

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA**

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

RCRev..No. 25 of 2015 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 8/2013 of THE RENT CONTROL APPELLATE
AUTHORITY,PALAKKAD DATED 11.11.2014**

**AGAINST THE ORDER/JUDGMENT IN RCP 27/2011 of THE RENT CONTROL COURT OF
THE MUNSIF (PRINCIPAL), PALAKKAD DATED 16.02.2013**

REVISION PETITIONER(S)/RESPONDENT NO.1:

**M.K.SUSEELA AGED 53 YEARS
W/O. LATE BALAKRISHNAN, CHEMMANKADU
KANNADI VILLAGE & POST, PALAKKAD TALUK, PALAKKAD DIST.**

BY ADV. SRI.T.K.SANDEEP

RESPONDENT(S)/1ST APPELLANT /RESPONDENTS 2 TO 6:

- 1. P.N.MANGALAM, AGED 80 YEARS
D/O LATE P.R.NARAYANASWAMY IYER, 10/567, COLLEGE ROAD
PALAKKAD TALUK & DISTRIC-678 001**
- 2. RAMESH KUMAR, , AGED 30 YEARS
S/O MANI, KULIKKAL BHAVANAM, KALLEPULLY
PALAKKAD DISTRICT
NOW DOING STATIONARY BUSINESS IN DOOR NO.10/568
COLLEGE ROAD, PALAKKAD TALUK & DISTRICT, PIN-678 001**
- 3. R.GANGADHARAN,, AGED 79 YEARS
S/O.RAGHAVAN, 17/519, SUDHIN
KIZHAKKEYAKKARA, KUNNATHURMEDU POST
PALAKKAD TALUK & DISTRICT, PIN-678 013**
- 4. R.DEVAKI,
W/O. RADHAKRISHNAN, RAMANI NIVAS, KADUMTHURUTHI
YAKKARA POST, PALAKKAD TALUK & DISTRICT, PIN-678 013**
- 5. SWAYAMPBABHA, AGED 63 YEARS
W/O. RAMANKUTTY, POOVAKKODE HOUSE, PULINELLI POST
KOTTAYI, ALATHUR TALUK & PALAKKAD DISTRICT
PIN-678 541**

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**6. YASODHA,, AGED 71 YEARS
W/O.LATE CHAMMUNI, NANDANAM, KATHIRKAD HOUSE
PANNIYAMPADAM, MUNDUR POST, PALAKKAD DISTRICT
PIN-678 592**

**R2,R4-R6 BY ADV. SRI.GOKUL DAS V.V.H.
R1 BY ADV. SRI.K.G.BALASUBRAMANYAN**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
18-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

kkj

“C.R.”

K.SURENDRA MOHAN & P.V.ASHA, JJ.

R.C.R.No. 25 of 2015

Dated this the 18th day of September, 2015

O R D E R

Surendra Mohan, J.

This is a tenant's revision against the judgment of the Rent Control Appellate Authority, Palakkad in RCA No.8 of 2013 reversing in part, an order passed by the Rent Control Court, Palakkad in RCP No.27 of 2011. The landlord had filed the Rent Control Petition on the grounds under Sections 11(2)(b), 11(3) and 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act, 1969 (hereinafter referred to as 'the Act' for short).

2. The landlady owns a building that is situate by the side of the College Road at Palakkad. The building consists of two shop rooms facing the road, with the landlady residing in the residential portion behind. According to the landlady, her son is employed in a software company in Hyderabad. He is suffering from a disease by name

Cervical Dystonia which debilitates him from continuing his present employment. Therefore, he wants to return to his native place and to start a business in computer peripherals from the tenanted shop room. The first revision petitioner is the wife of the original tenant to whom the shop room was entrusted. He was conducting a tailoring shop from the premises. After his demise, the first revision petitioner has been conducting a stationery business. According to the landlady, the premises had been sublet to the original second respondent in the Rent Control Petition, who is no more. Therefore, the other revision petitioners have been impleaded as his legal representatives. The case of the landlady was that, she requires the tenanted shop room for the bonafide occupation of her son.

3. The tenants disputed the claim of the landlady. It was alleged that, the need that was put forward was neither genuine nor bonafide. The same was only a pretext for evicting the tenants. On the question of subletting,

according to the first revision petitioner, her sister's son who was employed elsewhere was only helping her by opening the shop room in the morning and by closing the same at night since she was alone. The first revision petitioner, has no children. Though there were arrears of rent at the time of filing the Rent Control Petition, the same was paid during the pendency of the proceedings and therefore, the said ground does not survive.

4. The Rent Control Court tried the petition on the above pleadings. Evidence on the side of the landlady consists of Exhibits A1 to A3 documents and her oral evidence as PW1. On the side of the tenants, RWs 1 and 2 were examined and Exhibit B1 was marked. Exhibit C1 Commission Report was marked as Court Exhibit.

5. The Rent Control court considered the evidence on record and found that, the landlady was entitled to an order of eviction under Section 11(2)(b) of the Act. However, eviction was declined under Section 11(3) and 11

(4)(i) of the Act. The aggrieved landlady carried the matter in appeal before the Rent Control Appellate Authority, Palakkad in RCA No.8 of 2013. The Appellate Authority on a re-appreciation of the evidence, sustained the order of the Rent Control Court in finding that there was no subletting. However, the dismissal of the Rent Control Petition under Section 11(3) has been set aside and an order of eviction has been granted. The aggrieved tenants are before us in revision.

6. According to Sri.T.K.Sandeep who appears for the revision petitioners, the landlady is in possession of another shop room which is located on the southern side of and forming part of the same building. The said room is larger and more spacious when compared to the tenanted shop room. The fact that the landlady was in possession of the said vacant room , has not been disclosed either in Exhibit A1, the initial notice that was issued or in her Rent Control Petition. The existence of the vacant room was pointed out

in Exhibit A2 reply notice. Thereafter, when the Advocate Commissioner inspected the premises, on the basis of a work memo submitted by the tenant, the existence of the said room has been reported as per Exhibit C1. According to the learned Counsel, both the Courts have failed to consider the effect of the first proviso to Section 11(3) of the Act. The first proviso to Section 11(3) mandates that no eviction could be granted in cases where the landlord has another vacant room in his possession, unless special reasons are shown. According to the learned Counsel, in the present case, no special reasons have been put forward. For the above reason, it is contended that the judgment of the Appellate Authority requires to be interfered with in revision.

7. Advocate K.G.Balasubramanyan who appears for the first respondent-landlady on the other hand refutes the contentions of the counsel for the revision petitioner. According to the learned counsel, the son of the landlady is

suffering from a disease of the neck called Cervical Dystonia. Therefore, he is not in a position to continue his job at Hyderabad. He wants to return to his native place and settle down along with his mother. For his sustenance, he is desirous of starting a business in computer peripherals from the tenanted shop room. It is for the said purpose that, vacant possession of the room is sought. The bona fides of the need that has been put forward has been concurrently found by both the authorities below. However, the Rent Control Court declined an order of eviction finding that the tenant was entitled to the benefit of the second proviso to Section 11(3) of the Act. The said finding has been set aside by the Appellate Authority. On the question of the first proviso to Section 11(3) also, it is pointed out by the learned Counsel that, the findings are concurrent. Though it is true that another shop room in the same building is vacant and is in the possession of the landlady, the same is used by her as part of her residence. Our

attention has been drawn to the description of the residential portion of the landlady, behind the tenanted shop room, to point out that the residential portion is comprised of small rooms, with limited conveniences. The Commissioner has also reported that the shop room available with the landlady contained items of furniture like an easy chair, table, chair etc., justifying a conclusion that the said room was being used as part of her residence. The above facts, according to the learned counsel, constitute the special reasons contemplated by the first proviso to Section 11(3). Nothing further is required to be proved, for the reason that, the landlady has absolute freedom to decide the suitability of the room that is required for her bona fide need. For the above reasons, it is contended that no interference with the judgment of the Appellate Authority is called for in revision.

