IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

WEDNESDAY, THE 29TH DAY OF NOVEMBER 2023 / 8TH AGRAHAYANA, 1945

RCREV. NO. 104 OF 2023

AGAINST THE JUDGMENT DATED 27.09.2022 IN RCA NO.1 OF 2020 OF THE ADDITIONAL DISTRICT COURT (ADHOC), MAVELIKKARA CONCURRING WITH THE COMMON ORDER DATED 28.10.2019 IN RCP NO.4 OF 2017 OF THE RENT CONTROL COURT,CHENGANNUR

REVISION PETITIONER/APPELLANT/RESPONDENT:

LALU MATHEW,
AGED 48 YEARS,

BY ADVS.
JACOB P.ALEX
JOSEPH P.ALEX
MANU SANKAR P.
AMAL AMIR ALI

RESPONDENT/RESPONDENT/PETITIONER:

BINO ALEXANDER,
AGED 47 YEARS

JACOB MATHEW MANALIL
THOMSTINE K.AUGUSTINE
PRIYA ELIZABETH BABU
HRISHIKESH JAYASARMAN
S.V.BALAKRISHNA IYER

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 14.11.2023, THE COURT ON 29.11.2023 DELIVERED THE FOLLOWING:

C.R.

P.B.SURESH KUMAR & JOHNSON JOHN, JJ.

R.C.Rev. No.104 of 2023

Dated this the 29th day of November, 2023.

O R D E R

P.B.Suresh Kumar, J.

The tenant in a proceedings for eviction under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act is the petitioner in this revision petition. The respondent is the landlord. The Rent Control Court ordered eviction, and the Appellate Authority affirmed the decision of the Rent Control Court.

2. The tenanted premises is a portion of the ground floor of a three storeyed building measuring 750 sq.ft. which is being used by the tenant as a showroom for his crockery business. The tenancy arrangement commenced in the year 1997. Earlier, the tenant was using the second floor of the

building also as a godown to keep the stock of the products handled by him. However, on a request made by the landlord, the tenant surrendered the second floor of the building and is using an adjacent building as his godown. It was while so, the eviction petition was instituted. The case set out by the landlord in the eviction petition is that he needs the premises for establishing a computer related business in which he is proficient and for establishing a dental clinic for his wife who is a Dentist. One of the contentions raised by the tenant in the proceedings was that the need set out by the landlord is not *bona fide,* and it is after rejecting the said contention, eviction was ordered by the Rent Control Court.

3. It is seen that during the pendency of the appeal, the first floor of the building measuring approximately 1800 sq.ft. held by another tenant of the landlord fell vacant. The tenant preferred an interlocutory application then in the appeal seeking orders appointing an Advocate Commissioner to ascertain and report the said fact. The said application was rejected by the Appellate Authority. The tenant challenged the

order passed by the Appellate Authority in this regard before this Court in O.P. (RC) No.17 of 2022. This Court dismissed the above original petition holding that it is unnecessary to appoint an Advocate Commissioner for the purpose sought for, as there is no dispute as regards the said fact. It was, however, observed by this Court in the judgment that in the light of the decisions of the Apex Court in **Hasmat Rai v. Raghunath Prasad**, (1981) 3 SCC 103 and **Sheshambal v. Chelur Corpn. Chelur Building**, (2010) 3 SCC 470, the Appellate Authority is expected to examine whether the fact pointed out by the tenant has any impact on the relief claimed by the landlord. It was also observed by this Court in the judgment that such a contention cannot be simply brushed aside as a subsequent event. Thereupon, the appeal was taken up and disposed of by the Appellate Authority, affirming the decision of the Rent Control Court. As noted, it is aggrieved by the said decision of the Appellate Authority that the tenant has preferred this revision petition.

