

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

RCRev..No. 307 of 2014 (C)

AGAINST THE JUDGMENT IN RCA 34/2012 of RENT CONTROL APPELLATE
AUTHORITY, TIRUR DATED 28-08-2014

AGAINST THE ORDER IN RCP 18/2011 of RENT CONTROL COURT,
PARAPPANANGADI DATED 25-09-2012

REVISION PETITIONERS/RESPONDENTS/PETITIONERS:

1. MOIDEENKUTTY HAJI, AGED 70 YEARS
S/O.CHOLAYIL MUHAMMEDALI, VELIPRAM AMSOM
KARIKALLAI DESOM, KOZHIKODE TALUK.
2. RUKHIYA, AGED 44 YEARS
D/O.MOIDEENKUTTY HAJI, W/O.ABDU RAZAK, VELIPRAM AMSOM
KARIKALLAI DESOM, KOZHIKODE TALUK.
3. SAFIYA, AGED 43 YEARS
D/O.MOIDEENKUTTY HAJI, W/O.KALLUPARAMBAN MUHAMMEDALI
TRIKKULAM AMSOM DESOM, P.O.TIRURANGADI
MALAPPURAM DISTRICT.
4. SAINABHA, AGED 39 YEARS
D/O.MOIDEENKUTTY HAJI
W/O.CHAKKALA OTTAKA NIRATHIL MOOSAKOYA
VELIMUKKU AMSOM DESOM, TIRURANGADI TALUK
MALAPPURAM DISTRICT.
5. MUMTHAZ AGED 35 YEARS
D/O.MOIDEENKUTTY HAJI, W/O.ANCHUKANDATHIL ALAVIKUTTY
VALIYORA AMSOM DESOM, TIRURANGADI TALUK
MALAPPURAM DISTRICT.
6. SAHINA, AGED 30 YEARS
D/O.MOIDEENKUTTY HAJI, W/O.KADENGAL MUHAMMED
A.R.NAGAR AMSOM DESOM, TIRURANGADI TALUK
MALAPPURAM DISTRICT.

7. RAZEENA ,AGED 28 YEARS
D/O.MOIDEENKUTTY HAJI, W/O.BHADARUSAMAN
THENHIPPALAM AMSOM DESOM, TIRURANGADI TALUK
MALAPPURAM DISTRICT.

BY ADVS. SRI.K.P.SUDHEER
SRI.ARUN MATHEW VADAKKAN

RESPONDENT/APPELLANT/RESPONDENT:

UNNI, AGED 52 YEARS,
S/O.KODERI VELAYUDHAN, THRIKULAM AMSOM DESOM
TIRURANGADI TALUK, MALAPPURAM DISTRICT, PIN 676306.

R1 BY ADV. SRI.T.SETHUMADHAVAN (SR.)
R1 BY ADV. SRI.PUSHPARAJAN KODOTH
R1 BY ADV. SRI.K.JAYESH MOHANKUMAR
R1 BY ADV. SMT.VANDANA MENON
R1 BY ADV. SMT.N.DEEPA

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
08-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

R.C.R.No.307 of 2014

Dated this the 8th day of December, 2015

ORDER

P. N. Ravindran, J.

The petitioners are the landlords in R.C.P.No.18 of 2011 on the file of the Rent Control Court, Parappanangadi, a petition filed by them for an order of eviction under section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as the "Act", for short. The landlords had in the petition for eviction averred that they are the owners of the petition schedule shop room as also the room immediately behind it and the corresponding rooms on the upstairs portion of the said building. They had further averred that the second petitioner, who is a person with disability intends to start a tailoring business in the petition schedule shop room and in the room directly above it on the first floor of the building which is in the possession of a tenant by name Abu. The landlords had in the petition for eviction inter alia averred as follows:

“ഈ കോടതി അധികാരാതിർത്തിക്കകമായ താഴെ പട്ടികയിൽ വിവരിച്ച പീടികമുറികളടക്കമുള്ള ഒട്ടാകെ എടുപ്പിൽ താഴെ പട്ടികയിൽ വിവരിച്ച പീടികമുറിയും അതിന് പുറകിലുള്ള മുറിയും ഇവയുടെ മുകളിലുള്ള 2 മുറികളും അതു നിൽക്കുന്ന സ്ഥലവും മാത്രം ഒന്നാം ഹരജിക്കാരന്റെ ഭാര്യയും, രണ്ട് മുതൽ ഏഴ് കുടി ഹരജിക്കാരുടെ പെറ്റമ്മയും ആയ കല്ലുപറമ്പൻ മമ്മാതിക്കുട്ടി എന്ന മമ്മാദിയക്കുട്ടി എന്നവർക്ക് ജന്മാവകാശമായിരുന്നതും, മേൽപറഞ്ഞ മമ്മാതിക്കുട്ടി എന്ന മമ്മാദിയക്കുട്ടി എന്നവരുടെ മരണശേഷം ഹരജിക്കാർക്ക് കൂട്ടായി ജന്മാവകാശമായതുമാണ്.”

