

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

RCRev..No. 338 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 63/2014 of RENT CONTROL APPELLATE
AUTHORITY, ERNAKULAM DATED 12.10.2015

AGAINST THE ORDER/JUDGMENT IN RCP 97/2013 of RENT CONTROL COURT,
ERNAKULAM DATED 31.5.2014
REVISION PETITIONER(S)/APPELLANT/RESPONDENT:-:

M/S.ECONOMIC TRANSPORT ORGANISATION LTD.
PODAR COURT, GROUND FLOOR, 18
RABINDRA SARANI, KOLKATA - 700 001
REPRESENTED BY ITS MANAGER C.S.PRADEEP, AGED 46 YEARS
S/O.LATE C.K.SUPPRAN, RESIDING AT CHOKKATTIL HOUSE
KUNNATHERY, THAIKKATUKARA P.O., ALUVA - 683 106.

BY ADVS.SRI.G.HARIHARAN
SRI.PRAVEEN.H.
SMT.N.C.SALINI
SMT.K.S.SMITHA
SRI.C.RADHAKRISHNAN
SMT.V.S.SANGEETHA

RESPONDENT(S)/RESPONDENTS/PETITIONERS:-:

1. C.A.SUBAIDA, AGED 64 YEARS
W/O.A.M.HAMEED, 1/1005 FOSSEE ROAD, KUNNUMPURAM
KOCHI - 682 001.

2. HIDAYATH, AGED 48 YEARS
SON OF A.M HAMEED, 1/1005 FOSSEE ROAD, KUNNUMPURAM
KOCHI - 682 001.

3. HABEEB, AGED 46 YEARS
SON OF AM HAMEED, 1/1005 FOSSEE ROAD, KUNNUMPURAM
KOCHI - 682 001.

R1-R3 BY ADV. SRI.P.U.ZIYAD

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
18-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

R.C.r.No.338 of 2015

Dated this the 18th December, 2015

O R D E R

P.N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.97 of 2013 on the file of the Rent Control Court, Ernakulam, a petition filed by the respondents/landlords for an order of eviction under sections 11(3) and 11(4)(iii) of the Kerala Buildings (Lease & Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. The landlords had in the petition for eviction averred that they bonafide need the petition schedule building so as to enable the second petitioner to start a business in electrical accessories in a portion thereof and to enable the third petitioner to start a business in furnishing cloth in the remaining portion. Petitioners 2 and 3 are admittedly the sons of the first petitioner. They also contended that the petition schedule building can be conveniently divided into two by putting up a partition wall and that they have no other buildings of their own in the locality. They also contended that the tenant which is a limited company with a paid up capital of more than Rupees Ten Crores, is in possession of other buildings in the locality convenient for their requirement.

2. The tenant opposed the petition for eviction by filing a counter statement. It was contended that the need put forward is not true or

genuine and that there are no other suitable buildings available in the locality. The rent control court considered the rival contentions and held that the need put forward is bonafide. The rent control court also held that the tenant is in possession of buildings on T.D. Road, Ernakulam and also at Kalamassery and therefore the landlords are entitled for an order under section 11(4)(iii) of the Act as well. An order of eviction was accordingly passed on 31.5.2014. Challenging that order the tenant filed R.C.A.No.63 of 2014 on the file of the Rent Control Appellate Authority, Ernakulam. By judgment delivered on 12.10.2015 the appellate authority concurred with the rent control court and dismissed the appeal. The tenant has, aggrieved thereby, filed this revision petition.

3. We heard Shri G. Hariharan, learned counsel appearing for the petitioner and Shri P.U. Ziyad, learned counsel appearing for the respondents. We have also gone through the pleadings and the materials on record. Shorn of details, the main ground raised in the instant revision petition is that the need put forward is not bonafide and that the real motive of the landlords is to let out the building to another person to earn a higher income. It is submitted that prior to the institution of the rent control petition the landlords had demanded

higher rent, that in the year 1997 they had filed R.C.P.No.68 of 1997 and that the said petition was dismissed as not pressed on payment of higher rent and therefore the courts below erred in holding that the need put forward is bonafide.

4. It is evident from the pleadings and the materials on record that the need put forward in R.C.P.No.68 of 1997 was different. The need then projected was that the spouses of petitioners 2 and 3 and the first petitioner need the petition schedule building for the purpose of starting a tailoring and garment making unit. It was stated that the first petitioner is skilled in garment making, that her daughters-in-law are also experts in garment making and that they propose to start a tailoring and garment making unit in the petition schedule building. That petition was dismissed out of court by order passed on 22.12.2000. It is not in dispute that petitioners 2 and 3 were at that point of time employed abroad. The averments in R.C.P.No.68 of 1997 establish the said fact. The need put forward in the instant rent control petition which was filed in the year 2013 is that petitioners 2 and 3 have lost their employment in Saudi Arabia and are back in India and they need the petition schedule building to start a business in electrical goods and furnishing cloth. The rent control court and the appellate

authority have, on an analysis of the pleadings and the evidence on record held that the need put forward is bonafide. Though petitioners 2 and 3 were examined as P.Ws.1 and 2 and were subjected to cross examination, nothing was brought out to discredit their testimony. In such circumstances, merely for the reason that they had before filing the petition for eviction demanded higher rent, is not a reason to hold that the need put forward is not bonafide. The landlords are certainly entitled to market rent. The fact that they had claimed market rent is not a reason to hold that if they file a petition for eviction thereafter on the ground that they bonafide need the petition schedule building for their own purposes, that petition is liable to be thrown out on the ground that it is not a bonafide need.

5. After hearing learned counsel appearing for the petitioners and after considering the submissions made at the Bar, we are not satisfied that the finding entered by the rent control court and upheld by the appellate authority that the bonafide need put forward is true and genuine, is a perverse finding warranting interference in exercise of the revisional jurisdiction of this court. It has also come out in evidence that besides the petition schedule building, the tenant is in possession of another building at T.D. Road, Ernakulam and yet

another building at Kalamassery. As the tenant is not a natural person but only a jurisdic person, it cannot also claim the protection of the second proviso to section 11(3) of the Act. We therefore find no good grounds to entertain the challenge to the impugned judgment/order. The revision petition fails and it is accordingly dismissed.

6. After the revision petition was dismissed, learned counsel appearing for the tenant sought six months time from today to surrender vacant possession of the petition schedule building. Learned counsel appearing for the landlords did not oppose the said request. In such circumstances, even while dismissing the revision petition, we deem it appropriate to grant the petitioner six months time from today to surrender vacant possession of the petition schedule building subject to the following conditions:

- (a) The petitioner shall, within one month 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 landlords on 18.6.2016;
- (b) The petitioner shall also undertake that it will not induct strangers into possession of the petition schedule building or commit acts of waste therein;

(c) It shall also deposit the rent, if any, in arrears within one month from today and continue to pay 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 landlords to forthwith execute the order of eviction.

(P.N. Ravindran, Judge.)

(Babu Mathew P.Joseph, Judge.)

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