4. The learned counsel for the tenant contended

that it was for the purpose of enabling the landlord to use the second floor of the building for establishing the computer related business as also dental clinic for his wife, he surrendered the said portion of the building to the landlord on his request and it is an admitted fact that on getting the possession of the second floor of the building, instead of occupying the same for the said purposes, the landlord leased out the same to others. According to the learned counsel, on that sole ground, the authorities below ought to have held that there is no *bona fides* at all for the need pleaded in the eviction petition by the landlord. It was also contended by the learned counsel that in the light of the first proviso to Section 11(3) of the Act which precludes the Rent Control Court from granting an order of eviction unless it is satisfied that it is just and proper to do so for special reasons, if the landlord has another building of his own in his possession in the same city, the Appellate Authority ought to have considered the issue whether the fact that the first floor of the building which fell vacant during the pendency of the appeal has any impact on the relief claimed by

the landlord, especially in the light of the observations made by this Court in the original petition referred to above. The learned counsel relied on the decisions of the Apex Court in **Hasmat Rai** and **Sheshambal,** in support of the said contention. The proposition canvassed by the learned counsel was that in such cases, it is obligatory for the landlord to raise additional pleadings indicating the special reasons as to why the said premises cannot be used for the need pleaded in the eviction petition.

5. On a query from the Court as to whether the first proviso to Section 11(3) of the Act can be pressed into service in cases where a landlord obtains another building after the institution of the eviction petition, the learned counsel for the tenant asserted that it has been held to be so by this Court in several decisions including **Raghavan v. Govindan Nambiar**, 1995 SCC OnLine Ker 60, **Janatha Drugs v. Maithri Construction**, 2007 SCC OnLine Ker 437, **Mareena v. Elizabeth**, 2013 SCC OnLine Ker 6361, **M.K. Suseela v. P.N. Mangalam**, 2015 SCC OnLine Ker 28083, **Regy V. Edathil v. Hubert Leslie D' Cruz**,

2016 SCC OnLine Ker 5063, **S.A.Sahitha v. Nazeera** (R.C.R. No.434 of 2017) and **Kuttiat Rayaroth Rajitha v. E.N. Sajitha** (R.C.R. No.283 of 2018). It was, however, submitted fairly by the learned counsel that a contrary view has been expressed by this Court in **Dasan v. Janardhanan**, 2009 SCC OnLine Ker 970.

6. *Per contra*, the learned Senior Counsel for the landlord contended that there is nothing on record to indicate that the landlord sought vacant possession of the second floor of the building from the tenant for the purpose of using the said premises for the needs stated in the eviction petition. According to the learned Senior Counsel, there was only a suggestion to the landlord when he was giving evidence that the possession of the second floor of the building was sought by him for the said purposes and that the same was emphatically denied by the landlord. It was also argued by the learned Senior Counsel, placing reliance on the judgment of this Court in O.P. (R.C.) No.17 of 2022, that the first floor of the building which fell vacant during the pendency of the appeal was one constructed by the landlord with a strong room so as to enable the landlord

to let out the same to banking institutions who require strong room for their business and it is on account of the said reason that the landlord is pursuing the eviction petition, even after the first floor of the building fell vacant. The proposition that the authorities are not precluded from taking into account subsequent events which have a material bearing on the entitlement of the parties to relief, for moulding the relief to be granted to the parties, was not disputed by the learned Senior Counsel. But, according to him, the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events. It was argued by the learned Senior Counsel that the fact that the first floor of the building fell vacant during the pendency of the appeal is not an event which would eclipse completely, the need propounded by the landlord and the proposition aforesaid cannot, therefore, have any application to the facts of the present case.

7. We have bestowed our attention to the

arguments advanced by the learned counsel for the parties on either side.

8. As rightly argued by the learned Senior Counsel for the landlord, we do not find any material to indicate that the vacant possession of the second floor of the building was sought by the landlord from the tenant for the needs set out in the eviction petition. The argument advanced by the learned counsel for the tenant on that basis, in the circumstances, is only to be rejected.

