

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

RCRev.No.246 of 2014 (B)

AGAINST THE JUDGMENT IN RCA 36/2009 of III ADDL. RENT CONTROL
APPELLATE AUTHORITY (III ADDL. DISTRICT COURT), KOLLAM DATED 11-07-14

AGAINST THE ORDER IN RCOP 39/2005 of RENT CONTROL COURT
(PRL.MUNSIFF COURT), KOLLAM DATED 07-04-2009

REVISION PETITIONER/APPELLANT/ RESPONDENT:

M/S. A.N.GUNA SHENOY & BROTHERS
A PARTNERSHIP FIRM CARRYING ON BUSINESS
AMONG OTHER PLACES AT DOOR NO. 2198 OF
WARD NO. XVII OF KOLLAM CORPORATION
MAIN ROAD, KOLLAM-691001.

BY ADVS.SRI.R.D.SHENOY (SR.)
SRI.LEGITH T.KOTTAKKAL
SRI.S.VINOD BHAT

RESPONDENT/RESPONDENT/PETITIONER:

PRADEEP NAICK, AGED 54 YEARS
S/O. LATE SRI. RAMANATHAN BHATTER
RESIDING AT VAYYAMUKKU HOUSE, KOTTAKKAKAM WARD
KOLLAM-691013.

BY ADV. SMT.K.G.BINDU
BY ADV. SMT.T.S.MAYA (THIYADIL)

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 04-
02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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Dated this the 4th day of February, 2015.

O R D E R

Antony Dominic, J.

The tenant in R.C.O.P.No.39/21005 on the file of the Principal Rent Control Court, Kollam, against whom an order of eviction was passed under the Kerala Buildings (Lease and Rent Control) Act, 1965, which was confirmed by the Rent Control Appellate Authority, Kollam by dismissing R.C.A.No.36/2009, is the revision petitioner.

2. The respondent-landlord filed R.C.O.P.No.39/2005 seeking eviction of the petitioner-tenant under Secs. 11(4)(iii) and 11(4)(iv) of the Act. The case of the landlord was that initially the building No.2198 was leased out to the tenant for their business purposes and that subsequently, at their request, the scheduled building No.56 (re-numbered as 1461) was also leased out to the tenant to be used as a godown. According to the landlord, the scheduled building is situated in a plot of land having an extent of 33.5cents. The godown is old and dilapidated and needed reconstruction. The landlord therefore contended that demolishing the godown and the other

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structures in the land, he wanted to construct an apartment complex, the details of which, including the plan and permit were produced. It was therefore that the landlord sought eviction of the petitioner relying on Sec. 11(4)(iv) of the At.

3. The landlord also contended that the tenant had acquired possession of several other godowns which were more than reasonably sufficient for their purpose and that therefore he was entitled to an order of eviction under Sec. 11 (4)(iii) of the Act also. It was accordingly that the landlord filed the petition urging the grounds under Secs. 11(4)(iii) and 11(4)(iv) of the Act.

4. The tenant entered appearance and disputed the claim of the landlord that the building required to be reconstructed. According to the tenant, the building did not require reconstruction and according to them the landlord did not have the capacity to reconstruct the building. The tenant also denied the allegation of the landlord that they had other buildings in their possession entitling the landlord for an order of eviction under Sec. 11(4)(iii) of the Act.

5. Before the Rent Control Court, landlord was examined as PW1. The tenant and advocate commissioner

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were examined as CPWs1 & 2. Exts.A1 to A18 and Exts.C1 & C2 were also marked in evidence. Considering the entire materials, the Rent Control Court passed order dated 7.4.2009 allowing the petition as prayed for. The tenant challenged the order of the Rent Control Court in R.C.A.No.36/2009 before the Rent Control Appellate Authority, Kollam. The Appellate Authority vide its judgment dated 11.7.2014 dismissed the appeal. This is the background in which this revision is filed by the tenant under Sec. 20 of the Act.

6. We heard the learned Senior Counsel for the petitioner-tenant and learned counsel appearing for the respondent-landlord.

