(3) of the Act. However, the Rent Control Court rejected all the contentions raised by the tenants and allowed eviction as prayed for by the landlord.

6. In so far as the contention raised by the tenants that there was absolutely no *bona fides* in the petitions filed by the landlord is concerned, the Rent Control Court held that merely for the reason that in his evidence landlord was unable to say the square feet area that was required for his business or that he had not measured the area of the building, the *bona fides* of his intention to commence business cannot be doubted. The Rent Control Court, in this context, placed reliance on the evidence of the landlord and his wife, who were examined as PWs 1 and 4, that they needed a concrete building for the their business purposes. Accepting the evidence so adduced by the landlord, the Rent Control Court held that there was nothing to doubt the *bona fides* of the need urged by the landlord.

7. The contention that the landlord needed to start a business because of his financial constraints was sought to be refuted by the tenants by pointing out the evidence of the

landlord that he had ₹25 lakhs ready with him for investment in the proposed business of hypermarket. This was rejected by the Rent Control Court pointing out that the said amount of ₹25 lakhs was raised by the landlord by disposing of 55 cents of his land and that the availability of the said amount did not mean that the landlord was incorrect in contending that he had financial constraints, which necessitated business.

8. It was then contended before the Rent Control Court that the shop rooms which are the subject matter of the rent control petitions were not suitable for conducting the hyper market. This was on the basis that there are separate rooms, which cannot be suitable for the business in question. That also was rejected by the Rent Control Court by accepting the evidence on behalf of the landlord that there was nothing preventing the landlord from removing the partition walls of the shops to make the building suitable with such sufficient modifications.

9. Yet another contention raised before the Rent Control Court was that the Rent Control Court had on an earlier occasion evicted another tenant urging ground under Section 11(3) of the

Act and had not started business and left the room vacant. This, according to the tenants, was sufficient to cast a shadow of doubt on the bona fides of the need urged by the landlord. The Rent Control Court considered this contention and held that though it is true that the room was got evicted for starting cosmetic business and that the landlord or his wife did not start the aforesaid business, the landlord had in fact made use of the room in question for his distribution agency, under the name and style "World Wide Exporters". Therefore, according to the Rent Control Court, the fact that the business that was started in the room was changed from cosmetic business to distribution business, does not mean that the bona fides of the need now urged by the landlord was a doubtful one.

10. It was then contended by the tenants that the landlord is an enormously rich person having various businesses and that therefore there was no necessity for him to start a hyper market to earn income. This contention of the tenants was also rejected by the Rent Control Court by pointing out that the fact that a person is rich or has some other occupation does not mean that

he shall not venture into any new businesses. It was on the basis of the above findings that the Rent Control Court upheld the claim of the landlord for eviction under Section 11(3) of the Act.

11. Thereafter, under point Nos.2 and 3, the Rent Control Court considered the claim of the tenants for the benefit of the provisos to Section 11(3). In so far as the first proviso preventing the Rent Control Court from passing an order of eviction if the landlord has other buildings in his possession, unless specific reasons are made out is concerned, the Rent Control Court found that there was absolutely no pleading on the part of the tenants that the landlord was having another building of his own in his possession which could be utilized for starting the hyper market. The Rent Control Court also rejected the contention of the tenants that the landlord is in possession of a portion of the very same building where the petition schedule rooms are situated and that the said portion was good enough for the landlord to start his business. According to the Rent Control Court, even if the landlord is in possession of the portion of the building as claimed, it is for the landlord to assess the requirements of his business in the

manner he chooses and therefore the availability of the portion did not dis-entitle him either for order under Section 11(3) nor could it be taken advantage of by the tenants under the first proviso to the said section.

12. In so far as the second proviso is concerned, the said proviso requires the tenants to prove that they were mainly depending on the income derived from the business in the petition schedule building for their livelihood. It is the settled law that the burden or proof for the benefit of this proviso is entirely on the tenant who is claiming the benefit of the proviso. On appreciation of the evidence adduced by the tenants, the Rent Control Court held that the evidence adduced was absolutely insufficient for the tenants to claim the benefit of the proviso.

13. In so far as the order passed by the Appellate Court is concerned, though the Appellate Court did not disturb the findings of the Rent Control Court, in so far as the provisos to Section 11 (3) of the Act are concerned, the Appellate Court upset the finding of the Rent Control Court on the finding of the *bona fide* need under Section 11(3) of the Act. The Appellate Court concluded

this issue by finding that the landlord, who is in possession of 116.48 m² of the building, can start his business making use of the said portion and in future, if he needs additional accommodation, he can apply for eviction of the tenants invoking Section 11(8) of the Act. It is on that ground the appellate authority has interfered with the finding of the Rent Control Court on the *bona fides* of the need urged by the landlord. We also notice that, in the course of its discussion, the Rent Control Appellate Authority has made reference to assessment of comparative hardship as provided under the proviso to Section 11 (10).

