

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 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

RCRev..No.279 of 2015 (C)

AGAINST THE JUDGMENT IN RCA 128/2012 of ADDL.D.C.-I (RENT CONTROL
APPELLATE AUTHORITY), THALASSERY DATED 31-07-2015

AGAINST THE ORDER IN RCP 23/2004 of MUNSIFF COURT (RENT CONTROL
COURT), THALASSERY DATED 13-04-2012

PETITIONER/APPELLANT/RESPONDENT

K.P. VIJAYAN, S/O KANNAN,
AGED 62 YEARS,
R/A KUNTHAPILAKOOL, PERINGALAM AMSOM,
POOKOM DESOM, P.O. PANOOR,
THALASSERRY, KANNUR DIST.- 670 692.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT/RESPONDENT/PETITIONER:

K.T. MUHAMMED, S/O KUNHIMOOSA,
AGED 54 YEARS, R/A MABEETH,
PANOOR AMSOM DESOM, THALASSERRY TALUK,
KANNUR DISTRICT - 670 101.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
09-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**P. N. RAVINDRAN
&
BABU MATHEW P. JOSEPH, JJ.**

R.C.R.No.279 of 2015

Dated this the 9th day of November, 2015

ORDER

P. N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.23 of 2004 on the file of the Rent Control Court, Thalassery, a petition filed by the respondent landlord for an order of eviction under section 11(2), 11(3) and 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as the "Act", for short. The landlord had in the petition for eviction averred that he bona fide needs the petition schedule building to enable his niece who was examined as PW1 to start a computer job work-cum-coaching centre. It was averred that PW1 possesses Masters Degree in Computer Science, that she has gained experience in computer education and also possesses the requisite funds to establish a computer job work-cum-coaching centre. He also contended that the rent is in arrears from May 1998 and that the tenant has without his consent and knowledge sublet the petition schedule building to another person at a higher rent.

2. Upon receipt of notice, the tenant entered appearance and filed a counter statement. He contended that the rent happened to be

in arrears since no one intimated him about the person to whom rent should be paid upon the death of Kunhimoossa to whom the building originally belonged. He had further averred that upon receipt of the lawyer's notice, arrears of rent was sent by money order, but the landlord refused to receive the same. He further contended that the need put forward is only a ruse to evict him, that the petition schedule building is not suitable to run a computer centre and that the niece of the landlord is not a member of his family and is not dependent on him. The tenant contended that he and his family are mainly depending for their livelihood on the income derived from the business carried on by him in the petition schedule building and that other suitable buildings are not available in the locality to shift his business. He also denied and disputed the averment in the rent control petition that he has sublet the building to another and contended that he is still in possession of the tenanted premises.

3. Before the rent control court, the niece of the landlord for whose benefit, an order of eviction was sought, was examined as PW1 and Exts.A1 to A6 were produced and marked. The tenant examined himself as RW1 and produced and marked Exts.B1 to B5. The rent control court considered the rival contentions and held that as the arrears of rent has since been paid, the landlord is not entitled to an

order of eviction under section 11(2)(b) of the Act. The rent control court held, accepting the case put forward by the landlord and spoken to by PW1 that the bona fide need put forward is true and genuine. The contention of the tenant that he is entitled to the protection of the second proviso to section 11(3) of the Act was repelled. The rent control court however held, relying on Ext.B5 building tax assessment register maintained by the Panoor Grama Panchayath, that the landlord is in possession of the building mentioned therein and that he has not disclosed the said fact in the petition for eviction or proved special reasons justifying the grant of an order of eviction in respect of the petition schedule building. The rent control court accordingly held that the tenant is entitled to the protection of the first proviso to section 11(3) of the Act. As regards the contention that the tenant has sublet the premises, the rent control court held that the landlord has failed to prove the said contention. Consequently, by order passed on 29.07.2005, the rent control court dismissed the petition for eviction.

4. Challenging the order passed by the rent control court dismissing the petition for eviction, the landlord filed R.C.A.No.180 of 2005 on the file of the Rent Control Appellate Authority, Thalassery. The tenant filed R.C.A.No.175 of 2005 challenging the finding entered by the rent control court that the need put forward is bona fide. The

