

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

RCRev..No. 247 of 2014 ()

AGAINST THE JUDGMENT IN RCA 5/2011 of RENT CONTROL APPELLATE AUTHORITY,
KALPETTA DATED 13-06-2014

AGAINST THE ORDER IN RCP 5/2009 of RENT CONTROL COURT, MANANTHAVADY
DATED 31-01-2011

REVISION PETITIONER/PETITIONER/APPELLANT:

P.C.ZACHARIAH JAMES AGED 51 YEARS
S/O. CHACKO, TRADER, PULIKKAL HOUSE
CHEERAL AMSOM DESOM, SULTHANBATHERY TALUK
WAYANAD DISTRICT, KERALA STATE.

BY ADVS.SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

RESPONDENT/RESPONDENT IN RCA :

MATHEW JOSE, AGED 54 YEARS
S/O. JOSEPH, PUTHIYAKUNNEL HOUSE, MANANTHAVADY AMSOM
ARATTUTHARA DESOM, MANANTHAVADY TALUK
WAYANAD DISTRICT, KERALA STATE.

R BY ADVS. SRI.BLAZE K.JOSE
SRI.M.YASIR

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
23-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES :

ANNEXURE 1 : COPY OF THE REQUEST TO PUBLIC INFORMATION OFFICER,
COMMERICAL TAX, MANANTHAVADY DATED 25.8.2014

ANNEXURE 2 : ORIGINAL OF THE LETTER BY PUBLIC INFORMATION OFFICER,
COMMERCIAL TAX MANANTHAVADY DATED 25.8.2014

RESPONDENTS' ANNEXURES :

ANNEXURE R1 : COPY OF THE LETTER OF INTENT DATED 17.2.2014 OF THE HINDUSTAN
PETROLEUM CORPORATION LTD

ANNEXURE R2 : CERTIFICATE OF REGISTRATION BEFORE THE COMMERCIAL TAXES
DEPARTMENT OF KERALA

/TRUE COPY/

P.A TO JUDGE

AV

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

R.C.R.No.247 of 2014

Dated this the 23rd day of September, 2015.

ORDER

P.N.Ravindran, J.

The petitioner is the tenant in R.C.P.No.5 of 2009 on the file of the Court of the Rent Controller (Munsiff-Magistrate), Mananthavady. The respondent is the landlord therein. The respondent instituted R.C.P.No.5 of 2009 under section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short, praying for an order of eviction in respect of a shop room bearing Door No.VI/486 of Mananthavady Grama Panchayath. The said building is situate in R.S.No.459/2 of Memom Village, Mananthavady Taluk, Wayanad District.

2. The landlord contended that he needs the petition schedule building for the purpose of starting a business in hill produce. Upon receipt of notice, the tenant entered appearance and filed a counter statement contending that the need put forward is not *bonafide* and that the landlord is already conducting jewellery business. He also claimed the benefit of the second proviso to sub-section (3) of section 11 of the Act. Before the Rent Control Court, the landlord examined himself as PW1 and produced and marked Exts.A1 to A3 on his side. The tenant examined himself as RW2, the Secretary of

Mananthavady Grama Panchayath as RW1 and produced and marked Ext.B1 on his side. The court below considered the rival contentions and held that the need put forward is *bonafide*. As regards the benefits of the second proviso to sub-section (3) of section 11 of the Act, the Rent Control Court held that the tenant has other sources of income and that he has not taken any steps to prove the ingredients of the second limb of the second proviso to section 11(3) of the Act. An order for eviction was accordingly passed on 31.01.2011. The tenant carried the matter in appeal by filing R.C.A.No.5 of 2011 on the file of the Rent Control Appellate Authority (Additional District Judge-I), Kalpetta. By judgment delivered on 13.06.2014, the Rent Control Appellate Authority concurred with the Rent Control Court and dismissed the appeal. Hence this revision petition.

3. We heard Sri.B.Krishnan, learned counsel appearing for the petitioner and Sri.Blaze K. Jose, learned counsel appearing for the respondent. Sri.B.Krishnan, learned counsel appearing for the petitioner contended with particular reference to the documents produced as Annexures R1 and R2 along with the counter affidavit filed by the respondent/landlord in I.A.No.2154 of 2014 as also the contents of Annexure 1 and 2 documents produced by the tenant, that after the rent control petition was filed, the landlord had stopped the jewellery business being run by him in premises

bearing Door Nos.VI/484 and 485 of Mananthavady Grama Panchayath and therefore the need put forward by the landlord that he needs the petition schedule premises to start a business in hill produce cannot any longer be said to exist. Learned counsel for the petitioner contended that as the landlord had stopped the business in jewellery with effect from 31.05.2012, he had a duty to bring the said fact to the notice of the Rent Control Appellate Authority where R.C.A.No.5 of 2011 was pending.

