



2024:KER:91929

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

MONDAY, THE 2ND DAY OF DECEMBER 2024 / 11TH AGRAHAYANA, 1946

RCREV. NO. 228 OF 2024

AGAINST THE JUDGMENT DATED 31.08.2024 IN RCA NO.54 OF
2023 OF II ADDITIONAL RENT CONTROL APPELLATE AUTHORITY / II
ADDITIONAL DISTRICT COURT, KOZHIKODE ARISING OUT OF THE ORDER
DATED 28.02.2023 IN RCP NO.10 OF 2020 OF MUNSIF-MAGISTRATE
COURT, THAMARASSERY

REVISION PETITIONERS/APPELLANTS/RESPONDENTS:

- 1 MAYA M.T.
AGED 73 YEARS
W/O. LATE PARAMESWARAN NAMBEESAN, MANJU VIHAR, NEAR
KARADI U.P. SCHOOL, THAMARASSERY P.O., KOZHIKODE,
PIN - 673573
- 2 BINJUSH NAMBEESAN
AGED 44 YEARS
S/O. LATE PARAMESWARAN NAMBEESAN, MANJU VIHAR, NEAR
KARADI U.P. SCHOOL, THAMARASSERY P.O., KOZHIKODE,
PIN - 673573
- 3 RANJUSHA
AGED 42 YEARS
D/O. LATE PARAMESWARAN NAMBEESAN, MANJU VIHAR, NEAR
KARADI U.P. SCHOOL, THAMARASSERY P.O., KOZHIKODE,
PIN - 673573



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BY ADVS.
T.KABIL CHANDRAN
R.ANJALI

RESPONDENT/RESPONDENT/PETITIONER:

NADUKKANDY P.C. ASHRAF
AGED 70 YEARS
S/O. MAMUHAJI, VAVAD AMSOM, PORGONTTOOR DESOM,
THAMARASSERY P.O., KOZHIKODE, PIN - 673573

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION
ON 02.12.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

The tenants who suffered an order of eviction under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 ('the Act', for short) challenge the concurrent findings of the Rent Control Court and the Appellate Authority, by invoking the revisional jurisdiction of this court.

2. The short facts which are necessary for the disposal of this case are as follows:

The landlord-respondent purchased the tenanted premises on 04/03/1995. The predecessor-in-interest of the tenants-revision petitioners was inducted into the said building by the prior owner as his tenant, and the tenancy continued despite the death



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of the original tenant. The landlord requires the vacant possession of the tenanted building for the bona fide occupation of his dependent son. The tenants objected to the petition for eviction, contending that the need projected was not genuine.

3. We heard the learned counsel appearing for the petitioners as well as the respondent.

4. It is forcefully submitted by the learned counsel for the petitioners that the predecessor-in-interest of the petitioners was a commercial tenant and thus the petitioners are entitled to get protection under Section 106 of the Kerala Land Reforms Act (for short, KLR Act). It is argued that there was a specific contention in the written objection that the original tenancy was commenced on 18/08/1961 in between the predecessors of both sides and the original tenant had reconstructed the petition scheduled building by using his own money with the consent of the prior owner for conducting business in Pooja articles. According to the learned



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counsel, the courts of the first and second instances omitted to note the relevance of the said legal question even though the first revision petitioner had given oral evidence as RW1 to prove the said contentions. It is further urged that the matter should have been taken out of the precincts of the Rent Control Court considering the second proviso to section 11(1) of the Act, in the light of the above-mentioned pleadings.

5. We cannot accept these contentions for the apparent reason that the revision petitioners failed to plead the claim of permanent tenancy in specific and explicit terms. The pleadings regarding the denial of title or the claim for permanent tenancy must be clear, specific, and unequivocal, without which the Rent Control Court cannot assess whether the said contention was raised in good faith or was merely a pretext for eviction. Although the strict rules of pleadings may not apply with full force to rent control proceedings, when the statute imposes a



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duty on the court to examine the genuineness of the claim before making a crucial decision, the party who wishes to invoke the said remedy must plead it with certainty and particularity.

6. In **Abdul Hakkim v. Shazam Abdul Majeed (2017 (5) KHC 538)**, this Court faced a similar situation. As in the present case, the concurrent findings of the rent control authorities were challenged before this court by filing a revision petition on the ground that the question of denial of title was not properly addressed by the courts of first and second instances. It is then held that such a contention has to be explicitly raised.

7. Apart from that, we find no merit in the contention raised by the learned counsel for claiming protection under the second proviso to Section 11(1) of the Act based on the abovementioned allegations. The landlord can be relegated to a civil court only if the respondent in the eviction proceedings denies in good faith the title of the



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landlord or otherwise claims permanent tenancy. To avail the protection under Section 106 of the KLR Act, the respondent in the eviction proceedings must plead and establish two essential conditions: (i) that they were granted a lease of **the land** (not a building) for commercial or industrial purposes, and (ii) that subsequent to the grant of the lease, they constructed a building or structure on the land for the said purpose, before 20/05/1967. These twin conditions are indispensable for invoking the provisions of Section 106 of the KLR Act. In the absence of a specific contention to this effect, the Rent Control Court is not obligated to examine the applicability of the second proviso to Section 11(1) of the Act. Our observations are reinforced by the legal principles enumerated in **Chandy Varghese v. Abdul Khader [(2003) 11 SCC 328]** and **Abdul Rehiman v. Iype (1965 KHC 69)**. In fact, what is pleaded by the petitioners is contrary to the said requirements. According to them, their predecessor-



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in-interest, the late Parameswaran Nambeesan, was *inducted into the building* by the prior owner of the building on 18/08/1961 and later *the building* was reconstructed by Parameswaran Nambeesan using his own money.

8. Though the learned counsel appearing for the petitioners raised certain feeble contentions to assail the eviction order passed under Section 11(2) (b) and 11(3) of the Act, we find no reason to evaluate the correctness of those findings on facts. In **Ubaiba v. Damodaran [(1999) 5 SCC 645]** the Honourable Apex Court held that the power of revision under Section 20 of the Act should not be exercised to reappraise the evidence and to substitute an independent conclusion in place of the conclusions arrived at by the Rent Control Court/Appellate Authority. In the absence of any material to show that there is perversity or gross irregularity in the findings of the Courts of the first and second instances, this court is not



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expected to reconsider the correctness of the concurrent factual findings as to the bona fide need projected by the landlord or the questions relating to arrears of rent.

9. In such circumstances, this Rent Control Revision Petition is dismissed. However, considering the fervent plea made by the learned counsel for the petitioners, six months' time is granted to the petitioners to surrender vacant possession of the petition schedule shop room to the respondent, subject to the following conditions:

- (i) The respondents 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



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will surrender vacant possession of the petition schedule shop room to the petitioner-landlord 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 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 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



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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 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**