



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 9TH DAY OF APRIL 2025 / 19TH CHAITHRA, 1947

RCREV. NO. 180 OF 2024

AGAINST THE JUDGMENT DATED 15.12.2023 IN RCA NO.3 OF
2020 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT - II,
KASARAGOD / II ADDITIONAL MACT, KASARAGODE ARISING OUT OF THE
ORDER DATED 04.12.2019 IN RCP NO.4 OF 2017 OF MUNSIF COURT,
HOSDRUG

REVISION PETITIONER/APPELLANT/PETITIONER:

T.V.BABU
AGED 60 YEARS
'THUSHARA', AANIKKADI, PALA IN KODAKAD VILLAGE OF
HOSDURG TALUK, KASARAGOD DISTRICT. (REPRESENTED BY
PA HOLDER, BINDU BABU P V, AGED 49 YEARS,
W/O.T.V.BABU, ELECTION IDENTITY CARD NO.JWB1537331,
'THUSHARA', AANIKKADI, PALA IN KODAKAD VILLAGE OF
HOSDURG TALUK, KASARAGOD DISTRICT, PIN - 671315

BY ADVS.
ARUN KRISHNA DHAN
T.K.SANDEEP
ARJUN SREEDHAR
ALEX ABRAHAM
SWETHA R.
HARIKRISHNAN P.B.
GOWRI MENON



RESPONDENT/RESPONDENT/RESPONDENT:

**BEENA.K.P
AGED 46 YEARS
'SHIMATTY VASTHRALAYAM, NEAR CHERUVATHUR BUS STAND
IN CHERUVATHUR VILLAGE, HOSDURG TALUK, KASARAGOD
DISTRICT, PIN - 671313**

BY ADV JAWAHAR JOSE

**THIS RENT CONTROL REVISION HAVING COME UP FOR HEARING ON
02.04.2025, THE COURT ON 09.04.2025 PASSED THE FOLLOWING:**

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

The landlord who filed an eviction petition under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 ('the Act', for short) suffered an adverse finding by the Rent Control Court and the Rent Control Appellate Authority concurrently, is before us by invoking the revisional jurisdiction of this Court under the Act.

2. The contention of the landlord was that he *bona fide* needed the vacant possession of the shop room rented out to the tenant on 28.04.2006, for the occupation of his dependent son, for starting a computer-related business. Both the courts concurrently found that the need projected by the landlord was *bona fide*. However, they found that the



landlord was in possession of certain other rooms in the shopping complex owned by him, which also housed the petition-scheduled shop room. It is also found that the landlord failed to show any special reasons for getting the eviction order, in view of the first proviso to Section 11(3) of the Act.

3. We have heard Sri.Arun Krishna Dhan, the learned counsel appearing for the petitioner and Sri.Jawahar Jose, the learned counsel appearing for the respondent.

4. Ordinarily, this Court will be very slow in interfering with the concurrent findings of fact entered into by the Rent Control Court and the Rent Control Appellate Authority, while invoking its power under Section 20 of the Act. However, in this case, when we analysed the impugned orders, it was found that the enquiry conducted by both the courts was completely misdirected. The burden of proof of establishing the basic elements of the first proviso



to Section 11(3) of the Act is indisputably upon the tenant. Further, this Court in **Kakkottakath Puthiyapurayil Muhammad Ali and Others v. Kakkottakath Puthiyarambath Mahamood and Others** (2022(4) KLT 221) held that it is obligatory on the part of the tenant to specifically plead and prove the identity of the vacant buildings in the possession of the landlord if he wants to get the advantage of the first proviso to Section 11(3) of the Act. The Court followed the earlier decision of the High Court of Kerala in **Dineshan Pillai P.B. v. Joseph** (2019(3) KHC 206) while arriving at the above finding. The Court also observed that it is not incumbent upon the landlord to disclose in his pleadings the availability of other vacant buildings in his possession. It is beneficial to quote the relevant findings in the said decision:

“8. In **Vasanth Mallan v. N.S. Aboobacker Siddique** [2020 (1) KHC 21] the question that arose before a Division Bench of this Court was whether a landlord is



bound to plead under the first proviso to Section 11(3) of the Act, the availability of vacant building in his possession and seek to explain special reason for non-occupation of such premises, in a proceeding initiated for eviction of the tenant under Section 11(3) of the Act. The Division Bench held that the initial burden to prove that the landlord is in possession of vacant building, if any, is only upon the tenant unless the landlord himself admits any such vacant building to be in his possession. Only when the primary burden of proof in this behalf is discharged by the tenant, the burden shifts to the landlord to show otherwise or that the vacant premises are not suited to his needs. It is up to the tenant alone to take up the contention and prove that landlord is in vacant possession of the premises.

9. In *Vasantha Mallan*, relying on the law laid down by the Apex Court in *M.L. Prabhakar* [(2001) 2 SCC 355] the Division Bench held that, it is not incumbent on the landlord to disclose in his pleading the availability of vacant building in his possession. The non-disclosure of vacant premises cannot be picked up as a reason or circumstance to doubt the bona fides of the claim of the landlord put forward under Section 11(3) of the Act. It is not obligatory for the landlord to disclose in his pleadings the details of the vacant buildings available in his possession. Nor does the first proviso to Section 11(3) of the Act insist the landlord to plead that the buildings available in his possession are not sufficient to meet his requirements.