7. According to the learned Senior Counsel for the tenant, the proviso to Sec. 11(4)(iv) of the Act conferred a right on the tenant to re-occupy the building after reconstruction. It was argued that the building now under the occupation of the tenant is a godown and that the admitted case of the landlord is that what is proposed to be constructed is a residential apartment complex. According to him, therefore, this proposal of the landlord would defeat the

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tenant's right under the proviso and hence, the landlord was not entitled to an order under Sec. 11(4)(iv) of the Act. In so far as Sec. 11(4)(iii) of the Act urged by the landlord is concerned, learned counsel contended that the landlord had the initial burden to prima facie show that the tenant had other buildings in their possession which were reasonably sufficient for their purposes. It was contended that though vague suggestions were made, the landlord did not discharge the burden to prima facie prove the sufficiency of the building in the possession of the tenant. This according to the counsel disentitled the landlord for an order of eviction under Sec. 11 (4)(iii) of the Act also. Therefore, according to him, orders passed by the Rent Control Court and confirmed by the Appellate Authority being illegal, are liable to be set aside. However, those contentions raised on behalf of the tenant were refuted by the counsel for the respondent-landlord.

8. We have considered the submissions made. As we have already stated, in the petition filed by the landlord, he has invoked Secs. 11(4)(iii) and 11(4)(iv) of the Act. Sec. 11 (4)(iii) of the Act provides that the landlord may apply to the

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Rent Control Court for an order directing the tenant to put the landlord in possession of the building if the tenant already has in his possession a building or subsequently acquires possession or puts up a building, reasonably sufficient for his requirements in the same city, town or village. Sec. 11(4)(iv) also entitles the landlord for an order directing the tenant to put him in possession of the building if the building is in such a condition that it needs reconstruction and if the landlord requires bonafide to reconstruct the same and if he satisfies the court that he has the plan and licence, if any required, and the ability to rebuild and if the proposal is not made as a pretext to evict the tenant. The third proviso to this sub-section provides that the tenant, who was evicted in pursuance to an order under Sec. 11(4)(iv) of the Act shall have the first option to have the reconstructed building allotted to him with liability to pay its fair rent.

9. Though the grounds under both these sub-sections were urged in the petition filed by the landlord, these two sub-sections confer separate and independent right on the landlord to seek eviction of the tenant. Therefore, if the landlord

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succeeds in establishing the ground under Sec. 11(4)(iii), it is unnecessary for the Rent Control Court to probe into his case under Sec. 11(4)(iv) of the Act. This view has been taken by a Division Bench of this Court in the decision **George Varghese v. Ammini Cherian** [1995 (2) KLJ 413]. That was a case where grounds urged by the landlord were under Secs. 11(3) and 11(4)(iv). The Division Bench in paragraph 5 of the above said judgment held thus:

"5. Be that as it may, should the rent control court or the Appellate Authority have considered the legal position relating to Sec. 11(4)(vi) of the Act in the present case at all. Here what the landlady wants is eviction of the tenant for demolishing the building to put up a new building on the site for accommodating her son who is dependent on her. That precisely forms the ground covered by Sec. 11 (3) of the Act i.e., the landlord bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him. Merely because the landlady said that a new building has to be put up in the place of the existing structure does not transpose the ground to Sec. 11 (4)(iv) of the Act. In the context of Sec 11 (3) of the Act the landlady would have stated formally as to how she would make use of the building after eviction. In the same context she has also said about the proposal to put up a new building in the place of the old one. When a landlord applies for eviction on two grounds-one under Sec. 11(3) and the other under S. 11(4) (iv) of the Act - Rent Control Court can stop with the finding that the ground under S. 11(3) has been made out. In such a situation there is no need to proceed further to the consideration of the other ground. Of course, if the former ground is found against the landlord, there may arise the necessity to consider the latter ground, when that ground is pressed into service (vide Das Naik v. Narayanan 1980 KLT 951)."

