

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN

&

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

RCRev. No.4 of 2015(B)

AGAINST THE JUDGMENT DATED 7.11.2014 IN RCA.NO.65/2014 OF THE COURT OF THE RENT CONTROL APPELLATE AUTHORITY (II ADDL.DISTRICT JUDGE),ERNAKULAM

AGAINST THE ORDER DATED 2.7.2014 IN RCP.NO.27/2010 OF THE RENT CONTROL COURT, ERNAKULAM.

REVISION PETITIONER:2ND RESPONDENT:1ST RESPONDENT:

P.A.ABDUL GAFOOR, AGED 64 YEARS,
S/O PUTHIYAVEETIL AHAMMED HAJI
CC 41/2806, V C ANTONY MEMORIAL BUILDING
PARAMARA ROAD, (OPP. TOWN HALL), COCHIN 620 17.

BY ADVS.SRI.P.CHANDRASEKHAR
SRI.S.PRASANATH
SRI.SOORAJ T.ELENJICKAL
SRI.P.A.MOHAMMED SHAH
SRI.T.S.SARATH

RESPONDENTS:APPELLANT & RESPONDENTS 1 AND 3 TO 10:
PETITIONERS & RESPONDENTS 2 TO 5:

1. GULAM KHADER, S/O.LATE KHADER HAJI
RESIDING AT CC 41/2806
V.C.ANTONY MEMORIAL BUILDING, PARAMA ROAD
OPP TOWN HALL, COCHIN 682 017.
2. V.A THOMAS, AGED ABOUT 54 YEARS, VELUKARAN ANTONY,
VELUKARAN HOUSE,CHEKKUNGAL ROAD
PALARIVATTOM, KOCHI 682 025.
3. AYSHA BEEVI,
D/O LATE KHADER HAJI, KHADER MANZIL,
P.O. MAYYIL, KANNUR
4. THAJUDHEEN,
S/O LATE KHADER HAJI, KHADER MANZIL,
P.O. MAYYIL, KANNUR.
5. SULAIKHA,
D/O LATE KHADER HAJI, KHADER MANZIL,
P.O. MAYYIL,KANNUR
6. FATHIMA,
D/O LATE KHADER HAJI, KHADER MANZIL,
P.O. MAYYIL, KANNUR.

7. KHADEEJA,
D/O LATE KHADER HAJI, KHADER MANZIL,
P.O. MAYYIL, KANNUR
8. ABHAS, S/O LATE KHADER HAJI, KHADER MANZIL, P.O
MAYYIL, KANNUR
9. BASHEER, S/O LATE KHADER HAJI,
KHADER MANZIL, P.O.MAYYIL, KANNUR.
10. RASHEED, S/O LATE KHADER HAJI, KHADER MANZIL, P.O
MAYYIL, KANNUR

R2 BY ADV. M.P.RAMANATH
R1 & R3 TO R9 BY ADV.DINESH R.SHENOY

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
30.9.2015, ALONG WITH RCR.5/2015, THE COURT ON 8.10.2015 PASSED
THE FOLLOWING:

**K.T.SANKARAN &
C.K.ABDUL REHIM, JJ.**

R.C.R. Nos.4 and 5 of 2015 (B)

Dated this the 8th day of October, 2015

ORDER

K.T.Sankaran, J.

These Rent Control Revisions arise out of the same judgment, namely, the judgment in R.C.A.No.65 of 2014 on the file of the Rent Control Appellate Authority, Ernakulam. Therefore, these Revisions were heard together and they are being disposed of by this common order. In R.C.R.No.4 of 2015, Advocate M.P.Ramnath appeared for the second respondent/landlord and Advocate Dinesh R.Shenoy appeared for respondents 1 and 3 to 9, who are the revision petitioners in R.C.R.No.5 of 2015. In R.C.R.No.5 of 2015, Advocate M.P.Ramnath appeared for the first respondent/landlord and Advocate P.Chandrasekhar appeared for the second respondent. The second respondent in R.C.R.No.5 of 2015 is the revision petitioner in R.C.R.No.4 of 2015.

2. V.A.Thomas, who is the first respondent in R.C.R.No.5 of 2015 and the second respondent in R.C.R.No.4 of 2015, filed R.C.P.No.27 of 2010 on the file of the Rent Control Court, Ernakulam against the revision

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petitioner in R.C.R.No.4 of 2015, the revision petitioners in R.C.R.No.5 of 2015 and one Rasheed (who is the tenth respondent in R.C.R.No.4 of 2015 and the third respondent in R.C.R.No.5 of 2015), under Section 11 (3), 11(4)(i), 11(4)(ii) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as 'the Act').

