

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

RP.No. 966 of 2013 () IN R.C.Rev.NO.424/2011

AGAINST THE ORDER IN R.C.Rev.NO.424/2011 of HIGH COURT OF
KERALA DATED 17-11-2011.

REVIEW PETITIONER(S)/RESPONDENT:

1. VINEESH KUMAR,
S/O.THUPPAYIL APPUKUTTAN.

2. VIJEESH KUMAR,
S/O.THUPPAYIL APPUKUTTAN,
BOTH THE PETITIONERS ARE RESIDING
AT THUPPAYIL HOUSE,
KOTTAKKAL AMSOM DESOM, KOTTAKKAL(PO) ,
PIN ERANAD TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.JAMSHEED HAFIZ

RESPONDENT/PETITIONER:

PAREPARMBIL NARAYANAN,
S/O.PARANGODAN, PAREPARAMBIL HOUSE, KOTT DESOM,
TIRUR(PO)-676101, MALAPPURAM DISTRICT.

R BY SRI.T.K.SAIDALIKUTTY

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD
ON 02-02-2015, ALONG WITH RP. 967/2013 AND RP.
969/2013, THE COURT ON 05/02/2015 PASSED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
K. HARILAL, JJ.**

**R.P. Nos.966, 967 & 969 of 2013
in
R.C.R. Nos.420, 423 & 424 of 2011**

Dated this the 5th day of February, 2015

ORDER

Harilal, J.

These review petitions are filed with a prayer to review the condition in the common order passed in the above Rent Control Revisions that for the delivery of the buildings, in execution of the said order, the Execution Court shall insist on the 1st review petitioner to produce the documents issued by his present employer to the effect that he has been relieved from his employment and he shall file an affidavit also stating that he is no longer employed and that he intends to personally occupy the buildings which are being vacated for accomplishment of his need.

2. The review petitions are filed mainly on three grounds. Firstly, the said condition was imposed on the 1st review petitioner without affording an opportunity of being heard to the review petitioners as the revisions were dismissed at the admission stage itself, without issuing notice to the respondents. Secondly, R.C.R. No.423 of 2011 was filed for the bona fide need of the 2nd review petitioner only. The 1st review petitioner was made a party because he is the co-owner of the property. Hence, in the said R.C.R. the court ought not to have imposed a condition that the 1st review petitioner should produce his relieving certificate before the Execution Court for the delivery of the shop room to the 2nd review petitioner. Thirdly, Sec.11(12) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short 'the Act') is intended to make sure that after eviction, the landlord will occupy the building for his bona fide need alleged in the petition and the bona fide need shall not be a ruse for eviction. When a specific provision is available in the statute, imposition of such a condition would amount to an unnecessary additional precaution over burdening the

review petitioners.

3. Heard the learned counsel for the review petitioners and the learned counsel for the respondents and we have anxiously considered the arguments made at the Bar, in support of the above contentions.

4. Going by the impugned order, we see that as rightly contended by the review petitioners, the said condition was imposed in the common order, dismissing the revision petitions, passed at the time of admission, without issuing notice to the review petitioners as respondents. It is true that an opportunity of being heard was not given to the review petitioners before imposing the said condition. Similarly, the respondents have no case that the 2nd review petitioner has any job or avocation; but mistakenly the said condition to produce the relieving certificate from the 1st review petitioner's employer was imposed commonly in a manner applicable for the delivery of the shop room to the 2nd review petitioner, who has no job or avocation also. We find that the said condition was unnecessary for the delivery of the shop room to the 2nd review petitioner and this is an

error apparent on the face of the record. Similarly, as rightly submitted by the review petitioners, Sec.11(12) of the Act is intended to make sure that the landlord who has obtained possession of a building in pursuance of an order under sub-section (3) of Sec.11 must occupy the building for his alleged need after getting delivery of the shop room. Hence such a condition is not necessary to make sure that the review petitioners will occupy the building for the need alleged in the Rent Control Petitions. Needless to say, the respondents are at liberty to move such petitions under Sec.11(12) of the Act, as and when required.

5. We have no hesitation to hold that the review petitioners had not been given an opportunity to bring the said facts to the notice of the Court at the time of passing the said order. Had the said facts been brought to the notice of the Court at the time of passing the common order, this Court would not have imposed the said condition in a manner applicable to both the review petitioners. Therefore, paragraph-6 and the last sentence in paragraph-5, will stand deleted in the exercise of jurisdiction under review and all

the review petitions will stand allowed accordingly. The Registry is directed to issue a fresh common order accordingly in the above Rent Control Revisions.

The review petitions will stand allowed.

Sd/-

(THOTTATHIL B. RADHAKRISHNAN, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

Nan/

//true copy//

P.S. to Judge