14. We shall examine the correctness of this finding of the Rent Control Appellate Authority. It is true that 116.48 m² area of the building in question is in the possession of the landlord and the total plinth area of the three rooms, which are the subject matter of these rent control petitions, is 49.42 m². According to the landlord, he needed to make use of the vacant area now in his possession together with the area occupied by the tenants to start

the hyper market. It was therefore that he sought eviction of the tenants under Section 11(3) of the Act.

15. While considering the claim of the landlord for eviction of a tenant, the principles to be borne in mind by the Rent Control Court are indicated by the Apex Court in its judgment in **Shiv Sarup Gupta v. Dr.Mahesh Chand Gupta** [(1999) 6 SCC 222], where it has been held thus;

“The judge of facts should place himself in the armchair of the landlord and then ask the question to himself whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bona fides of the need of

the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against."

16. Thereafter, referring to the judgments of the Apex Court in **Meenal Eknath Kshirsagar v. Traders & Agencies** [(1996) 5 SCC 344] and **Sarla Ahuju v. United India Insurance Company Ltd.**, [(1998) 8 SCC 119], in **Jerry Joseph v. Selvaraj** (2002 (2) KLT 129), a Division Bench of this Court held that it is not for the tenant to dictate terms to the landlord as

to how else he can adjust himself without getting possession of the tenanted premises and that while deciding the question of *bona fides* of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself. This question came up for consideration of this Court again in **Venkitaramanan v. Rajamma** (2004 (3) KLT 930), where it was held that it is for the landlord to decide in what manner the space is to be utilized and what are the modifications, additions, alternations etc., to be made. Subsequently, in **Madhava v. Pathumabi** (2005 (3) KLT 369), a Division Bench of this Court considered the very same issue and held that adequacy of the space is a matter to be considered by the landlord and the tenant cannot have a dictatorial role in that assessment of the landlord. It was also held that the Court need not hear the tenant on that aspect. The very same principle has been laid down again in the judgment in **Sheela v. KAMCO Employees Union** (2010 (2) KLT 435).

17. Since the principles laid down by the Apex Court and this Court are as above, it is trite that it is for the landlord to

assess his own requirements and the tenant and the Rent Control Court cannot be heard to say that it is for the landlord to adjust himself within the space available with him without seeking eviction of the tenant from the leased out premises. Bearing these principles in mind, if the order passed by the appellate authority is appreciated, it can be seen that what has been done by the appellate authority is exactly contrary to the principles laid down in these judgments.

18. As we have already stated, the appellate authority has held that the landlord should start his business utilising the existing space available with him and in future if he needs additional accommodation, he can seek eviction of the tenants invoking Section 11(8) of the Act. This, in our view, is totally illegal and this finding of the Rent Control Appellate Authority deserves to be vacated.

19. We also notice that the appellate authority has referred to the previous conduct of the landlord. This reference is made in the context of the finding of the Rent Control Court that on an earlier occasion, the landlord got a room vacated urging need

under Section 11(3) of the Act for starting a cosmetic business and that the landlord did not make use of that building for the said purpose. According to the appellate authority, the landlord cannot change its stand and is estopped from doing so. We are unable to agree. As rightly held by the Rent Control Court that though the landlord has not started the cosmetic business as originally said, the landlord has made use of the said building for distribution purpose. It may be true that the landlord sought eviction for a particular purpose and would have utilized the space for a different business. In our view, nothing prevented the landlord from doing so if commercial prudence justified such a decision, which is entirely his own. Therefore, we do not find anything in the conduct of the landlord to conclude that the need urged by him was not a *bona fide* one.

20. In so far as the reference made by the appellate authority to comparative hardship is concerned, comparative hardship as is evident from the proviso to Section 11(10) of the Act is relevant only in a petition filed under Section 11(8). In so far as these cases are concerned, the eviction sought and allowed

by the Rent Control Court was with reference to Section 11(3) and therefore, this finding of the Rent Control Appellate authority has absolutely no relevance in so far as the factual context in which the petitions were filed and ordered by the Rent Control Court is concerned. This is all the more so in view of the fact that the appellate authority has rejected the case of the tenants that the petition under Section 11(3) of the Act was not maintainable and the petitions ought to have been under Section 11(8) of the Act.

21. For all these reasons, we are unable to sustain the order of the Rent Control Appellate Authority in RCA Nos.7, 8 and 9/10. The order of the appellate authority is set aside. The order passed by the Rent Control Court, Kayamkulam in RCP Nos. 5, 6 and 7/07 will stand restored.

The revisions are disposed of accordingly.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
ALEXANDER THOMAS
JUDGE

Rp

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PA to Judge