

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

RCRev..No. 318 of 2013 ()

AGAINST THE ORDER/JUDGMENT IN RCA 32/2011 of THE RENT CONTROL
APPELLATE AUTHORITY,KASARAGOD DATED 28-05-2013

AGAINST THE ORDER/JUDGMENT IN RCP 14/2009 of THE RENT CONTROL COURT,
HOSDRUG DATED 29-10-2011

REVISION PETITIONER(S)/REVISION PETITIONER:

ABDUL RAHIMAN AGED 50 YEARS
S/O.MUHAMED KUNHI, PROPRIETOR, MORNING STAR TRAVELS
NEAR BUS STAND, THRIKARIPUR, KASARAGOD DIST
(RESIDING AT KAIKKOTTUKAVU, P O , ELAMBACHI
SOUTH THRIKARIPUR VILLAGE, HOSDURG TALUK
KASARAGOD DIST

BY ADVS.SRI.JAWAHAR JOSE
SMT.CISSY MATHEWS

RESPONDENT(S)/RESPONDENTS:

1. A.G.C.RUKIYA, AGED 70 YEARS
W/O.LATE A P AHAMMED HAJI, R/A.NORTH KOVVAL
P O THRIKARIPUR, NORTH THRIKARIPUR VILLAGE
HOSDURG TALK, KASARGOD DIST

2. A G C MUSTHAFI, AGED 48 YEARS
S/O.LATE A P AHAMMED HAJI, R/A.NORTH KOVVAL
P O THRIKARIPUR, NORTH THRIKARIPUR VILLAGE
HOSDURG TALK, KASARGOD DIST

3. A G C IQBAL, AGED 47 YEARS
S/O.LATE A P AHAMMED HAJI, R/A.NORTH KOVVAL
P O THRIKARIPUR, NORTH THRIKARIPUR VILLAGE
HOSDURG TALK, KASARGOD DIST

4. A G C AMEER ALI
S/O.LATE A P AHAMMED HAJI, R/A.NORTH KOVVAL
P O THRIKARIPUR, NORTH THRIKARIPUR VILLAGE
HOSDURG TALK, KASARGOD DIST

5. A G C FAISAL,, AGED 35 YEARS
S/O.LATE A P AHAMMED HAJI, R/A.NORTH KOVVAL
P O THRIKARIPUR, NORTH THRIKARIPUR VILLAGE
HOSDURG TALK, KASARGOD DIST

R1& 3 BY ADV. SMT MINY V MENON
R1 & 3 BY ADV. SRI.D.KRISHNA PRASAD
R1 & 3 BY ADV. SMT.S.SANTHY

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
18-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
kkj

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

R.C.R. No.318 of 2013

Dated this the 18th day of June, 2015

O R D E R

Surendra Mohan, J.

The tenant is the revision petitioner. The respondents are the landlords. The respondents had filed RCP No.14 of 2009 seeking an order of eviction against the tenant on the grounds under Section 11(2)(b) and 11(3) of the Act. The ground under Section 11(2)(b) does not survive for the reason that the arrears of rent was paid even before the trial of the Rent Control Petition. The Rent Control Court found against the landlords on the question of bonafide need. However, the Rent Control Petition was dismissed finding that the landlords were not entitled to an order of eviction in view of first proviso to Section 11(3). In appeal, the Rent Control Appellate Authority, Kasargod in RCA No.32 of 2011 found in favour of the landlords and has ordered eviction. This revision is against the said judgment.

2. The tenanted shop room, is part of a larger

shopping complex having sixty rooms. The building was constructed by late A.P.Ahammad Haji who is the father of respondents 2 to 5 and the husband of the first respondent. They filed the Rent Control Petition seeking eviction for the occupation of the 5th respondent who is stated to be unemployed and wanting to start a business in home appliances. The tenant is occupying a room on the ground floor of the building. It was stated that, the said room is the most suitable room for the business of home appliances. It is also stated in the Rent Control Petition that a room facing the main road was necessary for the business. The petition schedule room is facing the Trikaripur-Nadakkav Main Road.