3. Certain facts are either admitted or proved in the case. The building in question belongs to the landlord V.A.Thomas. The building is situated on the northern side of Banerji Road and on the western side of Paramara Temple Road, which is in an important locality in Kochi city. The building was let out as per Ext.A1 registered rent agreement executed in the year 1999 for a period of five years, fixing a monthly rent of ₹5,000/-, in favour of P.A.Abdul Gafoor (first respondent in the Rent Control Petition) and Khader Haji. Khader Haji died and his legal representatives are respondents 2 to 9 in the Rent Control Petition. There was an agreement to renew the lease for a further period of five years on an increase in rent by 30%. It would appear that the lease was renewed for another five years and the rent was increased accordingly. The tenants are doing bakery business under the name and style "Bimbis". It is stated that the present rent payable is ₹8,450/-.

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4. The landlord put forward the bona fide need in paragraph 5 of the Rent Control Petition in the following words:

“5. The petitioner along with his wife Alphonsa, need the petition schedule building for their own occupation to start a business of their own in readymade textiles, garments, fancy items, gold covering jewellery etc. The need is bonafide. The petitioner does not have any other building of his own in his vacant possession suitable for starting the business in readymade textiles, garments, fancy items, gold covering jewellery etc. as stated above. Further the petition schedule building is the most suitable building for the said need as it has road frontage facing the Banerji Road on the south and the Paramara Temple road on the east. The building is situated almost opposite to Town Hall, Ernakulam and is a location of good business activity in the vicinity and very close to Town Hall bus stops (both sides), Paramara Temple and enroute from Banerji Road to Ernakulam Town (North) Railway Station. There are various other suitable buildings available in the locality for the tenants to carry on their business and the tenants are not depending for their livelihood mainly on the income derived from any trade or business carried on in the schedule building.”

5. The bona fide need put forward by the landlord was denied by the tenants. In the objection filed by the second respondent in the Rent Control Petition, it was stated thus:

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“5. The averments in paragraph 5 are incorrect and false and are denied. The petitioner and his wife have no bonafide need for own occupation of the building. They are already conducting a business in ornamental fishes, aquariums and allied matters in the northernmost room of V.C.Antony Memorial Building itself and elsewhere are fully engaged and occupied in the same. They are having other extensive income also. But these respondents are dependent on the income from the business being conducted in the rented premises for their livelihood and there is no other suitable building to which their business can be shifted in the locality. Infact the allegation that they have other suitable buildings in their possession and ownership to shift their existing business is false and is denied.”

The objection filed by the second respondent was adopted by respondents 1 and 3 to 9 in the Rent Control Petition.

6. Since the only question to be considered in these Revisions is with respect to the claim of the landlord under Section 11(3) of the Act, it is not necessary to state the facts in respect of the other grounds raised in the Rent Control Petition.

7. Hereinafter the parties are referred to as per their rank in the Rent Control Petition.

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8. In the Rent Control Petition, respondent No.1 was set exparte on 2.6.2010 and respondents 3 to 9 were set exparte on 2.7.2010. The second respondent in the Rent Control Petition alone filed counter and contested the case. However, he did not appear at the final stage. The Rent Control Petition was allowed by the order dated 15.6.2011 under Sections 11(3), 11(4)(i) and 11(4)(iii) of the Act and it was dismissed under Section 11(4)(ii). The second respondent in the Rent Control Petition filed I.A.No.4092 of 2011 on 11.7.2011, to set aside the exparte order dated 15.6.2011. On 23.8.2011, I.A.No.4092 of 2011 was dismissed, against which the second respondent filed R.C.A.No.106 of 2011 before the Rent Control Appellate Authority. The Rent Control Appellate Authority dismissed R.C.A.No.106 of 2011, by the judgment dated 21.6.2012. Against the appellate judgment, the second respondent filed R.C.R.No.256 of 2012 before the High Court on 25.7.2012. By the order dated 30.7.2012, R.C.R.No.256 of 2012 was allowed and the case was remanded to the Rent Control Court. However, it was made clear in the revisional order as follows:

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“We make it clear that the trial court shall proceed with the case to decide the lis between the revision petitioner and the respondent only, as the other respondents have chosen to remain exparte.”

