

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

FRIDAY, THE 19TH DAY OF AUGUST 2022 / 28TH SRAVANA, 1944

R.C.REV.NO. 21 OF 2019

AGAINST THE JUDGMENT DATED 30.07.2018 IN R.C.A.NO.274 OF
2016 OF THE RENT CONTROL APPELLATE AUTHORITY (ADDITIONAL
DISTRICT JUDGE-II), KOZHIKODE AND THE ORDER DATED 26.08.2016
IN R.C.P.NO.34 OF 2014 OF THE RENT CONTROL COURT (ADDITIONAL
MUNSIFF-I), KOZHIKODE

REVISION PETITIONERS:

- 1 USHA BAI,
AGED 60 YEARS, W/O.SELVARAJ, RESIDING AT
KALLUNGAL HOUSE, PUTHIYANIRATH, ELATHUR P.O.,
KOZHIKODE-673 303.
- 2 ATHREYA RAJ K.,
AGED 30 YEARS, S/O.SELVARAJ, RESIDING AT
KALLUNGAL HOUSE, PUTHIYANIRATH, ELATHUR P.O.,
KOZHIKODE-673 303.
- 3 ATHULYA,
AGED 28 YEARS, D/O.SELVARAJ, RESIDING AT
KALLUNGAL HOUSE, PUTHIYANIRATH, ELATHUR P.O.,
KOZHIKODE-673 303.

BY ADVS.

P.B.KRISHNAN

SRI.P.M.NEELAKANDAN

SRI.P.B.SUBRAMANYAN

SRI.SABU GEORGE

SMT.B.ANUSREE

SRI.MANU VYASAN PETER

R.C.Rev.No.21 of 2019

RESPONDENTS :

- 1 PANDIKASALA NIYAS
AGED 43 YEARS, S/O.PANDIKASALA MUHAMMED KUTTY,
RESIDING AT "NIYAS NIVAS" IN FEROKE AMSOM,
NALLUR DESOM OF KOZHIKODE TALUK, KOZHIKODE-673
631.
- 2 KARATTIYATTIL BEERAN,
AGED 64 YEARS, S/O.MUHAMMED, RESIDING AT
KARATTIYATTIL HOUSE, CHANDAKADAVU, FEROKE P.O.,
KOZHIKODE-673 631.
- 3 KUZHIYAMBADATH SAIDA,
AGED 54 YEARS, W/O.BEERAN, RESIDING AT
KARATTIYATTIL HOUSE, CHANDAKADAVU, FEROKE P.O.,
KOZHIKODE-673 631.
- 4 AIYSHA NIYAS,
AGED 17 YEARS, D/O.PANDIKASALA NIYAS,
KARATTIYATTIL HOUSE, CHANDAKADAVU, FEROKE P.O.,
KOZHIKODE-673 631.
- 5 FATHIMA NIYAS,
AGED 15 YEARS, D/O.PANDIKASALA NIYAS,
KARATTIYATTIL HOUSE, CHANDAKADAVU, FEROKE P.O.,
KOZHIKODE-673 631.

BY ADV SRI.R.RAMADAS

THIS RENT CONTROL REVISION HAVING COME UP FOR FINAL
HEARING ON 27.07.2022, THE COURT ON 19.08.2022 DELIVERED
THE FOLLOWING:

ORDER

Ajithkumar, J.

Revision petitioners are the legal representatives of the tenant-appellant in R.C.A.No.274 of 2016 on the file of the Rent Control Appellate Authority (II Additional District Judge), Kozhikode, who died on 03.11.2018, after disposal of the appeal. Respondents are the landlords. They filed R.C.P.No.34 of 2014 before the Rent Control Court (Additional Munsiff-I), Kozhikode, seeking eviction under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965. R.C.P. was allowed as per the order dated 26.08.2016. An appeal was preferred under Section 18(1)(b) of the Act by the tenant. It was dismissed. Aggrieved by the judgment of the Appellate Authority and the order of the Rent Control Court, the legal representatives of the tenant have filed this Revision under Section 20 of the Act.

