

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

RCRev..No. 291 of 2013 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 11/2011 of RENT CONTROL APPELLATE
AUTHORITY, VATAKARA DATED 12-04-2013**

**AGAINST THE ORDER/JUDGMENT IN RCP 5/2010 of RENT CONTROL COURT,
NADAPURAM DATED 22-10-2010**

REVISION PETITIONER/APPELLANT/RESPONDENT:

- 1. VALIYAPARAMBATH ABDULLA HAJI (DIED)**
- 2. VALIYAPARAMBATH SARA,
D/O.ABDULLA HAJI
RESIDING AT CHEVTTAN KANDIYIL HOUSE
KUMMANKODE AMSOM, NADAPURAM DESOM, VATAKARA TALUK
KOZHIKODE**
- 3. VALIYA PARAMBATH UMMAR,
S/O.ABDULLA HAJI, KUMMANKODE AMSOM, NADAPURAM DESOM
VATAKARA TALUK, KOZHIKODE**
- 4. VALIYAPARAMBATH HAMZA
S/O.ABDULLA HAJI DO**
- 5. VALIYAPARAMBATH KADEEJA,
S/O.ABDULLA HAJI, DO**
- 6. VALIYAPARAMBATH ABOOBACKER,
S/O.ABDULLA HAJI, DO**
- 7. VALIYAPARAMBATH ALI
S/O. ABDULLA HAJI, DO DO**

**BY ADVS.SRI.C.S.AJITH PRAKASH
SRI.K.V.SADANANDA PRABHU
SRI.C.S.YESUDAS**

RESPONDENT/APPLICANT/PETITIONER:

**PUTHAMPURAYIL AMBALATHAM KANDI AACHOOTTY,
D/O AMMAD HAJI, CHEKKIAD AMSOM,
JATHIYERI DESOM,
VATAKARA TALUK,
KOZHIKODE 673101.**

**R1 BY ADV. SRI.GEORGE THOMAS (MEVADA) (SR.)
R1 BY SR ADV. SRI.MANU GEORGE KURUVILLA
R1 BY ADV. SMT.RINU JOSE**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 09-01-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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R.C.R. No. 291 of 2013
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Dated this the 9th day of January, 2015

O R D E R

Antony Dominic, J.

The tenant in RCP No.5/2010 on the file of the Rent Control Court, Nadapuram in which an order of eviction under Section 11(3) was passed and which was confirmed by the Rent Control Appellate Authority, Vadakara in RCA No.11/11 is the revision petitioner.

2. The respondent landlady filed the rent control petition urging ground of bonafide need under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, seeking eviction of the tenant. According to the landlady, her two children Sri.Andru and Sri.Muhammed were doing hotel work in the gulf countries and that they wanted to come back and start hotel business in the scheduled building. Before the Rent Control Court, Sri.Andru was examined as PW1 and one of the petitioners was also examined as RW1. The Rent Control Court by its order dated 22nd of October, 2010 allowed the petition. The appeal filed by the petitioners was also dismissed. This is the background in which the revision petition was filed.

3. When the revision was taken up, learned counsel for the petitioners contended that it was their contention that the children of the landlady were engaged in their business in a gulf country and were not doing hotel work as claimed. It is stated that though PW1 denied a question put to him in this behalf, PW1 did not produce any document evidencing his employment status. Therefore, according to the counsel, the petitioner in the Rent Control Court did not discharge the burden of proof of bonafide need pleaded by her. Learned counsel contends that this question has not been considered either by the Rent Control Court or by the appellate authority and that therefore, the orders are illegal. We are unable to accept this contention.

4. The specific plea in the rent control petition was that the children of the landlady are engaged in hotel work in a gulf country. This statement was denied by the revision petitioners who contended that they were not working as alleged, but were engaged in their business and are therefore, not likely to come and start the hotel business. When the revision petitioners contended that the children of the landlady were not employed but were engaged in their own business, the burden of proving

the assertion made by the revision petitioners was not upon the landlady but upon the revision petitioners themselves. Therefore, the revision petitioners cannot now find fault with the landlady or her son, who was examined as PW1 for not producing any document showing their employment status. This is all the more so because the revision petitioners did not even chose to file an application before the Trial Court calling upon the landlady to produce documents showing the employment details of her sons.

5. We, therefore, do not find any error committed by the Rent Control Court or the appellate court. This being the only contention and as we are unable to accept the same, the revision petition is only to be dismissed and we do so.

At this stage, learned counsel for the revision petitioners sought time to surrender vacant possession of the scheduled building. Considering the fact that the revision petitioners are running a hotel in the building in question, we direct that the revision petitioners will be given six months time from today to surrender vacant possession of the building to the landlady. This shall, however, be subject to the condition that the revision petitioners shall within two weeks from today, file an affidavit

before the Rent Control Court, undertaking unconditionally to surrender vacant possession of the room on or before the expiry of six months period from today. They shall also continue to pay rent without default.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge