

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

RCRev..No. 2 of 2014 ()

RCA 38/2011 of THE RENT CONTROL APPELLATE AUTHORITY

RCP 8/2009 of RENT CONTROL COURT, KOZHIKODE

REVISION PETITIONER/APPELLANT/RESPONDENT:

**K.M.ABDUL GAFOOR, AGED 53 YEARS
S/O.ABDULLA KOYA, 12/799, THEKKUMTHALA
KUTTICHIRA, NAGARAM AMSOM, DESOM
KOZHIKODE TALUK.**

**BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN**

RESPONDENT(S)/RESPONDENT/PETITIONER:

**MOORPPALA VEETTIL SAINABI,
D/O.SIYYALI KOYA, W/O.MAMMAD KOYA, SOUDA MANZIL
FRANCIS ROAD, NAGARAM AMSOM DESOM, KOZHIKODE-673027.**

**BY ADV. SRI.K.SANEESH KUMAR
BY ADV. SMT.V.B.SANTHINI**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 03-02-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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R.C.Rev.No. 2 of 2014

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Dated this the 3rd day of February, 2015

O R D E R

ANTONY DOMINIC, J.:

The respondent landlady filed R.C.P.No.8/2009 before the Rent Control Court, Kozhikode, seeking eviction of the petitioner tenant under Secs.11(2)(b), 11(3) and 11(4)(v) of Kerala Buildings (Lease and Rent Control) Act. The Rent Control Court, by its judgment dated 17.1.2011, allowed the petition as prayed for. The tenant challenged the order by filing R.C.A.No. 38/2011 before the Rent Control Appellate Authority, Kozhikode. The Appellate Authority, by its judgment dated 20.10.2012, dismissed the appeal. It is challenging these proceedings, the tenant has filed this revision.

2. We heard the learned counsel for the petitioner and the learned counsel appearing for the respondent.

3. According to the petitioner, the finding of the Rent Control Court, as confirmed by the Appellate Authority, insofar as the ground under Secs.11(3) and 11(4)(v) are illegal and untenable.

Elaborating on her contention, the learned counsel argued that the landlady had two buildings in her possession bearing Nos.21/948 and 21/941. Despite this, the landlady did not make out any special reason justifying an order of eviction under Sec.11(3). The counsel also complained that though the landlady or her daughter for whom the eviction was sought, were not examined, finding has been entered into under Sec.11(3) in favour of the landlady. This, the counsel points out that is also untenable. The counsel proceeded to contend that insofar as the ground under Sec.11(4)(v) is concerned, finding has been entered against the tenant ignoring the fact that there were no pleadings or evidence attracting the said Section. All these contentions are refuted by the learned counsel for the respondent landlady.

4. We have considered the submissions made.

5. Insofar as Sec.11(3) urged by the landlady is concerned, according to the landlady, her daughter, Fathima, wanted to start a tailoring shop in the building in question and it was pointing out this need of her dependant daughter, that the landlady sought eviction. It is true that the landlady or Fathima were not examined

in court and that, as PW-1, it was the landlady's son, who was examined in the court. Insofar as the contention of the learned counsel for the petitioner that in terms of the first proviso to Sec.11 (3), the Rent Control Court shall not order eviction, if the landlady has in her possession another building, except in a case where special reasons justifying such an order are made out, is concerned this argument is set up by learned counsel for the petitioner by pointing out that, at the time when eviction was sought, the landlady had in her possession room Nos.21/948 and 21/591, which could have been made use of by her for the need of her daughter. However, though this claim of the landlady made in Ext.A-2 reply notice is seen denied in the Rent Control Petition, in the proof affidavit filed by PW-1, he has admitted that the buildings in question were lying vacant at the relevant point of time. However, it has come out in evidence that at that point of time, the land acquisition proceedings were already initiated by Ext.A-3 notification dated 17.9.2010, proposing to acquire the buildings in question for a Railway overbridge. We are also told that subsequently the acquisition proceedings were completed and the

building itself has been demolished. The fact that acquisition proceedings were pending at the relevant point of time, disclosed in the evidence, in our view, is certainly a special reason as contemplated under the first proviso to Section 11(3). Therefore, the contention raised by the learned counsel for the tenant that on account of the availability of the rooms mentioned above, the Rent Control Court ought not to have ordered eviction, cannot be accepted.