4. Per contra, Sri.Blaze K.Jose, learned counsel appearing for the respondent/landlord submitted that after the rent control petition was allowed by order passed on 31.01.2011, the Hindustan Petroleum Corporation Limited invited applications from eligible persons for appointment as LPG Distributor at Mananthavady, that the respondent's son had applied on 17.08.2011 offering the land situate in Survey No.158/1B for the purpose of the godown and the shop rooms situate in Survey No.459/2 as the show room, that the said application was considered and the LPG distributorship awarded to the respondent's son as per Annexure-R1 letter of intent dated 17.02.2014 and that thereupon, the landlord's son has started the distributorship. The learned counsel for the landlord contended that it was with a view to enable the landlord's son to start the LPG Distributorship that he had closed down the business in jewellery and that such a course was adopted for the reason that the

petitioner had not surrendered possession of the petition schedule building and was prosecuting the matter in appeal and also for the reason that he had no other premises available with him where his son could have started the distributorship. Learned counsel contended that in such circumstances, it cannot be said that by virtue of subsequent events, the *bonafide* need stands eclipsed.

5. We have considered the submissions made at the Bar by learned counsel appearing on either side as well. We have also gone through the pleadings and the materials on record. The impugned judgment/order disclose that the Rent Controller and the Appellate Authority have concurrently held that the need put forward is *bonafide* and genuine. The Rent Control Court and the Appellate Authority have also held that the tenant has signally failed to prove the ingredients of the second limb of the second proviso to sub-section (3) of section 11 of the Act. The Rent Control Court and the Appellate Authority have also held that the tenant has other sources of income and therefore he cannot contend that he is depending for his livelihood mainly on the income derived by him from the business carried on from the petition schedule building. Learned counsel for the petitioner did not canvass the correctness of the said findings. The only contention raised before us by the learned counsel appearing for the petitioner is that by virtue of the subsequent events, namely the stoppage of the business in

jewellery, the need of the landlord stands eclipsed. Reference is also made to the first proviso to section 11(3) of the Act in support of the said contention. In our opinion, the contention now pressed into service by the petitioner/tenant is without any merit. The records disclose that the rent control petition was instituted on 08.04.2009 and an order for eviction was passed on 31.01.2011. Shortly thereafter, the Hindustan Petroleum Corporation Limited invited applications for the appointment of LPG Distributors at Mananthavady in Wayanad District. The landlord's son applied as per application dated 17.08.2011. That application was considered and the distributorship was offered to him as per Annexure R1 letter of intent dated 17.02.2014. The said letter discloses that the LPG godown has to be set up in Survey No.158/1B and the showroom in the premises situate in Survey No.459/2 respectively mentioned in the application. Learned counsel for the petitioner however contends that the LPG godown and the showroom have to be set up in the same premises namely in Survey Nos.158/1B and 459/2 and therefore, the landlord cannot be heard to contend that the showroom is required to be established in the premises where he was running the jewellery. In our opinion, the interpretation sought to be placed by the tenant on Annexure R1 letter is without any merit. All that the Hindustan Petroleum Corporation had insisted in Annexure R1 letter is that the godown and the showroom should be

in the premises mentioned in the application and not elsewhere. In any view of the case, it is not in dispute that the showroom of the LPG distributorship awarded to the landlord's son is functioning in the premises, where he was formerly running the jewellery. It is evident from the chronology of events that it was with a view to enable his son to apply for LPG distributorship that the landlord had stopped the business in jewellery with effect from 31.05.2012. It is also not in dispute that the landlord's son has commenced running the LPG distributorship in the premises where the landlord was formerly running the jewellery. It cannot therefore be said that the subsequent event which was necessitated on account of events which had not been foreseen by either of the parties, will have an impact on the need put forward by the landlord namely the need to start a business in hill produce in the petition schedule premises. On the other hand, the subsequent events in the instant case would only strengthen the case of the landlord that he *bonafide* needs the petition schedule building for the purpose of starting a business in hill produce. In such circumstances, we are not persuaded to accept the contention of the petitioner that subsequent events should be held out against the landlord.

For the reasons stated above, we hold that there is no merit in the instant revision petition. It fails and is accordingly dismissed. However, having regard to the fact that the petitioner/tenant is

running a business in vegetables in the petition schedule premises we deem it appropriate to grant him four months' time from today to surrender vacant possession of the petition schedule building subject to the condition that he shall within three weeks from today file an undertaking in the form of an affidavit in the execution court, undertaking to surrender vacant possession of the petition schedule shop room within the said period of four months. He shall in that affidavit also undertake to pay the arrears of rent if any and continue to pay the rent till the date of such surrender. The tenant shall also undertake that he will not induct strangers into possession of the petition schedule property or commit acts of waste therein. In the event of default on the part of the tenant in filing an affidavit within the time limit stipulated above, it will be open to the landlord to forthwith execute the order for eviction.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P.JOSEPH
JUDGE