

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

RCRev..No. 217 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 32/2012 of ADDL. RENT CONTROL
APPELLATE AUTHORITY, THIRUVANANTHAPURAM

AGAINST THE ORDER/JUDGMENT IN RCP 36/2010 of RENT CONTROL COURT, TVM
DATED 15.6.2012

REVISION PETITIONER(S)/APPELLANT/COUNTER PETITIONER:

USHA JACOB, AGED 52 YEARS
HOUSE NO.29, K.P.XVIII/1160, MAHATHA NAGAR
MARKET ROAD, KAZHAKUTTOM, THIRUVANANTHAPURAM.

BY ADV. SRI.R.S.KALKURA

RESPONDENT(S)/RESPONDENT/PETITIONER:

NAZEER,, AGED 55 YEARS
S/O.MUHAMMED ELIAS, RESIDING AT SULLOS, KAZHAKUTTOM
TRIVANDRUM-695582.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
01-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**P.N. Ravindran &
Babu Mathew P. Joseph, JJ.**

R.C.R. No.217 of 2015

Dated this the 1st October, 2015

ORDER

P.N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.36 of 2010 on the file of the Rent Control Court, Thiruvananthapuram. The respondent landlord instituted RC.P.No.36 of 2010 under sections 11(2)(b), 11(3) and 11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as “the Act”), praying for an order evicting the petitioner herein from a residential building bearing No.KP 18/1160 of Kazhakuttom Grama Panchayat. He contended that the rent is in arrears ever since the date of entrustment, that in violation of the terms of the entrustment, the tenant is conducting a play school under the name and style “Sai Little Hearts Play and Fun School”, after putting up an extension to the building and that he bonafide needs the petition schedule building for the purpose of demolishing it and putting up a shopping complex at the site of the building and the appurtenant portion having a total area of 26 cents. The tenant opposed the application by filing written objections. She contended that the land owner is wealthy and well off, that he owns many buildings in

Thiruvananthapuram city and that the need put-forward is only a ruse to evict her. As regards arrears of rent, she contended that rent upto June, 2009 has been since cleared. She further contended that the real intention of the landlord is to evict her and to sell the petition schedule building to another person and that he really has no intention to put up a commercial building therein. She further contended that she is in possession of only a portion of the residential building and that the remaining portion is in the possession of another tenant by name Zeenath.

2. In the Rent Control Court, the landlord examined himself as P.W.1 and produced and marked Exts.A1 to A6. On the side of the tenant, she examined herself as C.P.W.1 and two of the neighbouring residents as C.P.Ws.2 and 3. She also produced and marked Exts.B1 to B12. The Rent Control Court considered the rival contentions and held, relying on the admission made by the tenant examined as C.P.W.1 that the rent is in arrears from 9.7.2009 onwards. As regards the bonafide need put forward, the Rent Control Court held that the need put forward is bonafide. The Rent Control Court also held, relying on Ext.A5 complaint filed by the tenant against the landlord before the Chairperson of the Kerala Vanitha Commission that she is running a play school therein and that the said play

school is being conducted in an unauthorised extension made by the tenant. An order of eviction was accordingly passed on 15.6.2010. The tenant carried the matter in appeal by filing R.C.A. No.32 of 2012 on the file of the Additional Rent Control Appellate Authority, Thiruvananthapuram. By judgment delivered on 20.12.2014, the Rent Control Appellate Authority concurred with the Rent Control Court and dismissed the appeal. Hence, this revision petition.

3. We heard Shri R.S. Kalkura, learned counsel appearing for the petitioner. We have also gone through the impugned judgment/order. It is evident from the materials on record that ever since the date of entrustment the tenant had kept the rent in arrears. She had in her cross examination, admitted the said fact. No exception can therefore be taken to the order for eviction passed under section 11(2)(b) of the Act.

4. As regards the bonafide need put-forward, viz., the construction of a shopping complex in 26.65 cents of land in Kazhakuttom town, the Rent Control Court and the Appellate Authority have concurrently held that the need put forward is bonafide. It was held that the need put forward need not be a dire need and absolute necessity for the landlord for the purpose of livelihood and that he has enough wherewithals to put up a multi-storied

building in the premises entrusted with the tenant. It was held that in the light of the materials on record, it cannot be said that the need is not true and genuine. In our considered opinion, in the light of the evidence on record and having regard to the fact that the landlord is a person who has the means to put up commercial building, it cannot be said that his attempt is only a ruse to evict the tenant. We accordingly uphold the concurrent findings rendered by the Appellate Authority/Rent Control Court that the need put-forward is genuine. After hearing the learned counsel appearing for the petitioner at length, we are not persuaded to hold that the impugned order suffers from any infirmity or illegality. The revision petition fails and is accordingly dismissed.

After the revision petition was dismissed, Shri R.S. Kalkura, learned counsel appearing for the petitioner sought time to surrender vacant possession of the petition schedule building to the landlord. Having regard to the fact that the monsoons have set in and the tenant is in residential occupation of the premises, we deem it appropriate to grant the petitioner four months' time from today subject to the following conditions:

- (a) The petitioner shall within three weeks from today file an undertaking in the form of an affidavit in the Rent Control Court,

undertaking to surrender vacant possession of the petition schedule building to the landlord within three months from today;

(b) The petitioner shall also undertake that she will not induct strangers into possession of the petition schedule building or commit acts of waste therein;

(c) She shall also undertake to deposit the rent in arrears and to continue to pay the rent till the date of surrender;

(d) Needless to say, in the event of failure on the part of the petitioner to file an affidavit within the time limit stipulated above, it will be open to the landlord to forthwith execute the order for eviction.

(e) No costs.

(P.N. Ravindran, Judge.)

(Babu Mathew P. Joseph, Judge.)

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