

Johnson, vs Vincy George,

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Court : Kerala

Decided On : Feb-23-2022

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

Appeal No. : RCRev./187/2019

Appellant : Johnson,

Respondent : Vincy George,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR WEDNESDAY, THE 23RD DAY OF FEBRUARY 2022 / 4TH PHALGUNA, 1943 R.C.REV.NO.187 OF 2019 AGAINST THE JUDGMENT DATED 02.02.2019 IN R.C.A.NO.145 OF 2016 OF THE RENT CONTROL APPELLATE AUTHORITY (ADDITIONAL DISTRICT JUDGE), IRINJALAKUDA AND THE ORDER DATED 31.08.2016 IN O.P.(RC) NO.5 OF 2008 OF THE RENT CONTROL COURT (MUNSIFF), CHALAKKUDY REVISION PETITIONER: JOHNSON, AGED 56 YEARS, S/O.ITTEERA, CHERPANATH HOUSE, GOVT.HOSPITAL ROAD,

EAST CHALAKUDY VILLAGE, DESOM, CHALAKUDY TALUK, THRISSUR DISTRICT - 680 307. BY ADVS. P.PAULCHAN ANTONY SRI.S.SUNIL KUMAR (PALAKKAD) RESPONDENT: VINCY GEORGE, AGED 42 YEARS, W/O.GEORGE, THEKKATHALA HOUSE, EAST CHALAKUDY VILLAGE, DESOM, CHALAKUDY TALUK, THRISSUR - 680 307. BY ADVS. M.M.DEEPA P.MAYA THIS RENT CONTROL REVISION HAVING COME UP FOR FINAL HEARING ON 23.02.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Anil K. Narendran, J.

The petitioner is the respondent-tenant in O.P.(RC) No.5

of 2008 on the file of the Rent Control Court (Munsiff), Chalakkudy, a petition filed by the respondent herein-landlady under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, seeking eviction of the tenant from the petition schedule shop room. The bona fide need projected in the O.P.(RC) was that the landlady wanted to start business in ladies items and cosmetics in the petition schedule shop room. Before the Rent Control Court, the tenant opposed the order of eviction by filing counter. On the side of the landlady, Exts.A1 to A7 were marked and she was examined as PW1. On the side of the tenant, Exts.B1 to B3 were marked and he was examined as RW1. The report dated 12.12.2008 of the

Advocate Commissioner was marked as Ext.C1. After considering the pleadings and evidence on record, the Rent Control Court, by order dated 31.08.2016, allowed O.P.(RC) No.5 of 2008, granting an order of eviction under Section 11(3) of the Act and the tenant was directed to surrender vacant possession of the petition schedule shop room to the landlady

within a period of one month. The Rent Control Court found that the need projected in O.P.(RC) for seeking an order of eviction under Section 11(3) of the Act is bona fide; the provisions in the first proviso to Section 11(3) of the Act has

no application; and the tenant is not entitled to the protection of the second proviso to Section 11(3) of the Act.

2. Challenging the order of eviction granted by the

Rent Control Court in O.P.(RC) No.5 of 2008, the tenant filed R.C.A.No.145 of 2016 before the Rent Control Appellate Authority (Additional District Judge), Irinjalakuda, invoking the provisions under Section 18(1)(b) of the Act. That appeal ended in dismissal by the judgment dated 02.02.2019, thereby confirming the order of eviction granted by the Rent Control Court under Section 11(3) of the Act.

3. Challenging the judgment dated 02.02.2019 of the

Appellate Authority in R.C.A.No.145 of 2016, whereby the order

of eviction granted by the Rent Control Court in the order dated 31.08.2016 in O.P.(RC) No.5 of 2008 stands confirmed, the tenant is before this Court in this Rent Control Revision, invoking the provisions under Section 20 of the Act.

4. On 08.07.2019, when this Rent Control Revision came up for admission, this Court issued notice on admission to the respondent-landlady.

5. Heard the learned counsel for the petitioner-tenant and also the learned counsel for the respondent-landlady.

6. The issue that arises for consideration in this Rent

Control Revision is as to whether any interference is warranted on the order of eviction granted by the Rent Control Court under Section 11(3) of the Act and the judgment of the Appellate Authority, whereby the said order stands confirmed.

7. The learned counsel for the petitioner-tenant would

contend that order of eviction granted by the authorities below is per se arbitrary and illegal, which warrants interference in this Rent Control Revision, in exercise of the revisional jurisdiction of this Court under Section 20 of the Act. The contentions raised by the tenant with reference to the provisions under Section 15

of the Act, in view of the order of the Rent Control Court in R.C.P.No.24 of 2004, a petition for eviction initially filed seeking eviction of the petition schedule shop room for the bona fide need of the landlady's husband for

starting an automobile spare parts shop, was not considered appropriately by the authorities below.

