

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

RCRev..No. 166 of 2015 ()

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AGAINST THE JUDGMENT IN RCA 24/2013 of ADDL.RENT CONTROL APPELLATE  
AUTHORITY - IV, KOTTAYAM DATED 30-01-2015

AGAINST THE ORDER IN RCP 4/2011 of RENT CONTROL COURT, CHANGANACHERRY  
DATED 28-02-2013

REVISION PETITIONER(S)/APPELLANT:

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MATHEW KAINIKARA AGED 68 YEARS  
S/O. CHANDRAN PILLAI, KAINIKARA HOUSE  
CHETHIPPUZHA VILLAGE, CHANGANACHERRY TALUK  
KOTTAYAM DISTRICT.

BY ADV. SRI.V.V.NANDAGOPAL NAMBIAR

RESPONDENT(S)/RESPONDENT:

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1. BOBY JOSEPH  
THOTTASSERY HOUSE, KURISUMMOODU, CHETHIPUZHA VILLAGE  
CHANGANASSERY TALUK, KOTTAYAM DISTRICT.

2. T. JOSEPH,  
THOTTASSERY HOUSE, KURISUMMOODU, CHETHIPUZHA VILLAGE  
CHANGANASSERY TALUK, KOTTAYAM DISTRICT

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON  
29-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.Surendra Mohan & Mary Joseph, JJ.

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R.C.R No.166 of 2015

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Dated this the 29<sup>th</sup> day of July, 2015.

ORDER

Surendra Mohan, J

The tenant is in revision challenging the order of eviction granted by the Rent Control Court, Changanacherry in R.C.P No.4 of 2011, confirmed by the Rent Control Appellate Authority, Kottayam in R.C.A No.24 of 2013. The respondents are the landlords.

2. The landlords had filed the Rent Control Petition seeking an order of eviction alleging grounds under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act', for short). The first respondent is the son of the second respondent. He is conducting a business from the other rooms available in the same building in laboratory equipments and chemicals. According to him, he needs vacant possession of the tenanted shop room for the purpose of storing the

chemicals in which he was conducting business. The tenant disputed the need of the landlords taking up various contentions. The main contention put forward was that the need was only a ruse for eviction and that, the first respondent was not conducting any business at all, as alleged. The Rent Control Petition was tried on the above pleadings.

2. The evidence on the side of the landlords consists of Exts.A1 to A6 documents and the oral evidence of P.W.1 and P.W.2. On the side of the tenant, Ext.B1 document was marked and C.P.W.1 and C.P.W.2 were examined. The report of the Advocate Commissioner and sketch have been marked as Exts.C1 and C1(a) and the Advocate Commissioner was examined as C.W.1.

3. On an appreciation of the evidence on record, the Rent Control Court found that the landlords had succeeded in proving the bona fide need under Section 11(3) of the Act. It was also held that, the tenant was not entitled to the protection under second proviso to Section 11(3). Therefore, eviction was ordered. The tenant carried the matter in appeal to the Appellate Authority. The Appellate

Authority has, on a re-appreciation of the evidence, found that the order of eviction granted by the Rent Control Court was justified. Accordingly, the said order has been confirmed. The aggrieved tenant has filed this revision.

4. According to Adv.Sri.V.V.Nandagopal Nambiar, who appears for the petitioner/tenant, both the courts below have erred in finding that the need put forward by the landlords was bona fide. The contention of the learned counsel is that, actually no business is being conducted by the first respondent in the building. He also has other shop rooms in the same premises, one of which could be used by him, if his need was genuine. Instead, he has filed the Rent Control Petition. The tenant is occupying only a small shop room from which he is conducting a business in photostat works and other items. The income from the said business is the sole source of his livelihood. There are also no other buildings available in the locality for shifting his business. The petitioner has discharged his burden by examining the Accommodation Controller. Therefore, it is contended that the tenant ought have been granted the benefit of

second proviso to Section 11(3) of the Act. Since both the authorities have erroneously found in favour of the landlords, according to the learned counsel, this is a case in which interference in revision is called for.

5. Heard. We have gone through the order of the Rent Control Court as well as the judgment of the Appellate Authority. We find that, in order to prove the need that has been alleged by the respondents, they had taken out an Advocate Commission. The Advocate Commissioner has conducted an inspection and has submitted Ext.C1 report. The Advocate Commissioner has reported that at the time of his visit chemicals were stocked on the veranda of the building as well as other vacant spaces available outside the room from which the first respondent was conducting business. It was also reported that, articles have been stored in the scooter shed as well as a shed on the backside of the house. The report of the Advocate Commissioner clearly shows that the first respondent is in need of additional space. For the said reason, it has been found that the need that has been put forward is bona fide. We find that the

conclusion arrived at by the authorities below is justified.

6. In respect of the benefit of the second proviso to Section 11(3) of the Act, the burden to prove both the limbs thereof is squarely on the tenant. It is not in dispute that, the tenant is a person who has retired from the Military and that he is getting a Military pension of Rs.7000/- per month. According to him, he is getting only an income of Rs.500/- per month from the business conducted by him. In view of the above, it has been found by the authorities below that the tenant is not entitled to claim the benefit of the first limb of second proviso to Section 11(3) of the Act. We find that the authorities below were justified in the said conclusion.

7. With respect to the non-availability of other suitable buildings in the locality, it is true that the tenant has examined the Accommodation Controller and that extract of the Vacancy Register has been marked as Ext.B1. But, it has been held by this Court that the burden on the tenant with respect to the second proviso to Section 11(3) cannot be discharged merely by examining the Accommodation Controller. Therefore, it cannot be said that the

tenant has discharged his burden in this case. On an overall consideration of the evidence available on record, we are satisfied that there is no illegality, irregularity or impropriety in the judgment of the Appellate Authority, warranting an interference therewith, in exercise of our power of revision under Section 20 of the Act. Therefore, this Rent Control Revision is only to be dismissed.

8. As a last submission the counsel for the revision petitioner sought for the grant of some time to surrender vacant possession of the premises to the landlords. Having considered the contentions of the learned counsel for the petitioner, we are satisfied that it is necessary to grant six months time to the tenant to surrender vacant possession of the premises.

In the result,

- i) The Rent Control Revision is dismissed.
- ii) The revision petitioner/tenant is granted time up to 31.01.2016 to surrender vacant possession of the premises to the landlords on condition that he files an affidavit before the Rent Control Court, Changanacherry in R.C.P No.4 of 2011 within a

period of two weeks of the date of receipt of a copy of this order, unconditionally undertaking to surrender vacant possession of the premises to the landlords on or before 31.01.2016. It shall be a further condition for the grant of such time, that the tenant pays off arrears of rent, if any remaining unpaid in respect of the tenanted premises and continues to pay the rent in respect thereof, without delay or default until vacant possession is surrendered to the landlords.

Sd/-  
K. Surendra Mohan, Judge.

Sd/-  
Mary Joseph, Judge.

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