9. After remand, the Rent Control Petition was allowed by the order dated 7.9.2012 under Sections 11(3), 11(4)(i) and 11(4)(iii) of the Act. Against the order of the Rent Control Court, the second respondent in the Rent Control Petition filed R.C.A.No.80 of 2012 before the Rent Control Appellate Authority on 22.10.2012. The Appellate Authority allowed R.C.A.No.80 of 2012 by the judgment dated 31.3.2014 and remanded the case to the Rent Control Court with liberty to the second respondent to examine witnesses.

10. After the second remand, the fourth respondent in the Rent Control Petition was examined as RW4, as a witness on the side of the second respondent in the Rent Control Petition. Certain other witnesses were also examined. It is to be noted that after the first remand, the first respondent in the Rent Control Petition was examined as RW2, as a witness on the side of the second

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respondent in the Rent Control Petition. Thus, though respondent Nos.1 and 4 were set exparte and they were disabled to adduce evidence before the Rent Control Court, their evidence have come on record as witnesses on behalf of the second respondent in the Rent Control Petition. After the second remand, the Rent Control Petition was again allowed as per the order dated 2.7.2014 under Sections 11(3) and 11(4)(iii) of the Act, but the ground under Section 11(4)(i) was disallowed. Against the order of the Rent Control Court after the second remand, the second respondent in the Rent Control Petition filed R.C.A.No.65 of 2014.

11. Meanwhile, after the first remand, respondents 1 and 3 to 9 filed I.A.No.5093 of 2012 to set aside the exparte order passed against them. They also filed I.A.No.5094 of 2012 to condone the delay of 395 days in filing the application to set aside the exparte order and I.A.No.5095 of 2012 to receive objections in the Rent Control Petition. By the order dated 3.9.2012, the Rent Control Court dismissed I.A.Nos.5093, 5094 and 5095 of 2012. The order dated 3.9.2012 was challenged by respondents 1 and 3 to 9 in R.C.A.No.75 of 2012 before the Appellate Authority, which was dismissed by the judgment dated 31.3.2014. The judgment of the Appellate Authority in R.C.A.No.75 of 2012 was

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challenged by respondents 1 and 3 to 9 in R.C.R.No.161 of 2014. R.C.R.No.161 of 2014 was disposed of by this Court as per the order dated 21.7.2014 wherein it was found that the order of the Rent Control Court and the judgment of the Appellate Authority could not be faulted. However, taking note of the facts and circumstances of the case and the likelihood of conflicting decisions which may arise in the case because of the parallel proceedings initiated by respondent No.2 on the one hand and respondent Nos.1 and 3 to 9 on the other hand, the Division Bench provided liberty to respondent Nos.1 and 3 to 9 to put forward all their contentions in R.C.A.No.65 of 2014, which was pending then. The Division Bench issued the following directions:

“8. Though we find that the authorities below were justified in not setting aside the exparte order passed against the revision petitioners, we are of the view that it should not result in conflicting orders being passed against two sets of respondents in the same Rent Control Petitions. Now, R.C.A.No.65 of 2014 is pending disposal. The revision petitioners, who are respondent Nos.1 and 3 to 9 in the Rent Control Petition, are arrayed as respondents in R.C.A.No.65 of 2014, as submitted by the learned counsel for the revision petitioners. We make it clear that the revision petitioners would be entitled to put forward all their

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contentions in R.C.A.No.65 of 2014. However, the revision petitioners would not be entitled to request for an opportunity to adduce any other evidence and they should not seek for an order of remand. In other words, they are entitled to participate in the proceedings and support the contentions as raised by the second respondent in the Rent Control Petition. The contentions raised by the second respondent in the Rent Control Petition can be allowed to be adopted by respondent Nos.1 and 3 to 9 in the Rent Control Petition, without even filing any application in that regard. Adopting the above course would be beneficial to the landlord as well as to the tenants. This course was agreed to by the learned counsel appearing for the landlord as well as the revision petitioners.”

12. Meanwhile, the tenants had filed O.S.No.480 of 2011 on the file of the Sub Court, Ernakulam against the landlord for specific performance of the alleged lease agreement and for extension of the term of lease by a period of five years after the expiry of the period of ten years. O.S.No.480 of 2011 was dismissed for default and it has become final.