8. Per contra, the learned counsel for the respondent-

landlady would contend that the order of eviction granted by the Rent Control Court in O.P.(RC)No.5 of 2008, under Section 11(3) of the Act, which now stands confirmed by the Appellate Authority in its judgment in R.C.A.No.145 of 2016, cannot be said to be either perverse or patently illegal, warranting an interference in exercise of the revisional jurisdiction under Section 20 of the Act. The order of the Rent Control Court in R.C.P.No.24 of 2004 will not attract the provisions of Section 15 of the Act and the contention to the contra raised by the tenant is absolutely untenable.

9. 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.

10. 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.

11. 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.

12. In the instant case, the bona fide need projected in

the O.P.(RC) was that the landlady wanted to start business in ladies items and cosmetics in the petition schedule shop room. The need projected in the O.P.(RC) for seeking an order of eviction under Section 11(3) of the Act is substantiated by the oral testimony of the landlady, who was examined as PW1.

During cross-examination, nothing could be brought out to discredit the oral testimony of PW1. During cross-examination of PW1, the learned counsel for the tenant challenged her previous experience to conduct business in ladies items and cosmetics. As rightly noticed by the Rent Control Court, previous experience to conduct business is not a pre-condition for seeking eviction on the ground of bona fide need, as held by this Court in *Kurian K. Kuriakose v. Usha Cherian* [2008

(1) KLT 739]. After considering the pleadings and evidence on record, the Rent Control Court arrived at a conclusion that the

need projected in the Rent Control Petition for seeking an order

of eviction under Section 11(3) of the Act is bona fide and it is not a ruse to evict the tenant from the petition schedule shop room, for one reason or other. The said finding was confirmed in the judgment of the Appellate Authority in R.C.A.No.145 of

2016. Viewed in the light of the law laid down in the decisions

referred to supra, the reasoning of the Rent Control Court and that of the Appellate Authority cannot be said to be either perverse or patently illegal and it cannot also be said that the authorities below have committed a manifest error while arriving at such a finding.

13. As per the first proviso to Section 11(3) of the Act,

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.

14. In *M.L. Prabhakar v. Rajiv Singal* [(2001) 2 SCC

355] the Apex Court was dealing with a case in which eviction on the ground of bona fide requirement was sought for under Section 14(1)(e) of the Delhi Rent Control Act, 1958. In the said decision, the Apex Court relied on the law laid down

in *Ram Narain Arora v. Asha Rani* [(1999) 1 SCC 141], wherein it was held that the question whether the landlord has any other reasonably suitable residential accommodation is a

question which is intermixed with the question regarding bona

fide requirement. Whether the landlord has any other reasonably suitable residential accommodation is a defence for the tenant. Whether the other accommodation is more suitable than the suit premises would not solely depend upon pleadings and non-disclosure by the landlord. The landlord having another accommodation would not be fatal to the eviction proceedings if both the parties understood the case and placed materials before the court and case of neither party was prejudiced. On the facts of the case on hand, the Apex Court found that, even though the landlord has not mentioned about the other two premises, the material in respect of the other two premises was placed before the Rent Controller as well as before the High Court, thus no prejudice has been caused, and the parties have squarely dealt with this question.

15. In *Vasanthan Mallan v. N.S. Aboobacker*

Siddique [2020 (1) KHC 21] the question that arose before a Division Bench of this Court was whether a landlord is bound to plead under first proviso to Section 11(3) of the Act, the availability of vacant building in his possession and seek to

explain special reason for non-occupation of such premises, in a proceeding initiated for eviction of the tenant under Section 11(3) of the Act. The Division Bench held that the initial burden to prove that landlord is in possession of vacant building, if any, is only upon the tenant unless the landlord himself admits any such vacant building to be in his possession. Only when the primary burden of proof in this behalf is discharged by the tenant, the burden shifts to the landlord to show otherwise or that the vacant premises are not suited to his needs. He can successfully discharge his part of the burden by adducing evidence either through his own testimony or others or in any other legal manner. Law does not require the landlord to plead that he is in possession of any vacant building and has special reasons for its non-occupation. It is up to the tenant alone to take up the

contention and prove that landlord is in vacant possession of premises.

