

Pradeepkumar vs Faysal Rahman

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SooperKanoon Citation : sooperkanoon.com/1452861

Court : Kerala

Decided On : Feb-17-2022

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : RCRev./72/2021

Appellant : Pradeepkumar

Respondent : Faysal Rahman

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR THURSDAY, THE 17TH DAY OF FEBRUARY 2022 / 28TH MAGHA, 1943 R.C.REV. NO. 71 OF 2021 AGAINST THE JUDGMENT DATED 19.10.2020 IN R.C.A.NO.33 OF 2018 OF THE RENT CONTROL APPELLATE AUTHORITY (ADDITIONAL DISTRICT JUDGE), TIRUR AND AGAINST THE ORDER DATED

07.03.2018 IN R.C.P.NO.12 OF 2015 OF THE RENT CONTROL COURT (MUNSIFF), PONNANI REVISION PETITIONER: VADAKAYIL

ABUBACKER AGED 55 YEARS, S/O.MOIDUNNY, FRUIT SHOP, OLD PRADEEKSHA BUILDING, P.O. ERAMANGALAM, PONNANI TALUK, PIN-679 587. BY ADVS. T.I.ABDUL SALAM SMT.P.S.SREEVIDYA SMT.K.R.MONISHA RESPONDENT: FAYSAL RAHMAN KOZHAKKANIYIL, S/O.P.K. ABU, P.O. ERAMANGALAM, PONNANI TALUK, PIN-679 587. BY ADV SRI.C.M.MOHAMMED IQUABAL THIS RENT CONTROL REVISION HAVING COME UP FOR FINAL HEARING ON 10.02.2022, ALONG WITH R.C.Rev.NO.72 OF 2021 AND CONNECTED CASES, THE COURT ON 17.02.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR THURSDAY, THE 17TH DAY OF FEBRUARY 2022 / 28TH MAGHA, 1943 R.C.REV. NO. 72 OF 2021 AGAINST THE JUDGMENT DATED 19.10.2020 IN R.C.A.NO.37 OF

2018 OF THE RENT CONTROL APPELLATE AUTHORITY (ADDITIONAL DISTRICT JUDGE), TIRUR AND AGAINST THE ORDER DATED 07.03.2018 IN R.C.P.NO.9 OF 2015 OF THE RENT CONTROL COURT (MUNSIFF), PONNANI REVISION PETITIONER: PRADEEPAKUMAR, AGED 45 YEARS, S/O. CHANDRASEKHARAN, INDIAN TYRE WORKS, OLD PRADEEKSHA BUILDING, P. O. ERAMANGALAM, PONNANI TALUK, PIN-679587. BY ADVS. T.I.ABDUL SALAM SMT.P.S.SREEVIDYA SMT.K.R.MONISHA RESPONDENT: FAYSAL RAHMAN KOZHAKKANIYIL, S/O. P.K.ABDU, P.O.ERAMANGALAM, PONNANI TALUK, PIN - 679587. BY ADV SRI.C.M.MOHAMMED IQUABAL THIS RENT CONTROL REVISION HAVING COME UP FOR FINAL HEARING ON 10.02.2022, ALONG WITH R.C.Rev.NO.71 OF 2021 AND CONNECTED CASES, THE COURT ON 17.02.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR THURSDAY, THE 17TH DAY OF FEBRUARY 2022 / 28TH MAGHA, 1943 R.C.REV. NO. 73 OF 2021 AGAINST THE JUDGMENT DATED 19.10.2020 IN R.C.A.NO.34 OF 2018 OF THE RENT CONTROL APPELLATE AUTHORITY (ADDITIONAL DISTRICT JUDGE), TIRUR AND AGAINST THE ORDER DATED 07.03.2018 IN R.C.P.NO.13 OF 2015 OF THE RENT CONTROL COURT (MUNSIFF), PONNANI REVISION PETITIONER: JITHESH AGED 47 YEARS, S/O.K.V.CHANDRAN VYDIAR, VYDIAR SHOP, OLD PRADEEKSHA BUILDING, P.O., ERAMANGALAM, PONNANI TALUK, PIN-679 587 (RESIDING AT VAKKAKATU HOUSE, AYIRUR AMSOM, KOTTATHUR DESOM, PONNANI TALUK) BY ADVS. T.I.ABDUL SALAM SMT.P.S.SREEVIDYA SMT.K.R.MONISHA RESPONDENTS: 1 FAYSAL RAHMAN KOZHAKKANIYIL S/O.P.K.ABDU,P.O. ERAMANGALAM, PONNANI TALUK, PIN-679 587. 2 JISHI D/O.K.V.CHANDRAN VYDIAR, OLD PRADEEKSHA BUILDING, P.O. ERAMANGALAM, PONNANI TALUK, PIN 679 587, RESIDING AT VAKKEKKATU HOUSE, AYIRUR AMSOM, KOTTATHUR DESOM, PONNANI TALUK. 3 JYOTHI W/O.JENNER, PAYITHRA HOUSE, ESWARAMANGALAM P.O., KOTTATHARA, PONNANI TALUK PIN 679 587 BY ADV SRI.C.M.MOHAMMED IQUBAL THIS RENT CONTROL REVISION HAVING COME UP FOR FINAL HEARING ON 10.02.2022, ALONG WITH R.C.Rev.NO.71 OF 2021 AND CONNECTED CASES, THE COURT ON 17.02.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR THURSDAY, THE 17TH DAY OF FEBRUARY 2022 / 28TH MAGHA, 1943 R.C.REV. NO. 75 OF 2021 AGAINST THE JUDGMENT DATED 19.10.2020 IN