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10. Yet another aspect which should be clarified in this context is that under Sec. 11(4)(iii), the entitlement of the landlord depends upon the proof that the tenant already has in his possession a building or subsequently acquires possession of or puts up a building which is reasonably sufficient for his requirement in the same city, town or village. Interpreting this provision of the Act, a Division Bench of this Court held in **Kunhiraman v. Kumaran** [2004 (2) KLT 674] that the burden is on the landlord to prima facie show that the building acquired by the tenant or building subsequently put up by the tenant is reasonably sufficient for his requirement. The relevant portion of the judgment contained in paragraph 2 thereof reads thus:

"2. S. 11(4)(iii) contemplates three situations where the landlord could successfully maintain a petition for eviction. If the tenant has come into possession of a building before or after commencement of the tenancy which is reasonably sufficient for his requirement in the same city, town or village and continued to be in his possession on the date of filing of the petition the landlord could seek an order for eviction S.11(4)(iii). So also if the tenant after the commencement of the tenancy acquire possession of or puts up a building, reasonably sufficient for his requirements in the same city, town or village and continues to be in possession on the date of filing of the application that is also a ground available for eviction to the landlord. Landlord could seek eviction under S.11(4)(iii) even if the tenanted building is not bona fide required for his own occupation or for additional accommodation. The underlying object of the provision is that tenant shall not keep unto himself so many tenanted premises lest there will be

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scarcity of accommodation for the needy tenants. Burden of proving that the tenant has in his possession of a building and continues to be in possession of that building or has put up a building is on the landlord. Landlord has also to establish prima facie that the building which is in the possession of the tenant is reasonably sufficient for the tenant's requirement. The tenant can disprove the same by establishing that he is not in possession of the building on the date of the application and if at all he is in possession that is not reasonably sufficient for his requirement. The Court has to weigh the evidence adduced by the landlord and tenant and render a finding as to whether the tenant is in possession of a building which is reasonably sufficient for the requirement on the date of filing of the petition. However, in a given case the tenant can even explain that though he has put up a building the circumstances are such that he cannot occupy the same. Construction of building availing of loan from financial institution is quite common and unless tenant gets a reasonable return it will not be possible to repay the loan amount. In such circumstance the tenant may rent out the building, so that he can repay the loan. Tenant may in a given case put up building after availing loan from prospective buyers or even from prospective tenants, so that the mere fact that tenant has put up a building is not sufficient to show that he is in possession so as to occupy the same without any hindrance. However, the onus is on the tenant to show the circumstances which stands in his way of not occupying the premises. The burden is on the landlord to prima facie show that the building acquired by the tenant and building subsequently put up by the tenant is also reasonably sufficient for his requirement".

11. This question again came up for consideration before this Court in **Kanhangad Co-op. M.S. Society Ltd. v. Ganapathy Kamath** [1995 (1) KLT 681] wherein it was held that once the landlord discharged his prima facie burden as indicated in the above judgment, then the burden would shift to the tenant to establish that such building is not sufficient for his requirement and that a mere plea of insufficiency for his

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requirements is not enough nor can such a plea be used as a pretext to remain in the tenanted premises. This principle laid down is seen in paragraph 11 of the judgment which reads thus:

'11. When it is shown that tenant has possession of another building, then the burden is on the tenant to establish that such building is not sufficient for his requirements. A mere plea of insufficiency for his requirements is not enough nor can such a plea be used as a pretext to remain in the tenanted premises. To highlight this aspect the legislature has prefixed the expression "sufficient for his requirement" with a qualification by using the word "reasonably". When can you say that a building is not reasonably sufficient for your requirement? Of course what is reasonably sufficient for one man may not be so for another. Reasonableness should be viewed objectively regard being had to the facts and circumstances of the particular case. Supreme Court has observed that it would be unreasonable to expect any exact definition of the word "reasonable". However, their Lordships have observed that the word "reasonable" has, in law, the prima facie meaning of reasonable in regard to those circumstances of which a person is called upon to perform his act reasonably (vide Delhi Municipal Corporation v. M/s.Jagan Nath Ashok Kumar, AIR 1987 SC 2316).'

