

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

RCRev..No. 308 of 2013 ()

AGAINST THE ORDER/JUDGMENT IN RCA 178/2012 of THE RENT CONTROL
APPELLATE AUTHORITY, THALASSERY DATED 29-06-2013

AGAINST THE ORDER/JUDGMENT IN RCP 246/2011 of THE RENT CONTROL COURT,
KANNUR DATED 26-07-2012

REVISION PETITIONER(S)/APPELLANT/ PETITIONER:

P.BHARGAVI AMMA
D/O KADAN DASAN, SARITHA VASTHRALAYAM, VANGULATHUVAYAL
AZHEEKODU, KANNUR TALUK

BY ADVS.SRI.C.KHALID
SRI.PHIJO PRADEESH PHILIP

RESPONDENT(S)/RESPONDENT/ RESPONDENT:

K.P.AJAYAKUMAR
S/O RAGHAVAN, CHIRAKKAL AMSOM, DESOM
ALAVIL, KANNUR DISTRICT 670001

R1 BY ADV. SRI.R.PARTHASARATHY
R1 BY ADV. SRI.RAJESH V.NAIR

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
30-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

kkj

// TRUE COPY //

PA TO JUDGE

C.R.

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

R.C.R No.308 of 2013

Dated this the 30th day of June, 2015

O R D E R

Surendra Mohan, J.

The tenant is in revision before us challenging the reversing judgment of the Rent Control Appellate Authority, Thalassery, in RCA No.178 of 2012. The landlord had filed RCP No.246 of 2011 before the Rent Control Court, Kannur seeking an order of eviction against the tenant alleging grounds under Section 11(2)(b) 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)(b) was not pressed by way of an endorsement made before the trial of the Rent Control Petition. Therefore, the Rent Control Petition was tried only on the ground under Section 11(3) of the Act.

2. According to the landlord, the tenanted shop room

was needed by him for the purpose of his wife to start a gift house. It is stated in the Rent Control Petition that his wife was conducting the said business in a rented shop room. The business was not doing well and there was no sufficient income even to pay the rent properly. Therefore, it is contended that, the tenanted shop room was the most suitable for the purpose of shifting the said business. The tenant filed objections and contested the Rent Control Petition. It is stated in the counter statement that the petition is malafide and vindictive. The case of the tenant was that, there was an agreement to sell the shop room to her husband. The agreement was executed by the original landlord. During the pendency of the said agreement, the property was purchased by the present landlord. Therefore, the husband of the tenant had filed O.S.No.14 of 2008 before the Sub Court, Thalassery. The said suit was dismissed but, it is stated that the first appeal is pending before this Court. In view of the said proceedings, the

tenant disputed the right of ownership asserted by the landlord. The Rent Control Court tried the petition on the above pleadings.

3. The evidence consists of Exhibits A1 to A3 documents and oral evidence of the landlord as PW1 on the side of the landlord. The tenant did not adduce any evidence. When the landlord was examined as PW1 in cross examination, he has stated that the tenanted shop room is part of a larger building having four shop rooms of equal dimensions. To a pointed question as to who was in possession of Room No.VI/93, his answer was that he could not remember. Regarding shop room No.VI/94 also, he stated that he could not remember. He stated that the number of the tenanted shop room was VI/96. Thereafter, he has stated that shop room No.VI/97 is in possession. VI/98 is also stated to be in his possession. He has further gone on to state that, the shop rooms in his possession are remaining locked. He has also deposed that

all the shop rooms were having the same area. Placing reliance on the admissions of the landlord, the Rent Control Court found that the landlord had not pleaded any special reasons for not occupying vacant shop rooms that were in his possession. In view of the above, eviction was declined by the Rent Control Court.

4. The landlord challenged the order of the Rent Control Court in RCA No.178 of 2012. The Rent Control Appellate Authority considered the contentions afresh and took a different view of the matter. According to the Rent Control Appellate Authority, the tenant had not pleaded that the landlord was in possession of other vacant rooms. However, it has been elicited in cross examination that there are vacant rooms in the possession of the landlord. Relying on the dictum laid down by this Court in **Chandran v. Sunil Kumar** [2004(3) KLT 420], the Appellate Authority found that subsequent events brought out in cross examination could not be relied upon to non-suit the

landlord, unless the pleadings are amended and such facts are brought on record. In the absence of pleadings, it is held that the tenant should not be held entitled to take advantage of the facts brought out in cross examination. In the above view of the matter, the Rent Control Appellate Authority found that, the landlord had succeeded in establishing his bonafide need and granted an order of eviction. It is against the said judgment that this revision is filed.

