



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

FRIDAY, THE 7TH DAY OF JULY 2023 / 16TH ASHADHA, 1945

RCREV. NO. 115 OF 2023

AGAINST THE JUDGMENT IN RCA 1/2019 OF RENT CONTROL APPELLATE

AUTHORITY (DISTRICT JUDGE), KALPETTA, WAYANAD

RCP 18/2014 OF THE RENT CONTROLLER (MUNSIFF MAGISTRATE), SULTHAN

BATHERI

REVISION PETITIONER/APPELLANT/RESPONDENT:

C.J. GEORGE, AGED 78 YEARS
S/O JOSEPH, THANNITHERUVU,
PULPALLY POST AND VILLAGE, SULTHAN BATHERY TALUK,
WAYANAD DISTRICT., PIN - 673579

BY ADVS.
ALEX.M.SCARIA
SARITHA THOMAS
ALEN J. CHERUVIL
SAHL ABDUL KADER
M.T.FATHIMA SULTHANA
GEORGE POONTHOTTAM (SR.) (K/000570/1979)

RESPONDENT/PETITIONER:

M.P. VARGHESE, AGED 69 YEARS
S/O PAILY, MUTTATH HOUSE, KALAMUZHY,
PADICHIRA VILLAGE, SULTHANBATHERY TALUK
WAYANAD DISTRICT, PIN - 673579

BY ADVS.
NIRMAL V NAIR
DEEPA NARAYANAN (K/1754/1995)
K.SUJAI SATHIAN (K/1307/1999)
PREETHI. P.V. (K/1819/1999)
M.V.BALAGOPAL (K/707/2009)
GOURI MEEMPAT (K/001516/2021)
SANGEETHA SREEKUMAR (K/2099/2022)



T.SETHUMADHAVAN (SR.) (S-310)

ABU MATHEW- CAVEATOR

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
21.06.2023, THE COURT ON 07.07.2023 DELIVERED THE FOLLOWING:



**A.K.JAYASANKARAN NAMBIAR,
&
MOHAMMED NIAS C.P., JJ**

.....
RCRev. No.115 of 2023
.....

Dated this the 7th day of July, 2023

ORDER

Mohammed Nias C.P., J.

The tenant/revision petitioner is aggrieved by the judgment in RCA No.1/2019 on the files of the Rent Control Appellate Authority (District Judge), Kalpetta, Wayanad, that confirmed the order of eviction under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short, 'the Act') passed by the Rent Control Court (Munsiff/Magistrate), Sulthanbathery, Wayanad in RCP No.18/2014.

2. The respondent/landlord herein filed the petition for eviction under Sections 11(2)(b) and 11(3) of the Act, contending that the petition schedule room was let out to the tenant in the year 2001 and by the agreement arrived at on 01.10.2007, the monthly rent was fixed at Rs.8,260/- for five years. The landlord also contended that the rent was later enhanced to Rs.30,000/- from 01.04.2009, and the rent from 30.09.2009 is in arrears and prayed for eviction under Section 11(2)(b) of



the Act. The landlord further contended that the son of the petitioner, one Sabu, was employed temporarily in a petrol bunk, and as he is currently unemployed and depending on the petitioner for his livelihood, the petitioner is in bona fide need of the petition scheduled room for commencing business for his son.

3. The tenant resisted the rent control petition contending that the room in question was rented out to him from 01.10.2007 for Rs.8,260/- as rent, and there was no agreement for any enhancement after that. The allegation that the rent is in arrears from 01.10.2009 was denied. The plea of the bonafide need was also denied by the tenant, who also contended that there are several shop rooms in the possession of the landlord. The tenant also pleaded the protection of the first and the second provisos to Section 11(3) of the Act.

4. On behalf of the landlord, PWs 1 and 2 were examined, and Exts.A1 to A13 series were marked. The tenant examined himself as RW1 and marked Exts.B1 to B5(b). The rent control court found that the petitioner's son was employed in a petrol bunk in Pulpally. He is not presently employed and held that PW1 is in bona fide need of the petition scheduled shop room for starting a business for his son. The trial court also considered the evidence of PW1 that his son required 2000 sq. ft. space for starting the business and rejected the contention of the tenant that the exact nature of the proposed business was not pleaded in the rent control petition. Thus, analysing the evidence of PWs 1 and 2 and also relying on



the principles of laws laid down in **Narayani v. District Judge** [1991 (1) KLT 646], **Kochappan Pilla v. Chellappan Nair** [1976 KLT 1], **Abdulla Haji v. Chandran** [2009 (2) KLT SN4 (C.No.5)] and **Kurian v. Prathapan** [ILR 1992 (2) Ker 500] the trial court concluded that the need asserted by the petitioner stands proved.