R.C.A.NO.30 OF

2018 OF THE RENT CONTROL APPELLATE AUTHORITY (ADDITIONAL DISTRICT JUDGE), TIRUR AND AGAINST THE ORDER DATED 07.03.2018 IN R.C.P.NO.8 OF 2015 OF THE RENT CONTROL COURT (MUNSIFF), PONNANI REVISION PETITIONER: P.KESAVAN AGED 32 YEARS, S/O.ADIMA, TAILOR SHOP, OLD PRADEEKSHA BUILDING, P.O.ERAMANGALAM, PONNANI TALUK, PIN - 679 587. BY ADVS. T.I.ABDUL SALAM SMT.P.S.SREEVIDYA SMT.K.R.MONISHA RESPONDENT: FAYSAL RAHMAN KOZHAKKANIYIL AGED 59 YEARS S/O.P.K.ABU, P.O.ERAMANGALAM, PONNANI TALUK, PIN - 679 587. BY ADV SRI.C.M.MOHAMMED IQUABAL THIS RENT CONTROL REVISION HAVING COME UP FOR FINAL HEARING ON 10.02.2022, ALONG WITH R.C.Rev.NO.71/2021 AND CONNECTED CASES, THE COURT ON 17.02.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDHAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR THURSDAY, THE 17TH DAY OF FEBRUARY 2022 / 28TH MAGHA, 1943 R.C.REV. NO. 79 OF 2021 AGAINST THE JUDGMENT DATED 19.10.2020 IN R.C.A.NO.32 OF 2018 OF THE RENT CONTROL APPELLATE AUTHORITY (ADDITIONAL DISTRICT JUDGE), TIRUR AND AGAINST THE ORDER DATED 07.03.2018 IN R.C.P.NO.7 OF 2015 OF THE RENT CONTROL COURT (MUNSIFF), PONNANI REVISION PETITIONER: P.KUNHIMOHAMMED AGED 45 YEARS, S/O.PANANGAVIL MOIDUNNI MUSLIYAR, SAVARI CYCLE SHOP, OLD PRADEEKSHA BUILDING, P.O. ERAMANGALAM, PONNANI TALUK, PIN- 679 587. BY ADVS. T.I.ABDUL SALAM SMT.P.S.SREEVIDYA SMT.K.R.MONISHA RESPONDENT: FAYSAL RAHMAN KOZHAKKANIYIL, S/O.P.K.ABU, P.O.ERAMANGALAM, PONNANI TALUK, PIN-679 587. BY ADV C.M.MOHAMMED IQUABAL THIS RENT CONTROL REVISION HAVING COME UP FOR FINAL

HEARING ON 10.02.2022, ALONG WITH R.C.Rev.NO.71 OF 2021 AND CONNECTED CASES, THE COURT ON 17.02.2022 DELIVERED THE FOLLOWING:

ORDER

Ajithkumar, J.