2. Upon receipt of notice, the tenant entered appearance and filed a counter statement dated 26.09.2011 wherein he denied and disputed the bona fide need put forward in the rent control petition. He also contended in paragraph 6 of the said counter statement that the petitioners have another room of their own in their possession in the same building to conduct the proposed business if they really need it. It was contended that to the rear of the petition schedule building and in the upstairs portion, rooms are kept vacant. He did not however specifically allege that the landlord is in possession of any room other than the rooms referred to in paragraph 3 of the rent control petition. He also contended that he is mainly depending for his livelihood on the income derived from the business carried on in the petition schedule shop room and that no other shop rooms are available in the locality for him to shift his business and claimed the protection of the second proviso to section 11(3) of the Act.

3. Before the rent control court, on the side of the landlords, the second petitioner, on whose behalf the order of eviction was sought, was examined as PW1 and Exts.A1 to A8 were produced and marked. The respondent/tenant examined himself as RW1 and produced and

marked Exts.B1 to B5. On application filed by the landlords, an advocate commissioner was appointed to inspect the petition schedule building. The advocate commissioner was examined as CW1, the report submitted by her was marked as Ext.C1 and the plan accompanying it was marked as Ext.C1(a). The rent control court considered the rival contentions and held that the need put forward is bona fide. Though it was contended before the rent control court that the landlord is in possession of a vacant room situate behind the petition schedule building, the rent control court held that it has no direct access from the road and that it is being used as a godown. The rent control court also took note of the fact that the landlord has obtained an order of eviction in respect of the premises bearing door No.IV/1169 by filing R.C.P.No.17 of 2011. The rent control court also held that the tenant has not discharged the burden of proving the ingredients of both the limbs of the second proviso to section 11(3) of the Act. An order of eviction was accordingly passed under section 11 (3) of the Act on 25.09.2012. Challenging that order, the tenant filed R.C.A.No.34 of 2012 before the Rent Control Appellate Authority, Tirur. The appellate authority after independently considering the pleadings

and the materials on record held that the bona fide need put forward is true and genuine. The appellate authority however held that as the landlords have admitted that they are in possession of the room behind the petition schedule shop room and the rooms immediately above the petition schedule shop room and the room to its rear, in the absence of any pleading, setting out the special reasons justifying an order of eviction, or evidence in that regard, the tenant is entitled to the protection of the first proviso to section 11(3) of the Act. In coming to the said conclusion, the appellate authority placed reliance on the decisions of this court in **Janatha Drugs v. Maithri Construction [2007 (4) KLT 625]** and **Abdul Salam v. Sebastian [2013 (4) KLT 592]**. The appellate authority accordingly allowed the appeal and set aside the order of eviction passed by the rent control court. It did not however enter any finding as regards the claim made by the tenant under the second proviso to section 11(3) of the Act. The landlords have, aggrieved thereby, filed this revision petition.

4. We heard Sri.K.P.Sudheer, learned counsel appearing for the petitioners and Smt.N.Deepa, learned counsel appearing for the respondent. Sri.K.P.Sudheer, learned counsel appearing for the

petitioners contended that the appellate authority has proceeded on the erroneous assumption that the landlord is in possession of rooms other than the petition schedule shop room in the instant rent control petition as also in R.C.P.No.17 of 2011 and that the said fact has been suppressed in the rent control petition. Learned counsel for the petitioners submitted that the rent control appellate authority has proceeded on the erroneous assumption that the landlord has to plead the special reasons which justify an order of eviction and prove the same before an order of eviction can be passed under section 11(3) of the Act. Learned counsel submitted that the evidence in the case unmistakably establishes the fact that besides the petition schedule shop room, the landlord is in possession of only premises bearing door No.IV/1169 situate directly above it (the subject matter of R.C.P.No.17 of 2011) and the unnumbered room situate behind the petition schedule shop rooms in both the cases; that it has come out in evidence that the room situate behind the petition schedule shop room is being used as a godown by various tenants including the tenant in the instant case and that the evidence in the case on hand does not lead to the conclusion that besides the rooms involved in the two rent

control petitions and the unnumbered room situate immediately behind the said rooms, the landlord is the owner of any other room in the petition schedule building. Learned counsel also invited our attention to the case set out by the respondent/tenant in the affidavit filed by him in-lieu of chief examination to contend that even the tenant had no case that apart from the two shop rooms, which are the subject matter of the rent control petitions and the room situate immediately behind the petition schedule shop rooms involved in both the rent control petitions, the landlord is the owner of any other room and therefore, the rent control appellate authority erred in proceeding on the basis that besides the petition schedule shop room, the landlord is in possession of three other rooms in the upstairs portion of the building.

