

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

RCRev..No. 252 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 97/2012 of RENT CONTROL APPELLATE
AUTHORITY, THALASSERY DATED 09-12-2014

AGAINST THE ORDER/JUDGMENT IN RCP 6/2011 of RENT CONTROLLER,
KUTHUPARAMBA DATED 16-11-2011
REVISION PETITIONER(S)/APPELLANTS/RESPONDENTS:

1. PANOLI KANAPPANKANDY VASANTHA AGED 56 YEARS
W/O.LATE PANKAJAN, HOUSE WIFE
RESIDING AT NIRMALA VILLA, KUTHUPARAMBA AMSOM
AMBILAD DESOM P.O.KUTHUPARAMBA.

2. PANOLI KANNAPPANKANDY SAREESH, AGED 34 YEARS
S/O.LATE PANKAJAN, BUSINESS, RESIDING AT NIRMALA VILLA
KUTHUPARMBA AMSOMAMBILAD DESOM P.O., KUTHUPARAMBA

3. PANILI KANNAPPANKANDY SAMEERA AGED 28 YEARS
D/O.LATE PANKAJAN, RESIDING AT NIRMALA VILLA
KUTHUPARAMBA AMSOM, AMBILAD DEOSM, P.O.KUTHUPARAMBA.

BY ADV. SRI.CIBI THOMAS

RESPONDENT(S)/RESPONDENT/PETITIONER:

KOROTHUMKANDY AYISHA, AGED 66 YEARS
W/O.ABOO, HOUSE WIFE, KOROTHUMKANDY HOUSE
MOKERI AMSOM DEOSM, P.O.KOORARA.

R1 BY ADV. SRI.P.C..CHACKO(PARATHANAM) CAVEATOR

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
13-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

R.C.R. No.252 of 2015

Dated this the 13th October, 2015

ORDER

P.N. Ravindran, J.

The petitioners are the tenants in R.C.P.No.6 of 2011 on the file of the Rent Control Court, Kuthuparamba, a petition filed by the respondent/landlord for an order of eviction under section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. She had, in the rent control petition, averred that she bonafide needs the petition schedule building for her son who was examined as P.W.2, for starting a business in car accessories. She had also averred in the petition for eviction that she and her son are not in possession of any other building in Kuthuparamba town. The tenants opposed the application by filing a counter statement, contending that the need put forward is not bonafide, that the landlord is in possession of other vacant rooms in the same locality and that in view of the first proviso to section 11(3) of the Act, the landlord is not entitled to an order of eviction. The tenants

further contended that they are entitled to the protection of the second proviso to section 11(3) of the Act.

2. Before the rent control court, the landlord examined herself as PW1, her son as PW2 and a relative who is running a business adjacent to the petition schedule shop room, as PW3. She also produced and marked Exts.A1 to A6 series. On application filed by her, an Advocate Commissioner was appointed to inspect the petition schedule building and the report submitted by the Advocate Commissioner was marked as Ext.C1. On the side of the tenants, the second respondent before the rent control court was examined as RW1 and Exts.B1 to B4 were produced and marked.

3. The rent control court considered the rival contentions and the materials on record and held that the bonafide need put forward is true. Though much was sought to be made out regarding the point of time at which PW2 gave up his employment in the Gulf countries and came back to his native place and also the reason why he came back to India, the rent control court held that as the petition for eviction was filed only in the year 2011 and PW2 has no regular source of income

though he was working as a salesman temporarily, the need put forward cannot be said to be a ruse to evict the tenants. Accordingly, the rent control court held that the need put forward by the landlord is bonafide. Regarding the first proviso to section 11(3) of the Act, the rent control court held that the tenants have not proved that the landlord is in vacant possession of any other building of her own in the same locality. The rent control court held that though the Advocate Commissioner was appointed on an application filed by the landlord, the tenants did not request the Advocate Commissioner to inspect the premises which according to them, were in the possession of the landlord. Therefore, as the tenants have not established the ingredients of the first proviso to section 11(3) of the Act, they cannot successfully resist the petition for eviction. The contention of the tenants that they are entitled to the protection of the second proviso to section 11(3) of the Act was repelled on the ground that the tenants are admittedly in possession of another godown. The rent control court accordingly passed an order of eviction on 16.11.2011. Aggrieved thereby, the tenants filed R.C.A.No.97 of 2012 on the file of the Rent Control Appellate

Authority, Thalassery. By judgment delivered on 9.12.2014 the rent control appellate authority concurred with the rent control court and dismissed the appeal. The tenants have, aggrieved thereby, filed this revision petition under section 20 of the Act.

4. We heard Shri Cibi Thomas, learned counsel for the petitioners and Shri P.C. Chacko, learned counsel for the respondent who has lodged a caveat. Shri Cibi Thomas, learned counsel for the petitioners contended, relying on the testimony tendered by the landlord during her cross examination, that she has admitted the fact that she is in possession of two other vacant rooms as on the date of the rent control petition, that the rooms were let out six months and four months respectively prior to the date on which she was examined and therefore, the rent control court and the appellate authority erred in holding that the first proviso to section 11(3) of the Act has no application to the facts of this case. Learned counsel submitted that as the landlords have suppressed the said fact from the rent control court and it has come out in evidence that the landlord was in possession of two rooms on the date of institution of the rent control petition, the rent control court and

the appellate authority erred in holding that the need put forward is bonafide.