These revision petitions arose from a set of connected rent

control petitions on the files of the Rent Control Court (Munsiff), Ponnani. There were eight rent control petitions, which were tried jointly and disposed of by a common order dated 07.03.2018. All the rent control petitions were allowed, ordering eviction. The respective tenants filed appeals before the Rent Control Appellate Authority (Additional District Judge), Tirur under Section 18(1)

(b) of the Kerala Buildings (Lease and Rent Control) Act, 1965.

The appeals were heard together and dismissed as per a common judgment dated 19.10.2020. Five among the tenants preferred these revision petitions, invoking the jurisdiction of this Court under Section 20 of the Act.

2. Necessary details are tabulated below for easy reference: R.C.Rev.No. R.C.A.No. R.C.P.No. Name of the petitioner-tenant 71 of 2021 33 of 2018 12 of 2015 Vadakayil Abubacker

72 of 2021

37 of 2018

9 of 2015

Pradeepkum

3. The landlord (Faysal Rahman) is the respondent in

all the revision petitions; in R.C.R.No.73 of 2021 besides him, two co-tenants are also respondents; namely, respondent Nos.2 and 3. The building in question abuts Guruvayoor- Ponnani National Highway. There are 14 rooms in the building. Before initiating the rent control proceedings, the respondent-landlord got vacant possession of four rooms. After initiation of the proceedings, one more tenant surrendered vacant possession of another room to the respondent. Two rent

control petitions, namely, R.C.P.Nos.5 of 2015 and 13 of 2016, were filed against the same tenant, who was in occupation of two rooms under a single tenancy. The

order of eviction in the said rent control petitions, as well as

R.C.P.No.10 of 2015 became final. Therefore, reference needs be had to the details of the five rent control petitions pertaining to these revision petitions alone.

4. The respondent-landlord filed the rent control

petitions for eviction under Sections 11(3), 11(4)(ii) and 11(4)(v) of the Act which was resisted by the respective petitioners-tenants filing counter statements. At the joint trial, the Rent Control Court recorded oral testimony of PW1 and PW2 on the respondents' side and RW1 on the petitioners' side. RW1 is the petitioner in R.C.Rev.No.79 of 2021. It is seen that he gave evidence for and on behalf of other tenants as well. Documents marked are Exts.A1 to A7, B1 to B5(d) and C1 to C6. The Rent Control Court, after such trial, ordered eviction under Section 11(3) of the Act alone. The Appellate Authority confirmed the said orders.

5. Similar are the contentions of the landlord in all the rent control petitions, which are as follows:

6. He along with another person has been conducting

business in the solar panels at Kodungallur. With the help and assistance of his two children and a nephew, Sri.Kabeer, he proposes to start a business of sale and service of solar panels on a large scale, making use of all the fourteen rooms of the building in question. He has no other building suitable for the purpose.

7. The respective petitioners-tenants resisted the rent

control petitions raising more or less identical contentions. Their common contentions are that the respondent-landlord has no intention to start such a business and the need projected is not bonafide. He could have used the vacant rooms already with him for the business, if he really wanted to start such a business. He has many vacant rooms in his possession. The tenants are

depending solely on the income derived from their business in the respective petition schedule shop rooms for their livelihood. No other suitable alternative room or building is available in the locality for shifting their business.

8. Some of the tenants further raised a contention

that the land, where the building in question is situated, is a paddy field and it was reclaimed without obtaining any permission from the authorities. Therefore, the building itself is an illegal structure. The petitioner in R.C.Rev.No.72 of 2021 further contended that the actual tenant in the petition schedule shop room is not he, but one Mr.Sreenivasan.