5. Per contra Smt.N.Deepa, learned counsel appearing for the tenant submitted that PW1 has in cross-examination admitted that she is in possession of four rooms in the building thereby meaning that she is in possession of three rooms in the upstairs portion of the building besides the petition schedule room and therefore, in the absence of any special reasons justifying an order of eviction, the rent control appellate authority was perfectly right in setting aside the order of

eviction passed by the rent control court and dismissing the petition for eviction. Learned counsel contended that as the landlords own more than one room in the same building, they were bound to give special reasons even in the rent control petition and also adduce evidence in support of the same; that in the instant case, the landlords have failed to plead and prove the special reasons justifying an order of eviction and therefore, no exception can be taken to the impugned judgment of the appellate authority. Relying on the decision of the Constitution Bench of the Apex Court in **Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh [2014 (4) KLT 182 (SC)]**, learned counsel contended that this court exercising jurisdiction under section 20 of the Act cannot re-appreciate the evidence and interfere with the finding of fact recorded by the appellate authority. Alternatively it was submitted that even if this court were to come to the conclusion that the finding entered by the appellate authority is not based on any evidence, this court cannot pass an order of eviction but can only remand the appeal to the appellate authority for fresh disposal.

6. We have considered the submissions made at the Bar by learned counsel appearing on either side. We have also gone through

the pleadings and the materials on record. The landlords had, as stated earlier, set out in paragraph 3 of the rent control petition that they own the petition schedule shop room and the room immediately behind it; as also the corresponding rooms on the first floor of the same building. This is the consistent case spoken to by the second petitioner who was examined as PW1 in the rent control court. Ext.C1 report submitted by the advocate commissioner also supports the said averment. The tenant had in the affidavit filed by him in-lieu of chief examination averred that besides the petition schedule shop room, the landlord is in possession of the room behind it and the corresponding rooms on the upstairs portion of the very same building. He had no case that besides the rooms mentioned in paragraph 3 of the rent control petition, the landlord is in possession of any other shop room in the same building. It is not in dispute that in respect of premises bearing door No.IV/1169, the very same rent control court has passed Ext.A8 order of eviction in R.C.P.No.17 of 2011. The instant rent control petition and R.C.P.No.17 of 2011 were presented on the same day. R.C.P.No.17 of 2011 was disposed of earlier in point of time by Ext.A8 order passed on 28.10.2011, having regard to the fact that the

tenant had agreed to surrender vacant possession and was only interested in seeking time to surrender.

7. The common need put forward in the two rent control petitions is that the landlords bona fide need the petition schedule shop rooms so as to enable PW1 to start a tailoring unit. The rent control court as well as the appellate authority have concurrently held that the need put forward is bona fide. The rent control court has also held that the tenant has not succeeded in proving the ingredients of both the limbs of the second proviso to section 11(3) of the Act. It has also come out in evidence that in the very same building, rooms belong to other landlords are lying vacant. The advocate commissioner has also deposed that vacant rooms are available elsewhere in Chemmad town. It has also come out in evidence that the room immediately behind the petition schedule shop room is not in the direct possession of the landlords, but it is being used as a godown by various tenants. Apart from the statement in Ext.C1 report submitted by the advocate commissioner to that effect, the tenant in the instant case has when cross-examined admitted the fact that he is also using the room behind the petition schedule shop room as a godown. The

only other room available is a similar room situate behind the premises which was the subject matter of Ext.A8 order passed in R.C.P.No.17 of 2011. It has also come out in evidence that the rooms behind the petition schedule shop room and the petition schedule shop room which was the subject matter of R.C.P.No.17 of 2011 have not been numbered for the reason that they are unauthorised constructions. Such being the situation, if the landlord proposes to undertake any venture in the said rooms, the local authority will not grant a licence. It has also come out in evidence that the room at the rear of the petition schedule shop room has no access from the road or ventilation but only a door which provides entry to it. In any case, as it is not numbered and the room immediately above it is also not numbered, the said premises cannot be said to be available at the disposal of the landlord for being put to profitable use. Such being the situation, we are of the opinion that the rent control appellate authority erred in proceeding on the basis that the first proviso to section 11(3) of the Act applies to the case on hand. As the landlords do not own any building other than the subject matter of the two rent control petitions and as reference has been made in the rent control

petition to the proposal to file a petition to evict the tenant occupying the premises situate directly above the petition schedule shop room, we are of the opinion that no further averment was necessary in that regard.