appellate authority considered the rival contentions and upheld the bona fide need put forward by the landlord as also the finding entered by the rent control court that the tenant is not entitled to the protection of the second proviso to section 11(3) of the Act. R.C.A.No.175 of 2005 was accordingly dismissed. The appellate authority also upheld the finding entered by the rent control court that the landlord has failed to prove that the tenant has sublet the petition schedule building. The appellate authority however held that merely by relying on Ext.B5 building tax assessment register, it cannot be concluded that the tenant is entitled to protection of the first proviso to section 11(3) of the Act and that a further enquiry should be held as regards the question whether the tenant is entitled to the protection of first proviso to section 11(3) of the Act. Consequently, the rent control appellate authority allowed R.C.A.No.180 of 2005 and remanded R.C.P.No.23 of 2004 to the rent control court for the limited purpose of conducting an enquiry as regards the question whether the claim of the landlord is hit by the first proviso to section 11(3) of the Act. The operative portion of the judgment delivered by the Rent Control Appellate Authority, Thalassery on 29.09.2010 in R.C.A.Nos.175 and 180 of 2005 is extracted below:-

“In the result,

- (1) RCA 175/05 is dismissed.
- (2) RCA 180/05 is allowed by way of remand.
- (3) The finding in RCP 23/04 that the claim of the landlord is bonafide is confirmed.
- (4) The further finding that the tenant is not entitled to the protections contained in the second proviso to S.11(3) of the Act is also confirmed.
- (5) The order of dismissal of RCP 23/04 u/s. 11(3) of the Act is set aside and the RCP is remanded back to the court below for the minimum purpose of conducting enquiry on the question whether the claim of the landlord is hit by the 1st proviso to S.11(3) of the Act or not and to pass a revised order as per law.
- (6) The order of dismissal of RCP 23/04 u/s.11(4)(i) is confirmed.
- (7) The parties in both the appeals are directed to bear their respective cost in these appeals.
- (8) Parties shall appear before the court below on 3.11.2010."

5. Challenging the judgment delivered by the rent control appellate authority on 29.09.2010, the tenant filed R.C.R.Nos.150 and 153 of 2011 in this court. After considering the rival contentions, a Division Bench of this court held, by order passed on 14.12.2011, that the finding entered by the rent control court and upheld by the appellate authority that the need put forward is bona fide, does not

merit interference. This court also held that the finding entered by the rent control court and confirmed by the appellate authority that the tenant is not entitled to the protection of the second proviso to section 11(3) of the Act is a correct finding and does not warrant interference. The tenant had in R.C.R.Nos.150 and 153 of 2011 contended that the order of remand should be an open one and should not be limited to the claim of the tenant that he is entitled to protection of the first proviso to section 11(3) of the Act. It was contended on behalf of the tenant that PW1 - the niece of the landlord for whose benefit eviction of the building is sought has secured a permanent employment in a college at Vadakara, that PW1's mother has constructed a commercial building at Panoor, that these subsequent events have a bearing on the landlord's right to evict the tenant from the tenanted premises and therefore, the rent control court should be directed to consider the implications of these subsequent events as well. After considering the rival contentions, the Division Bench of this Court directed the rent control court to enquire into (in addition to the point directed to be enquired into by the rent control appellate authority in the order of remand) the question as to whether PW1 has secured a permanent employment in a college at Vadakara and whether her mother has constructed a commercial building at Panoor and if so, PW1 has

reasons to insist on getting possession of the petition schedule building. This court further directed that the rent control court shall afford an opportunity to both sides to adduce evidence.

6. Pursuant to this court's orders, the landlord examined himself as PW2 and produced and marked Exts.A7 and A8. The tenant examined the mother of PW1 as RW2 and the Principal of IHRD College of Applied Sciences, Nadapuram as RW3. The acquittance rolls maintained in IHRD College of Applied Sciences, Nadapuram evidencing payment of salary to PW1 for the months of January and February, 2012 were produced and marked as Exts.X1 and X2. The rent control court considered the rival contentions as also the additional evidence adduced before it and held relying on the testimony tendered by RW3 that PW1 is only a Guest Lecturer and that she has not secured a permanent employment as alleged by the tenant. The rent control court also held, relying on the testimony tendered by RW3, that PW1 is only a Guest Lecturer and that her term of appointment came to an end on 31.03.2012. The rent control court, thereafter considered the question whether the landlord is in possession of the building referred to in Ext.B5 building tax assessment register. Relying on Ext.A8 reply notice sent by the Secretary, Panoor Grama Panchayat as also the testimony tendered by