9. On 09.04.2021, when these petitions came up for

consideration, all the revision petitions were admitted directing notice to the respondents. Execution of the orders of eviction was stayed by way of an interim order. The order of stay initially granted till 20.05.2021 has been extended from time to time.

10. Heard the learned counsel appearing for the petitioners and also the learned counsel appearing for the respondent-landlord.

11. The petitioners were asked to surrender vacant

possession of the respective petition schedule shop rooms under Section 11(3) of the Act. The need urged by the respondent-landlord is that he with the assistance of his two sons and a nephew wants to start a business of sales and service of solar panels and accessories in a large scale. He proposes to import solar panels and accessories from Germany. He, along with one Sudhi, as partners, has been

conducting the business of sale and service of solar panels at Kondungallur since 2014. Sri.Sudhi has an import licence and on the strength of the same, they have been importing solar panels for the purpose of their business at Kodungallur. Business in the similar lines is proposed to be started in the petition schedule rooms by the respondent with the assistance of his sons and a nephew.

12. The respondent-landlord is PW1. He deposed in

detail regarding the proposed business being started in the petition schedule shop rooms. It is his version that solar panels are proposed to be imported from Germany. Extensive area is required for exhibition of solar panels and various accessories, and therefore, he intends to make use of all the fourteen rooms for the business. It is his idea to induct his two sons, who are working abroad, and a nephew, PW2, in the business. Only on getting all the rooms vacant, he would be able to start the business as he envisages.

13. PW2, Sri.Kabeer, deposed that his uncle, PW1, agreed to include him also in the business proposed to be

started in the petition schedule shop rooms. He would state that he is a dependent of PW1 and it is for his livelihood to join with PW1 in the business. He also stated that it was PW1, who bore the entire expense required for the business.

14. While the learned counsel appearing for the

respondents would contend that the oral evidence let in through PWs.1 and 2 and the documents brought on record sufficiently proved that the need is bonafide, the learned counsel appearing for the petitioners submitted that for more than one reason, the need urged by the respondent lacks bonafides, but the courts below without properly appreciating the evidence entered a wrong finding that the need was bonafide. The learned counsel for the petitioners raised a prognostic contention that the petitions for eviction are not maintainable, inasmuch as the very construction of the building comprising the petition schedule shop rooms is illegal. It is alleged that the building was constructed in a wetland without getting any permission from the authorities for reclamation and conversion of the wetland into dry land.

15. The petitioner in R.C.Rev.No.79 of 2021 is RW1. He

deposed that the building was constructed illegally in a wetland. As against the version of RW1, PW1 deposed that the land was reclaimed decades ago, at the time of his purchasing the property the building was already 35 years old and, therefore the construction cannot be said to be illegal. Oral evidence may not have

much relevance with respect to that aspect.

16. The respondent purchased the property along with

the building in question by virtue of Ext.A1, sale deed. It is dated 23.05.2013. It can be seen from Ext.A1 that the respondent purchased the landed property along with an existing building. Of course, the tenure of the land has been shown as wetland. As far as this rent control proceedings are concerned, the said fact has no much relevance. If the construction is not legal, it is a matter to be dealt with under the provisions of Kerala Conservation of Paddy Land and Wetland Act, 2008. It is for the respondent-landlord to face the consequences, if any. That cannot be a reason to say that

the claim of the respondent who is the landlord, a fact which is beyond dispute now, for eviction of the tenants from the building is not bonafide. Therefore, the said contention of the petitioners regarding maintainability of the petitions is untenable.

17. Ext.A4 is the deed of partnership as per which the

respondent along with Sri.Sudhi is conducting the business in solar panels at Kodungallur. The learned counsel appearing for the petitioners would submit that by virtue of clause 11 in Ext.A4 the respondent is not entitled to commence a new venture in the same field in any way competing with the firm business and therefore his claim for eviction for the reason that he wants the petition schedule rooms for starting such a business cannot be said to be a genuine one. Even if he obtained all the rooms, he would not therefore be able to start the business.