3. The need put forward by the landlords was resisted by the respondent tenant. It was contended that, the need put forward was only a ruse for eviction and there were other rooms in the possession of the landlords for the purpose of satisfying the bonafide need. The evidence in the case consists of Exhibits A1 to A5 documents as well as the oral evidence of the 5th respondent as PW1 on the side of the landlords and Exhibits B1 to B3 documents as well as oral

evidence of the tenant as RW1. Exhibits C1 and C2 report and sketch of the Advocate Commissioner are marked as Court Exhibits. The Rent Control Court on a consideration of the evidence on record found that the need put forward by the landlords was bonafide. However, it was held that the landlords were in possession of other vacant rooms attracting the first proviso to Section 11(3) of the Act. On the said ground, the Rent Control Petition was dismissed. The Appellate Authority has reversed the said finding and has ordered eviction.

4. According to Advocate Jawahar Jose who appears for the petitioner, the Appellate Court seriously went wrong in finding on the first proviso to Section 11(3) in favour of the landlords. Our attention has been drawn to Exhibit B3 Assessment Register of the Panchayat which shows that shop room No.1110 is in possession of one Majeed. However, when PW1 was in the box, he has deposed that the said room was surrendered to the landlords eight years prior to the said date. He has also stated that the said room is now in possession of M/s Deluxe Textiles. According to the counsel,

as per the Commission Report, the petition schedule shop room has a length of 4.5meters and a width of 3meters. The above room also has the same dimensions. Exhibit P3 Assessment Register further shows that shop room No.1108 was vacant. However, when the Advocate Commissioner visited the premises, it was found that an ATM of the State Bank of Travancore was functioning from the said shop. On the basis of the above, it is contended that, the two rooms mentioned above had fallen vacant, but were given on rent by the landlords during the pendency of the Rent Control Proceedings or shortly before the institution thereof. Therefore, it is contended that, the finding of the Rent Control Court that no special reasons were available on the side of the landlords was justified. It is also contended that, in view of the above, the judgment of the Rent Control Appellate Authority requires to be interfered with and set aside. It is also contended that, when it is shown that the landlord had got vacant possession of another shop room, the burden was upon him to prove that there were special reasons justifying the non occupation thereof by him.

5. Advocate Mini V.Menon appears for the landlords. According to the learned Counsel, it has been specifically stated in paragraph 4 of the Rent Control Petition that the 5th respondent is unemployed and he wants to start a business in home appliances from the tenanted shop room. The said shop room is spacious, has the required road frontage and is the room that is most suitable for the proposed business. The counsel has placed reliance on Exhibits C1 Commission Report and Exhibit C2 sketch to point out that, the tenanted shop room is larger and more spacious than the other rooms, which factor is evidenced from Exhibit P2 sketch. The counsel also points out that as per the Commission Report, shop room No.1108 is occupied by the ATM Counter. According to the counsel, shop room No.1110, which is occupied by the Deluxe Textiles was leased out on 23.04.2008. The contention of the learned Counsel for the respondents is that, the burden to prove that the landlords are in possession of other vacant shop rooms is on the tenant and that it is not incumbent on the landlords to refer to in the Rent Control Petition and disclose all the premises that are

available with the landlords. In the present case, according to the learned Counsel, the tenant had not taken any steps to discharge the burden on him either by taking out a Commission or by letting in other evidence to show that the shop rooms referred to were suitable for the proposed business. Reliance is also placed on the dicta laid down by the decisions of this Court.

6. Heard. A perusal of the Rent Control Petition shows that, the need of the 5th respondent who is stated to be an unemployed person to start a business in home appliances has been set out therein. It is also stated that, the tenanted shop room is the most suitable room for the business. It is further pleaded that, a room on the ground floor of the building is required for the business in home appliances and that there is no other suitable room in the possession of the landlords. The counter filed to the above does not contain any specific mention to the rooms to which reference has been made by the counsel for the petitioner before us. What is mentioned in the counter of the Rent Control Petition is only that several rooms were available in the possession of the

landlords to satisfy the proposed need. We also notice that the Advocate Commissioner who inspected the premises was deputed to conduct the inspection at the instance of the landlords. Though the petitioner was present at the time of inspection, he has not pointed out specifically, any room that was remaining vacant. According to the counsel for the petitioner, the Commissioner had inspected the premises more than an year after the Rent control Petition was filed. Therefore, the report cannot and does not evidence the situation that was existing at the time of filing the petition. However, the fact remains that, though the Advocate Commissioner had inspected the premises, no evidence of any room remaining vacant has been brought before the Court.