8. A Division Bench of this court has in **Kunju v. Fathima [2014 (3) KLT 563]** repelled the contention that in view of the first proviso to section 11(3) of the Act, special reasons for non-occupation of the vacant premises should be disclosed in the petition and that such non-disclosure is fatal to the case of the landlords. It was held that it cannot be understood from the first proviso to section 11(3) of the Act that the landlords have to plead the particulars of all the premises under their ownership and possession to claim an order of eviction. The Division Bench held that it is only when it is established that the landlord has another building of his own in his possession in the same locality, town or village that he need satisfy the rent control court about the special reasons for not occupying the said building. The Division Bench also held that to non-suit the landlord, the vacant building should be of such a character, which would meet the requirements of the landlord and that any other interpretation of the

proviso would lead to absurdity and cannot be accepted. It is also relevant in this context to note that the Division Bench of this court has not, in **Abdul Salam v. Sebastian** (supra) held that special reasons for non-occupation should be disclosed in the rent control petition. All that the Division Bench has held is that at the time of evidence, the landlord will have to prove the special reasons which justify the grant of an order of eviction, when the landlord is in possession of other vacant rooms.

9. In the instant case, such a question does not arise for the reason that as on the date of the rent control petition, the landlord was not in possession of any vacant room. Even as on date, the room immediately behind the petition schedule building, which is not numbered for the reason that it is unauthorised construction, is being occupied by the tenants of the building. The room on the upstairs portion of the said room is also an unauthorised construction and it has also not been numbered. Such unauthorised constructions cannot be construed and understood as rooms which are available to be used by the landlord so as to attract the first proviso to section 11(3) of the Act. The finding entered by the rent control appellate authority that the

claim for eviction is hit by the first proviso to section 11(3) of the Act, cannot therefore be sustained. We accordingly set aside the same.

10. It has come out in evidence that vacant rooms belonging to others are available in the very building of which the petition schedule room is a part. The advocate commissioner has also reported about the existence of other vacant rooms in the locality. The burden of proving the ingredients of both the limbs of the second proviso to section 11(3) of the Act is on the tenant. Even assuming that the tenant is mainly depending for his livelihood on the income derived from the business carried on by him in the petition schedule shop room, as he has not proved the non-availability of other suitable rooms in the locality, it cannot be said that he is entitled to the protection of the second proviso to section 11(3) of the Act. A Constitution Bench of the Apex Court has in **Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh** (supra) held that if a finding of fact recorded by the rent control court or the appellate authority is perverse or has been arrived at without considering the material evidence or such finding is based on no evidence or a misreading of the evidence, or is grossly erroneous that, if allowed to stand, it will result in gross miscarriage of

justice, such a finding will be open to correction for the reason that it cannot be treated as a finding in accordance with law. The Apex Court held that in the aforesaid contingencies, the High Court in exercise of its revisional jurisdiction under section 20 of the Act will be entitled to set aside the impugned order. The Apex Court has not in **Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh** (supra) held that in the event of this court coming to the conclusion that the finding recorded by the appellate authority is perverse or is based on no evidence or on a misreading of the evidence or is grossly erroneous, this court cannot exercise the revisional jurisdiction to set aside that finding and restore the finding of the rent control court which has been interfered with by the appellate authority. The Apex Court has also not held that the only course open to this court in such an eventuality will be to remand the case to the appellate authority for fresh disposal. The evidence on record in the instant case does not support the finding entered by the rent control appellate authority that the landlords are in possession of other vacant rooms in the same building and that they have not set out or proved special reasons justifying an order of eviction. The evidence in the case does not warrant such a finding.

For the reasons stated above, we allow the revision petition, set aside the judgment delivered by the Rent Control Appellate Authority, Tirur in R.C.A.No.34 of 2012 on 28.08.2014 and restore the order of eviction passed by the Rent Control Court, Parappanangadi in R.C.P.No.18 of 2011. Having regard to the fact that the tenant is admittedly running a business in the petition schedule shop room, we deem it appropriate to grant him six months' time from today to surrender vacant possession of the petition schedule shop room. The parties shall bear their respective costs.

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