PW2, the rent control court held that the building referred to in Ext.B5 is in the possession of the tenant by name "Krishnan"; that a Driving School was functioning in the said premises from 1993 to 2005; that a petition for eviction namely R.C.P.No.23 of 2012 is pending in respect of the said premises and therefore, the contention of the tenant that the landlord is in possession of another building in the same locality cannot be accepted. The rent control court thereafter proceeded to consider whether the mother of PW1 has put up a commercial building at Panoor as alleged by the tenant and held relying on the testimony tendered by RW2 that the building belonging to her is in the possession of tenants and that she is not in possession of vacant rooms. The rent control court accordingly passed an order of eviction under section 11(3) of the Act and directed the tenant to surrender vacant possession of the petition schedule building within one month from the date of the order, viz. 13.04.2012. Challenging the revised order of eviction passed by the rent control court, the tenant filed R.C.A.No.128 of 2012 on the file of the Rent Control Appellate Authority, Thalassery. By judgment delivered on 31.07.2015, the rent control appellate authority dismissed the appeal. The tenant has, aggrieved thereby, filed this revision petition under section 20 of the Act.

7. We heard Sri.Kaleeswaram Raj, learned counsel appearing for the petitioner. Learned counsel appearing for the petitioner contended that the testimony tendered by the mother of PW1, who was examined as RW2 after the order of remand discloses that the need put forward is not bona fide and therefore, the rent control court erred in passing an order of eviction. Inviting our attention to the testimony tendered by RW2, learned counsel contended that she had deposed that her daughter had not called upon her to evict her tenants for the purpose of running the proposed institute and therefore, by no stretch of imagination can it be said that the need put forward by the landlord, that he needs the petition schedule building for his niece who was examined as PW1, is bona fide. Inviting our attention to the testimony tendered by the landlord who was examined as PW2, learned counsel contended that the landlord has deposed that he is not aware as to whether PW1 has worked as a teacher, that it has come out in evidence that PW1 is working as a Guest Lecturer and therefore, for that reason also, the rent control court erred in holding that the need put forward is bona fide. Inviting our attention to paragraph 11 of the judgment delivered by the appellate authority, learned counsel contended that it has come out in evidence that PW2 has filed R.C.P.No.23 of 2012 to evict Krishnan, the tenant of the building

referred to in Ext.B5 building tax assessment register, that an order of eviction has in fact been passed and therefore, it cannot any longer be said that the landlord is not in possession of any other building in the same locality. Learned counsel contended that in such circumstances, the rent control court and the appellate authority erred in not extending to the tenant, the benefit of the first proviso to section 11 (3) of the Act. Learned counsel contended that as it has come out in evidence that PW1 is employed as a Guest Lecturer and her mother owns other rooms, the rent control court and the appellate authority ought to have held that the need put forward is not bona fide.

8. We have considered the submissions made at the Bar by learned counsel appearing for the petitioner. We have also gone through the impugned judgment/order and the Judges' papers in R.C.R.Nos.150 and 153 of 2011. A reading of the order passed by the rent control court in the first instance, viz. on 29.07.2005 discloses that the rent control court had entered a finding that the need put forward is bona fide. The rent control court had also found that the tenant is not entitled to the protection of the second proviso to section 11(3) of the Act. However, an order of eviction under section 11(3) of the Act was declined on the ground that the landlord is in possession of another building. Such a finding was entered relying on Ext.B5 building

tax assessment register. In view of that finding and the finding entered by it to the effect that the rent is not in arrears and that the landlord has not proved objectionable sublease, the rent control court dismissed the petition for eviction. The appeal filed by the tenant challenging the finding under section 11(3) of the Act as R.C.A.No.175 of 2005 was dismissed by the appellate authority by judgment delivered on 29.09.2010. By the very same judgment, R.C.A.No.180 of 2005, the appeal filed by the landlord was allowed and the rent control petition was remanded to the rent control court for the limited purpose of considering the question whether the claim of the landlord for eviction is hit by first proviso to section 11(3) of the Act. Such an order of remand was passed after entering a finding that merely by placing reliance on Ext.B5 building tax assessment register, one cannot find that the landlord is in vacant possession of another building. The rent control appellate authority held that a further enquiry regarding that aspect of the matter is required. The tenant thereupon filed R.C.R.Nos.150 and 153 of 2011 in this court challenging the judgment of the rent control appellate authority. In the said revision petitions, this court declined to interfere with the order of remand passed by the rent control appellate authority and held that the findings entered under section 11(3) and the second proviso to section 11(3) of the Act

do not merit interference. This court, however, directed that in addition to the point directed to be enquired into by the rent control appellate authority, the rent control court shall consider the question whether PW1 has secured a permanent employment in a college at Vadakara and whether her mother has put up a commercial building at Panoor and if so, PW1 has reasons to get possession of the petition schedule building itself. This court also refixed the rent payable in respect of the tenanted premises from ₹100/- per mensem to ₹600/- per mensem, with effect from 01.01.2012, till the fair rent is fixed.