5. According to the counsel for the petitioner, the burden of proving the ingredients of the first proviso to Section 11(3) was on the landlord. In the present case, the landlord had clearly admitted that he was in possession of two shop rooms, which were being kept locked by him. Therefore, it was incumbent upon him to have put forward special reasons as to why the said rooms could not be utilized for satisfying the need put forward by him. In the absence of any such special reasons, it is contended that the

Appellate Authority erred in allowing the petition.

6. Advocate Rajesh V. Nair who appears for the respondent landlord on the other hand canvasses for the proposition that the initial burden of proving other vacant rooms were available in the possession of the landlord was squarely on the tenant. We have been taken through the counter statement filed by the tenant to point out that, there was no pleading therein that the landlord had other vacant rooms in his possession. In the absence of pleadings, it is contended that it was not necessary for the landlord to have pleaded special reasons in the Rent Control Petition. According to the counsel, the fact that other vacant rooms were available in his possession had been elicited from the landlord during cross examination. It is in a similar situation that this Court has held that such subsequent events should be made part of the pleadings by appropriate amendments. No such amendment having been made in the present case, according to the learned counsel,

the admission cannot be relied upon to vacate the findings of the Appellate Authority. The learned Counsel also submits that, he had tried to produce extracts of the Property Tax Assessment Register of the local authority before the Appellate Authority to substantiate his contention that there are in fact no vacant shop rooms in his possession. However, the Appellate Authority, according to the counsel dismissed the said petition. Therefore, it is contended by the counsel that, the Appellate Authority has rightly held that, the tenant was entitled to an order of eviction under Section 11(3) of the Act. This is so especially in view of the fact that his bonafides has not been disputed by the tenant.

7. Heard. Section 11(3) of the Act is reproduced hereunder for convenience of reference.

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:

Provided further that the Rent Control Court shall not give any direction to a tenant to put the landlord in possession, if such tenant is depending for his livelihood mainly on the income derived from any trade or business carried on in such building and there is no other suitable building available in the locality for such person to carry on such trade or business:

Provided further that no landlord whose right to recover possession arises under an instrument of transfer inter vivos shall be entitled to apply to be put in possession until the expiry of one year from the date of the instrument:

Provided further that if a landlord after obtaining an order to be put in possession transfers his rights in respect of the building to another person, the transferee shall not be entitled to be put in possession unless he proves that he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him.

A perusal of the statutory provision shows that, the landlord is entitled to an order of eviction only if, he bonafide needs

the building for his own occupation or for the occupation by any member of the family dependent on him. In the present case, the need put forward by the landlord is for the occupation of his wife, who wants to conduct a gift house in the shop room. The onus of proving the bonafides of the said need is squarely on the landlord. The Rent Control Court shall grant an order of eviction only if it is satisfied by the bonafides of the need that is put forward. The first proviso casts an additional duty on the Rent Control Court and provides 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 town or village except on being satisfied that for special reasons, in any particular case it is just and proper to do so. Therefore, the prohibition in the first proviso to Section 11(3) is directed against the Rent Control Court, that no direction shall be given if the landlord has another building in his possession in the same town or village.

8. In the present case, when he was examined as PW1, the landlord has very clearly stated 'that he has two rooms in his occupation. The said admission is clear for the reason that, he has specifically referred to Door Numbers on each of the rooms in his possession. He has further gone on to state that, the said rooms were kept locked. It is his further case that all the rooms are of the same dimensions. It is true that, the tenant has not pleaded that, the landlord has other shop rooms in his possession. However, the fact remains that the landlord has also not disclosed in his Rent Control Petition that he was in possession of other vacant shop rooms. The counsel for the landlord contended before us that the non-disclosure of the said vacant shop rooms in the Rent Control Petition was neither willful nor deliberate. Be that as it may, the fact remains that the very relevant fact, namely that, the landlord was in possession of two vacant shop rooms of equal dimensions as the tenanted shop rooms in his possession was not disclosed in the Rent

Control Petition. The said act of non disclosure of a crucial fact cuts at the bonafides of the need that is put forward. It was incumbent on the landlord to have disclosed the fact that he was in possession of the said vacant rooms and to have put forward special reasons for not utilising them for the satisfaction of the need that has been put forward. It is pertinent to note that the above crucial fact has been elicited from him in cross examination. It cannot be said that the fact that has been elicited is a subsequent event that would come within the meaning of the said expression. The said term used by this Court in the decision in **Chandran v. Sunil Kumar** [2004 KHC 1145] on which reliance has been placed by the Appellate Authority.