10. In *Dineshan Pillai P.B. v. Joseph @ Jose* [2019 (3) KHC 206] a Division Bench of this Court was dealing with a case in which one of the contentions of the tenant was that, the landlord has several other vacant buildings of his own, in his possession, to



start the proposed business. The Division Bench noticed that, the pleadings are very vague with respect to the first proviso to Section 11(3) of the Act. It is stated that the landlord has several other buildings. No particular vacant room has been identified or pointed out in the pleadings. The Division Bench opined that, it is obligatory on the part of the tenant to plead and prove the identity of the vacant building in the possession of the landlord. In the absence of specific pleadings, disclosing the identity of the vacant building in the possession of the landlord, it can be said that the tenant has not discharged the initial burden of proof under the first proviso to Section 11(3) of the Act.

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13. In Ext.P2 counter, the tenant has stated that the landlord and her husband have several other vacant buildings in the locality for starting a provision store. No particular vacant room, allegedly in possession of the landlord or her husband, has been identified or pointed out in Ext.P2 counter filed in the RCPs. It is obligatory on the part of the tenant to plead and prove the identity of the vacant building in the possession of the landlord, in order to attract the first proviso to Section 11(3) of the Act. Therefore, in the absence of specific pleadings in Ext.P2 counter disclosing the identity of any vacant building in the possession of the landlord, it can only be said that the tenant has not discharged the initial burden of proof under the first proviso to Section 11(3) of the Act."

(Emphasis added)

The Court further held that unless the tenant discloses the identity of the vacant buildings



allegedly in the possession of the landlord, he could not even be permitted to take out a commission for local inspection.

5. The pleadings of the tenant in the present case are almost identical. It is relevant to reproduce paragraphs 6 and 8 of the counter filed by the respondent:

“6. It is respectfully submitted that the petition scheduled room is part of a huge shopping complex, by name Thushara Shopping Complex belonging to the petitioner. There are three floors for the said building including the basement. There are about 30 rooms in the said shopping complex out of which the petition schedule room is situate in the ground floor. The petitioner himself is in possession of some portion of the said building where he is conducting a super market by name Thushara Super Market which is being managed by the petitioner's son. The petitioner is also conducting a business in grocery in retail and wholesale in the same building under the name and style “Thushara Traders”. The petitioner is employed under the Government of Qatar and he is permanently



there in connection with his employment. Hence the entire business establishments at Cheruvathur belonging to the petitioner are managed by his son. Hence the contention that the son of the petitioner has no other avocation is absolutely incorrect.

8. There are many vacant rooms which are suitable for computer business in the very same building belonging to the petitioner, where the petition schedule premises are situate. The petitioner has inducted new lessee in the building which is Vijaya Bank after the sending of registered notice to the respondent. The said rooms are more than sufficient for accommodating the alleged business projected in the petition. The petitioner also has in his possession vacant buildings at Chanadukkam near to his house."

(emphasis added)

The concurrent finding was rendered on the basis of the above pleadings. The entire enquiry conducted by the Rent Control Court was seemingly under the assumption that it was the burden of the landlord to prove that there were no vacant rooms in her possession. At one point, the Rent Control Court even



went on to hold that "So, the burden is upon the petitioner to show that there are no vacant rooms suitable for his purpose in his possession and that even if there is any such room, he needs the petition schedule room for special reasons. Here the petitioner has not pleaded about the possession of other rooms in the same building."

6. Both the authorities placed heavy reliance on the extract of the building register from the Grama Panchayath concerned, which shows that certain rooms are in the possession of the landlord. Mere production of a record from the local authority does not relieve the burden of the tenant. It is well-settled law that the admissibility of a document in evidence and the proof of its contents or the truth of the facts stated in it are entirely different and distinct aspects. What is required to be proved by the tenant to attract the first proviso to Section 11(3) of the Act is the physical existence of a



vacant building in the possession of the landlord. Even if it is noted in the register maintained by the local authority that a particular building is in the vacant possession of the landlord, that would not amount to proof of the fact that the said building was actually vacant and the same was in the possession of the landlord. Such facts are to be proved through direct evidence or in the other manner permitted under the Indian Evidence Act/Bharatiya Sakshya Adhinyam.

7. Interestingly, in the present case, the landlord took out a commission to show that rooms in the shopping complex owned by him were not vacant. However, the Rent Control Court did not act upon the said evidence on the ground that the Commissioner did not inspect all the rooms in the said complex.

8. Both the authorities gave much emphasis on the admission made by PW1, the wife of the landlord, that she is in possession of certain other shop rooms



in the shopping complex other than the rooms in which a supermarket is being run by the landlord. However, we find no reason to uphold this finding. PW1 specifically stated in the chief affidavit as well as during cross-examination that she and her husband are conducting a supermarket and a trading business in the said shopping complex in different rooms and the licence for the said business was taken in her name. The said statement has no relevance in the present enquiry as the burden of the tenant is to show that the landlord was in vacant possession of another building/rooms of his own, at the time when the eviction petition was filed.

9. In view of the above discussion, we find sufficient reasons to interfere with the concurrent finding of facts entered into by both the authorities. As it is concurrently found that the landlord *bona fide* needs the vacant possession of the tenanted premises, the eviction petition is only to



be allowed, as the tenant failed to prove that there are no other vacant buildings in the nearby locality to shift her business.

10. In the result, the revision petition is allowed. The petitioner is entitled to get vacant possession of the petition-scheduled building as per Section 11(3) of the Act. However, we grant six months' time to the tenant to vacate the said premises on the following conditions:

(i) The respondent 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 she will surrender vacant possession of the petition-scheduled shop room to the petitioner-landlord within six months from the date



of this order and that, she shall not induct third parties into possession of the petition-scheduled shop room.

(ii) The respondent 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 every succeeding month, 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-scheduled shop room will stand cancelled automatically, and the



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

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

Sd/-

P.KRISHNA KUMAR

JUDGE

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