8. Heard. As already noticed above, the case of the landlady is that, she requires vacant possession of the

tenanted shop room for the purpose of her son to start a business of his own in computer peripherals. The son has not been examined in this case. However, both the authorities below have found that the need of the landlady is bona fide. The contention of the tenant is that, there is a larger room forming part of the very same building in which the tenanted shop room is situate, which is in the possession of the landlady. Even if the landlady's son wants to start a business of his own, such business could be started comfortably in the vacant room that is already in her possession. The above contention has been negatived by both the authorities below on the ground that, tenant had no right to dictate where landlady should start her business. It is for the landlady to decide, which of the premises is suitable for her purpose.

9. The Rent Control Court has in paragraph 23 of its judgment, expressed the opinion that it has not been “clearly established why that room was not available for the

business of" the landlady's son. However, the said contention has been dismissed on the ground that the tenant cannot determine the extent of the requirement of the landlord. The Appellate Authority has considered the above aspect in paragraphs 12 and 13 of its judgment. The Appellate Authority has accepted the contention that the house and other shop room in the possession of the landlady were not at all convenient for the purpose of conducting the business proposed by her son. It has also been held that, for the above reason, the first proviso to Section 11(3) of the Act was not applicable to the facts of the present case. What has to be examined is whether the approach adopted by the authorities below to the first proviso to Section 11(3) of the Act is correct or not. It is clear from the observations of the Authorities below that they have not correctly understood the scope of the first proviso to Section 11(3) of the Act.

10. 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:

A bare reading of the first proviso makes it clear that, what has been enacted by the said provision is a limitation on the power of the Rent Control Court to issue a direction to surrender vacant possession of the premises under Section 11(3). The provision interdicts the Rent Control Court from issuing any such direction if the landlord has another building of his own in the same city, town or village except where the said Court is satisfied that for special reasons, in any particular case it is just and proper to do so. Therefore, wherever it is established that the landlord has another

building of his own in his possession in the same city, town or village, before issuing an order of eviction,

(i)The Rent Control Court has to be satisfied that

(ii)for special reasons in any particular case,

(iii)it will be just and proper to do so.

Therefore, in terms of the above proviso, it is imperative that the Rent Control Court enters a satisfaction, that for special reasons in that particular case, it would be just and proper to order eviction, though the landlord has another building of his own in his possession. The above aspect would be clear from an examination of the precedents on the point.

11. A Division Bench of this Court has in **Raghavan v. Govindan Nambiar** [1995(1) KLT 596] considered the scope of the first proviso to Section 11(3) and held as follows:-

5. The first proviso to S. 11(3) of the Act reads thus: -

“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”.

Section 11(3) recognises the principle that in spite of the restrictions imposed against eviction of the tenant the genuine need of the landlord must supercede even the tenant's need. But through the three provisos to the sub-section the legislature provided certain inbuilt safeguards for tenants against unbridled use of the ground by their landlords. The second proviso is embodied to keep even the genuine need of the landlord (to have vacant possession of the building) at bay vis-a-vis the tenant's need, if the source of livelihood of the tenant would be at peril as a consequence of eviction. The second proviso warrants consideration only after the landlord succeeds in establishing that his need is bona fide. Otherwise, court is not required to proceed to the second proviso at all. But the first proviso is different. It embodies a wholesome principle having a perceptible bearing on the core of the ground itself as it also helps the court to decide whether the need expressed by the landlord is bona fide. The idea is simple. When a landlord has one building in his possession, how can he seek the help of the court to evict his tenant of another building on the ground of his own need? The answer is that unless there are special reasons the landlord cannot be helped by the court to evict the tenant. In the absence of special reasons the fact of landlord having possession of another building of his own the same town or village may in some cases tell upon the genuineness of his need. The legislature, therefore, insists on special reasons. The special reasons should be such as would satisfy the court that, in spite of landlord having possession of another building of his own, it would be just and proper to evict the tenant. The first

proviso, is, in fact, so embedded in the main body of the sub-section that it is really an integral part of it S. 11(3) of the Act would have been incomplete without the first proviso. Even if such a proviso was not specifically set forth in the sub-section, the principle involved therein could have been read into the sub-section. The utility in relegating the principle in the form of a proviso was perhaps to cast the onus of proof at different stages of consideration.