12. Again the matter came up for consideration before this Court in **Ahammed v. Krishnalal** [2005 (3) KLT 1004] where also it was held by this Court in paragraph 11 thus:

"11.The Section says only that the building should be reasonably sufficient for the respondent's requirements. This Court in a number of decisions have held that if it is shown that the tenant has got another alternate building, the burden shifts on him to prove that the building is not reasonably sufficient for his purpose....."

This principle was reiterated again in the judgment in

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Parvathy Krishna v. Joseph Alias Jose [2007 (4) KLT 1062]

wherein paragraph 24 it was held thus:

"24. It is well settled that when the landlord establishes the ingredients of S.11(4)(iii), the burden shifts to the tenant to prove that the alternate building is not reasonably sufficient for his requirements. See *Ahmed v. Krishna Lal* (2005 (3) KLT 1004); *Kanhangad Co-op. M.S. Society Ltd. v. Ganapathy* (1995 (1) KLT 681); *Kunhiraman v. Kumaran* (2004 (2) KLT 674). The tenants have not discharged the burden of proof cast on them".

13. Bearing the above principles in mind, we shall now proceed to appreciate the case of the respective parties. In the petition filed by the landlord, after explaining the necessity to reconstruct the building and the reasons which led him to take such a decision in so far as Sec. 11 (4) (3) is concerned, the landlord in paragraph 9 of the Rent Control Petition has stated thus:

"9. Counter petitioner has already obtained possession of other suitable alternate accommodation more than reasonably sufficient for their use and purposes. They have also put up their own godown building just close to petition schedule building which itself is more larger in size than that of petition schedule building and they are in possession of it. They have also in their possession other godown close to their business place at main road, Kollam. It is also learnt that they have got other branches. Since, counter petitioners have got such other accommodations reasonably sufficient for their requirement in the same city, they are liable to vacate the petition schedule building."

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The above averments contained in the petition were denied by the tenant in his written objections by contending thus:

7. The allegation that the counter petitioner had already obtained possession of other suitable alternative accommodation more than reasonably sufficient for their use and purposes and they have put up their own godown building just close to the petition schedule building which is itself is more longer in size than that of petition schedule building and that they are in possession of it etc. are not true to facts and hence denied. The counter petitioner had not put up any godown building as alleged in the petition.

8. The counter petitioner is not having sufficient accommodation to stock their materials in the godown. The counter petitioner is in dire need of godowns for stocking their materials....."

In the proof affidavit filed by the landlord, he has given the details of the rooms which were in the possession of the tenant by stating thus:

".....എതിർക്കക്ഷിക്ക് ടിയാ നെറ ഉപേയാഗത്തിന് അന ുയോജ്യമായ ധാരാളം കെട്ടിടങ്ങൾ ഹർജിപട്ടിക കെട്ടിടം വാടകയ്ക്കേറ്റതിന് ശേഷം കൈവശം കിട്ടിയിട്ടുള്ളതാണ്. ഹർജിപട്ടിക ഗോഡൗണിനോട് ചേർന്ന് തൊട്ടടുത്ത് തന്നെ ഒരു ുഗോഡൗൺ എതിർക്കക്ഷിക്ക് സ്വന്തമായി ഉള്ളതും ആയത് ഹർജിപട്ടിക ഗോഡൗണിലേക്കാൾ വളരെയധികം വലിപ്പമുള്ളതുമാണ്.
.....
ഹർജിപട്ടിക ഗോഡൗണിന് പടിഞ്ഞാറ് വശത്ത് സ്ഥിതിചെയ്യുന്ന MC XXIII/59, XXIII/60 എന്നീ കെട്ടിടങ്ങളിൽ എതിർക്കക്ഷി തന്നെ രൂപേഷ് ആന്റ് കമ്പനി എന്ന പേരിൽ ബിസിനസ്സ് ചെയ്തുവരികയാണ്. ടി കെട്ടിടങ്ങളും അതിന് പടിഞ്ഞാറ് വശത്തുള്ള XXIII/62, XXIII/63 എന്നീ കെട്ടിടങ്ങളും കൂടാതെ XVII/2198, KC XL III/1492, KC XL III/1496, KC XL III/1043 എന്നീ കെട്ടിടങ്ങളും എതിർക്കക്ഷിയുടെ കൈവശമുള്ളതാണ്. ടി കെട്ടിടങ്ങളെല്ലാം തന്നെ എതിർക്കക്ഷി ഹർജിപട്ടികയിൽ

