

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

RRev..No. 196 of 2013 ()

AGAINST THE ORDER/JUDGMENT IN RCA 1/2009 of RENT CONTROL APPELLATE
AUTHORITY, TIRUR DATED 18-03-2013

AGAINST THE ORDER/JUDGMENT IN RCP 9/2005 of M.C., PARAPPANANGADI DATED
20-12-2008

REVISION PETITIONER(S)/PETITIONER/APPELLANT/PETITIONER:

KANDARU VEETIL RAMAKRISHNAN'S SON PREMAN AGED 65 YEARS
TRIKULAM AMSOM, DESOM, TIRURANGADI TALUK.

BY ADVS.SMT.N.DEEPA
SRI.BLAZE K.JOSE
SRI.T.KRISHNAN UNNI (SR.)

RESPONDENT(S) :

KADARUVEETIL RAMAKRISHNAN'S SON GOPI, AGED 48 YEARS
TRIKUILAM AMSOM DESOM, TIRURANGADI TALUK, PIN-676101.

R-R BY ADV. SRI.K.T.SHYAMKUMAR
R-R BY ADV. SRI.HARISH R. MENON

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
02-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

kkj

// TRUE COPY //

PA TO JUDGE

C.R.

**K.SURENDRA MOHAN, J &
MARY JOSEPH, JJ.**

R.C.R. No.196 of 2013

Dated this the 2nd day of July, 2015

O R D E R

Surendra Mohan, J.

The landlord is in revision challenging the dismissal of RCP.No.9 of 2005 of the Rent Control Court, Parappanangadi which has been confirmed by the Rent Control Appellate Authority, Tirur by judgment in RCA No.1 of 2009. The landlord had sought for an order of eviction against the respondent tenant under Sections 11(2) and 11 (3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act' for short). The ground under Section 11(2) does not survive and what has been pressed before us is only the ground under Section 11 (3). The case of the petitioner is that, he was conducting a Jewellery by name Ratna Jewellery in the tenanted premises. While so, he got an opportunity to go abroad. At

that time, he had entrusted the Jewellery to his father and brother. The respondent is his brother. In the year 1994, the entire building had to be demolished pursuant to the proceedings initiated by the PWD (Roads) for widening the road. The shop room on the upper floor of the building that was occupied by one Srinivasan was got evicted by filing a Rent Control Petition under Section 11(4)(iv) of the Act. The Rent Control Petition was filed by the respondent, acting as the power of attorney holder of the petitioner. After obtaining vacant possession of the building, the respondent shifted the Jewellery business to another premises temporarily. The building was thereafter reconstructed. Originally there were two rooms on the ground floor of the building. After reconstruction, there is only one room on the ground floor. The respondent is in occupation of the said shop room under a fresh oral lease. The revision petitioner sought eviction on the ground that he wanted to start his own jewellery business.

2. The Rent Control Petition was resisted by the respondent tenant. According to the tenant, the building was taken on rent in the year 1986, when the revision petitioner left for UAE as per Exhibit B1 registered lease deed. The term of the lease is 30 years and would expire only in the year 2016. It was during the currency of the lease agreement that the building was reconstructed in the year 1994. At that time, since the brothers were on good terms, the entire reconstruction was undertaken by the respondent himself. The Rent control Petition against Sri. Srinivasan who was a tenant was also instituted by the respondent. The business was shifted to another premises only temporarily. After reconstruction, the Jewellery business was shifted back to the ground floor of the reconstructed building. The respondent has been continuing in the said premises, ever since. Since the term of the lease has not expired, it was contended that, the Rent Control Petition was premature.

3. With respect to the need that was put forward under Section 11(3), the contention of the respondent was that, there was absolutely no bonafides in the need. If at all, the landlord had a genuine desire to start a Jewellery business of his own, he was in possession of other vacant shop rooms from one of which, such business could be started. Therefore, according to the respondent, the need put forward was lacking in bona fides and the Rent Control Petition was liable to be dismissed. It is also the case of the tenant that, all the litigation had commenced after the brothers fell apart in the year 2002. The landlord had initially filed O.S.No.46 of 2002 before the Sub Court, Tirur contending that he was conducting the Jewellery business, that the respondent was preparing to trespass into the said building and to obstruct the business and had obtained an order of temporary injunction. Thereupon, the respondent had filed O.S.No.162 of 2002 producing Exhibit B1 lease deed contending that he was the tenant in occupation of the

shop room conducting business therein. Both suits were tried together by the Sub Court, Tirur. The suit filed by the petitioner was dismissed while the suit filed by the respondent was decreed. It was thereafter that the present Rent Control Petition was filed.

4. Both sides adduced evidence in support of their respective contentions. On the side of the landlord, Exhibits A1 to A26 documents were marked and the landlord was examined as PW1. For the tenant, Exhibits B1 to B22 documents were marked and the tenant examined himself as RW1. Exhibits C1 to C6 Commission Reports and Plans were also marked.