18. The terms in a deed of partnership are parts of a

contract between the partners of the firm. Any prohibition or bar for one of the partners to start another business of similar nature is a matter of concern of such a partner. That is not a

bar created by law. It is a matter of contract. It may be correct that, if a partner in violation of such a restrictive term in the deed starts a fresh business in the same

field, the respondent would be violating the provisions of the deed. The other partner alone has a cause to espouse the grievance. In any view of the matter that cannot be a reason for disallowing the plea for eviction by the erring partner. The tenants cannot be heard to contend that for that reason the need projected by the landlord is not bonafide.

19. Section 11 of the Act deals with eviction of tenants.

As per Section 11(1), notwithstanding anything to the contrary contained in any other law or contract a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Act. As per Section 11(3) of the Act, 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. As per the first

proviso to Section 11(3), 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. As per the second proviso to Section 11(3), 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.

20. In *Adil Jamshed Frenchman v. Sardur Dastur*

Schools Trust [(2005) 2 SCC 476] the Apex Court reiterated that, as laid down in *Shiv Samp Gupta v. Dr. Mahesh Chand Gupta* [(1999) 6 SCC 222] a bona fide requirement must be an outcome of a sincere and honest desire in contradistinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the

premises for himself or for any member of the family which would entitle the landlord to seek ejectment of the tenant. The question to be asked by a judge of facts by placing himself in the place of the landlord is whether in the given

facts proved by the material on record the need to occupy the

premises can be said to be natural, real, sincere and honest. The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. As reiterated in Deena Nath v. Pooran Lal [(2001) 5 SCC 705] bona fide requirement has to be distinguished from a mere whim or fanciful desire. The bona fide requirement is in praesenti and must be manifested in actual need so as to convince the court that it is not a mere fanciful or whimsical desire.

21. In Ammu v. Nafeesa [2015 (5) KHC 718] a

Division Bench of this Court held that, it is a settled proposition of law that the need put forward by the landlord has to be examined on the presumption that the same is a genuine one, in the absence of any materials to the contra. In

Gireeshbabu T.P. v. Jameela and others [2021 (5) KHC SN 30] this Court reiterated that in order to satisfy the requirement of Section 11(3) of the Act, a bona fide need must be an outcome of a sincere and honest desire of the landlord in contradistinction with a mere pretext on the part of the landlord for evicting the tenant, claiming to occupy the premises for himself or for any member of his family dependent on him. Once, on the basis of the materials on record, the landlord has succeeded in showing that the need to occupy the premises is natural, real, sincere and honest, and not a ruse to evict the tenant from the said premises, the landlord will certainly be entitled for an order of eviction under Section 11(3) of the Act, of course, subject to the first and second provisos to Section 11(3).

22. There are fourteen rooms in the building. Ext.C6,

rough sketch, picturizes the layout of the building and each room. In the index of Ext.C6 it is shown that five rooms are available vacant with the respondent. If it is taken from the north, room Nos.2, 3, 10, 11 and 13 are the vacant rooms.

Even if it is considered that those rooms are vacant and available with the respondent, the same being not adjoining ones, he may not be able to make use of the rooms for the projected purpose. Further, the very case of the respondent-landlord is that in order for housing the large scale business he proposed to start, all the 14 rooms are required. In the matter of utilizing the space belonging to the landlord, the liberty has to be given to him provided, of course, it is not fanciful or a ruse for eviction. We are of the view that availability of five vacant rooms with the respondent would not fetter him claiming eviction of all the tenants on the ground of need he has projected.

23. PW1 asserted that he has business in solar panels

abroad also, apart from his involvement as a partner in the similar business at Kodungallur. The petitioners have not challenged the financial capacity or ability of the respondent to start such a business. RW1 was put to, during cross examination, about those facts, but he feigned ignorance. All the aforesaid evidence and circumstances were taken into

consideration by the courts below. After such detailed

consideration only both the courts arrived at the conclusion

that the need urged by the respondent was bonafide.