6. Insofar as the second submission made by the learned counsel for the petitioner is concerned, it is true that neither the landlady nor her daughter, Fathima were examined in this case. The learned counsel for the petitioner relied on the judgments of this Court in Ratheesh Kumar v. Jithendra Kumar reported in 2005(2) KLT 669 and Sivadasa Panicker.N. v. Travancore Mats and Mattings Co. and Ors, reported in 2009(1) KHC 472, to drive home the point that in a case bona fide need is urged, either the landlady or the person for whose need the eviction is sought, should be examined. It is true that when the bona fide need is urged, convincing evidence should be adduced, for the court to accept the ground urged. The

principles laid down by this Court in the aforementioned judgments also highlight this aspect. However, as is evident from the judgments itself, it is not mandatory that in all cases, irrespective of the facts involved, either of the two therein should be examined. Insofar as this case is concerned, it has come out in evidence that the landlady is very aged and sick and that it is PW-1, who is looking after her affairs. The cross examination of PW-1 shows that he is fully familiar with the facts of the case. Though he has been cross-examined, the reliability of his testimony could not be impeached in any manner. This therefore shows that he was the perfectly competent person to depose on behalf of his mother. In such a case, we cannot accept the contention of the learned counsel for the petitioner that non-examination of the landlady or her daughter, was fatal to the need urged in the petition. We therefore decline to accept this contention of the learned counsel for the petitioner. This therefore means that the finding of the lower authorities under Sec.11(3) has to be confirmed and we do so.

7. It is true that the counsel contended that the factual situation with reference to the bona fide need is to be assessed is

the time when the petition was presented. According to the counsel, as on 27.1.2009, when the rent control petition was filed, Ext.A-3 notification was not in existence and therefore such a development cannot be taken cognizance of. Though generally it is true that the requirement as on the date of the prevention is what is relevant, but, however, when this subsequent development is brought to notice of the court, nothing prevents the court from referring to or relying on those subsequent developments as well. Insofar as this case is concerned, admittedly the property has been acquired and the building itself has been demolished. In such a case we cannot accept this contention raised by the learned counsel for the petitioner.

8. The other issue that survives is the finding of the Rent Control Court as confirmed by the Appellate Authority under Sec.114(v) of the Rent Control Act. Sec.11(4)(v) provides that a landlady may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building, if the tenant ceases to occupy the building continuously for six months without a reasonable cause. Though it is a fact that in the petition

this Section was also pressed into service and that this has been accepted concurrently by both the courts, what we find from the petition is that all what the landlady has pleaded in paragraph 5 of the petition is that the tenant is not properly using the scheduled premises. This therefore shows that the ingredients of cessation of occupation for a period of six months required under Sec.11(4)(v) was not even pleaded by the landlady. For that reason itself, we cannot sustain the finding of the Rent Control Court or the Appellate Authority under Sec. 11(4)(v). In the result, we confirm the findings of the Rent Control Court and Rent Control Appellate Authority under Sec.11(3) and vacate the finding under Sec.11(4)(v). The revision is disposed of as above.

9. At this stage, the learned counsel for the petitioner sought reasonable time to surrender vacant possession of the building to the landlady. On this request, we heard the learned counsel for the respondent also. Taking note of the submissions made by both sides and also having regard to the fact that the building in question is being used for commercial purposes, we allow the tenant eight months' time from today to surrender vacant

possession of the premises to the landlady. However, this shall be subject to the tenant filing an affidavit before the Rent Control Court unconditionally undertaking to surrender vacant possession of the premises to the landlady on or before the expiry of eight months' period allowed by us and on his paying the entire rent including arrears till the premises is surrendered as above. The affidavit shall be filed within three weeks from today.

Sd/-
ANTONY DOMINIC, JUDGE

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Sd/-
ALEXANDER THOMAS, JUDGE

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P.S. to Judge