9. Pursuant to the order of remand, the landlord of the building examined himself as PW2 and produced and marked Exts.A7 and A8. The tenant summoned and examined the mother of PW1 as RW2 and the Principal of IHRD College of Applied Sciences, Nadapuram as RW3. The acquittance rolls produced by RW3 were marked as Exts.X1 and X2. The rent control court thereafter proceeded to consider the question whether the case of the landlord stands eclipsed by reason of PW1 getting a permanent employment and also by reason of her mother putting up a new commercial building at Panoor. Relying on the testimony tendered by RW3 that PW1 is only a Guest Lecturer and she has not secured permanent employment, the rent control court held that PW1 has not secured a permanent employment as alleged by the

tenant. The rent control court also held that there is no evidence to show that RW2 is in possession of vacant rooms in the building belonging to her. Relying on Ext.A8, the rent control court held that the building referred in Ext.B5 building tax assessment register is in the possession of Krishnan and that a petition to evict him from the said building is pending as R.C.P.No.23 of 2012. The rent control court accordingly held that the tenant is not entitled to the protection of the first proviso to section 11(3) of the Act. In view of the fact that the finding originally entered by the rent control court under section 11(3) of the Act was upheld by this court and it had attained finality, the rent control court ordered eviction by order passed on 13.04.2012.

10. It is challenging that order that the tenant filed R.C.A.No.128 of 2012 on the file of the Rent Control Appellate Authority, Thalassery. Before the appellate authority, in the second round, the tenant contended in the memorandum of appeal that the bona fide need put forward is not true. It was contended that in view of the testimony tendered by RW2, the rent control court should have reconsidered its earlier finding with regard to the bona fide need. It was also contended that the rent control court should have found that PW1 is having a permanent employment and that PW1's mother who was examined as RW2 has put up a commercial building at Panoor and that the said

building is sufficient for PW1 to start the proposed institute. The rent control appellate authority considered the rival contentions and held relying on the testimony tendered by RW3, the Principal of IHRD College of Applied Sciences, Nadapuram that the tenant has not succeeded in proving that PW1 has secured a permanent employment. It was held that the evidence in the case on hand only proves that PW1 is a Guest Lecturer; that the nature of the employment is temporary and that her employment is not permanent. The rent control appellate authority thereafter proceeded to consider the question whether the mother of PW1 who was examined as RW2 has constructed a new commercial building at Panoor. The rent control appellate authority repelled the said contention and held relying on Ext.A7 partition deed that though as per the said partition deed PW2 was allotted some shop rooms, there is no evidence to prove that she is in possession of the said shop rooms. The rent control appellate authority, accordingly held that there is no reliable evidence to prove that PW1's mother RW2 has constructed a new commercial building at Panoor or that she is in possession of any vacant room of her own in the same locality. The appellate authority thereafter proceeded to consider the question whether, in view of Ext.B5, the tenant is entitled to the protection of the first proviso to section 11(3) of the Act.

Though it was contended that PW2 has succeeded in getting an order evicting the tenant of the premises described in Ext.B5 building tax assessment register, the said contention was repelled. The appellate authority held that the order of eviction passed by the rent control court in R.C.P.No.23 of 2012 has not attained finality in view of the fact that an appeal is pending and that PW2, the landlord, has not obtained possession of the building. It was held that in such circumstances, it cannot be held as contended by the tenant that the landlord has got vacant possession of another shop room of his own. The rent control appellate authority accordingly confirmed the order of eviction passed by the rent control court.

11. In our considered opinion, no exception can be taken to any of the impugned findings. The testimony tendered by RW3, the Principal of IHRD College of Applied Sciences, Nadapuram discloses that PW1 was employed only as a Guest Lecturer. The employment, by its very nature, is not permanent. As and when a regular hand is appointed as a Guest Lecturer, she will have to demit the office. RW3, the Principal of IHRD College of Applied Sciences, Nadapuram had deposed that the term of appointment of PW1 would come to an end on 31.03.2012. He had also deposed that if before that date, a regular hand is appointed, the appointment of PW1 would be terminated. In

such circumstances, as PW1 has not secured a permanent employment, we find no reason to interfere with the finding entered by the rent control appellate authority that the employment of PW1 is only temporary.

