



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

WEDNESDAY, THE 12TH DAY OF MARCH 2025 / 21ST PHALGUNA, 1946

RCREV. NO. 165 OF 2024

AGAINST THE JUDGMENT DATED 25.03.2024 IN RCA NO.8 OF 2020
OF ADDITIONAL DISTRICT COURT & MOTOR ACCIDENT CLAIMS TRIBUNAL ,
NORTH PARAVUR ARISING OUT OF THE ORDERDATED 18.02.2021 IN RCP
NO.28 OF 1997 OF MUNSIF COURT,ALUVA

REVISION PETITIONER/RESPONDENT/RESPONDENT:

P.M.ISMAIL
AGED 69 YEARS
S/O MAMMU, BOMBAY HARDWARES, PALACE ROAD, MUNICIPAL
WARD XVIII, ROOM NO.462, ALUVA KARA, ALUVA PAKUTHI
PIN - 683108

BY ADVS.
MEENA.A.
KURIAN ANTONY EDASSERY
VINOD RAVINDRANATH
K.C.KIRAN
M.R.MINI
ANISH ANTONY ANATHAZHATH
THAREEQ ANVER K.
NIVEDHITHA PREM.V



RESPONDENTS/APPELLANTS/PETITIONERS:

- 1 **ABBAS**
 AGED 61 YEARS
 S/O HYDROSE, THEMBADATH BUILDINGS, TASS ROAD, ALUVA
 KARA, ALUVA VILLAGE, ALUVA TALUK (NOW RESIDING AT
 MANA LANE THOTTAKKATTUKARA, ALUVA), PIN - 683108

- 2 **ABDUL SALIM @ SALIM**
 AGED 58 YEARS
 S/O HYDROSE, THEMBADATH BUILDINGS, TASS ROAD, ALUVA
 KARA, ALUVA VILLAGE, ALUVA, PIN - 683101

BY ADVS.
SADCHITH P KURUP
C.P.ANIL RAJ(K/872/2007)
SIVA SURESH(K/2688/2022)
B.SREEDEVI(K/169/2024)
ATHIRA VIJAYAN(K/199/2024)

THIS RENT CONTROL REVISION HAVING COME UP FOR HEARING ON
04.03.2025, THE COURT ON 12.03.2025 PASSED THE FOLLOWING:

**CR****ORDER****P. Krishna Kumar, J.**

In this revision petition, the tenant challenges the findings of the Rent Control Appellate Authority that the respondent-landlord is entitled to get vacant possession of the petition-scheduled building as per Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 ('the Act', for short). By the impugned order, the Appellate Authority set aside the order of dismissal of the eviction petition by the Rent Control Court.

2. Respondents are the owners of the petition scheduled building which was rented out to the petitioner by their predecessor-in-interest. Respondents contended that the first among them has no



job and hence he wants to start a business in Hardware in the petition scheduled room. It was resisted by the petitioner by contending that the landlords are in possession of several other vacant rooms which are more convenient for starting the said business.

3. The eviction petition was filed in the year 1997 under Section 11(2)(b) and 11(3) of the Act. The Rent Control Court had dismissed the petition finding that the landlords have no bonafides. On appeal, the Rent Control Appellate Authority found in favour of the landlords and ordered eviction. This finding was reversed by the High Court and the case was remanded back to the trial court for taking fresh evidence as regards certain subsequent events viz., the landlords obtained vacant possession of three shop rooms followed by the eviction order in R.C.P. No.19/1992. After considering the fresh evidence, the Rent Control Court again found that the landlords were not entitled to get eviction as they were in possession of other vacant



rooms which they rented out subsequently. The Rent Control Appellate Authority again set aside this finding and remanded back the matter for fresh disposal, on taking additional evidence. This time, an Advocate Commissioner was appointed by the trial court to inspect the petition-scheduled building and the other rooms. Accordingly, Ext.C1 report was filed by the Commissioner. The Commissioner was also examined as a witness.

4. The third time as well, the Rent Control Court dismissed the case. The court found that:

“11. It is stated by PW1 that he need a room having an area of 400 to 500 sq.feet for starting hardware business. It is for that reason the case was remanded back to this court to take out a commission and enable both parties to adduce evidence restricted to appointment of the commissioner. After remand PW4 inspected the spot and filed Ext.C2 and C2(a) showing the area of petition schedule building and three other rooms which the petitioners got vacant possession after the disposal of RCP No.19/92. As per Ext.C1 the



petition schedule building is having a total area of 647.52 Sq. feet. Room in RCP No. 19/92 has a total area of 482.93 Sq. feet. The room occupied by Sri. Reji is having an area of 206.81 Sq. feet. The rooms in RCP 19/92 and the room occupied by Sri.Reji earlier are having a total area of 689.74 Sq. feet. Those rooms are lying nearby facing the road. Petitioners have no case that those rooms cannot be combined. On a perusal of Ext. C1 it can be seen that those three rooms are having more area than petition schedule room and that can be combined together to conduct a hardware shop. There is no explanation from the side of the petitioners why they did not occupying those three rooms which are having more area than the petition schedule building, even after getting vacant possession. If the petitioners actually require the vacant possession of the rooms for the bonafide need of the first petitioner they would have definitely started the business on getting vacant possession of the other rooms. Ext.B10 strengthens the case of the respondent in that regard. It is also admitted by PW1 that two rooms in the first floor of the building became vacant consequent to the filing of RCP 5/2005 and those rooms were in their possession. It is subsequently those rooms were let out to tenants.”



