

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. 125 of 2015 ()  
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AGAINST THE JUDGMENT IN RCA 12/2014 of THE RENT CONTROL APPELLATE  
AUTHORITY (ADDL.DISTRICT JUDGE), KOZHIKODE DATED 29-01-2015

AGAINST THE ORDER/JUDGMENT IN RCP 136/2011 of THE RENT CONTROL COURT  
(PRL.M.C.),KOZHIKODE-II DATED 30-09-2013

REVISION PETITIONER(S)/REVISION PETITIONER/APPELLANT/RESPONDENT:  
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KERALA AGRO INDUSTRIES CORPORATION LIMITED  
REPRESENTED BY ITS MANAGING DIRECTOR, KISAN JYOTHI  
FORT, THIRUVANANTHAPURAM-695 025

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR  
SRI.P.GOPINATH  
SRI.P.BENNY THOMAS  
SRI.K.JOHN MATHAI  
SRI.JOSON MANAVALAN  
SRI.KURRYAN THOMAS  
SRI.B.DEEPAK

RESPONDENT(S)/RESPONDENTS/RESPONDENTS /PETITIONERS:  
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T.P.MOIDEEN KOYA, AGED 56 YEARS  
S/O.MOHAMMED KOYA, THAYYILPURAYIL HOUSE  
P.O VELLIMADUKUNNU, MCHEVAYUR AMSOM DESOM  
KOZHIKODE 673 012

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

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

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**R.C.R. No.125 of 2015**  
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**Dated this the 18<sup>th</sup> day of June, 2015**

**O R D E R**

Surendra Mohan, J.

The revision petitioner is the tenant in RCP No.136 of 2011 of the Rent Control Court, Kozhikode and the appellant in RCA No.12 of 2014 of the Rent Control Appellate Authority, Kozhikode. The petitioner is aggrieved by the order of eviction granted by the Rent Control Court under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act' for short). The landlord had sought eviction of the Revision Petitioner from the tenanted premises on the ground that he needed the premises as well as the adjacent premises occupied by another tenant for the purpose of commencing and conducting a business in building materials. Both the Rent Control Petitions, RCP Nos. 136 of 2011 and 137 of 2011 were disposed of by a common order finding that the

landlord was entitled to an order of eviction in both the cases. According to the counsel for the petitioner, the tenant in the other Rent Control Petition has accepted the order of the Rent Control Court and has already vacated the premises. However, the landlord has not commenced his business in the said premises. Therefore, the said conduct is pointed out as an additional circumstance against the bonafides of the need projected in the present case.

2. The contention of the counsel for the petitioner is that, the landlord is a person who was working in the Gulf Countries. He has amassed considerable wealth and has acquired other items of properties. He is wealthy and has a comfortable income for his livelihood. At the same time, his case in the Rent Control Petition is that he requires the tenanted premises for commencing a business, for his "livelihood". However, no evidence has been adduced by him to support his case that the income from the business proposed to be started by him was necessary for his

livelihood. Whether income from such a business was necessary for his livelihood or not has not been considered by the authorities below. According to the learned Counsel, it was a necessary aspect that had to be considered. Therefore, it is contended that the judgment of the Appellate Authority requires interference in revision. With respect to the question as to the applicability of the second proviso to Section 11(3), the counsel does not raise any specific contention.

3. This revision comes up before us for admission. We have heard the counsel for the respondent at length. We have been taken through the order of the Rent Control Court as well as the judgment of the Appellate Authority.

4. The respondent landlord has examined himself as PW1. It is true that, he is a person who had been working in a Gulf Country. According to him, he wants the tenanted premises as well as the premises in the other Rent Control Petition for the purpose of starting a business in building

materials. The Rent Control Court has found the oral testimony of PW1 to be trustworthy and has believed the same. It is stated by the Rent Control Court that, though PW1 was cross examined extensively, nothing could be brought out to discredit his testimony. According to the counsel for the petitioner before us, the landlord had issued a notice to the tenant initially in the year 2009. At that time, the need that was put forward by him was for starting an industrial workshop. Thereafter, he had gone to some Gulf country. Later on, in the year 2011, he has caused the issue of another notice demanding vacant possession alleging that he required the building for commencing a business in building materials. According to the learned counsel, the above change in the nature of the business proposed to be conducted, shows lack of bonafides. We are not satisfied that anything turns on the above aspect. After the notice was initially issued, the same was not pursued by the landlord. If it had been his objective to evict the tenant

somehow or the other he would have pursued the said ground, even during his absence from the country. However, he did not do so. It was only after he came back to the country that he has issued the second notice in the year 2011. The change in the business he wanted to conduct, cannot be rejected for the said reason alone. During the time gap in between, he would have thought that it was better to do business in building materials than to conduct a workshop. The said change cannot be found fault with.

5. Both the authorities below have found that the petitioner is not entitled to the benefit of the second proviso to Section 11(3). The said findings are not seriously disputed. The petitioner is a State owned Co-operation. For the foregoing reasons, we find no grounds to entertain this revision.

6. As a last submission, the Counsel for the petitioner seeks some time to vacate the premises.

Considering the fact that the petitioner is conducting an industrial Unit also in the premises, we are satisfied that it is necessary to grant time up to 31.12.2005 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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