5. On a consideration of the evidence on record, the Rent Control court found that Exhibit B1 agreement was in force, that the term of the lease had not expired and for the said reason, the Rent Control Petition was premature. On the question of bonafide need, it was found that the landlord had other shop rooms in his possession and that, there were

no sufficient reasons available to justify the grant of an order of eviction. For the above reasons, the Rent control Petition was dismissed. The aggrieved landlord carried the matter in appeal before the Rent Control Appellate Authority, Tirur. On a reappreciation of the evidence on record, the Appellate Authority dismissed RCA No.1 of 2009 holding that the dismissal of the Rent Control Petition was justified. The landlord is in revision before us, as already stated above.

6. According to Sri.T.Krishnan Unni, Senior Advocate, who appears for the revision petitioner, Exhibit B1 lease had come to an end with the demolition of the building and reconstruction thereof. The original building had two shop rooms on the ground floor and one room on the upper floor. One of the shop rooms on the ground floor was given on rent to his father, while the other shop room was given on rent to the respondent. The tenant who was occupying the upper floor was evicted pursuant to an order

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of the Rent Control Court under Section 11(4)(iv) of the Act. However, in the case of the tenant herein, the premises were surrendered without any order from the Court. After reconstruction, the tenanted premises underwent a complete change. It was converted into a single room on the ground floor. The rent stipulated by Exhibit B1 was ₹ 100/-. Admittedly, the rent at present is ₹500/-. Therefore, according to the learned Senior Counsel, there has been a change in the identity of the premises as well as a change in the rate of rent that was paid, indicating that there was a fresh lease subject to fresh terms and conditions. It is also contended that, Exhibit B1 lease had been terminated by surrender of vacant possession of the tenanted premises by the tenant. In other words, on surrender, Exhibit B1 lease got determined and after reconstruction when he was put back in possession, a fresh lease deed came into existence. Therefore, the finding of the authorities below that the Rent Control Petition was

premature was wrong and liable to be set aside.

7. With respect to the ground under Section 11(3), it is pointed out by the learned Senior Counsel that, there is no contention in the objections filed by the tenant to the Rent Control Petition that, there was any specifically identified premises in the occupation of the landlord which was suitable for the need that was put forward by him. The need under Section 11(3), according to the learned Counsel is genuine and therefore it is only appropriate that an order of eviction is granted as prayed for.

8. The contention of the learned Senior Counsel are seriously opposed by Advocate Harish R. Menon who appears for the respondent tenant. According to the learned Counsel, the parties are brothers. They were on good terms till the year 2002. It is true that, Exhibit B1 lease deed was executed in the year 1986 when the Revision Petitioner wanted to go to the UAE. The respondent was also the power of attorney holder of the

petitioner. The building had to be demolished pursuant to a direction issued by the PWD (Roads) alleging that there was encroachment on to the road. Thereupon, the tenant who was occupying the upper floor was evicted and the building was reconstructed. For the purpose of reconstruction, the respondent had shifted his business temporarily to another premises. After reconstruction, he had shifted his business back to the reconstructed building and had continued there. The temporary shifting of the business for the purpose of reconstruction was done by himself when the revision petitioner was abroad. Therefore, there was no occasion for surrender of the premises or determination of the lease, as contended. Neither of the parties had an intention to determine the lease, as contended. Therefore, according to the learned Counsel, he is occupying the tenanted premises under Exhibit B1 lease deed. The Sub Court had also found to the said effect, in the suits filed by the parties.

9. On the ground under Section 11(3), the

contention of the counsel for the respondent is that, Exhibits B18, B19 and B20 documents clearly evidence the existence of vacant shop rooms owned by the revision petitioner. When the existence of vacant shop rooms are shown to the Court, it was obligatory on the part of the petitioner landlord to put forward special reasons as to why the said rooms were not suitable for satisfying the need that he has put forward. In the present case, though the Advocate Commissioner had conducted local inspection on a number of occasions, no attempt was made to have the vacant premises inspected. In the absence of any specific reasons, it is contended that, the findings of the authorities below under Section 11(3) are correct and fully justified.

10. Heard. The first question that arises for consideration is whether the Rent Control Petition filed by the revision petitioner before the expiry of the term stipulated by Exhibit B1 was premature or not. It is necessary to notice in the first place that, Exhibit B1 is a

registered document. It evidences beyond doubt that the respondent is the tenant of the building in question. The term of the lease has been specified therein as 30 years. Exhibit B1 is dated 27.02.1986. Therefore, the term of the lease has not expired. It is not in dispute that in 1994, the building that was originally given on lease was demolished and reconstructed. It is also not in dispute that, after reconstruction, the respondent was put back in possession of the ground floor of the building. It is admitted that, the premises now occupied by the tenant is larger to the one that was initially leased out to him. The contention of the learned Senior counsel is that, the surrender of the lease hold premises for the purpose of reconstruction would entail determination of the lease. The said contention cannot be accepted for more reasons than one. In the first place, on facts, at the time of the alleged surrender, the respondent himself was acting as the landlord in his capacity as his power of attorney holder. He was also