16. In Vasantha Mallan, relying on the law laid down

by the Apex Court in M.L. Prabhakar [(2001) 2 SCC 355] the Division Bench held that, it is not incumbent on the landlord to disclose in his pleadings availability of vacant

building in his possession. The non-disclosure of vacant premises cannot be picked up as a reason or circumstance to doubt the bona fides of the claim of the landlord put forward under Section 11(3) of the Act. The Division Bench made it clear that it is not obligatory for the landlord to disclose in his pleadings the details of the vacant buildings available in his possession. Nor does first proviso to Section 11(3) of the Act insist the landlord to plead that the buildings available in his possession are not sufficient to meet his requirements. These are matters of evidence rather than pleadings. Failure of the landlord to disclose availability of buildings in his possession and plead special reasons for not occupying them, cannot be taken as a valid and legal ground for rejecting the claim of the landlord as not bona fide. What could at the most be said is that it might be a fair and reasonable conduct if the landlord disclosed in his pleadings the details of buildings in his possession and simultaneously explained the reason for non-occupation of the premises for his alleged needs.

17. In the objection filed by the tenant in O.P(RC)No.5 of 2008, there is no specific contention that the landlady is not

entitled to an order of eviction, in view of the first proviso to Section 11(3). In view of the law laid down in the decisions referred to supra, conclusion is irresistible that, the first proviso to Section 11(3) of the Act has no application to the facts and circumstances of the case on hand.

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

Act, 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.

19. In *Ammeer Hamsa v. Ramabhadran and another* [2019 (2) KHC 465] a Division Bench of this Court

held that, it is trite law that both limbs under the second

proviso to Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act are conjunctive and the burden of proof is on the tenant. Thus, the legal position has been settled by a long line of decisions and the courts below have rightly placed reliance upon those decisions. Vide: *Narayanan Nair v. Pachumma* [1980 KLT 430], *Prasannan v. Haris* [2005

(2) KLT 365], *Vineethan v. Fathima and others* [2016 (1)

KHC 631]. In view of the legal position well settled by the aforesaid decisions, the landlord is not required to plead or prove other sources of income of the tenant. That apart, income is a fact which remains exclusively in the knowledge of each person only and another person cannot adduce evidence to prove income. Merely on the reason that the landlord has stated that the tenant has other sources of income and he is not mainly depending upon the income from the business carried on in the tenanted premises, for his livelihood and he failed to prove so, the tenant cannot escape from the burden of proof cast on him under the first limb of the second proviso to Section 11(3) of the Act. Where the statutory provision itself explicitly imposes the burden of proof on a party to the lis, there cannot be any variation whatever be the pleadings of the other party in that respect. The second proviso to Section 11(3) is an exception to the principal provision, granting protection to the tenant. When the second proviso itself imposes the burden of proof on the tenant, the question

whether the landlord has pleaded or proved the facts

constituting the said proviso is insignificant and irrelevant. Even if the landlord pleaded so, the burden of proof will not be shifted to him. Since the second proviso

to Section 11(3) is an exception to the principal provision, which would dis-entitle the landlord to get the order of eviction under Section 11(3), the burden of proof, under the said proviso is always on the tenant and unless the burden of proof under the second proviso is discharged satisfactorily, the tenant is not entitled to get protection under the said proviso to Section 11(3) of the Act.

20. Before the Rent Control Court the tenant contended

that he is solely depending upon the income derived from the business conducted in the petition schedule shop room and that no other suitable rooms are available in the locality to conduct the business. The Rent Control Court appointed an Advocate Commissioner, who submitted Ext.C1 report, after inspecting the petition schedule shop room, with notice to both sides. In the said report, the Advocate Commissioner has reported the existence of a bakery and also the availability of vacant rooms adjacent to the petition schedule shop room. During cross-

examination, the tenant as RW1 admitted the availability of vacant rooms in the locality. However, his grievance was that the landlords of those rooms are demanding rent higher than what is paid to the petition schedule shop room.

21. Insofar as the second limb of the second proviso to

Section 11(3) of the Act is concerned, no reliable materials were placed before the Rent Control Court to prove the income of the tenant derived from the business conducted in the petition schedule shop room. During cross-examination the tenant as RW1 admitted that his children are studying in self- financing Engineering Colleges as well as in private schools. Considering the living standards of the tenant, as borne out from the evidence on record, the Rent Control Court found that there are strong circumstances to believe that the tenant has other source of income, as alleged by the landlady. After considering the pleadings and evidence on record, the Rent Control Court arrived at a conclusion that the tenant failed to prove that he is solely depending upon the income derived from the business conducted in the petition schedule shop room for his livelihood and that there is no other suitable

building in the locality for the tenant to carryout the business conducted in the petition schedule shop room. The Appellate Authority in the judgment in R.C.A.No.145 of 2016 confirmed the aforesaid finding of the Rent Control Court.

22. Viewed in the light of the law laid down in the

decisions referred to supra, the reasoning of the Rent Control Court and that of the Appellate Authority cannot be said to be either perverse or patently illegal and it also cannot be said that the authorities have committed a manifest error while arriving at such a finding.