12. The Apex Court has also taken note of the principle behind the insistence of such special reasons, in **M.M.Quasim v. Manohar Lal Sharma** [AIR 1981 SC 1113], in the following words:-

Undoubtedly, if it is shown by the tenant that the landlord has some other vacant premises in his possession, that by itself may not be sufficient to negative the landlord's claim but in such a situation the Court would expect the landlord to establish that the premises which is vacant is not suitable for the purpose of his occupation or for the purpose for which he requires the premises in respect of which the action is commenced in the Court. It would, however, be a bald statement unsupported by the Rent Act to say that the landlord has an unfettered right to choose whatever premises he wants and that too irrespective of the fact that he has some vacant premises in possession which he would not occupy and try to seek to remove the tenant. This approach would put a premium on the landlord's greed

to throw out tenants paying lower rent in the name of personal occupation and rent out the premises in his possession at the market rate. To curb this very tendency the Rent Act was enacted and, therefore, it becomes the duty of the Court administering the Rent Act to bear in mind the object and intendment of the legislature in enacting the same.

13. In **Janatha Drugs v. Maithri Construction** [2007(4)KLT 625], a landlord had come into possession of another shop room having more or less equal space, which he had let out to another person during the pendency of the proceedings. This Court took exception to the conduct of the landlord and has held as follows in paragraph 8 of the said judgment.

When the landlord came into possession of rooms which are having more or less equal space in the very same building where the tenant also is occupying a similar room, the question is whether the landlord was justified in letting out the rooms for a higher rent while requiring the eviction of the tenant herein. Even though the tenant cannot dictate as to how the landlord should utilise the room, we find that on the proved facts of the case, the tenant is right in pointing out that instead of occupying one of the vacant rooms, he has chosen to let

out it for higher rent, which is not a special reason at all.

14. The obligation on the part of the landlord to establish special reasons has been reiterated by this Court in **Abdul Salam v. Sebastian** [2013(4) KLT 592] in paragraph 12 of the judgment in the following words:-

In case like this where the landlord clearly admitted in evidence that vacant rooms are in their possession which are having independent entries, the first proviso to S.11(3) of the Act obliges the landlord to attribute special reasons for not occupying it. Then only the Court will be able to analyse it and can go into the sufficiency of the said reasons. Under S.11(3) of the Act what the landlord is to establish is a genuine bona fide need and it is well settled that a mere desire is not sufficient.

15. A slightly different view has been taken by another Division Bench of this Court in **Kunju v. Fathima** [2014(3) KLT 563] where scope of the proviso has been interpreted in paragraph 10 of the judgment as follows:-

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. In other words, to non-suit the landlord, the vacant building should be of such a character, which would meet the requirements of the landlord. Any other interpretation of the proviso would lead to absurdity and cannot be accepted.

However, the above dictum only lays down that the tenants should also satisfy the Rent Control Court that the vacant shop room would meet the requirements of the landlord.

16. The legal position that emerges from the above discussion is that, once it is established that the landlord has another building of his own in his possession in the same city, town or village that is suitable for his requirements, he would have to satisfy the Rent Control Court of the existence of special reasons to support an order of eviction. Therefore, it is necessary to examine whether the landlady in this case has established such special reasons.

17. Exhibit A1 is the notice that was issued on behalf of the landlady demanding vacant possession of the

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tenanted shop room. On receipt of Exhibit A1, the tenant responded by causing the issue of Exhibit A2 reply notice. In Exhibit A2, the tenant has seriously disputed the bona fides of the need put forward. It has also been specifically pointed out that, another shop room in the same building bearing Door No.753 was remaining vacant and was in the possession of the landlady. It was thereafter that RCP No.27 of 2011 was filed by the landlady. In paragraph 9 of the Rent Control Petition, the stand of the landlady is to the following effect:-

The contention that there is alternate space in the same house for the business of the son is not correct and is denied.