conducting business from the premises as the tenant. It was the respondent who had instituted the Rent control Proceedings against the tenant who was in occupation of the upper floor. It is true that the tenant had shifted his business to another premises temporarily and had shifted back to the reconstructed building after reconstruction. The conduct of the parties in the present case clearly show that neither of the parties had an intention to determine the lease even if it is assumed that there was a surrender of the lease hold premises. The surrender if at all that was made, was only for the purpose of facilitating the reconstruction of the building, to be handed back after reconstruction. The above is evident from the conduct of the parties. The revision petitioner had no objection to any of the above acts that were done in 1994. It is true that, there has been enhancement in the rent that had been stipulated initially in Exhibit B1. Though the revision petitioner contends that, the rent was enhanced as per a fresh lease agreement,

there is absolutely no evidence regarding the fresh lease agreement. Therefore, except for the fact that, the tenant is paying an enhanced rent, there is no evidence to conclude one way or the other as to the circumstances under which such enhancement was effected. Since the parties had no intention to determine the lease by the alleged surrender for reconstruction in 1995, we do not accept the contention that the lease had determined on such surrender. Apart from the above, the question as to whether the destruction or demolition of a building would extinguish the lease has been considered by the Supreme Court in **T.Lakshmipathi v. P.Nithyananda Reddy** [2003(5)SCC 150]. After considering the dicta laid down by various decisions on the point, it has been held by the Court that, in the event of a tenancy created in respect of a building standing on a land, the building and land are both components of the subject matter of the demise and the destruction of the building alone does not determine the tenancy when the land which

was the site of the building continues to exist.

11. Considering a similar question, the Supreme court in **Shaha Ratansi Khimji v. Proposed Kumbhar Sons Hotel Pvt. Ltd**[2014 (3) KLT 1014(SC)] held as follows:-

It has been further opined that once a tenancy is created in respect of a building standing on the land it is the building and the land which are both components of the subject-matter of demise and the destruction of the building alone does not determine the tenancy when the land which is the site of the building continues to exist.

In view of the above, the contention that Exhibit B1 lease had determined on demolition and reconstruction of the tenanted premises is rejected.

12. The second question that arises is whether the landlord is entitled to an order of eviction under Section 11 (3) of the Act. Eviction has been declined for the reason that, the landlord has been found to have other buildings of his own in his occupation. Exhibits B18, B19 and B20 are extracts of the Property Tax Register maintained by the Tiruranagadi Grama Panchayat. The said documents

evidence the existence of vacant shop rooms in the possession of the revision petitioner landlord. The landlord has no explanation regarding the question as to whether they were suitable for his purpose or not. Of course, he has stated in his deposition that the said rooms are not suitable for his purpose. However, the documents revealed that they are shop rooms, and therefore, it was incumbent on the landlord to have shown special reasons as to why they were not suitable. No such special reasons are available in the present case. Referring to the first proviso to Section 11(3), the learned Senior Counsel Sri. T.Krishnan Unni has put forward a contention that the first proviso though makes mention of "city, town or village" does not mention a "Panchayat". Therefore, in the absence of any evidence to show that the shop rooms mentioned in Exhibits B18,19 and 20 are in the same village, they cannot be acted upon to non suit the landlord under the first proviso to Section 11(3). Section 11(3) along with the first proviso are reproduced

hereunder for convenience of reference.

11(3) A landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building if he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him:

Provided that the Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons, in any particular case it will be just and proper to do so:

13. A perusal of the above proviso shows that the expressions “city, town or village” have been used in the general sense to indicate the rural and urban areas that constitute the different parts of our state. Therefore, it is sufficient that the other building in the ownership and possession of landlord is within the same village, town or city. The expressions city and town encompasses larger areas which would include Panchayats also and therefore it cannot be said that, Panchayats would form a different area to which the first proviso would have no application. Even

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assuming that the use of the expression “village” denotes the Revenue Village, the definition of a Panchayat contained in Section (2)(xxv) puts the matter beyond any doubt. Section 2(xxv) of the Kerala Panchayat Raj Act, 1994 reads as under:

'Panchayat' means a Village Panchayat, a Block Panchayat or a District Panchayat:

14. As per the above definition, the Panchayat means a Village Panchayat, Block Panchayat or District Panchayat.

15. Section 2(xlvi) defines a Village Panchayat as follows:-

“Village Panchayat” means a Village Panchayat constituted for a village or for a group of villages under clause(a) of sub-section (1) of Section (4);

A reading of the above definitions conjunctively shows that the expression Panchayat would include a Village Panchayat and the Village Panchayat would include a village or a group of villages. Therefore, the contention that the tenant should further prove that the building owned and possessed by the landlord is within the same village, in addition to

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adducing evidence that the same is within the same Panchayat, lacks substance. The findings of the authorities below to the effect that, the landlord has not succeeded in proving special reasons under the first proviso to Section 11 (3) of the Act is held to be proper and justified.

For the above reasons, we find no grounds to interfere with the proceedings of the authorities below. This revision fails and is accordingly dismissed.

Sd/-
K.SURENDRA MOHAN
JUDGE

Sd/-
MARY JOSEPH
JUDGE

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