9. It is fundamental that the right of a party to obtain relief in a legal proceedings is one to be determined with reference to the date of institution of the proceedings. No doubt, it was held by the Apex Court in **Pasupuleti Venkateswarlu v. Motor and General Traders**, (1975) 1 SCC 770, that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceedings provided the rules of fairness

to both sides are scrupulously obeyed. Placing reliance on **Pasupuleti Venkateswarlu**, it was held by the Apex Court in **Hasmat Rai** that if the tenant is in a position to show that the need or requirement no more exists because of subsequent events, it would be open to him to point out such events and the court including the Appellate Court has to examine, evaluate and adjudicate the same. It was also clarified in **Hasmat Rai** that when an action is brought by the landlord in a proceedings of the instant nature for eviction on the ground of personal requirement, his need must not only be shown to exist on the date of the suit, but must be shown to exist on the date of the appellate order or the date when the higher court deals with the matter. It was also clarified in **Hasmat Rai** that during the progress and passage of proceedings from court to court, if subsequent events occur which if noticed would non-suit the plaintiff, the court has to examine and evaluate the same and mould the relief accordingly. Later, after referring to both **Pasupuleti Venkateswarlu** and **Hasmat Rai**, in **Gaya Prasad v. Pradeep Srivastava**, (2001) 2 SCC 604, the Apex Court clarified

that the subsequent events to overshadow the genuineness of the need must be of such nature and such a dimension that the need propounded by the petitioning party should have been completely eclipsed by the subsequent event. Later, in Sheshambal, after referring to all the three judgments referred to above, the Apex Court has observed in paragraph 17 of the judgment thus:

> "17. While it is true that the right to relief must be judged by reference to the date suit or the legal proceedings were instituted, it is equally true that if subsequent to the filing of the suit, certain developments take place that have a bearing on the right to relief claimed by a party, such subsequent events cannot be shut out from consideration. What the court in such a situation is expected to do is to examine the impact of the said subsequent development on the right to relief claimed by a party and, if necessary, mould the relief suitably so that the same is tailored to the situation that obtains on the date the relief is actually granted."

Sheshambal is a case where a premises was sought to be evicted for its owners, an elderly couple to reside. During the pendency of the revision before the High Court, the husband died and during the pendency of the civil appeal preferred

before the Apex Court against the decision of the High Court, the wife also died. The question that arose before the Apex Court, in the circumstances, was whether the *bona fide* need within the meaning of Section 11(3) of the Act would survive, in the light of the said developments. It is in the context of answering the said question in the negative, the proposition referred to above has been laid down. What is discernible from the decisions aforesaid is that if the subsequent events are of such a nature and of such a dimension that the need propounded by the petitioning party would be completely eclipsed by the subsequent event, the same is one which will have a bearing on the right to relief claimed by that party and the subsequent event, therefore should certainly be taken note of by the authorities and if necessary, mould the relief suitably so that it is tailored to the situation that obtains on the date the relief is actually granted.

10. Reverting to the facts of the case on hand, as noted, the subsequent event namely, the conduct of the landlord in not occupying the first floor of the building which fell

vacant during the pendency of the appeal, is not one that would eclipse the need propounded by the landlord. There is no dispute to the fact that the need subsists even after the said event inasmuch as the landlord has not made use of the first floor of the building or any other premises for the needs set out in the eviction petition. The argument of the tenant is that the said subsequent event would show that the need is not *bona fide*. The argument is fallacious. We fail to understand as to how a fact which was not even in the contemplation of the landlord on the date of institution of the eviction petition, would affect the *bona fides* of the need set out by him. *Bona fides* of the need is one to be decided as on the date of institution of the proceedings [See **Shakuntala Bai v. Narayan Das**, (2004) 5 SCC 772]. If the need set out is found to be *bona fide* as on the date of institution of the eviction petition, the same will not begone on account of a subsequent event. Needless to say, the arguments advanced based on the subsequent event pointed out by the tenant necessarily fail.

11. As noted, it was also contended by the learned

counsel for the tenant that the subsequent event, at any rate would fall within the scope of the first proviso to Section 11(3) and it was, therefore, necessary for the landlord to establish the special reasons for not occupying the first floor of the building for the needs stated in the eviction petition. Let us therefore consider the question whether the first proviso to Section 11(3) of the Act can be pressed into service in cases where a landlord obtains another building after the institution of the eviction petition. Section 11(3) of the Act reads thus:

> "(3) A landlord may apply to the Rent Control Court, for an order directing the tenant to put the landlord in possession of the building if he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him:
>
> Provided that the Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons, in any particular case it will be just and proper to do so:
>
> Provided further that the Rent Control Court shall not give any direction to a tenant to put the landlord in possession, if such tenant is depending for his livelihood mainly on the income derived from any trade or business carried on in such building and there is no other suitable building available in the locality

