

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

RCCRev..No. 109 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 23/2012 of THE RENT CONTROL
APPELLATE AUTHORITY, TIRUR DATED 25-02-2015

AGAINST THE ORDER/JUDGMENT IN RCP 12/2010 of THE RENT CONTROL COURT,
TIRUR DATED 11-04-2012

REVISION PETITIONER(S)/REVISION PETITIONER/APPELLANT/RESPONDENT:

RARAMKANDATH USMANKOYA, AGED 53 YEARS
S/O.KUNHUMHAMMED HAJI, TRIKKANAPURAM AMSOM DESOM
PONNANI TALUK, MALAPPURAM DISTRICT.

BY ADVS.SRI.SANTHEEP ANKARATH
SRI.Y.JAFAR KHAN

RESPONDENT(S)/RESPONDENT/RESPONDENT/PETITIONER:

RARAMKANDATH ABOOBACKER,, AGED 57 YEARS
S/O.KUNHUMHAMMED HAJI
THRIKKANAPURAM AMSOM AND DESOM, PONNANI TALUK
MALAPPURAM DISTRICT, PIN-679573.

R1 BY ADV. SMT.N..DEEPA (CAVEATOR)
R1 BY ADV. SRI.T.SETHUMADHAVAN (SR.)
R1 BY ADV. SMT.N.DEEPA

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
18-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

kkj

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

R.C.R. No.109 of 2015

Dated this the 18th day of June, 2015

O R D E R

Surendra Mohan, J.

This is a tenant's revision against the concurrent orders of eviction under Section 11(8) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act' for short). The tenanted premises form part of a shopping complex. The respondent landlord had sought eviction of the tenant from the petition schedule rooms which are numbered as KP 1/531 and 1/532. Originally, shop room Nos.1/527, 528, 530, 531 and 532 had been taken on rent by the tenant. Later on, in the year 2009, shop room Nos. 1/527 and 1/528 were surrendered to the landlord by the petitioner. The landlord sought eviction on the ground that vacant possession of the premises was needed for him to display the furniture and other items of the business that he was conducting. The landlord also

contended that he was entitled to an order of eviction under Section 11(3) as well as 11(4)(ii) of the Act. The tenant disputed the grounds that were put forward. The parties went to trial and after evidence was adduced, the Rent Control Court found that the grounds under Sections 11(3) and 11(4)(ii) of the Act were not made out. However, eviction was ordered under Section 11(8). The tenant challenged the order of eviction passed by the Rent Control Court, Tirur in RCA No.23 of 2012 before the Rent Control Appellate Authority, Tirur. The Appellate Authority on a re-appreciation of the evidence on record, confirmed the order of eviction passed under Section 11(8) of the Act.

2. According to the counsel for the petitioner, though initially the landlord had claimed eviction on the ground of bonafide need under Section 11(3) also, the said ground was not pressed. Since the ground was not pressed well before the parties adduced any evidence, the tenant had not let in any evidence to claim the benefit of the proviso to Section 11(3) also. The only aspect on which the

challenge in the revision is made, is with respect to the eviction granted under Section 11(8) of the Act. The contention of the counsel for the petitioner is that, the landlord is in occupation of room Nos.1/527 and 1/528 that were surrendered by the tenant in the year 2009. According to the landlord, he has not started his furniture business in room No.1/527 for the reason that it was not spacious enough to accommodate the business. That is the reason why he has sought to evict the tenant. In shop room No.1/528, though he is conducting a partnership business, the need projected in the Rent Control Petition is for expanding the furniture business that he wanted to conduct in room No.527. Since the landlord is only in possession of the shop room and not in occupation thereof by conducting any business, according to the learned counsel for the petitioner the ground under Section 11(8) is not available to him. He cannot be considered to be a person who is occupying a portion of the building. It is further contended that, the tenant is in occupation of shop room numbers

1/531,532, 530, 533 and 534. All those rooms form a cohesive unit. Therefore, the tenancy according to the learned counsel cannot be split up and partial eviction cannot be sought in respect of the tenanted premises. A further contention is advanced by the counsel for the petitioner that since the building has been constructed in two items of properties abutting each other but belonging to the landlord and his wife separately, the Rent Control Petition filed without the juncture of his wife is not maintainable. It is also contended that, the remaining portion for which eviction has not been sought namely, room No.1/530, located in the property of the wife would be left with no means of access. This is for the reason that the common staircase of the building is situate in the property of the respondent landlord. It is contended that the above aspects have not been considered by the authorities below in the proper perspective. Therefore, the counsel seeks interference in revision with the judgment of the Appellate Authority.

4. Sri.T.Sethumadhavan (Senior Counsel) has entered appearance for the landlord. According to the learned Senior Counsel, though the property on which the building is constructed belongs to two different persons, the respondent and his wife, the building has a common staircase as well as a lift. They are meant for providing access to all parts of the building. There is also a corridor in the building which provides access to various parts thereof, which are occupied by different tenants. Therefore, the contention regarding lack of access is without any basis. According to the learned Senior Counsel, the various rooms in the building are numbered separately and are occupied by different tenants who are carrying on their distinct and separate businesses. Therefore, the identity of each of the premises is clear and there can be no difficulty in identifying each portion separately. In such circumstances, there is no impediment in seeking eviction in respect of a portion of the building. With respect to the ground under Section 11(8), according to the learned

Senior counsel, what the statutory provision contemplates is only that the landlord is in occupation of a portion of the building. In the present case, admittedly he is conducting a business in shop room No.1/528. Therefore, there is no absolutely no bar in applying Section 11(8) to the facts of the present case. It is the specific contention of the learned Senior counsel that eviction could be sought under Section 11(8) not only for conduct of the business that was being conducted in the building but also for the purpose of commencing or conducting another business or altogether a new business. For the above reasons, it is contended that the authorities below have considered the matter in the proper perspective and that no interference with the same is called for.

