

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

RRev..No. 131 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 7/2012 of ADDITIONAL DISTRICT
JUDGE AND RENT CONTROL APPELLATE AUTHORITY, NORTH PARAVUR

AGAINST THE ORDER/JUDGMENT IN RCP 32/2010 of RENT CONTROL COURT,
NORTH PARAVUR

REVISION PETITIONER(S)/RESPONDENT:

GAYAN
S/O. SANKARAN, THILEYAPARAMBU HOUSE, UDYOGAMANDAL P.O.
ELOOR VILLAGE, KANAYANNUR TALUK, ERNAKULAM.

BY ADVS.SMT.P.F.ROSY
SRI.PHILIP.N.JOSEPH
SRI.V.M.SYAM KUMAR
SMT.KRIPA ELIZABETH MATHEWS

RESPONDENT(S)/RESPONDENTS:

1. ELDO PAUL
SECRETARY, KERALA VYPARI VYVASAAYI EKOPANA SAMITHI
ELOOR UNIT 683 501.

2. KERALA VYAPARI VYAVASAAYI EKOPANA SAMTHI,
ELOOR UNIT, REPRESENTEDBY GENERAL SECRETARY, S. RANGAN
SURABHI HOUSE, ELOOR SOUTH, UDYOGAMANDAL 683 501.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
21-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JJ

K. SURENDRA MOHAN & MARY JOSEPH, JJ.

R.C.R NO. 131 OF 2015

Dated this the 21st July, 2015.

O R D E R

Surendra Mohan, J.

The tenant against whom an order of eviction has been passed in RCP 32/2010 by the Rent Control Court, North Paravur and confirmed in RCA 7/2012 by the Rent Control Appellate Authority, North Paravur is in revision before us. The respondent landlords, an Association by name Kerala Vyapari Vyavasaayi Ekopana Samithi, Eloor unit had filed the Rent Control Petition seeking eviction under Sections 11(2)(b), Section 11(3) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (the Act' for short). According to the landlords, the tenant was in occupation of the ground floor portion of their building. The upper floor was occupied by the landlords. On the upper floor, there was an office table,

chairs, racks and other furniture that took up a lot of space. Consequently, it was not possible for the samithi to conduct general body meetings on the upper floor. According to them, if the office furniture were moved downstairs, they would have sufficient space on the upper floor for conducting their general body meetings. Due to paucity of space at present such meetings are conducted outside, in halls taken on rent. Therefore, they sought eviction of the tenant.

2. The tenant resisted the Rent Control Petition raising a number of contentions. According to the tenant, a resolution had been adopted by the samithi in the year 2007 resolving to sell the entire property. For the purpose, quotations had also been invited and negotiations had also taken place. Therefore, it was contended that the real intention behind seeking the order of eviction was to sell off the property without the tenant. It was further contended that, the tenant was depending for his livelihood on the income of the

business conducted in the tenanted shop room and that there were no other suitable rooms available in the locality for shifting the business. According to the tenant the space available in the building was grossly insufficient for holding the meetings of the samithi, as alleged. The space occupied by the shop room was only 150 sq.ft. For the said reason also it was contended that the need was impracticable.

3. The Rent Control Court tried the petition on the above pleadings. The evidence on the side of the landlords consists of Exts.A1 to A6 documents and the oral testimonies of P.Ws1 to 4. The tenant produced Ext.B1 document and examined himself as R.W.1. Ext.C1 commission report was marked as court exhibit. The Rent Control Court, on an appreciation of the evidence on record found that the landlord had established the case that was pleaded and therefore granted an order of eviction both under Section 11(3) and 11(8) of the Act. The tenant carried the matter in appeal to the Rent

Control Appellate Authority. The Appellate Authority on a reappreciation of evidence found that, the landlords were entitled to an order of eviction under Section 11(8) of the Act. Accordingly, the order of eviction was confined to the said provision.

4. According to Adv.V.M.Syam Kumar who appears for the petitioner, both the Rent Control Court as well as the Appellate Authority have omitted to take note of many material aspects of the case. The approach in analysing the evidence where the need is put forward by an individual and by an organisation as in the present case has to be different. According to the counsel, there is no evidence regarding the membership strength of the landlord samithi. There is absolutely no evidence available regarding the average age of the members. In view of the contention put forward that many of the aged members were finding it difficult to climb up the first floor it was incumbent on the landlords to have

adduced evidence regarding the number of aged members. It is the contention of the learned counsel that, the space available on the ground floor as well as on the first floor being very limited, was insufficient for conducting the general body meetings of the samithi. Therefore, it should have been found that the need put forward was without any bonafides whatsoever. With respect to the question as to the availability of other rooms in the locality for shifting his business, according to the learned counsel, the room that was pointed out to the Advocate Commissioner was old and dilapidated while the rooms in the shopping complex of the Municipality were far away from the tenanted shop room. It is further contended by the learned counsel that, the Appellate Authority had not undertaken a comparison of the advantages that would inure to the benefit of the landlords by ordering vacant possession and the hardships that the tenant would have to suffer therefrom. There was also no evidence let in by the

landlords for the purpose of undertaking an effective comparison of the advantages and disadvantages as mandated by Section 11(10) of the Act. For the above reasons, according to the learned counsel this is a fit case in which the judgment of the Appellate Authority requires to be interfered with in revision. The counsel has also placed reliance on the decisions of this Court to support his contention that a balancing of the advantages and disadvantages as required by Section 11(10) of the Act was necessary to be undertaken before an order of eviction was granted under Section 11(8) of the Act.