2. This Revision was admitted to file on 11.01.2019 and notice was ordered to be served on the respondents. On 13.11.2019, an interim order of stay was granted initially for a

period of one month. The order of stay was extended from time to time and is still in force.

3. Heard the learned counsel appearing for the petitioners and the learned Senior Counsel appeared on instruction for the respondents.

4. The respondents are the owners in possession of 37 cents of land where Simax Shopping Complex and the petition schedule shop room are situated. Since eviction was ordered under Section 11(3) of the Act, facts with reference to the same alone are relevant. In Simax Shopping Complex, which has five floors, several institutions and establishments are functioning. M/s HDFC Bank, YES Bank, Tata Docomo Communications, Muthoot FinCorp, Kotak Mahindra Insurance Company and a few other companies are in occupation of various parts of the buildings as tenants. In order to make available sufficient and convenient parking area for the customers and staff members coming to the building, the space occupied by the petition schedule shop room and its adjoining room is

required. Hence, eviction of the tenant from the petition schedule shop room was sought.

5. The tenant filed a counter statement disputing the contentions of the respondents. The shopping complex has enough parking space. The space earmarked for the parking while obtaining permit from the Corporation for the construction is enough and the contention of the respondents that more space has to be provided after demolishing the petition schedule shop room for the parking space is without any basis. The petition schedule shop room and its adjacent room occupy only a small area and by its demolition, there would not be any substantial increase in the area of parking. Therefore, it is alleged that the need urged is just a ruse for eviction. It was further contended that the tenant and his family have been depending for their livelihood on the income generated from the business in the petition schedule shop room. Since no other alternative building is available in the locality, the tenant is entitled to get protection from eviction under the second proviso to Section 11(3) of the Act.

6. PW1 was examined and Exts.A1 to A4 were marked on the side of the respondents. RW1 was examined and Exts.B1 to B3 were marked on the side of the tenant. Exts.C1, C1(a), C2 and C(a) were also marked. The Rent Control Court after considering the said evidence, took the view that the respondents have established the need urged by them to be bona fide. After holding that the tenant failed to prove the requirements of the second proviso to Section 11(3) of the Act, eviction was ordered.

7. Before the Appellate Authority, the tenant has raised similar contentions. Further, the tenant has produced Ext.B4, a certified copy of the judgment in R.C.P.No.33 of 2014. That R.C.P. was filed by the respondents seeking eviction of the tenant in the adjacent room. The Appellate Authority on finding that the said order was rendered only on 20.01.2017, which was after disposal of R.C.P.No.34 of 2014, admitted it in evidence and marked as Ext.B4. Pointing out that fact and also that the space available on the southern end of the Shopping Complex was allowed to be occupied for

conducting Cafe Malabari, the petitioner contended that there is no bona fides in claiming more space for parking. The Appellate Authority, however, did not accept the said contentions. Dismissal of R.C.P.No.33 of 2014, in the view of the Appellate Authority, did not have any bearing in this case. It was observed that a case has to be decided on the evidence in that case and hence Ext.B4, which rests only on the evidence that came on record in that case, cannot be reckoned with while deciding this matter. Occupation of the space on the southern end of the shopping complex by Cafe Malabari also was found not a reason to discredit the claim of the respondents. Accordingly, the Appellate Authority confirmed the findings of the Rent Control Court.

8. The learned counsel appearing for the petitioners, apart from reiterating the aforesaid contentions, would submit that two upper floors of the Simax Shopping Complex are not occupied, since the construction of the same is yet to be regularised. Since there are no occupants on the upper two floors, in the view of the learned counsel, the space now

available for parking itself is more than enough, and therefore, there is no justification in claiming eviction of the petitioners and also the tenant in the adjacent room. In the wake of the said contentions, the respondents have filed I.A.No.1 of 2022 producing therewith the original building permit. It is seen that the Kozhikode Corporation issued the building permit on 08.07.2005 in favour of Sri.T.K. Kunhabdulla, who admittedly was the predecessor-in-interest of the respondents. It being an official document issued much prior to the institution of R.C.P.No.34 of 2014 and has a material bearing in the light of the contention, the petitioners have now raised, namely, third and fourth floors are unauthorised constructions and not possible to be occupied by anyone, it is only appropriate to receive the said document in evidence under Order XLI, Rule 27 of the Code of Civil Procedure, 1908. Hence, the building permit dated 08.07.2005 produced as Annexure 1 along with I.A.No.1 of 2022 is received in evidence by allowing the said petition. It is received in evidence as Ext.A5.