5. With respect to the first proviso, though the tenant contended that though rooms in the cellar portion of a building are available, relying on Ext.C1 commission report, it was found that those rooms did not have proper access, and thus, there was no vacant suitable room in the possession of the landlord to start the proposed business. In arriving at that conclusion, the trial court relied on the evidence of the tenant when he deposed to a specific question with regard to the availability of the vacant rooms in the building by stating that he was not aware of those matters. Accordingly, the trial court found that a reading of the above answers really showed that the tenant was not aware of the vacant shop rooms in the building. The trial court also considered the aspect of the second proviso, and it was found that the evidence of the tenant clearly showed that the tenant had income other than from the business carried on in the petition schedule room and, therefore, he failed to discharge the burden that he is living solely out of the income derived from the business conducted in the petition schedule shop rooms. The evidence of RW1 was relied on to come to such a conclusion. Regarding the second limb of the second proviso as well, the trial court found that the tenant had not discharged the burden and accordingly ordered eviction under Section 11(3) of the Act.



6. Regarding Section 11(2)(b), the trial court found that the claim of the landlord that the tenant had agreed to pay rent at the rate of Rs.30,000/- per month through an oral agreement was not proved and that the tenant is paying enhanced rent as per Ext.A2 rent agreement dated 01.10.2007, therefore, found against the claim of the landlord under Section 11(2)(b) and dismissed the claim.

7. The tenant filed RCA No.1/2019 against the order of eviction granted under Section 11(3) while the landlord filed RCA No.3/2019 against the refusal to grant eviction under Section 11(2)(b) of the Act. The appellate court considered both appeals and, by the common judgment, dismissed both appeals. Since only the tenant has come up in revision, we are not considering the correctness of the orders passed under Section 11(2)(b) of the Act by the authorities below refusing eviction.

8. The appellate court found that the tenant's argument that the lack of precise details stated in the petition was fatal was not accepted as the exact nature of the business is a matter of evidence. It relied on the decisions in **Narayani's** case (supra) and **Kochappan Pilla's** case for holding so. The tenant had also argued that the landlord filed a previous RCP No.13/2011 under Section 11(3) of the Act, but it was later not pressed. The landlord's explanation was that during the pendency of the said RCP, the tenant had agreed to give up vacant possession of the rooms and also agreed to pay the enhanced rent at the rate of Rs.30,000/- per month till the



room is vacated on 31.03.2011 and it was on the basis of such a compromise that the landlord did not press the previous rent control proceedings. However, the tenant violated the said oral agreement, refused to vacate the premises on 31.03.2011, and committed default in paying the enhanced rent. The landlord cited this as a reason to file the present eviction proceedings.

9. The appellate court reiterated the findings of the trial court that the need sought by the landlord was bona fide and that there was no other vacant room available with the landlord to conduct the proposed business, and that the rooms vacated during the proceedings by one Jabbar were small in size and also subsequently let out. The appellate court had also found that though the landlord had a four-storied building with cellar rooms, the same was behind the petition schedule rooms wherein it was not possible to conduct the proposed business as the said building did not have road access.

10. With regard to the availability of the protection of the second proviso to Section 11(3), the appellate court found that the evidence of RW1 and the fact that he admitted that his son was conducting the business in Kozhikode and also the admission that he owns 1 Acre 79 cents of agricultural land and his wife owns 70 cents of land proved that the main source of income was not from the business carried out in the petition schedule room and therefore the benefit of the first limb of the proviso was not granted to the tenant. Likewise, the evidence of RW1 also showed that



he had not conducted any proper enquiry regarding the availability of other shop rooms for shifting the business and dismissed the appeal confirming the eviction granted under Section 11(3) granted by the trial court. The landlord's appeal challenging the order passed under Section 11(2)(b) of the Act was also dismissed by affirming the findings of the Rent Control Court.

11. We have heard Sri. George Poonthottam, the learned Senior Counsel, instructed by Adv.Alex M. Scaria and Sri. T. Sethumadhavan, the learned Senior Counsel instructed by Adv. Abu Mathew for the respondent.

12. Sri. George Poonthottam, the learned Senior Counsel, argued that the withdrawal of the earlier rent control petition that sought eviction on the ground of bona fide need definitely had an impact on the present petition claiming bona fide need, and that aspect has not been considered properly by the courts below. According to the learned Senior Counsel, his claim of bona fide need must be taken as abandoned by the withdrawal of the earlier petition, and no cause of action can be said to be surviving for filing the second rent control petition. The learned Senior Counsel further argues that the details of the proposed business were not stated in the petition, preventing the tenant from meeting the same. He also argues that the finding under Section 11(2)(b) that the plea of enhanced rent by an oral agreement having been found against the same should also reflect on the claim of bona fide need alleged by the landlord. The learned Senior



Counsel also relied on the judgment of this Court in **Mariyam v. Vijayarajan [2015 (1) KLT 341]**, and **Muhammed Master v. Abu Haji [1981 KLT 578]** for the proposition that the abandonment of the earlier petition was fatal and not pressing of the earlier case should be taken as withdrawal of the claim founded on those allegations.

