

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

RCRev..No. 249 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 237/2011 of RENT CONTROL APPELLATE
AUTHORITY, THRISSUR DATED 27.2.2015

AGAINST THE ORDER/JUDGMENT IN RCP 30/2010 of RENT CONTROL COURT,
KODUNGALLUR DT.27.8.2011
REVISION PETITIONER(S)/APPELLANTS/RESPONDENTS:

1. AMMINI AMMAL AGED 75 YEARS
W/O.KAVIL THEKKEMADAM NARAYANA IYYER, THEKKEMADAM
LOKAMALLESWARAM VILLAGE, KODUNGALLUR TALUK

2. SUBRAMANIAN AGED 55 YEARS
S/O.KAVIL THEKKEMADAM NARAYANA IYYER, THEKKEMADAM
LOKAMALLESWARAM VILLAGE, KODUNGALLUR TALUK

BY ADVS.SRI.M.PREMCHAND
SRI.C.S.SUMESH

RESPONDENT(S)/RESPONDENT/PETITIONER:

RAJAGOPALAN, AGED 49 YEARS
S/O.KARANCHERY MADATHIL RANGANATHASHENAI PADAKULAM DESOM
METHALA VILLAGE, KODUNGALLUR TALUK 680664

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
12-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

R.C.R. No.249 of 2015

Dated this the 12th October, 2015

ORDER

P.N. Ravindran, J.

The petitioners are the tenants in R.C.P.No.30 of 2010 on the file of the Rent Control Court, Kodungallur. The respondent/landlord instituted R.C.P.No.30 of 2010 praying for an order evicting the tenants under sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. By order passed on 27.8.2011 the rent control court allowed R.C.P.No.30 of 2010 and passed an order of eviction under section 11 (3) of the Act. Aggrieved thereby, the tenants filed R.C.A. No.237 of 2011 on the file of the Rent Control Appellate Authority, Thrissur. By judgment delivered on 27.2.2015, the rent control appellate authority concurred with the rent control court and dismissed the appeal. The tenants have, aggrieved thereby, filed this revision petition. The brief facts of the case are as follows:

2. The respondent/landlord instituted R.C.P.No.30 of 2010 primarily contending that the second petitioner before the rent control court who is the wife of the first petitioner therein bonafide needs the petition schedule room, which is in the upstairs portion of a building situate within the local limits of the Kodungallur Municipality, for the purpose of establishing a tuition centre. The landlord had, in the rent control petition, averred that his wife is a qualified teacher and that she is presently working in a parallel college. The tenants contended inter-alia that the landlord has no title over the petition schedule building, that the predecessor-in-interest of the tenants took the petition schedule building on lease prior to 1940 and therefore, they are entitled to the protection of section 11(17) of the Act. They also contended that the need put forward is not bonafide, that the landlord has other vacant buildings of his own in his possession, that they are mainly depending for their livelihood on the income derived from the petition schedule building, that no other suitable buildings are available in the locality and therefore, they are not liable to be evicted from the petition schedule building.

3. Before the rent control court, the landlord of the building examined himself as PW1, his wife as PW2 and one other witness as PW3 and produced and marked Exts.A1 to A6. On the side of the tenants, the second respondent before the rent control court was examined as RW1 and Ext.B1 was produced and marked. The rent control court considered the rival contentions and held, relying on the decision of the Full Bench of this court in **Narayanan v. Shalima** (2003 (2) KLT 317 - FB) that the protection under section 11(17) of the Act is available only to the tenant who was in actual possession from the relevant date, viz. 1.4.1940 and not to his successors. The contention of the tenant that the landlords have not derived title to the petition schedule building was repelled. The rent control court also held that the need put forward is bonafide. As regards the contention that the landlord is not entitled to an order of eviction in view of the first proviso to section 11(3) of the Act, the rent control court held that the tenants have not succeeded in proving that the landlord is in vacant possession of any other building of his own in the same city, town or village. The rent control court also held that the tenants have not

succeeded in proving the ingredients of the second proviso to section 11(3) of the Act and that the tenants have not even adduced any evidence to show that they are running a typewriting institute in the petition schedule building. An order for eviction was accordingly passed on 27.8.2011. Aggrieved thereby, the tenants filed R.C.A. No.237 of 2011 on the file of the Rent Control Appellate Authority, Thrissur. By judgment delivered on 27.2.2015, the rent control appellate authority concurred with the rent control court and dismissed the appeal. Hence, this revision petition.