Therefore, the landlady denied even the existence of the vacant room in her possession. We notice that, the tenant has in paragraph 12 of her objections to the Rent Control Petition reiterated her contention that, on the southern side of the tenanted shop room, another shop room was remaining vacant in the possession of the landlady, forming

part of the same building. It is alleged that, the conduct of the landlady in seeking eviction of the tenanted shop room without starting her business from the shop room in her possession was not bona fide. Later on, an Advocate Commissioner has inspected the tenanted premises and has submitted Exhibit C1 report at the instance of the tenant. The Advocate Commissioner has reported that, on the southern side of the tenanted shop room, there was another shop room that was remaining vacant in the possession of the landlady. At the time of the inspection, the landlady opened the said shop room. The Door Number of the said shop room has been noted as XVI/753 in Exhibit C1. The Advocate Commissioner has noted that, the said room was electrified and had a separate electric connection with consumer No.2516. The Advocate Commissioner noted that there were three tables, two benches, three stools, an easy chair, a cane chair, a wooden box and a metallic chair in the said shop room. It is clear from the above evidence that,

another room forming part of the very same building as the tenanted shop room is available and remaining vacant, in the possession of the landlady.

18. The counsel for the landlady has pointed out that, according to Exhibit C1 Commission Report, the residential portion occupied by the landlady has only limited convenience, being comprised of small rooms. The nature of the furniture available in the shop room in possession of the landlady is also relied upon by the counsel to point out that, she was using the same as part of her residence. The counsel places reliance on the description of the tenanted shop room contained in Exhibit C1 report to point out that, the southern boundary thereof has been shown to be landlady's residence and property. For the above reason, according to the counsel, the vacant shop room has also been considered by the Advocate Commissioner as part of the residential portion. However, the above contention cannot be accepted for more reasons than one. In the first

place, the vacant shop room as per Exhibit C1 report, has a separate electric connection. There is absolutely no indication in the report that the room was being put to use by the landlady as part of her residence. There is also no evidence of any internal access between the vacant shop room and the residential portion occupied by the landlady. If the landlady had a case that, she was actually using the vacant shop room as part of her residence, she would have stated so. According to Exhibit C1 Commission Report, the said vacant shop room was opened by the landlady at the time of the inspection. The same is also described as “a shop room”. The Commissioner has further reported that in between the two shop rooms there is a passage that leads to the residential portion behind that is occupied by the landlady.

19. The landlady was examined as PW1. It is in her proof affidavit that she has stated for the first time that she was using the vacant shop room as part of her residence. In

her cross examination, the landlady has admitted that, there is another room next to the tenanted shop room. She has further admitted that, the said shop room is more spacious than the tenanted shop room. Her case is that, the same was being put to her own personal use. She has also admitted that, she was residing alone in the residential portion behind, comprising of four rooms. To a pointed question as to whether the room in her possession as well as the other portions occupied by her were not sufficient for conducting the proposed business of her son, her reply is that she does not know. In the present case therefore, Exhibit C1 Commission Report shows that, the shop room was remaining locked from outside, having been opened by the landlady herself only at the time of inspection. It is true that, there were some items of furniture inside. However, no conclusion that the said room was being used as part of her residence could be drawn, solely on the basis of the nature of the furniture available therein. According to her,

she has no idea as to whether the said premises would be sufficient for the proposed business of her son. At the same time, she has admitted that the said room is larger in area than the tenanted shop room. In the above state of affairs, there are absolutely no reasons available for the non-occupation of the shop room by the landlady. We remind ourselves of the fact that, her case in the Rent Control Petition is that there is no such room available. The availability of the room has been established by Exhibit C1 report of the Advocate Commissioner. She has also admitted in her cross examination that the said shop room was available. The vague attempt to make it appear that the said shop room was being used as part of her residence, is not convincing. At any rate, it cannot be said that there are any special reasons available in this case for the grant of an order of eviction under Section 11(3) of the Act. It is therefore held that, the order of eviction granted by the Rent Control Appellate Authority is unsustainable and liable

to be set aside. In this case, the landlady has failed to make out any special reason for the grant of an order of eviction under the first proviso to Section 11(3) of the Act. We do not find any grounds to interfere with the findings of the authorities below on the other aspects.

For the foregoing reasons, this Rent Control Revision is allowed. The judgment of the Appellate Authority, Palakkad dated 11.11.2014 in RCA No.08 of 2013 is set aside. Consequently, RCP No.57 of 2011 of the Rent Control Court, Palakkad is dismissed.

Sd/-
K.SURENDRA MOHAN,
JUDGE

Sd/-
P.V.ASHA
JUDGE