9. The contention of the learned counsel of the petitioners is that the third and fourth floors of Simax Shopping Complex were numbered as UA, which indicates that the said area of the building is an unauthorised construction and hence no one can occupy that space. It is not in dispute that the said two floors were numbered as UA.

10. The learned Senior Counsel appearing on behalf of the respondents pointed out Rule 20 of the Kerala Municipality (Property Tax, Service Tax and Surcharge) Rules, 2011 and would submit that numbering as UA only indicates that regularisation of the construction was required. The construction has already been regularised and the petitioners' contend that the said area is not able to be occupied by anyone is incorrect. As per Rule 20, if a construction is not authorised, the details of the same are to be entered in Form No.10 Register kept in the Corporation. It is a definite contention of the respondents that the third and fourth floors of Simax Shopping Complex have already been regularised and there are occupants in

that area. Ext.A5 becomes relevant then. As per Ext.A5, permit was accorded to the then owner to construct five floors. There is nothing in Ext.A5 to suggest that construction of the third and fourth floors of the building was subjected to any restriction. It may be true that during the course of such construction, there occurred violations of law or for such other reasons whereby that a portion of the building was initially numbered only as unauthorised. In the absence of anything on record to show that the said two floors still remain unoccupied, the assertion of the petitioners that the entire area, including the third and fourth floors of the shopping complex, are occupied cannot be rejected. There is no reason to find that the said area still remains as an unauthorised construction. The tenants did not have such a case during the trial of the R.C.P. nor has there been any evidence in that regard. In the said circumstances, we are of the view that the contention of the petitioners that there is no requirement of more parking area is untenable.

11. In **A.S.Parvathy Krishnan v. Jose and others [2007 (4) KLT 1062]**, this Court considered the question, when eviction of a building is sought only for the purpose of demolition and using the land where it is situated as an access, can the same be a ground for eviction under Section 11(3) of the Act. In the said decision, this Court held that the word 'occupation' in Section 11(3) has to be given a liberal construction. The contention raised in that case was that the access to be provided after demolition of the tenanted premises was intended to be used by the tenants in another building of the landlord. The tenant contended that such a need cannot be a reason for eviction under Section 11(3) of the Act. The Court did not accept that contention and held that if the need put forward is bona fide, the mere fact that the pathway made after demolition of the building would be used by several persons, including the landlord, or by his tenants, would not take the need out of the purview of Section 11(3) of the Act. In **Gopalakrishnan K. v. K.Maqbool Sha [2019 (4) KHC 521]** this Court has

considered whether eviction of a tenant can be claimed under Section 11(3) of the Act for the purpose of using the land by the landlord after demolition of the tenanted premises. After referring to the decision of the Apex Court in **Kunhamma v. Akkali Purushothaman [(2007) 11 SCC 181]**, this Court held that "the principle that a landlord can secure eviction of a tenant under Section 11(3) of the Act to demolish an existing structure for providing a pathway to a property or building of his own falls within the ground under Section 11(3) of the Act is no more res intergra."

12. The question whether eviction of a building tenant can be sought on the specific reason of making available parking area for another building of the landlord was considered by this Court in **Shajahan and another v. Muhammed and others [2017 (5) KHC 584]**. In paragraph Nos.13 and 14 read,-

"13. The principles that can be culled out from the aforesaid decision is that the word 'building' in ordinary language comprises not only the fabric of building; but the land upon which it stands also. Further, 'own

occupation of the building' contemplated under Section 11(3) of the Act encompasses occupation of the space occupied by the building and after demolition of the building in occupation of the tenant also.

14. So, we hold that the need of providing sufficient parking space to the Auditorium for parking the vehicles of the people who come to the Auditorium, after demolition of the building in occupation of the tenants, would fall under the expression 'need of the building for his own occupation' contemplated under Section 11(3) of the Act."