5. Heard. A perusal of the Commission Report and plan, copies of which have been handed over to us across the bar shows that the tenanted premises form part of a commercial complex or a larger building, portions of which are occupied by different tenants. The respondent tenant

was initially in occupation of room Nos.I/527,528, 530,531,532,533 and 534. In the year 2009, two of the shop rooms have been surrendered by the tenant to the landlord. It is admitted that the landlord is in possession of the said portion. It is clear from the above that, different portions of the tenanted premises are capable of separate identification as well as separate possession and enjoyment. This is further clear from the fact that room Nos.1/527 and 528 which initially formed part of the tenanted premises and surrendered by the tenant is in possession of the landlord being enjoyed separately. The authorities below have found that the other shop rooms are spread over different floors of the building and are not remaining as one cohesive unit. The above aspect is clear from the report and sketch prepared by the Advocate Commissioner also. Therefore, we are not satisfied that, the finding of the authorities below that eviction of the tenanted premises separately is maintainable, requires to be interfered with.

6. On the question of grant of eviction under Section

11(8), a reading of the provision shows that the landlord seeking eviction should be in occupation of a part of the building. Section 11(8) entitles a landlord who is occupying only a part of the building to seek eviction of a tenant occupying the whole or a portion of the remaining part of the building, provided he requires additional accommodation for his personal use. Therefore, it is enough that the additional accommodation is required for the personal use of the landlord. In the present case, it is not in dispute that, the landlord is conducting a business in Room.No.1/528. Therefore, this is case in which the landlord is occupying a part of the building. It has been held by the Full Bench in **M.M.Moidooty Haji v. Abdul Jaleel Haji** [2007(3) KHC 864] [2007(4) KLT 15] that, eviction under Section 11(8) could be sought by a landlord for any use as deemed fit by him. It can be either for the use of an existing business or for starting an altogether new business. It has been held by the Full Bench that the words "Personal use" is an expression having wide amplitude and

capable of encompassing any use that the landlord may decide to put the premises to. In **John v. Manuel** [2004 (KHC) 1126], the question arose whether the landlord could claim eviction under Section 11(8) in respect of a room that was not adjacent to the premises but was separated by two or three rooms. This Court has held that, the landlord was competent to seek eviction even if the tenanted rooms were not adjacent to the rooms, occupied by him. Therefore, it follows that, what is material is only to consider whether the landlord is in occupation of another portion of the same building of which tenanted premises is a part. If he is, then a petition under Section 11(8) is maintainable. The above being the position of law, it has to be held that the Rent Control Petition is maintainable, as rightly held by the authorities below.

7. The other contention put forward by the Counsel for the petitioner is that, eviction of the tenant from room Nos. 1/531 and 532 would leave him with no means of entry to the portion that would be left in his possession. The

above contention is a factual one. However, we have considered the same in the light of the sketch prepared by the Advocate Commissioner, a certified copy of which has been handed over to us across the Bar. A perusal of the sketch shows that, there is a common staircase at the centre of the building. There is also a lift at the centre of the building. Both the staircase as well as the lift provide entry to the premises that would be left in the possession of the tenant. Therefore, we are not satisfied that there is any substance in the contention regarding denial of access to the portion that would be left in the possession of the tenant. The counsel for the petitioner also contended that, while the staircase is located within the property of the respondent landlord, the remaining portion of the building that would be left in the possession of the tenant would be in the property of the wife. Nothing has been brought out in evidence to justify a conclusion that the above situation would result in denial of use of the staircase or the lift to the petitioner. It is also pointed out that, the petitioner as

well as the respondent are brothers though there is a litigation pending between them. As already noticed above, the staircase as well as the lift are provided for the use of the building as common means of entry and it cannot be presumed that the use of the said amenity would be denied to the tenant. Therefore, we do not find any substance in the said contention also.

8. We notice that, both the authorities below have considered the comparative hardship under Section 11(10) of the Act. It has been found that, the Commissioner himself has reported the availability of two vacant shop rooms on the opposite side of the building of which the tenanted premises forms part. The Commissioner has also noted the presence of sixteen vacant rooms in another building in the same locality. We do not find any infirmity in the findings of the authorities below under Section 11(10) also warranting an interference in revision.

9. As a last submission, the petitioner sought one year's time to vacate the premises. Having considered the

contentions of the counsel, we are satisfied that, it is necessary to grant time up to 31.12.2015 to vacate the premises.

In the result, it is ordered as follows:-

1. This Rent Control Revision is dismissed.
2. The petitioner tenant is granted time up to 31.12.2015 to surrender vacant possession of the premises on condition that he files an affidavit before the Rent Control Court, Nadapuram in Rent Control Petition 104 of 2008 undertaking to surrender vacant possession of the premises to the landlady on or before 31.12.2015, within a period of two weeks of the date of receipt of a copy of this judgment and continues to pay the rent in respect of the premises without any delay or default until he surrenders vacant possession of the premises. It is made clear that in the event of the tenant committing default in complying with any of the above conditions, he shall forfeit

the benefit of these directions and that the respondent shall be at liberty to seek vacant possession of the premises in accordance with law.

Sd/-
K.SURENDRA MOHAN
JUDGE

Sd/-
MARY JOSEPH
JUDGE

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