13. After passing the order in R.C.R.No.161 of 2014, the appeal

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filed by the second respondent as R.C.A.No.65 of 2014 and the cross objection filed by the landlord challenging the order of the Rent Control Court disallowing the claim for eviction under Section 11(4)(i) of the Act was taken up for hearing by the Appellate Authority. Both sides produced additional documents before the Appellate Authority and they were marked as Exts.A21 and A22 and B19 to B22. The Appellate Authority, by a detailed judgment, confirmed the order of eviction under Section 11(3) of the Act. However, the order passed by the Rent Control Court in favour of the landlord under Section 11(4)(iii) of the Act was set aside. The Appellate Authority also confirmed the order of the Rent Control Court rejecting the prayer for eviction under Section 11(4)(i) and 11(4)(ii) and the Memorandum of Cross Objection filed by the landlord was accordingly dismissed. As per the judgment of the Appellate Authority, now the only ground on which eviction is ordered is under Section 11(3) of the Act. The judgment of the Appellate Authority ordering eviction under Section 11(3) of the Act is challenged in R.C.R.No.4 of 2015 by the first respondent and in R.C.R.No.5 of 2015 by respondents 2 to 9, which are being disposed of as per this order.

14. Both the authorities below held that the bona fide need put forward by the landlord is genuine. The facts and circumstances of the

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case and the evidence on record were taken into account by the authorities below in arriving at this conclusion. It is well settled that in a Revision under Section 20 of the Act, the findings of the Rent Control Court and the Appellate Authority can be interfered with only if there is any illegality, irregularity or impropriety in the proceedings. After carefully going through the order and judgment of the authorities below, the pleadings and the relevant documents (copies of which were made available to us by the counsel), we do not find any such illegality, irregularity or impropriety in the order and judgment of the courts below. The building is situated in a very prominent locality. The building has great business potential. The tenants are doing bakery business in the building. It has come out in evidence that the first respondent is conducting similar business in other parts of the city. The genuineness of the need put forward by the landlord to conduct a business in the manner mentioned in paragraph 5 of the Rent Control Petition cannot be doubted. It is not suggested that the landlord owned another building or that he is in vacant possession of any other building. The suitability of the building for the need put forward by the landlord is also not in challenge by the tenants. The Appellate Authority noticed in paragraph 15 of the judgment under challenge that the learned counsel for the tenants fairly conceded that "there is no much reason to challenge the bonafides of the need

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urged by the petitioner”. In these circumstances, we are of the view that there is no ground to interfere with the findings of the authorities below that the need put forward by the landlord is genuine.

15. The tenants raised a contention that they are entitled to the protection of the second proviso to Section 11(3) of the Act. The second proviso gives protection to the tenant from eviction if he is able to prove that he is depending for his livelihood mainly on the income derived from any trade or business carried on in the building and that there is no other suitable building available in the locality for the tenant to carry on such trade or business. It is also well settled that the burden to establish both the limbs of the second proviso to Section 11(3) is on the tenant.

16. The Appellate Authority considered the question of availability of the second proviso and found that the tenants failed to prove that they are depending for their livelihood mainly on the income derived from the business carried on in the petition schedule building. No accounts were produced by the tenants to show the income derived from the business conducted in the petition schedule building. Though it is stated that the tenants formed a partnership, the statement of accounts were not produced before Court. Therefore, it was held by the Appellate

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Authority that the tenants failed to establish the first limb of the second proviso to Section 11(3) of the Act.

17. As regards the second limb of the second proviso to Section 11 (3), it has come out in evidence and as reported by the Commissioner who was examined as RW1, that several buildings are available for rent in the locality in which the petition schedule building is situated. It has come out in evidence that rooms in Kartha Buildings, Grand Tourist Home, Mather Square, Kokker's Complex were available for rent. These buildings are closely located to the petition schedule building. Moreover, rooms in three other buildings in Chittoor Road, Rajaji Road and M.G.Road were also vacant at the relevant time. The Commissioner reported that the rooms in the aforesaid buildings were intended for letting out and boards indicating the same were exhibited outside the said premises. The Appellate Authority held, on the basis of the evidence on record, that rooms in the buildings mentioned in the Commissioner's report were vacant and they were intended to be let out and thus the tenants failed to establish the second limb of the second proviso to Section 11(3) of the Act. The finding arrived at by the authorities below on the question of availability of the benefit of the second proviso was on the basis of the facts and evidence on record. It is not established that the

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evidence recorded by the authorities below on this point are erroneous, illegal or improper. Therefore, we are inclined to confirm the findings of the Appellate Authority with respect to the second proviso to Section 11(3) as well.