4. We heard Shri M. Premchand, learned counsel appearing for the petitioners. We have also gone through the pleadings and the materials on record. Learned counsel appearing for the petitioners submitted, relying on the information given to the tenant under the Right to Information Act, 2005 by the Public Information Officer of Kodungallur Municipality, that the landlord is in possession of 3 other buildings, viz. premises bearing door Nos.XIV/274, 275 and 276 of Kodungallur Municipality, that he had suppressed the said fact in the rent control petition and therefore, in the absence of special reasons an

order of eviction could not have been passed. The Public Information Officer of Kodungallur Municipality has, in the information furnished by him as per letter dated 22.8.2011, informed the first petitioner herein that the landlord is running a stationery business in the premises bearing door No.XIV/274, that he is running a hotel under the name and style "Shenoi" in building bearing door No.XIV/275 and that in building bearing door No.XIV/276, Shri K.R. Purushothaman is running a ration shop. It is evident from the information furnished by the Public Information Officer of Kodungallur Municipality that the landlord is not in vacant possession of any other building of his own in the same city, town or village. Two of the buildings are in his own occupation wherein he is running his own businesses and the third room is in the possession of a tenant who is running a ration shop. The need put forward in the instant case by the landlord is that his wife, examined as PW2 before the rent control court, who is a qualified teacher and is presently working in a parallel college, needs the petition schedule room to start a tuition centre. It is only in a case where the landlord is in possession of a vacant building in the same city, town or

village, that the protection of the first proviso to section 11(3) of the Act will be available to a tenant.

5. In the instant case, the information given to the tenant under the Right to Information Act, 2005 discloses that the landlord is running a stationery business in one building and a hotel in another and yet another building is tenanted premises wherein the tenant is running a ration shop. By no stretch of imagination can it be said that the first proviso to section 11(3) of the Act is attracted to the instant case, so as to warrant a dismissal of the rent control petition. The very fact that the landlord is in occupation of two rooms wherein he is running his businesses and the third room is in the occupation of a tenant, in our opinion, would constitute special reasons which would justify the grant of an order of eviction in respect of the petition schedule premises for the purpose of enabling the landlord's wife to establish a tuition centre. It has come out in evidence that the wife of the landlord who was examined as P.W.2, is working in a parallel college for the past 8 years. That apart, the tenants have failed to prove that they are running a typewriting institute in the petition schedule room. We are, therefore,

in agreement with the rent control court and the rent control appellate authority that the need put forward is bonafide and that the tenants have not succeeded in establishing the ingredients of both the limbs of the second proviso to section 11(3) of the Act. The impugned judgment/order do not, in our opinion, warrant interference in exercise of the revisional jurisdiction of this court under section 20 of the Act.

For the reasons stated above, we hold that there is no merit in the revision petition. It fails and is accordingly dismissed. No costs.

After the revision petition was dismissed, learned counsel for the petitioners sought time to surrender vacant possession of the petition schedule room. Though the tenants have not proved that they are doing any business in the petition schedule building and they are admittedly residing elsewhere, having regard to the fact that the first petitioner is a woman aged 71 years, we deem it appropriate to grant the petitioners three months time from today to surrender vacant possession of the petition schedule building subject to the following conditions:

- (a) The petitioners 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 on the expiry of the period of three months from today;

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

(c) They shall also undertake to deposit the rent, if any, 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 petitioners to file an affidavit within the time limit stipulated above, it will be open to the landlord to forthwith execute the order of eviction.

(P.N. Ravindran, Judge.)

(Babu Mathew P. Joseph, Judge.)

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