

S.R. BABU

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v.

T.K. VASUDEVAN AND ORS.

SEPTEMBER 4, 2001

[SYED SHAH MOHAMMED QUADRI AND S.N. PHUKAN, JJ.]

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Kerala Buildings (Lease and Rent Control) Act, 1965:

*Ss. 11(8) and 11(10), first proviso—Landlord filing eviction petition on grounds of **bona fide** requirement for personal occupation u/s. 11(3)—Bona fide requirement for personal occupation after reconstruction u/s. 11(8); and for reconstruction after demolition of portion for more beneficial use u/s. 11(4) (iv)—Rent Controller ordering eviction u/s. 11(3) and rejecting other grounds—Appeal of tenant dismissed by appellate authority but allowed in revision by District Judge—High Court setting aside order of District Judge and restoring that of Rent Controller—Held, case falls under sub-section (8) and not under sub-section (3) of s. 11 as landlord in occupation of a part of building and tenant occupying another part thereof—Once it is held that landlord requires additional accommodation for his personal use, he is entitled to utilise it as it exists or after necessary repairs, additions or alterations to best suit his requirement—Finding recorded by original authority as affirmed by appellate authority and High Court is that landlord **bona fide** needs the premises for his personal use, a **fortiori** he requires additional accommodation for his personal use—However, while making an order u/s. 11(8), a finding under first proviso to sub-section (10) of s.11 is also to be recorded; and as this has not been done, matter is remitted to Rent Controller to consider whether the requirement of said proviso is satisfied, if so, to record a finding thereunder.*

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Ss. 11(3) and (8)—Distinction between—Explained.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6304 of 2001.

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From the Judgment and Order dated 20.5.98 of the Kerala High Court in O.P. No. 2249 of 1994-P.

M.P. Vinod for the Appellant.

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A T.L.V. Iyer, Subramonium Prasad, Ms. Astha Tyagi and S.N. Jha for the Respondents.

The following Order of the Court was delivered:

Leave is granted.

B The appeal is directed against the order of the High Court of Kerala at Ernakulam in O.P.No. 2249 of 1994 dated May 20, 1998.

The appellant is the tenant of respondent No.1 in respect of premises, Ward No. 28, Changanacherry (hereinafter referred to as 'the suit premises').

C The first respondent filed eviction petition (R.C.P. No.11 of 1983) against the appellant in the court of the Rent Controller, Kottayam, on three grounds: (i) *bona-fide* requirement for personal occupation-under Section 11(3) of the Kerala Buildings (Lease & Rent Control), 1965 (Act 2 of 1965) (for short 'the Act'); (ii) *bona-fide* requirement for personal occupation after reconstruction-under Section 11(8) of the Act; and (iii) under Section 11(4)(iv)
D of the Act stating that he intends to demolish and reconstruct the portion for his more beneficial use. The appellant denied *bona fide* requirement of the first respondent and contested the eviction petition on all the three counts.

The learned Rent Controller rejected the claim of the respondent under sub-section (8) of Section 11 as also under clause (iv) of sub-section (4) of Section 11 of the Act. However, he ordered eviction under sub-section (3) of Section 11 holding that bona fide requirement of the first respondent was proved. The findings of the learned Rent Controller were upheld by the Appellate Authority in the appeal, filed by the appellant herein, and the appeal was dismissed on June 23, 1987. The appellant carried the matter in revision before the Additional District Court, Kottayam. The learned Additional District Judge on re-appreciating the evidence held that the bona fide requirement of the first respondent was not proved and reversed the order of the Appellate Authority, on that ground, by allowing the revision on October 18, 1993. The first respondent challenged the said order of the learned Additional District Judge by an application under Article 227 of the Constitution, O.P. No. 2249 of 1994, before the High Court of Kerala at Ernakulam. The High Court set aside the order of the learned Additional District Judge in RCRP No. 16/87 and restored the order of the Appellate Authority in RCA Nos. 16 and 17 of 1985 confirming the order of the Rent Controller in RCP 11/83 dated January 30, 1985. The O.P. was thus allowed
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H on May 20, 1998. It is the correctness of that order which is assailed in this

appeal.

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Mr. M.P. Vinod, the learned counsel for the appellant, contends that as the first respondent intends to occupy the suit premises not in its present form but after reconstruction, so it cannot be said that he *bona fide* requires the suit premises.

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Mr. S. Prasad, the learned counsel for the first respondent, contends that as all the courts below except the Additional District Court found the need of the respondent for the suit premises for his personal occupation is *bona fide* it is immaterial whether he utilises it as it is or repairs or reconstructs the same to suit his requirements.

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On the above contentions the questions that arises for our consideration is: whether the requirement of the suit premises by the appellant for personal use implies its use not only in the existing condition but also on making necessary repairs to or reconstruction of the same.

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Before proceeding further it will be useful to notice the distinction between sub-sections (3) and (8) of Section 11 of the Act. It is necessary to refer to them here:

“(3). 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:

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Provided that 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.

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Provided further that 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.