9. In **Chandran v. Sunil Kumar** (Supra), the landlord had sought for an order of eviction against the tenant for the bonafide need and occupation of his son. However, during the pendency of the proceedings, his son had obtained a job and had gone abroad. The said fact was

elicited in the cross examination. The fact that his son was available in India when the petition was filed and that he had gone only during the pendency of the petition along with the further fact that, there was no impediment in his returning to India had persuaded this Court to take such a view. The said subsequent fact ought to have been incorporated in the pleadings by way of amendment before reliance could have been placed on it, it was held. In sharp contrast to the fact situation in the said case, in the present case, the crucial fact that has been elicited in the cross examination is not a subsequent event. The rooms in his possession were vacant throughout. The admission that has been made by the landlord as PW1 is clear and categorical. It is not a statement made under a mistake. This is for the reason that, he is very specific about the door numbers of the rooms that are in his possession. He has also specifically stated that they are being kept locked. Therefore, this is a case where the landlord has filed the

Rent Control Petition without disclosing a very relevant fact to the Court. The non disclosure of the said fact as already held above is a circumstance that casts doubt on the bonafides of the need that has been put forward by him.

10. The counsel for the petitioner has put forward a further contention that, the landlord was not liable to have put forward any special reasons in the absence of any pleading on the part of the tenant that he had other vacant rooms in his possession. According to the learned Counsel, it was for the tenant to have initially pleaded and proved that other vacant rooms were available in the possession of the landlord. It is only upon discharge of the initial burden that, the landlord would have to put forward special reasons. The counsel has placed reliance on the decision of this Court in **Raghavan v. Govindan Nambiar** [1995(1) KLT 596] and **Chacko v. Sunil Kumar** [2002 (2) KLT SN 52] in support of the above contentions. However, we notice from a perusal of the provision that what has been

held therein is only that the primary burden to show that the landlord has a building of his own, is on the tenant, unless “it was an admitted fact”. In the present case as already found, it is an admitted fact that the landlord has other vacant shop rooms in his possession. Therefore, there is no question of shifting the burden as contended by the counsel for the petitioner. The counsel for the petitioner has also placed reliance on the decision of this Court in **Kunju v. Fathima** where Thottathil Radhakrishnan, J has speaking for the Bench held as follows in paragraph 10 of the judgment.

10. It cannot be understood from the First Proviso to S.11(3) of the Act that the landlords need to plead the particulars of all the premises under their ownership and possession to claim an order of eviction. The proviso only recites that the Rent Control Court shall not order eviction, if the landlord has another building of his own in his possession, without satisfying the special reasons for not occupying the vacant premises. The function of the proviso is to except something out of the enactment or qualify something enacted, which, but for the proviso, would come within the purview of the enactment. The

scope of the First Proviso to S.11(3) of the Act, in the circumstances, is to be understood in the context of the provision in S.11(3) of the Act. S.11 (3) of the Act, confers authority on the Rent Control Court to pass an order, directing the tenant to put the landlord in possession of the building, if he bona fide needs the building for his occupation and the proviso carves out an exception to the authority of the Rent Control Court to order eviction, when the landlord has another building of his own in his possession and there are no special reasons for not occupying the same for the proposed need. A combined reading of the provision and the proviso would indicate beyond doubt that it is only when it is established that the landlord has another building of his own in his possession for his occupation for the proposed need, he need satisfy the Rent Control Court the special reasons for not occupying the said premises.

As already held above, in the present case it has been established that the landlord has other vacant buildings in his possession. Therefore, it was obligatory on the part of the landlord to have established special reasons for non-occupation of the same. Since there are no special reasons in the present case, it cannot be said that the need put forward is bonafide. In the above view of the matter, we

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find that the Rent control Appellate Authority has misdirected itself to grant an order of eviction to the landlord. The judgment of the Appellate Authority is therefore unsustainable and the same is accordingly set aside.

In the result, this Rent Control Revision is allowed. The judgment of the Rent Control Appellate Authority, Thalassery in R.C.A.No.178 of 2012 is set aside. The order of the Rent Control Court in R.C.P.No.246 of 2011 is confirmed. The dismissal of this revision shall not in any way effect the rights if any available to the petitioner to file a fresh Rent Control Petition in accordance with law.

**K.SURENDRA MOHAN,
JUDGE**

**MARY JOSEPH
JUDGE**

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