24. Yet another contention raised by the learned

Counsel for the petitioners is that the petitioner in R.C.Rev.No.72 of 2021 is not the actual tenant, but one Sri.Sreenivasan is the tenant. It is accordingly contended that an eviction proceedings initiated even without ascertaining the identity of the tenant, deserves only to be dismissed. The said contention will not stand for the simple reason that the petitioner has contested the rent control petitions, carried the matter to the Appellate Authority and further to this Court by filing R.C.Rev.No.72 of 2021. If he is not the tenant what is his interest to take the pains of contesting the matter this far. In the circumstances, we have no hesitation to find that the petitioner Sri.Pradeepkumar is the tenant in the shop room scheduled to R.C.P.No.9 of 2015.

25. As per the second proviso to Section 11(3), 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. A Full Bench of this Court in

Francis v. Sreedevi Varassiar [2003 (2) KLT 230] held

that it is for the tenant to prove both the limbs of the second proviso to Section 11(3) of the Act and that the tenant cannot insist that alternative accommodation should be similar to that of the tenanted premises in terms of the rate of rent and convenience. Following this principle, this Court in Gireeshbabu T.P. (supra) held that both limbs under the second proviso to Section 11(3) of the Act are conjunctive and the burden of proof is on the tenant.

26. With reference to second proviso to Section 11(3)

of the Act, the only evidence adduced is the oral testimony of RW1. He is the petitioner in R.C.Rev.No.79 of 2021. He deposed that he gave evidence on behalf of the respondents- tenants in all the rent control petitions. Having set up a plea

that all of them are entitled to the benefit of the second proviso to Section 11(3) of the Act, it was the burden of each one of them to adduce evidence in support of that plea. The reason may be their ignorance or wrong legal advice. Either be the reason, lack of evidence on that aspect cannot be countenanced at this fag end as a reason for ordering a retrial. A person can give oral evidence in court regarding a fact that is in his personal knowledge and information alone. RW1 deposes that the other tenants also are relying for their livelihood solely on the income derived by them from their business in the respective petition schedule rooms. It is hard to believe that he stated such facts from his personal knowledge. Hence that evidence cannot be acted upon.

27. That apart, oral evidence alone is not sufficient

ordinarily to prove the fact that the tenants are king out their livelihood solely on the income derived from the business in the tenanted premises. Even regarding the income of RW1 from his business, there is no cogent evidence. In these circumstances, we are of the view that the respondents did not prove that the sole source of income for the petitioners livelihood is the income from their business in the respective petition schedule shop rooms.

28. It is true that PW1 did not state positively that

other rooms are available in the locality to avail on rent. The burden to prove that fact is on the tenants. Therefore the failure of PW1 to state about availability of alternative buildings in the locality is not enough to find this point in favour of the tenants. RW1 would not assert even that no other rooms are available in the locality for being taken on rent. In the light of the said evidence, we find that the petitioners did not discharge their burden to prove the requirement of second proviso to Section 11(3) of the Act.

29. Section 20 of the Kerala Buildings (Lease and Rent Control) Act deals with revision. As per sub-section (1) of

Section 20, in cases, where the appellate authority empowered under Section 18 is a Subordinate Judge, the District Court, and in other cases the High Court, may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceedings taken under this Act by such authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings, and may pass such

order in reference thereto as it thinks fit. As per sub-section

(2) of Section 20 of the Act, the costs of and incident to all proceedings before the High Court or District Court under sub- section (1) shall be at its discretion.

30. In Rukmini Amma Saradamma v. Kallyani

Sulochana [(1993) 1 SCC 499], the scope of revisional powers of the High Court under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 came

up for consideration before the Three-Judge Bench of the Apex Court. While considering whether the High Court could have re-appreciated entire evidence, the Apex Court held that, even the wider language of Section 20 of the Act cannot enable the High Court to act as a first or a second court of appeal. Otherwise, the distinction between appellate and

revisional jurisdiction will get obliterated. Hence, the High Court was not right in re-appreciating the entire evidence both oral or documentary in the light of the Commissioner's report. The High Court had travelled far beyond the revisional jurisdiction. Even by the presence of the word propriety it cannot mean that there could be a re-appreciation of evidence. Of course, the revisional court can come to a different conclusion but not on a re-appreciation of evidence; on the contrary, by confining itself to legality, regularity and propriety of the order impugned before it.

