

KIZHAKKAYIL SUHARA AND ORS.

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v.

MANHANTAVIDA ABOOBACKER (D) BY LRS. AND ANR.

SEPTEMBER 26, 2001

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

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*Rent and Eviction :*

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

*S.11(3), first proviso—Application for eviction of tenant on ground of bona fide need—Premises required by landlord for setting up business of his daughter and son-in-law—Application allowed—Plea raised by tenant that daughter and son-in-law of landlord have other non-residential and residential buildings—Matter remitted to Rent Control Appellate Authority (District Judge) to decide the question: Can landlord be said to need the building bona fide if it is meant for occupation of his married daughter who owns residential and non-residential buildings?*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1329 of 1997.

From the Judgment and Order dated 11.10.96 of the Kerala High Court in C.R.P. No. 95 of 1995-E.

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E.M.S. Anam for the Appellants.

T.L.V. Iyer, S. Prasad, S.N. Ojha, Ms. Asha Tyagi and Abhay Kumar for the Respondents.

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The following Order of the Court was delivered :

In this appeal, by special leave, the order of the High Court of Kerala in C.R.P. No. 95 of 1995 dated October 11, 1996, is brought under challenge.

The appellants are the tenants of a shop room. The original tenant died and the appellants are his legal representatives (hereinafter they are referred to as "the tenants"). The respondents are the landlords. They filed an application under sub-section (3) of Section 11 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short 'the Act') for eviction of the tenants on the ground that they *bona fide* need the premises for setting up business of their

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A daughter and son-in-law who are dependent on them. The tenants contested the petition denying that the daughter and son-in-law are not dependent on the respondent. The tenants also denied the *bona fide* requirement of the landlords. The learned Rent Controller having considered the material placed on record found that the need of the landlords was *bona fide* and accordingly ordered eviction of the tenants on December 21, 1993. An appeal against the said judgment was unsuccessful before the Rent Control Appellate Authority (District Judge), Thalassery. The appeal having been dismissed on November 17, 1994, the tenants filed a revision petition vide C.R.P. No. 95 of 1995 in the High Court of Kerala which was also dismissed by the impugned order.

C The short question that arises for consideration in this appeal is whether the respondents *bona fide* need the demised premises.

The respondents filed petition for eviction of the appellant under Section 11(3) of the Act which is set out hereunder :

D “11(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;

E 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;

F 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 suitable building available in the locality for such person to carry on such trade or business;

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|----------|------|------|------|
| Provided | xxxx | xxxx | xxxx |
| Provided | xxxx | xxxx | xxxx |

H A plain reading of the provision of sub-section (3) of Section 11 shows that it enables a landlord to seek possession of the building from his tenant by

making an application to the Rent Control Court if he *bona fide* needs the building for his own occupation or for the occupation by a member of his family dependent on him. The sub-section takes note of not only *bona fide* need of the landlord but also the need of the members of his family dependent on him. Where the landlords *bona fide* needs the building not for his own occupation but for occupation of a member of his family, it must be shown that such a member of his family is dependent on him. The mandate of the first and the second provisos is directed to the Rent Control Court. The first proviso directed Directed 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, for special reasons, in any particular case, that it will be just and proper to do so, it has to record the special reasons. The legislative mandate contained the second proviso is not to 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. The third and the fourth provisos are not relevant for the present discussion.

The question now urged before us, namely, whether the daughter and son-in-law of the landlords, with three children, living separately, could be said to be dependent on the landlords was not put in issue in the Trial Court nor was it urged before the Appellate Court or the High Court. We cannot, therefore, permit Mr. Inam to raise it for the first time in this Court.

The next point urged by Mr. Inam is that the daughter of the respondents are having other non-residential and residential buildings of her own and therefore they are not entitled to the benefit of eviction of the building in view of the first proviso to sub-section (3) of Section 11. This plea also cannot be entertained because as pointed out by Mr. Iyyer no such plea was urged before the Rent Control Authorities or the High Court.

The case throughout proceeded on the ground whether the landlords needed the premises *bona fide*. On this ground we have heard the learned counsel for the parties. We are of the view that if the need of the landlords for his own occupation has to be *bona fide* so also need of the members of the family of the landlord dependent on him and should satisfy the test of being *bona fide*. In the instant case, it has to be determined whether the need of the daughter and son-in-law of the landlords who own non-residential as well as residential buildings, can be said to be *bona fide*. Mr. Iyyer submits that this

- A** aspect was not adverted to in earlier stages of the proceedings. Inasmuch as the parties did not address their arguments on this aspect of the matter, we consider it just and appropriate to remand the case to the Rent Control Appellate Authority (District Judge) to give opportunity to the parties of being heard and decide the question : Can the respondents be said to need the building *bona fide* if it is meant for the occupation of their dependent married daughter who owns residential and non-residential buildings?
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- In this view of the matter the order under challenge is set aside. R.C.A. No. 88 of 1994 is restored to the file of the Appellate Authority for being disposed of in accordance with law. It is needless to mention that the Appellate Authority shall dispose of the case expeditiously.
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The appeal is accordingly allowed. No costs.

R.P.

Appeal allowed.