12. It has come out in evidence that the premises mentioned in Ext.B5 building tax assessment register is in the occupation of Krishnan, the tenant thereof. Though an order of eviction has been passed against him in R.C.P.No.23 of 2012, the order of eviction has not attained finality and it is *res sub judice* for the reason that the appeal from the order of eviction is pending before the appellate authority. Though it was contended before the rent control appellate authority that Ext.A9 order of eviction passed in R.C.P.No.23 of 2012 is collusive, that contention was repelled on the ground that Ext.A9 order would itself show that the case was hotly contested. That apart, the tenant has not taken steps to take out a commission to ascertain whether the building referred in Ext.B5 building tax assessment register is lying vacant. He could have, if his contention that the said building is not in the possession of the tenant is true, taken steps to have an advocate commissioner appointed to inspect the said building for the purpose of enabling the court to verify whether the room mentioned in Ext.B5 building tax assessment register is lying vacant.

For reasons best known to him, the tenant did not take steps in that regard. In such circumstances, we are in agreement with the rent control court and the appellate authority that the tenant cannot rely on Ext.B5 building tax assessment register to contend that the landlord is in possession of another room of his own.

13. That takes us to the question whether the tenant has succeeded in proving that the mother of PW1 who was later examined as RW2 has put up a new commercial building at Panoor. The rent control court and the appellate authority have held that apart from the *ipse dixit* of the tenant there is no material to substantiate the said contention. It is evident from a reading of the impugned judgment and the order that apart from raising such a contention, the tenant has not adduced any evidence to prove the said averment. Apart from vaguely contending that PW1's mother has constructed a new multi-storied commercial building at Panoor, the details are not furnished. No attempt was also made to point out the building or its particulars. Though RW2 had admitted that she owns a building, it has come out in evidence that it is the building allotted to her as per Ext.A7 partition deed and that it is in the possession of tenants. Though the tenant in the instant petition had also contended that RW2 has constructed a building in the land allotted to her share as per Ext.A7 partition deed,

he has not taken steps to prove the said averment. In such circumstances, we are of the opinion that the tenant cannot successfully contend that RW2 is in possession of vacant rooms so as to enable PW1 to start the proposed business therein.

14. Though learned counsel for the petitioner contended that, the rent control court and the appellate authority should have re-appreciated the evidence for the purpose of deciding the question whether the need put forward is bona fide or not, we are of the opinion that the tenant cannot be heard to raise such a plea. As stated earlier, the rent control court had in the first round itself entered a finding that the need put forward is bona fide. At that stage, a contention was raised that the non-examination of the landlord is fatal to the case. On appeal, the appellate authority concurred with the finding of the rent control court that the need put forward is bona fide and remanded the case to the rent control court for reconsidering the question whether the tenant is entitled to the protection of the first proviso to section 11 (3) of the Act. That order was upheld by this court in R.C.R.Nos.150 and 153 of 2011 wherein this court held that the finding entered by the rent control court and the rent control appellate authority that the need put forward is bona fide and that the tenant is not entitled to the benefit of the second proviso to section 11(3) of the Act, does not call

for interference. The tenant cannot, therefore, at this distance of time, contend that the rent control court should have after remand decided the question whether the need put forward is bona fide afresh. The Division Bench had in R.C.R.Nos.150 and 153 of 2011, directed that in addition to the point directed to be decided by the appellate authority, the rent control court should decide whether PW1 has secured permanent employment and whether her mother has put up a new commercial building at Panoor. As stated earlier, on the terms of the order passed by this court in R.C.R.Nos.150 and 153 of 2011, the tenant cannot, at this stage of the proceedings contend that the rent control court and the appellate authority should have re-examined the question whether the need put forward is bona fide. We, therefore, find no merit in the said contention as well.

15. For the reasons stated above, we hold that there is no merit in the instant revision petition. It fails and is accordingly dismissed. Though the learned counsel for the petitioner prayed for time to surrender vacant possession of the petition schedule premises, having regard to the fact that the rent control petition was instituted in the year 2004 and nearly 11 years have passed thereafter, we are of the opinion that it would be grossly unjust, if at this distance of time, the tenant is granted further time to surrender vacant possession of the

petition schedule building. Though the learned counsel for the petitioner submitted that the tenant needs some time to find another accommodation, we are of the opinion that he ought to have at least after R.C.R.Nos.150 and 153 of 2011 were heard and disposed of by this court after upholding the finding entered by the rent control court that the need put forward is bona fide and that the tenant is not entitled to the protection of second proviso to section 11(3) of the Act, found out another accommodation. Having regard to the long interval of the time that has elapsed between the date of institution of the rent control petition and the impugned order, we find no justification in granting the tenant any further time to surrender vacant possession of the petition schedule premises. The prayer in that regard is in our opinion untenable and is rejected.

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