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Provided further that no landlord whose right to recover possession arises under an instrument of transfer *inter vivos* shall be entitled to

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A apply to be put in possession until the expiry of one year from the date of the instrument.

B Provided further that if a landlord after obtaining an order to be put in possession transfers his rights in respect of the building to another person, the transferee shall not be entitled to be put in possession unless he proves that he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him."

C A plain reading of the provision, quoted above, shows that it enables a landlord to seek eviction of a tenant from the demised building if he *bona fide* needs the building for his own occupation or for the occupation of any dependent member of his family. The option available to a landlord under sub-section (3) is hedged around with conditions contained in the four provisos that follow it to prevent its misuse. The first proviso prohibits the court from passing an order of eviction in a case where the landlord is occupying another building of his own except when for special reasons the Rent Controller is satisfied that it will be just and proper to order eviction. The second proviso contains a prohibition addressed to the Rent Controller that he shall not pass an order of eviction from the building against a tenant who is depending for his livelihood mainly on the income derived from any trade or business carried on in that building and there is no other suitable buildings available in the locality for the tenant to carry on such trade or business. The third and the fourth provisos place embargo on a transferee landlord. A landlord who acquires title to the building under an instrument of transfer inter vivos cannot, in view of the third proviso, invoke sub-section (3), until the expiry of one year from the date of the instrument. The fourth proviso precludes a transferee landlord from taking advantage of the order of eviction secured by his transferor under sub-section (3) against the tenant of the building unless the transferee proves his bona fide need of the building for his own occupation or for the occupation by any member of his family dependent on him.

G Sub-section (8) of Section 11 reads thus:

H "A landlord who is occupying only a part of a building, may apply to the Rent Control Court for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he required additional accommodation for his personal use."

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A perusal of sub-section (8) makes it clear that to invoke this sub-section the landlord must show that : (i) he is occupying only a part of the building; (ii) the tenant is occupying the whole or a portion of the remaining part; and (iii) the landlord requires the additional accommodation for his personal use.

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The following is the distinction between sub-section (3) and sub-section (8) of Section 11 of the Act. The former provision applies when the building is wholly occupied by the tenant and the landlord *bona fide* needs the building for his own occupation or for the occupation by any member of his family dependent on him provided he does not have any building of his own in his possession in the same city, town or village whereas the latter provision C
applies when a landlord is already in occupation of a portion of the building and needs additional accommodation which the tenant is occupying, for his personal occupation.

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In the instant case admittedly the first respondent is in occupation of a part of a building and the appellant is occupying another part of the building which the first respondent requires as additional accommodation for his personal use. Therefore, this case falls under sub-section (8) of Section 11 and not under sub-section (3) of Section 11 of the Act.

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In our view, once it is held that the landlord requires additional accommodation for his personal use he is entitled to utilise it to best suit his requirement. The condition in which the additional accommodation is to be used by the landlord cannot be dictated by the tenant. The first respondent may use it as it exists or he may use it after necessary repairs, additions or alterations to suit his requirements. The appellant has no say in such matters.

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The finding recorded by the Original Authority which is confirmed by the Appellate Authority, as also by the High Court, is that the first respondent *bona fide* needs the suit premises for his personal use, *a fortiori* he requires additional accommodation for his personal use.

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In connection with an order under sub-section (8), sub section (10) of Section 11 of the Act needs to be noticed :

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“(10). The Rent Control Court Shall, if it is satisfied that the claim of the landlord under sub-sections (3), (4), (7) or sub-section (8) is *bona fide*, make an order directing the tenant to put the landlord in possession of the building on such date as may be specified by the

A Rent Control Court, and if the Court is not so satisfied, it shall make an order rejecting the application :

Provided that, in the case of an application made under sub-section (8), the Rent Control Court shall reject the application if it is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord.

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Provided further that the Rent Control Court may give the tenant a reasonable time for putting the landlord in possession of the building and may extend such time so as not to exceed three months in the aggregate.

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It provides that if the Rent Controller is satisfied that the claim of the landlord under sub-sections (3), (4), (7) or (8) is *bona fide*, he has to make an order directing the tenant to put the landlord in possession of the building. However, the first proviso says that the Rent Controller shall reject the application, if he is satisfied that the hardship which may be caused to the tenant by granting the application, will outweigh the advantage to the landlord. Inasmuch as the authorities below, having proceeded on the footing that sub-section (3) of Section 11 of the Act is attracted, have not recorded a finding under the first proviso to sub-section (10) of Section 11 of the Act, it is necessary that the case should be sent back to the Rent Controller to consider whether requirement of the said proviso is satisfied and if so, to record a finding thereunder, after hearing the parties.

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We, therefore, allow the appeal, remand the case to the Rent Controller for considering whether the requirement of the first proviso to sub-section (10) of Section 11 of the act is satisfied and for passing appropriate orders on the eviction petition (R.C.P.No. 11 of 1983), on the basis of the finding arrived at, thereunder, in accordance with law.

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The appeal is disposed of accordingly. No costs.

R.P.

Appeal disposed of