13. In the light of the proposition of law laid down in the aforesaid decisions, there cannot be any doubt that the plea for eviction of the respondents is one coming under Section 11(3) of the Act. PW1, the 1st respondent, deposed in court regarding the requirement of more parking area. His evidence was seriously challenged by the petitioners pointing out various aspects. The petition schedule shop room and its adjacent room occupy only a small area, considering that the total extent of the property is 37 cents. It remains the fact that the petition schedule shop room and also its adjacent room is in front of the Simax Shopping Complex, which faces

the National Highway. Although the area occupied by these rooms is small, the inconvenience for parking of more vehicles in the remaining front yard of the building is evident from the version of PW1. When the landlords say that they intend to provide more convenient and sufficient parking for the customers and visitors, who frequent to their building, it cannot be said that such a desire is only a fanciful idea. Of course, the landlords may be able to sail through even without availing more space for parking. But that is an option of the landlords. As long as it is not shown that out of some oblique motive the landlords have been trying to evict the tenants, such a claim can only be said to be bona fide. There is nothing on record to show that the respondents have any malafide intention to evict the petitioners.

14. Section 11 of the Act deals with eviction of tenants. As per Section 11(1), notwithstanding anything to the contrary contained in any other law or contract a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Act. As per

Section 11(3) of the Act, 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. As per the first proviso to Section 11(3), 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. As per the second proviso to Section 11(3), 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.

15. In **Adil Jamshed Frenchman v. Sardur Dastur Schools Trust [(2005) 2 SCC 476]** the Apex Court

reiterated that, as laid down in **Shiv Samp Gupta v. Dr. Mahesh Chand Gupta [(1999) 6 SCC 222]** a bona fide requirement must be an outcome of a sincere and honest desire in contradistinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the premises for himself or for any member of the family which would entitle the landlord to seek ejectment of the tenant. The question to be asked by a judge of facts by placing himself in the place of the landlord is whether in the given facts proved by the material on record the need to occupy the premises can be said to be natural, real, sincere and honest. The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. As reiterated in **Deena Nath v. Pooran Lal [(2001) 5 SCC 705]** bona fide requirement has to be distinguished from a mere whim or fanciful desire. The bona fide requirement is in praesenti and must be manifested in actual need so as to convince the court that it is not a mere fanciful or whimsical desire.

16. In **Ammu v. Nafeesa [2015 (5) KHC 718]** a Division Bench of this Court held that, it is a settled proposition of law that the need put forward by the landlord has to be examined on the presumption that the same is a genuine one, in the absence of any materials to the contra. In **Gireeshbabu T. P. v. Jameela and others [2021 (5) KHC SN 30]** this Court reiterated that in order to satisfy the requirement of Section 11(3) of the Act, a bona fide need must be an outcome of a sincere and honest desire of the landlord in contradistinction with a mere pretext on the part of the landlord for evicting the tenant, claiming to occupy the premises for himself or for any member of his family dependent on him. Once, on the basis of the materials on record, the landlord has succeeded in showing that the need to occupy the premises is natural, real, sincere and honest, and not a ruse to evict the tenant from the said premises, the landlord will certainly be entitled for an order of eviction under Section 11(3) of the Act, of course, subject to the first and second provisos to Section 11(3) of the Act.

17. Applying the principle of law laid down in the aforesaid decisions, we are of the view that the concurrent findings of the courts below that the need urged by the respondents is bona fide is not liable to be interfered with.

18. The contention based on Ext.B4 was not accepted by the Appellate Authority. It is true that the respondents have a definite contention that the space occupied by both the rooms is to be made available for enhancing the convenience of parking. When the proceedings for eviction with respect to the other room was decided against the respondents, that would have a bearing on the need projected by them. But by that alone the need urged by the respondents would not become non-existent or unreal, especially when it is found that they are entitled to get an eviction of the petitioners on the ground of such a need. Hence, the finding of the Appellate Authority in this respect is not liable to be interfered with.