31. In *T. Sivasubramaniam v. Kasinath Pujari*

[(1999) 7 SCC 275] the Apex Court held that, the words to satisfy itself employed in Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 no doubt is a power of superintendence, and the High Court is not required to interfere with the finding of fact merely because the High Court is not in agreement with the findings of the courts below. It is also true that the power exercisable by the High Court under Section 25 of the Act is not an appellate power to

reappraise or reassess the evidence for coming to a different finding contrary to the finding recorded by the courts below. But where a finding arrived at by the courts below is based on no evidence, the High Court would be justified in interfering with such a finding recorded by the courts below.

32. In *Ubaiba v. Damodaran* [(1999) 5 SCC 645]

the Apex Court considered the exercise of revisional power by the High Court, under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965, in the context of an issue as to whether the relationship of landlord-tenant existed or not. It was urged that whether such relationship existed would be a jurisdictional fact. Relying on the decision in

Rukmini Amma Saradamma it was contended that, however wide the jurisdiction of the revisional court under Section 20 of the Act may be, it cannot have jurisdiction to re- appreciate the evidence and substitute its own finding upsetting the finding arrived at by the appellate authority. The Apex Court held that, though the revisional power under Section 20 of the Act may be wider than Section 115 of the

Code of Civil Procedure, 1908 it cannot be equated even with the second appellate power conferred on the civil court under

the Code. Therefore, notwithstanding the use of the expression propriety in Section 20 of the Act, the revisional court will not be entitled to re-appreciate the evidence and substitute its own conclusion in place of the conclusion of the appellate authority. On examining the impugned judgment of the High Court, in the light of the aforesaid ratio, the Apex Court held that the High Court exceeded its jurisdiction by re-

appreciating the evidence and in coming to the conclusion

that the relationship of landlord-tenant did not exist.

33. In Hindustan Petroleum Corporation Limited

v. Dilbahar Singh [(2014) 9 SCC 78] a Five-Judge Bench of the Apex Court considered the revisional powers of the High Court under Rent Acts operating in different States. After referring to the law laid down in Rukmini Amma Saradamma the Apex Court reiterated that even the wider language of Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 does not enable the High Court to act

as a first or a second court of appeal. The Constitution Bench agreed with the view of the Three-Judge Bench in Rukmini Amma Saradamma that the word propriety does not confer power upon the High Court to re-appreciate evidence to come to a different conclusion, but its consideration of evidence is confined to find out legality, regularity and propriety of the

order impugned before it.

34. In Thankamony Amma v. Omana Amma [AIR 2019 SC 3803 : 2019 (4) KHC 412] considering the matter in the backdrop of law laid down in Rukmini Amma Saradamma, Ubaiba and Dilbahar Singh the Apex Court

held that the findings rendered by the courts below were well

supported by evidence on record and could not even be said to be perverse in any way. The High Court could not have re- appreciated the evidence and the concurrent findings rendered by the courts below ought not to have been interfered with by the High Court while exercising revisional jurisdiction.

35. Viewed in the light of the above principles of law, we hold that the findings entered into by the courts below

regarding the bonafides of the need urged by the respondent- landlord and he is entitled to get the petitioners evicted from the respective petition schedule shop rooms under Section 11(3) of the Act, are not suffering from any illegality, irregularity or impropriety. In the circumstances, we are of the view that the revision petitions are devoid of any merit and liable to be dismissed.

36. We, accordingly, dismiss all these revision

petitions. The petitioners-tenants are directed to surrender vacant possession of the respective petition schedule shop rooms to the respondent-landlord within a period of two months from today. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE dkr

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