5. Per contra, learned counsel for the respondent/landlord submitted with particular reference to the testimony tendered by P.W.1 that she has not admitted that the buildings were let out six and four months prior to the date on which she was examined. Learned counsel submitted that all that she had stated is that six months prior to the date of her examination, the tenant of one of the rooms has established a business under the name and style “Malabar Cements” and the tenant of yet another room has established a business in mobile phones, that she had, in re-examination deposed that the last among the lease deeds executed by her was ten years prior to the date on which she was examined, that P.W2 had also deposed to the said effect and therefore, the tenants cannot contend that the landlord has suppressed the fact that she had vacant possession of two rooms on the date of filing of the petition for eviction. Inviting our attention to the contents of Ext.C1 report submitted by the Advocate Commissioner, learned counsel for the landlord submitted that at the time of inspection by the Advocate

Commissioner, an artist was using the petition schedule premises and that it was really not being used as a godown as claimed by the tenants. Learned counsel contended that in such circumstances no interference is called for with the impugned judgment/order.

6. We have considered the submissions made at the Bar by the learned counsel appearing on either side. We have also gone through the pleadings and the materials on record including Ext.C1 report submitted by the Advocate Commissioner. The bonafide need put forward by the landlord in the instant case is that her son who was examined as PW2 needs the petition schedule building to establish a business in car accessories. The petition schedule building has an area of 300 Sq. Ft. It is situate by the side of the road leading from Kuthuparamba – Kannur road to Kannur Government Hospital. It has also got adequate parking space adjacent to it. PW2 is an ex-expatriate Indian who is presently not employed. The only other son of the landlord is in Government service in Kasaragod district. In such circumstances, we find no reason to interfere with the finding entered by the rent control court and upheld by the appellate authority that the

need put forward is a bonafide need.

7. That takes us to the question whether the tenant is entitled to the benefit of the first and second provisos to section 11(3) of the Act. As regards the first proviso, the main ground raised by the tenant is that the landlord is in possession of other vacant rooms and that she has admitted the said fact. The rent control court and the appellate authority have elaborately considered the said aspect and held that the landlord has not admitted that she is in vacant possession of any shop room of her own in the same locality. The appellate authority has also held that it has come out in evidence that two other shop rooms were let out by her several years back. Though learned counsel appearing for the tenants contended that the landlord has, in her cross examination, admitted the fact that the said shop rooms were let out six and four months prior to her cross examination, we are not persuaded to accept the said submission. All that PW1 has deposed is that in one of the rooms six months back a textile business was started and in another shop room a business in mobile phones was started four months prior to her cross examination. She had, in re-examination deposed that the

last among the lease deeds executed by her was about 10 years back. PW2 has deposed that no other vacant rooms are available in her possession. He had also stated that among the buildings belonging to the landlord, the petition schedule premises which has got adequate parking space, is the one most suited for the business which he proposes to start. Having regard to the evidence and materials on record, we are not persuaded to hold that the landlord was, on the date of institution of the rent control petition, in possession of any vacant room or that after the filing of the rent control petition she has come by possession of any other vacant room in the same locality. That apart, the tenants have not taken steps to summon and examine the tenants of the other two rooms belonging to the landlord. They have also not requested the Advocate Commissioner by filing a work memo, to inspect the tenanted premises for the purpose of ascertaining whether the tenancy arrangement commenced after the instant rent control petition was filed. In such circumstances, we uphold the finding of the rent control court and the appellate authority that the tenants are not entitled to the benefit of the first proviso to section 11

(3) of the Act. Even if for the sake of arguments it is conceded that the landlord was in possession of two other shop rooms on the date of institution of the rent control petition, as the petition schedule premises has parking space, which is certainly required for a business in car accessories, that would constitute a special reason within the meaning of the said term occurring in the first proviso to section 11(3) of the Act.

8. As regards the second proviso to section 11(3) of the Act, it has come out in evidence that the petition schedule building was really not being used as a godown. Ext.C1 report submitted by the Advocate Commissioner establishes the said fact. The Advocate Commissioner's report would indicate that some one was running an Arts studio there under the name and style of "Anagha Arts". It has also come out in evidence that the tenants were in possession of another godown even prior to the entrustment of the petition schedule building. That may be the reason why the petition schedule building was not being really used as a godown. At the time of the inspection by the Commissioner on 13.1.2011, he did not find the room full of the stock

in trade of the tenants. He only saw a few bags of cement, four boxes of hycount pipe filling materials, few water tanks and some miscellaneous articles. The Commissioner has also reported that remnants of furniture, computer monitors, keyboards and other articles were also stocked. It is evident from the materials on record the tenants are really not putting the petition schedule premises to use as a godown. They have also not taken steps to prove that no other suitable building is available in the same locality. We therefore find no reason to interfere with the finding of the rent control court and the appellate authority that the tenants have not succeeded in establishing the ingredients of the second proviso to section 11(3) 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.

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, we deem it appropriate to grant them four 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 for eviction.

(P.N. Ravindran, Judge.)

(Babu Mathew P. Joseph, Judge.)

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