19. The learned counsel appearing for the petitioners fairly conceded that the plea raised based on the second proviso to Section 11(3) of the Act does not survive after the

death of the original tenant. There is no scope for a plea under the first proviso to Section 11(3) of the Act in this case.

20. In **Rukmini Amma Saradamma v. Kallyani Sulochana [(1993) 1 SCC 499]**, the scope of revisional powers of the High Court under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 came up for consideration before the Three-Judge Bench of the Apex Court. While considering whether the High Court could have re-appreciated entire evidence, the Apex Court held that, even the wider language of Section 20 of the Act cannot enable the High Court to act as a first or a second court of appeal. Otherwise, the distinction between appellate and revisional jurisdiction will get obliterated. Hence, the High Court was not right in re-appreciating the entire evidence both oral or documentary in the light of the Commissioner's report. The High Court had travelled far beyond the revisional jurisdiction. Even by the presence of the word 'propriety' it cannot mean that there could be a re-appreciation of evidence. Of course, the revisional court can come to a

different conclusion but not on a re-appreciation of evidence; on the contrary, by confining itself to legality, regularity and propriety of the order impugned before it.

21. In **Hindustan Petroleum Corporation Limited v. Dilbahar Singh [(2014) 9 SCC 78]** a Five-Judge Bench of the Apex Court considered the revisional powers of the High Court under Rent Acts operating in different States. After referring to the law laid down in **Rukmini Amma Saradamma** the Apex Court reiterated that even the wider language of Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 does not enable the High Court to act as a first or a second court of appeal. The Constitution Bench agreed with the view of the Three-Judge Bench in **Rukmini Amma Saradamma** that the word 'propriety' does not confer power upon the High Court to re-appreciate evidence to come to a different conclusion, but its consideration of evidence is confined to find out legality, regularity and propriety of the order impugned before it.

22. In **Thankamony Amma v. Omana Amma [AIR**

2019 SC 3803 : 2019 (4) KHC 412] after considering the matter in the backdrop of law laid down in **Rukmini Amma Saradamma, Ubaiba** and **Dilbahar Singh (supra)** the Apex Court held that when the findings rendered by the courts below were well supported by evidence on record and could not be said to be perverse in any way, the High Court could not re-appreciate the evidence and interfere with the concurrent findings by the courts below while exercising revisional jurisdiction.

23. Viewed in the light of the law laid down in the aforesaid decisions, we are of the view that the eviction ordered by the courts below on the basis of the concurrent findings is not liable to be interfered with by this Court in the exercise of the jurisdiction under Section 20 of the Act. Hence this Revision Petition fails. We, accordingly, dismiss it.

24. At the time of pronouncement of the order, the learned counsel for the petitioners has made a request to afford six month's time for vacating the premises pointing out the difficulty in finding out another room and making

necessary arrangements for shifting the business. The learned counsel for the respondents is agreeable to grant the same.

25. Having considered all the aspects, we deem it appropriate to grant six months' time to surrender vacant possession of the petition schedule shop room, subject to the following conditions:

- (i) The respondents-tenants in the Rent Control Petition shall file an affidavit before the Rent Control Court or the Execution Court, as the case may be, within two weeks from the date of receipt of a certified copy of this order, expressing an unconditional undertaking that they will surrender vacant possession of the petition schedule shop room to the petitioners-landlords within six months from the date of this order and that, they shall not induct third parties into possession of the petition schedule shop room and further they shall conduct any business in the petition schedule shop room only on the strength of a valid licence/permission/ consent issued by the local authority/statutory authorities;
- (ii) The respondents-tenants in the Rent Control Petition shall deposit the entire arrears of rent as on date, if any, before the Rent Control Court or the Execution Court, as the case may be, within four weeks from the date of

receipt of a certified copy of this order, and shall continue to pay rent for every succeeding months, without any default;

- (iii) Needless to say, in the event of the respondents-tenants in the Rent Control Petition failing to comply with any one of the conditions stated above, the time limit granted by this order to surrender vacant possession of the petition schedule shop room will stand cancelled automatically and the petitioners-landlords will be at liberty to proceed with the execution of the order of eviction.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE

dkr