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നടത്തിവരുന്ന ബിസിനസ്സിന് തികച്ചും
അനുയോജ്യമായവയാണ്. ആ പകാരം എതിർക്കുകയ്ക്ക് ടി
പട്ടിക കെട്ടിടത്തിലുള്ള ബിസിനസ്സിന് അനുയോജ്യമായ
ധാരാളം കെട്ടിടങ്ങൾ കൈവശമുള്ളതിനാൽ ഹർജിപട്ടിക കെട്ടിടം
ഒഴിഞ്ഞുനൽകുവാൻ ടിയാൻ ബാധ്യസ്ഥനാണ്.....”

When the landlord was examined, the fact that the scheduled building is an old one was not even seriously disputed by the tenant and instead the question put to him suggested that the rooms in the possession of the tenant were insufficient for their requirements and this suggestion was denied by the landlord in his answer.

14. The tenant has filed his proof affidavit and in this affidavit, the averments made by the tenant was that the rooms in their possession were unsuitable and insufficient for their requirements. It is worth mentioning that the tenant did not deny possession of the rooms pointed out by the landlord although in the objection they had denied the very availability of the rooms with them. We also notice from Ext.C2, the report of the Advocate Commissioner, that it contained the details of each of the rooms in the possession of the tenant. Though the Advocate Commissioner was examined as CPW2, and in his cross-examination, the possession of the other

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godowns and rooms mentioned in the report submitted by him were not challenged by the tenant. Yet another aspect which is required to be noted is that the tenant in his cross-examination admitted that the rooms in their possession are discernible from the report of the Advocate Commissioner.

15. In the above background it is clear that the landlord had clearly established his case under Sec. 11(4)(iii). Thus, the landlord has furnished the details of the buildings in the possession of the tenant and has also discharged initial burden of showing that those rooms were sufficient for the requirements of their tenant. When that initial burden was discharged by the landlord, the burden got shifted to the tenant to prove that the rooms which were in his possession were insufficient for his requirements and according to us there was total failure on the part of the tenant in this aspect. In such circumstances, having considered the order passed by the Rent Control Court in its entirety, the conclusion arrived by the court that the tenant has miserably failed in discharging his part of burden cannot be faulted. If that be so, the landlord was entitled to an order of eviction under Sec. 11(4)(iii) of the

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Act and this order passed by the Rent Control Court which was confirmed by the Appellate Authority does not merit any interference.

16. Although, in view of the principles laid down in George Varghese's case (supra), it is unnecessary to examine the case of landlord under Sec. 11(4)(iv) of the Act, the evidence before the Rent Control Court shows that he had required a plan and licence and also financial capacity to reconstruct the building. In such a situation, we cannot find fault with the lower authorities in concluding the issue in favour of the landlord. In the light of the above, we do not find any reason to interfere with the order passed by the Rent Control Court as confirmed by the Appellate Authority. Further, the landlord having established his case for an order of eviction under Sec. 11(4) (iii), the contention of the counsel for the tenant regarding the non-compliance of the proviso to Sec. 11(4)(iv), does not arise for consideration.

17. At this stage, the learned Senior Counsel for the petitioner requested that the tenant should be given nine months time to surrender vacant possession of the room to the

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landlord. On this request, we also heard the learned counsel for the landlord. Taking note of the submissions made and also the fact that the premises in question is used as a godown, we allow the tenant nine months time from today to surrender vacant possession of the rooms. This shall be however subject to the condition that the tenant shall within one month from today, file an affidavit before the Rent Control Court unconditionally undertaking to surrender vacant possession of the building in question to the landlord on or before the expiry of nine months allowed by us and shall continue to pay the rent without default.

Subject to the above, orders passed by the lower authorities are confirmed.

**Sd/-
ANTONY DOMINIC,
Judge.**

**Sd/-
ALEXANDER THOMAS,
Judge.**

Bkn/-

// True Copy //

P.A to Judge.