> for such person to carry on such trade or business:
>
> Provided further that no landlord whose right to recover possession arises under an instrument of transfer inter vivos shall be entitled to apply to be put in possession until the expiry of one year from the date of the instrument:
>
> Provided further that if a landlord after obtaining an order to be put in possession transfers his rights in respect of the building to another person, the transferee shall not be entitled to be put in possession unless he proves that he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him."
>
> (underline supplied)

As evident from the extracted provision, the first proviso is worded in a manner restricting the power of the Rent Control Court in issuing an order directing the tenant to put the landlord in possession of the building, if the landlord has another building of his own in possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons, in any particular case it will be just and proper to do so, and not in a manner conferring benefit on the tenant. The courts have interpreted the first proviso in such a manner that the landlord has no obligation to plead that he/she does

not have another building of his/her own in the same city, town or village, but if it is shown that the landlord has another building of his own in his possession in the same city, town or village, it is obligatory for the landlord to show special reasons for not occupying the same for the proposed need. Section 24 of the Act provides that the Rent Control Court, as far as may be practicable, pass final orders in any proceeding before it within four months from the date of appearance of the parties thereto. Even though no outer time limit is prescribed for disposal of appeals and revisions filed under the Act, as evident from Section 24 of the Act, it can be certainly said that the scheme of the Statute is that the proceedings for eviction instituted under the Act, have to be disposed of expeditiously. The provisions of the Statute, according to us, are to be interpreted in the above background. Even though the manner in which the first proviso is worded gives room for interpretation that the same will have application until orders are passed by the Rent Control Court, according to us, the first proviso cannot have any application where a landlord obtains another building after the institution of

the eviction petition. We are inclined to take this view for more reasons than one. The first and foremost is that if the provision is interpreted in such a fashion that it applies to all buildings, the possession of which is obtained by the landlord until the order of eviction has become final, in cases where landlords have other buildings which are occupied by tenants, every time landlord/s obtains vacant possession of one of such buildings, he/she would owe to the court, an explanation as to the special reason for not occupying the premises for the need proposed in the eviction petition. There cannot be any doubt to the fact that the special reasons provided for in the first proviso to Section 11(3) is a question of fact and if the said fact is denied and disputed by the tenant, the Rent Control Court or the Appellate Authority or the Revisional Authority as the case may be, has to adjudicate the same and situations would certainly arise where the parties need to be granted an opportunity to adduce evidence for the said adjudication. Necessarily, in such situations, matters need to be remitted to the Rent Control Court. If that process is over and the decision is again taken in

favour of the landlord, the same may again be challenged in appeal or revision and the fact that the landlord may obtain another building in the meanwhile, cannot be ruled out. If that be so, the whole exercise will have to be repeated again and this would be a never ending process in the case of landlords who own several buildings. In other words, a landlord who establishes the *bona fides* of the need for occupation of a tenanted premises and who does not have another building in his possession as on the date of institution of the eviction petition and obtains an order of eviction on that basis, the fate of the order of eviction would depend on the question whether he obtains possession of any other building till the order has become final. In other words, if the tenant in the proceedings is able to prolong the proceedings by hook or crook, the landlord would be deprived of the benefit of the order of eviction. According to us, the same cannot be the intention of the legislature at all. Another reason for us to take the said view is that a landlord who rents out different premises to different tenants, should certainly have the option to seek eviction of a

premises which is convenient for him for the purpose the eviction is sought and the tenant cannot have a say at all on that matter, especially when several factors such as the rent received from the tenants occupying other building/buildings, convenience, the relationship with the tenant etc. goes into the mind of the landlord while exercising that option. Once a decision is taken to institute the eviction petition against a particular tenant, if another tenant vacates, it will be for the landlord to decide whether he should occupy the premises which fell vacant. The landlord after having made a preference, cannot be forced to occupy the premises which fell vacant subsequently. In such situations, according to us, the landlord can rent out the premises which came into his possession during the pendency of the rent control proceedings, for a better rent. No duty is cast on the landlord to keep the premises idle and discontinue the rent control proceedings. Identical view has seen taken by this Court in **K.K. Valsan v. C.M. Furtal**, 2004 SCC OnLine Ker 374. Paragraph 7 of the judgment in the said case reads thus:

> "7. Landlord might have rented out several premises to

different tenants but he has always the option to seek eviction of a premises which is convenient for him for the purpose for which eviction has been sought for. Option has to be exercised by the landlord exclusively for which tenants have no role. Several factors would go into the mind of the landlord while exercising the option against whom the rent control petition has to be filed when there is more than one tenant. Factors like rent received from the particular tenant, convenience, relationship and so on may influence the landlord while exercising his option. After having decided to file rent control petition against tenant A, tenant B vacates, it will be for the landlord to decide whether he should occupy the vacant premises. The landlord after having made a preference cannot be forced to occupy the premises B which became available subsequently unless the tenant's need is wholly satisfied which is essentially a question of fact. In a given case the landlord can rent out even the premises which came into his possession during the pendency of the rent control proceedings for a better rent. No duty is cast on the landlord to keep the premises idle and discontinue the rent control proceedings. Landlord can always proceed with the rent control proceedings having taken a decision to proceed against A rather than B. Special reasons may exist not only when he exercised his option but also when he got the vacant possession of a premises. Reference may be made to the decision of the apex court in Savitri Sahay v. Sachidanand Prasad ((2002) 8 SCC 765). In a recent decision in Pratap Rai Tanwani v. Uttam Chand (2004 (7) Scale 631) the apex court has reiterated that the crucial date for considering bonafide need is the date of filing of the rent control petition. Only in cases where the court is satisfied that subsequent events

> have wholly satisfied the requirement of the landlord it could reject the plea of the landlord under Section 11(3) of the Act."

Needless to say, as noted, the first proviso to Section 11(3) does not apply to situations where the landlord obtains vacant possession of a building after the institution of the eviction petition. It is seen that in **Dasan v. Janardhanan** *(supra)*, it was held by this court that the point of time at which the Rent Control Court becomes concerned with the first proviso is the point of time when the court takes up the eviction petition for decision and therefore the proviso cannot have any application if the landlord obtains possession of a vacant building after the institution of eviction petition. The relevant passage reads thus:

> "On a reading of the first proviso, it appears that the point of time at which the Rent Control Court becomes concerned with that proviso is the point of time when the court takes up the petition for decision. This would mean that if it becomes evident in the case at the time the Rent Control Court comes to take decision in the rent control petition that the landlord has another building of his own in his possession in the same city, town or village, the Rent Control Court shall not order eviction unless the court is satisfied that there are special

> reasons in the case to justify such order of eviction despite landlord's possession of the other building. We cannot agree that it is obligatory on the part of the landlord in a case like the present one where another building of the landlord's own came to the landlord's possession subsequent to the institution of the rent control petition to plead special reasons by raising additional pleadings."

We have perused the various judgments cited by the learned counsel for the tenant in support of his argument that the first proviso would apply in cases where landlord obtains another building after the institution of the eviction petition. True, some of those are cases where this Court applied the first proviso to Section 11(3) when the landlord concerned obtained possession of a vacant building after the institution of the eviction petition on an assumption that the first proviso would apply in such situations as well. But, the question whether the first proviso could be pressed into service when the landlord obtains possession of a vacant building after the institution of the eviction petition, is not seen considered in any of those cases. As such, we are of the view that the said judgments do not preclude us in any manner from considering and answering the question aforesaid.

12. In the light of the findings aforesaid, we do not find any merit in the rent control revision and the same is, accordingly, dismissed.

However, having regard to the peculiar facts of this case and the orders passed by this Court in identical and similar matters, we deem it appropriate to grant six months' time from today to the petitioner to surrender vacant possession of the premises on condition that he shall file an unconditional undertaking before the Rent Control Court within one month from today to vacate the tenanted premises within six months and also that he shall pay the arrears of rent, if any, within the aforesaid time limit and continue to pay the monthly rent on or before the tenth day of every succeeding month, till he vacates the premises. Ordered accordingly.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

JOHNSON JOHN, JUDGE.

YKB