5. Heard. It is true that, the Rent Control Petition filed by the landlords has sought eviction under Sections 11(2), 11(3) and 11(8) of the Act. However, it has been held by this Court that the grounds under Sections 11(3) and 11(8) being mutually exclusive, an order of eviction cannot be granted under both the provisions. The Rent Control Court had

committed the error of granting an order of eviction both under Sections 11(3) and 11(8) of the Act. However, the said error has been corrected by the Appellate Authority by confining the order of eviction to Section 11(8) of the Act. Therefore, the question that would have to be considered is whether the order of eviction granted under Section 11(8) of the Act is liable to be interfered with in revision.

6. As per the Rent Control Petition, the landlords who are in occupation of the first floor of the building has sought vacant possession of the ground floor portion for the purpose of shifting their office. The reason stated is that, in the first place, the aged members of the association find it difficult to climb up to the first floor from where the office is presently functioning, for frequent visits. Secondly, for the reason that a lot of space is taken up by the office furniture, the remaining space on the first floor is insufficient for holding the general meetings of the samithi. In view of the above, the general

body meetings are held outside in halls taken on rent for the purpose. It is the said problem that they want to solve, by obtaining vacant possession of the tenanted room and by shifting the office downstairs. On the side of the landlords P.Ws 1 to 4 have been examined. P.W.1 is the Secretary, P.W.2 is the Advocate Commissioner and P.W.3 is the President. They have all spoken of the need that is put forward. Though the witnesses have been cross examined at length, nothing has been brought out to discredit their testimonies. The counsel for the petitioner has put forward a contention that, a notice had been issued to him asking him to vacate the premises for the reason that the samithi had decided to sell the property. Ext.B1 is the notice of the annual general body meeting that was proposed to be conducted on 21.6.2007. Ext.B1 is relied upon to contend that, the samithi had been pursuing efforts to sell off the property to third parties. However, we notice that the Rent Control Petition

was filed in the year 2010, three years thereafter. It has to be borne in mind that organisations like the samithi in the present case are manned by office bearers who change periodically. It is not in dispute that no sale had taken place as proposed. Therefore, it is obvious that the association had dropped the idea of selling the property. There is nothing on record to show that they have been pursuing their efforts, to this date. The said contention has been rejected by both the authorities below. We do not find any grounds to take a different view of the matter.

7. Both the authorities below have found that the need put forward by the landlords was justified. Though the counsel for the petitioner has taken strain to point out that the space available in the building was not sufficient for holding a general body meeting of the samithi, we do not think it is the look out of the tenant to decide how the general body meetings should be held. The samithi cannot be found fault

with for deciding to hold general body meetings within the limited space available to them in their own building, rather than take other halls on rent. On an examination of the evidence on record, it is clear that the landlords have made out the need for additional accommodation in terms of Section 11(8) of the Act. With respect to the requirements of Section 11(10) of the Act, it has been held by this Court in a number of decisions that it is for the landlords to prove the advantages that would accrue on being granted an order of eviction. The burden of proving the hardships that would befall the tenant is to be discharged by the tenant himself. In the present case, the landlords have let in evidence regarding the advantages that would accrue to them. However, no evidence has been let in by the tenant to show that any hardship would follow, if an order of eviction is granted in favour of the landlords. At the same time, the landlords have adduced evidence to show that there is a vacant room nearby to which

the tenant could shift his business. Though a contention is raised that the room is old and dilapidated there is no evidence to support the said contention. P.W.4 the Municipal Secretary has deposed that there are vacant rooms available in the Municipal complex also. Therefore, evidence is available in the present case to show that vacant rooms are available in the locality for the tenant to shift. Of course, the counsel for the tenant has put forward a contention that the Municipal complex is about 500 mtrs. away from the present shop room and that the rooms available are on the first floor. However, there is no evidence regarding any disadvantage that would be caused to the tenant by the said factors. However, we find that the Appellate Authority was justified in granting an order of eviction to the landlords under Section 11(8) of the Act.

In the result:

i) RCR is dismissed.

ii) The revision petitioner tenant is granted time up to

31.12.2015 to surrender vacant possession of the premises to the landlords on condition that he swears to an affidavit before the Rent Control Court, North Paravur in RCA 7/2012 within a period of two weeks of the date of receipt of a copy of this order undertaking to surrender vacant possession of the premises to the landlords on or before 31.12.2015.

iii) It shall be a further condition for the grant of time to vacate that the petitioner pays the up to date arrears of rent, if any remaining unpaid and continues to pay rent in respect of the premises without any delay or default until vacant possession is surrendered.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
MARY JOSEPH
Judge

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/True copy/