13. Sri.T. Sethumadhavan, the learned Senior Counsel, on the other hand, defended the orders of the authorities below and submitted that the landlord had clearly pleaded in his petition about the filing of the earlier case and also the reason for withdrawing the same. It is also his argument that the present need or the claim cannot be said to be not maintainable because of the earlier withdrawal. He also argued that on the basis of the evidence of RW1 itself, it was clear that he had other businesses and that his business in the petition schedule room was not the main source of income, and that he has not even made enquiries about the availability of other rooms for shifting the business. According to the learned Senior Counsel, the commission report also shows that the other rooms available with the landlord were unsuitable for starting the proposed business. He finally argues that the findings of fact entered into by the authorities are all based on evidence that requires no interference.

14. After hearing the learned Senior Counsel on either side and perusing the available records, we cannot agree with the submissions made by the learned Senior Counsel for the tenant. The withdrawal of the earlier case was mentioned in the petition itself, and the landlord had clearly



stated that it was on the basis of an oral agreement for the enhancement of rent and also for vacating the premises in the year 2011. It was the landlord's contention that the tenant did not keep his word, and therefore the second rent control petition had to be filed. We find from the petition, which is made available to us by the learned Senior Counsel, that the landlord had clearly averred in the petition about the filing of the earlier case and that there was no suppression of the said fact. The decisions the learned Senior Counsel relied on to say that the earlier withdrawal affects the maintainability of the second petition are all rendered in entirely different contexts and not applicable to the present fact situation. There is no permanence attached to the abandonment of the earlier rent control petition nor any decision made or any claim considered in the said petition. The judgment in **Muhammed Master** (supra) was in connection with the withdrawal of an election petition with a consequence and permanence, unlike the withdrawal of a claim in a rent control petition alleging bona fide need, which can be a recurring cause of action. We find that the Appellate Authority has considered the above issue from the correct perspective, and the same does not call for any interference.

15. We also cannot agree with the learned Senior Counsel's submission that alternate buildings were available with the landlord in view of the factual findings rendered by the courts below on the basis of the commission report, which clearly showed that the alternate buildings did not have road access and were situated behind the petition schedule building and were smaller in size. The choice of the landlord in these



situations must be upheld, and the tenant cannot be allowed to dictate as to where or in what manner the landlord proposes to conduct his business. There is no case for the tenant that the dependent, on whose behalf the present petition is filed, has any other independent avocation. After appreciation of the pleadings and evidence adduced, both the authorities have concluded that the need alleged is bona fide, and we find no reason to differ from the findings so arrived.

16. Regarding the second proviso, both the courts had found on the basis of the evidence of RW1 itself that the tenant had other business and income, and therefore there was no material to show that the income from the business carried on in the petition schedule building was the only source of livelihood for the tenant. Regarding the second limb, namely the availability of other rooms in the locality, RW1's evidence showed that he had not made any serious enquiries in that regard. The finding of the authorities below on the question of the second proviso is only to be affirmed, and we do so.

17. In the light of the above findings, we hold that the view taken by the authorities below is based on the pleadings and the evidence adduced. The mere fact that another view is also possible cannot be a ground to interfere with the concurrent findings of fact in revisional jurisdiction under S.20 of the Act.

18. For the reasons mentioned above, we do not find any merit in the



revision, which is accordingly dismissed. At this juncture, the learned counsel for the revision petitioner sought a reasonable time to vacate.

Having considered the rival submissions and taking into account the facts and circumstances of the case, we deem it appropriate to grant six months' time, subject to the following conditions:

“(i) The respondent-tenant 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 he will surrender vacant possession of the petition schedule building to the petitioner-landlord within six months from the date of this order and that, he shall not induct third parties into possession of the petition schedule building, and further he shall conduct any business in the petition schedule building only on the strength of a valid licence/permission/ consent issued by the local authority/statutory authorities;

(ii) The respondent-tenant 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 month, without any default;

(iii) Needless to say, in the event of the respondent-tenant 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 building will stand cancelled automatically, and the



landlord will be at liberty to proceed with the execution of the order of eviction. ”

SD/-

A.K. JAYASANKARAN NAMBIAR
JUDGE

SD/-

MOHAMMED NIAS C.P.,
JUDGE

okb/