

AKKANISSERY GOVINDAN NAMBIAR

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v.

KARIYATH RAGHAVAN

AUGUST 19, 1998

[DR. A.S. ANAND AND V.N. KHARE, JJ.]

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*Rent and Eviction :*

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

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*S. 11(3) proviso—Non-residential premises—Eviction of tenant on ground of bonafide requirement to set up grocery trade for son of landlord—Pending proceedings another room vacated nearby by another tenant—Tenant pleading that due to the premises so vacated the ground of bonafide requirement no longer available—Appellate authority allowing application of landlord holding that the room vacated was not suitable for grocery trade and could not said to be an alternative accommodation—High Court rejecting landlord's application holding that landlord could meet the requirement after reconstruction/renovation of the room vacated during the proceedings—Held, requirement of law is that the building which has been vacated should be of such a character which would meet the requirements without reconstruction/renovation—The very fact that the premises which fell vacant during the pendency of proceedings have been found by final fact finding authority to be such as not to be suitable for proposed business would be a special reason within the meaning of the proviso—Order of High Court set aside and that of appellate authority restored.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9862 of 1996.

From the Judgment and Order dated 8.3.95 of the Kerala High Court in C.R.P. No. 2517 of 1994.

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Vipin Nair and K.M.K. Nair for the Appellant.

Romy Chacko and Ramesh Babu M.R. for the Respondent.

The following Order of the Court was delivered :

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A Appellant is the landlord. Respondent is the tenant. Appellant sought eviction of the tenant on the ground that the premises were required for the bonafide need of the son of the landlord to start his business in those premises. Initially the petition of the landlord was dismissed and even the appellate authority concurred with the Rent Controller. The main reason for arriving at the concurrent findings was that the landlord had not stated in his petition the exact nature of the business which was required to be carried out by his son in the premises in dispute. The High Court on a revision filed by the landlord, remanded the case to the appellate authority for deciding the appeal afresh, keeping in view the *bona fide* need of the landlord as pleaded by him.

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C The appellate authority, after remand, found that the landlord's need to accommodate his son, Jayarajan, for the *bona fide* need for starting grocery business was established. However, while the matter was pending before the appellate authority, after remand, it appears, that the landlord got vacant possession of another premises situate adjacent to the petition schedule building belonging to him. On this ground, the tenant advanced a plea based on the proviso to Section 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965 before the appellate authority and urged that since another premises was available to the landlord, his genuine need could be met by use of those premises and the ground of *bona fide* need, to have the tenant evicted, was no longer available to him. The appellate authority with a view to determine the effect of subsequent development appointed a Commissioner to conduct spot inspection of both the premises to find out if the building which had been vacated during the pendency of the proceedings before the appellate authority, was or was not suitable for the proposed business of the son of the landlord Jayarajan. The Local Commissioner submitted his report to which both sides filed objections. The appellate authority after taking into account the counter filed by the landlord and the report of the Local Commissioner arrived at the conclusion.

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G *"from the above it looks that the building they got vacated is not constructed as one fit for doing grocery trade".*

The appellate authority also opined -

H *"hence the room got vacated cannot be an alternative to the rooms in the possession of the tenant. The building got vacated cannot be*

*said to be suitable for the proposed business."*

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The tenant took the matter to the High Court through a revision petition. The learned Division Bench of the Kerala High Court by its order dated 8th March, 1995 allowed the revision petition and set aside the judgment of the appellate authority. The landlord is in appeal by special leave.

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There is no dispute that during the pendency of the eviction proceedings before the appellate authority another premises belonging to the landlord fell vacant of which he took possession. It is also not disputed that the premises which fell so vacant are adjacent to the premises which are under occupation of the tenant. The appellate authority on a consideration of the material on the record, including the report of the Local Commissioner, came to the conclusion that the building which had fallen vacant during the pendency of the proceedings, *was not fit for doing grocery trade* and, therefore, it could not be said that the said premises were suitable for the proposed business of the son of the landlord. This finding of fact was negated by the Division Bench of the High Court by opining that the drawbacks found in the premises which had been vacated during the pendency of the proceedings before the appellate authority -

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*"can easily be remedied by the landlord as the cost of providing such a roof ceiling may not be substantial when he proposes to make a good investment for starting a new grocery shop".*

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We are afraid this reasoning does not appeal to us to non-suit the landlord. Requirement of law is that the building which has been vacated should be of such a character which would meet the requirements of the landlord and not that the building which fell vacant could meet his requirements after reconstruction/renovation etc. The proviso to Section 11(3) which read thus : -

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"11. Eviction of tenants (1)

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xxxx                      xxx                      xxx

(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

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A him;

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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When read in conjunction with sub-section (3) of Section 11, unambiguously shows that the Rent Control Court shall not give directions for eviction of the tenant, 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". The very fact that the premises which fell vacant during the pendency of the proceedings have been found by the appellate authority, the final fact finding authority, to be such as not to be suitable for the proposed business of grocery would be a "special reason" within the meaning of the proviso and the High Court, therefore, fell in error in construing the proviso otherwise. In our opinion the order of the appellate authority was well merited and sound and should not have been interfered with. The impugned order of the High Court under the circumstances cannot be sustained. We, accordingly, set it aside and restore that of the appellate authority. The appeal succeeds and is allowed. No costs.

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Learned counsel for the tenant submits that the tenant has been in occupation of the premises for more than two decades and sufficient time may be granted to him to vacate and handover the premises so that in the meantime he may look for some alternative accommodation. Learned counsel for the appellant does not oppose the grant of some reasonable time to the tenant. We, in the facts and circumstances of this case, grant time to the tenant to vacate and handover the vacant possession of the premises on or before 31st January, 1999 on tenant's filing the usual undertaking in this Court within four weeks.

G R.P.

Appeal allowed.