7. The present contention that has been put forward is built up solely on the fact that Exhibit P3 assessment Register refers to room No.1110 as being in the possession of One Mr. Majeed. It is true that PW1 has stated in the box that the said room had been surrendered to the landlords, eights years prior to the said date. The Advocate Commissioner has reported that the said room is presently in the occupation of

M/S Deluxe Textiles. Therefore, it can be concluded that the said room was given on rent, at some point of time after Sri. Majeed had surrendered possession thereof. However, there is no evidence available as to when Sri.Majeed referred to had actually surrendered possession thereof. There is also no evidence available as to the point of time at which the room was given on rent to M/s. Deluxe Textiles. Similarly, in the case of shop room No.1108, the Assessment Register shows that the said room is vacant. At the same time, the Advocate Commissioner has reported that the said room is occupied by the ATM of M/s State Bank of Travancore. There is no acceptable evidence regarding the point of time at which the information available in Exhibit B3 Assessment Register had been received. No official of the Panchayat has been examined in this case. Therefore, regarding the correctness of the contents of Exhibit B3, there is no reliable evidence. For the above reasons, we are not satisfied that solely on the basis of Exhibit B3, a conclusion could be safely drawn that the two rooms referred to therein had fallen vacant and that the landlords had parted with the said rooms to other tenants

without satisfying the bonafide need that is put forward. There are gaps that require to be filled up before, the sequence of events could be properly reconstructed. In the absence of any evidence to do so, the said contention can only be rejected. We also bear in mind the fact that this Court has in the decision reported in **Kunju v. Fathima** [2014(3) KLT 563] held while considering the scope of first proviso to Section 11(3) of the Act, that the landlord need not plead the particulars of all the premises under their occupation to claim an order of eviction. The proviso only casts a duty on the Rent Control Court not to order eviction where the landlord has another building of his own in his possession, in the absence of special reasons to do so. Therefore, even if it is assumed that the landlords had obtained vacant possession of the shop rooms referred to, it cannot be held that there is sufficient evidence in the present case to warrant a conclusion that the landlords had obtained vacant possession thereof at the time of or just before the filing of the Rent Control Petition.

8. The learned Counsel has placed reliance on the

decision reported in **Janatha Drugs v. Maithri Construction** [2007(4) KLT 625] to contend that the burden to prove special reasons under the first proviso to Section 11 (3) is on the landlord, where he gets possession of another shop room. In the present case, as already found there is no evidence to conclude that, the landlords had obtained vacant possession of the premises in question during the crucial period of time. Therefore, the dictum in the said case has no application to the facts of the present case. In view of the above, we are not satisfied that any interference with the judgment of Appellate Authority is warranted.

9. As a last submission, the counsel for the petitioner sought for the grant of some time to vacate the premises. The request is opposed by the counsel for the landlords. Having considered the contentions of the counsel on either side, we are satisfied that it is necessary to grant time to the tenant to vacate up to 31.12.2015. For the purpose of availing the benefit, the petitioner shall file an affidavit before the Rent Control Court, Hozdurg in RCP No.14 of 2009 undertaking to surrender vacant possession of the premises to the landlord

on or before 31.12.2015 within a period of two weeks of the date of receipt of a copy of this judgment. The tenant shall also pay off any arrears of rent that is remaining unpaid and shall also pay rent in respect of the premises to the landlords without any delay or default until vacant possession is surrendered. It is made clear that in the event of the tenant committing default in complying with any of the above directions , he shall forfeit the benefit thereof and the landlords shall be at liberty to seek his eviction in accordance with law.

Sd/-
K.SURENDRA MOHAN
JUDGE

Sd/-
MARYD JOSEPH
JUDGE

kkj