18. A contention was put forward by the tenants that the bona fide need put forward in the Rent Control Petition has lost its significance, since the landlord transferred the building as per Ext.B19 gift deed dated 23.11.2012 in favour of his wife. It has come out in evidence that a portion of the land in which the building is situated was acquired for the purpose of metro rail. It was contended that the necessary agreement for surrender of the land was executed by the wife of the landlord. The landlord contended that he had alienated the land alone to his wife and the building was not the subject matter of the gift deed. It was also contended that the compensation for acquisition of a portion of the land covered by Ext.B19 was paid to his wife and the compensation for a portion of the building acquired was paid to the landlord. Ext.A21 and A22 were produced to prove this contention. The Appellate Authority found that, the compensation representing the value of the portion of the building was paid to the landlord and not to his wife. The Appellate Authority also noticed that there is no recital in Ext.B19 that the building or

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part of the building was also assigned in favour of the wife of the landlord. Relying on the decisions in Thankamma Kunjamma and others v. Gopalakrishnan Unnithan and others [1992(1) KLJ 415] and Gouri v. Benny [2012 (3) KLT SN 71 (C.No.74)], it was held that a building can be separately owned by a person other than the owner of the land. On the basis of the evidence on record, the Appellate Authority held that the building situated in the land covered by Ext.B19 is still owned by the landlord.

19. The learned counsel appearing for the tenants submitted that on a conjoint reading of Sections 3 and 8 of the Transfer of Property Act, it can be seen that unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor was then capable of passing in the property, or in the legal incidents thereof. It is also submitted that the incidents referred to in Section 8 include all things attached to the earth. It is submitted that going by Section 3 of the Transfer of Property Act, things attached to earth includes building. It is contended that the building belongs to the wife of the landlord and therefore, the Rent Control Petition is not maintainable. The learned counsel appearing for the landlord relied on the recitals in Ext.B19 and the absence of Form IB therein, as

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prescribed under the Kerala Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 to show that the building was not transferred as per Ext.B19 gift deed to the wife of the landlord. The learned counsel for the tenants submitted that Rule 3 of the aforesaid Rules would not apply in the present case in view of the wording of sub-rule (1A) of Rule 3. We do not think it is necessary to advert to these aspects, in view of the fact that the building is still possessed by the landlord. He received the compensation for the acquisition of a portion of the building in question which would indicate that he exercised his ownership right as well. Apart from all these facts, it is clear from paragraph 5 of the Rent Control Petition that the need projected in the Rent Control Petition is to start a business for the landlord and his wife in readymade textile garments, fancy items, gold covering jewellery etc. in the petition schedule building. That need projected in paragraph 5 of the Rent Control Petition is in no way affected by the gift deed executed by the landlord in favour of his wife. The authorities below found that the need put forward by the landlord is genuine. The Appellate Authority has recorded in paragraph 15 of the judgment that the tenants fairly conceded that there is no reason to challenge the bonafides of the need urged by the landlord. If so, even assuming that the rights over the building also came to vest in the wife of the landlord, there is no circumstance to doubt the genuineness of the

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need put forward in the Rent Control Petition. Going by any test, this is not a fit case to interfere with the concurrent findings of the authorities below that the landlord has established the bonafide need put forward by him and that the tenants are not entitled to the protection of the second proviso to Section 11(3) of the Act.

20. For the aforesaid reasons, we do not find any ground to interfere with the order and judgment of the authorities below. The Rent Control Revisions fail and they are, accordingly, dismissed.

In the facts and circumstances, the tenants are granted three months' time to vacate the petition schedule building, on condition that they shall deposit before the Rent Control Court the entire arrears of rent till September, 2015, within a period of one month from today and shall continue to deposit the monthly rent from October 2015 onwards on or before the 10th of the succeeding months till they vacate the petition schedule building and also on condition that the tenants shall file an unconditional undertaking within a period of one month before the Rent Control Court, undertaking to vacate the petition schedule building within the aforesaid period of three months from today. If the tenants fail to

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comply with any of the conditions mentioned above, they will not be entitled to avail the benefit of grant of three months to vacate. If they comply with the conditions mentioned above, the Execution Petition shall stand adjourned for a period of three months.

(K.T.SANKARAN)
Judge

(C.K.ABDUL REHIM)
Judge

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