5. Once again this order was challenged before the Rent Control Appellate Authority. Through a well-considered order, the Appellate Authority found that the tenant failed to prove the existence of any circumstances for invoking the first proviso to Section 11(3) and that the landlords bonafide required vacant possession of the petition-scheduled building for their own occupation. In the present revision petition, the tenant challenges these findings by contending that Ext.C1 Commission report conclusively shows that the landlords are in possession of some other vacant rooms having more extent than the petition scheduled shop room and thus their claim is not genuine.

6. We heard the learned counsel appearing for the petitioner and the respondents.

7. After considering the impugned judgment and the order passed by the learned Rent Control Court, in the light of the records available before us, we find no reason to upset the order of the Rent Control Appellate



Authority. As rightly observed by the Appellate Authority, the basic substratum of the findings of the Rent Control Court is that the landlords subsequently obtained possession of three rooms together having a combined area of 689.74 sq.ft. which is larger than the petition-scheduled building. The Court reached its pivotal conclusion i.e., the landlords have no bonafides, based on a finding that if these three rooms were combined into a single hall (by removing the walls separating them), the landlords could have started the proposed Hardware business in the said building. We are absolutely unable to accept the said proposition. The landlords being the best Judges of their cause, neither the tenant nor the court is expected to command them that they should alter the structure of the vacant rooms in their possession to suit them for starting the proposed business. The conversion of a building, as mentioned above, may involve significant financial commitments and could also impact its structural



integrity. These considerations might have deterred the landlords from undertaking such modifications. Matters of this nature should fall within the exclusive domain of the landlord, and the court should refrain from delving into such areas.

8. No doubt, those matters could have been brought to the attention of the landlord during the trial, to testify the veracity of the claim of bonafide requirement. The landlords may have several justifications for not using the vacant building. Apart from that, as correctly observed by the Appellate Authority, the Commissioner reported that the petition scheduled shop room is more suitable for starting the Hardware business than the vacant rooms obtained by the landlords followed by the eviction order in R.C.P.No.19/1992.

9. Another conclusion of the trial court is that two rooms on the first floor of the building became vacant subsequent to the filing of R.C.P.No.5/2005, but



the landlords let out the same to certain other tenants. First of all, those rooms are on the first floor and hence it cannot be compared with the petition scheduled building situated on the ground floor, facing the road. Further, the tenant did not succeed in showing that the said rooms are sufficient and suitable to accommodate the proposed need.

10. However, it is contended by the tenant that the finding of the Appellate Authority - that the crucial period for determining the landlord's bona fide need is the date on which the eviction petition was filed - is erroneous. True, there are exceptions to the general rule that the rights and obligations of the parties are to be determined as they were when the lis commenced. While it is correct to say that the landlord's requirement must continue throughout the litigation and exist on the date of the order of the final Court, the true test for assessing the impact of subsequent events



on such requirements is a different aspect. Only those subsequent events which completely eclipse the need of the landlord, are decisive for overturning the eviction order, if any, already passed. If that is not the situation, the court can proceed on the basis of the aforesaid general rule.

11. In this case, the need of the landlords cannot be said to be completely eclipsed because of the subsequent event. They subsequently obtained possession of a building that could be used for their proposed purpose only if the rooms were combined together by removing the partition walls. Thus, it cannot also be considered as a factor affecting their bonafides.

12. If, in order to defend the claim of the landlords, the tenant alleges that the landlords subsequently obtained possession of a suitable vacant building, the onus lies on the tenant to establish it. It appears that the trial court proceeded on the



assumption that the entire burden of proof to show that it was not suitable, rested on the landlords. If the crucial finding on which the decision of the court is based arises from a misplaced burden of proof, that alone is sufficient to overturn the verdict by the appellate court.

13. All the above aspects completely justify the findings of the Appellate Authority that the landlords bona fide require the vacant possession of the tenanted premises. The Rent Control Court and the Appellate Authority concurrently found that the tenant is not entitled to get the protection of the second proviso to Section 11(3). In view of the above discussion, we find no reason to interfere with the eviction order passed by the Rent Control Appellate Authority.

14. In the result, the revision petition is dismissed. However, the petitioner is permitted to continue their occupation in the petition schedule



building for a further period of four months on the following conditions:

(i) The petitioner 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 shop room to the respondents-landlords within four months from the date of this order and that, he shall not induct third parties into possession of the petition schedule shop room.

(ii) The petitioner 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 one month from the date of receipt of a certified copy of this order, and shall continue to pay rent for the succeeding months, without any default;

(iii) Needless to say, 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 landlords will be at liberty to proceed with the execution of the order of eviction.

Sd/-

A. MUHAMED MUSTAQUE

JUDGE

Sd/-

P. KRISHNA KUMAR

JUDGE