23. The husband of the landlady had earlier filed

R.C.P.No.24 of 2004 seeking eviction of the petition schedule shop room on the ground of bona fide need. That Rent Control Petition ended in dismissal by Ext.B1 order dated 31.10.2005 of the Rent Control Court, Irinjalakuda. In the said Rent Control Petition, the bona fide need projected is for commencing an auto electronic goods shop and service shop by the husband of the landlady. The Rent Control Court by Ext.B1 order dismissed that Rent Control Petition on a finding that the need projected in that Rent Control Petition is not bona fide. Thereafter, the

landlady acquired right and title over the petition schedule shop room on the strength of Ext.A1 deed dated 26.02.2007 executed by her husband and filed O.P(RC)No.5 of 2008 seeking eviction of the tenant from the petition schedule shop room.

24. As per Section 15 of the Act, decisions which have

become final not to be reopened. The Rent Control Court shall summarily reject any application under sub-section (2), (3), (4), (5), (7) or sub-section (8) of Section 11 which raises between the same parties or between parties under whom they or any of them claim substantially the same issues as have been finally decided or purports to have been finally decided in a former proceeding under this Act or under the corresponding provisions of any law in force prior to the commencement of this Act or the corresponding provisions of any law repealed or superseded by

such law.

25. In *Govindan v. Subaida Beevi* [1997 (1) KLT

910] this Court held that, Section 15 of the Kerala Buildings (Lease and Rent Control) Act, as the side heading indicates, is a provision specifically incorporated to ensure finality of the decisions once rendered under the Act and to prohibit re-opening of such decisions which have become final. The principle underlying the above provision cannot be anything other than the doctrine of *res judicata* partly incorporated in the provisions in Section 11 of the Code of Civil Procedure,

1908. As such it has to be held that the object of the provision

in question and that of Section 11 of the Code is more or less the same, namely, that there should be an end to litigations and no man should be vexed twice over for the same cause, expressed, since ancient times in the Roman Maxims '*interest republicae ut sit finis litium*' and '*memo debat bis vixari pro una at eadem causa*'. Since the legislature has incorporated Section 15 a provision more or less akin to Section 11 of the Code in the Act, which this Court held to be a self contained statute, it is only reasonable to hold that even the general principle of *res judicata* and constructive *res judicata* will apply to the proceedings under the Act only to the extent and subject to conditions incorporated or indicated in Section 15 of the Act and not in toto. Intention of the legislature in incorporating Section 15 of the Act seems to be to add a provision

corresponding to Section 11 of the Code in a modified manner and thus to make the statute a self contained one excluding

impliedly the application of the corresponding provision contained in Section 11 of the Code and the general principles of *res judicata* and constructive *res judicata*. If that was not the idea, the legislature could have very well included Section 11 of the Code also as a provision in Section 23 of the Act along with the other provisions of the Code included therein. As such, in the light of the specific provisions in Section 15 of the Act, it has to be held that neither Section 11 of the Code nor the general principle of *res judicata* and constructive *res judicata* as such

will have application to the proceedings under the Act. As a corollary, it has also to be further held that, in the matter of deciding the question whether an earlier decision rendered in an application filed under sub-sections (2), (3), (4), (5), (7) or (8) of Section 11 of the Act and which has become final would

bar a decision on merit of a later application under any of the said provisions, Section 15 alone will have application to the exclusion of all other provisions of law.

26. In *Mavilattu Shamsudheen v. Thanthonnikka-*

ndiyil Balan Nair @ Narayanan Nair [2014 (2) KHC 364] a Division Bench of this Court held that, to attract the bar under Section 15 of the Kerala Buildings (Lease and Rent Control) Act, (a) the parties in the present proceeding and in the earlier proceeding must be the same, or the parties in the earlier proceeding must be the persons under whom the parties in the present petition or any of them claim, (b) the issue in the two proceedings must be substantially the same, and (c) the said issue has been finally decided or purports to have been finally decided in the former proceeding. To decide whether the second application for eviction is barred under Section 15, the court will have to consider whether the landlord had raised the same, or substantially the same issue in the earlier proceeding, and whether the court has finally decided the said issue or ground in the earlier proceeding. When eviction is sought on the very same ground, but in changed circumstances, the bar under Section 15 would not apply, and the court cannot summarily reject the second application if the landlord could convincingly satisfy the Rent Control Court that he can sustain the ground, and justify eviction on the said ground in changed

circumstances. The burden is on the landlord to establish that there are changes in circumstances, when he brings a second application on the same ground on which eviction was sought in the former proceeding, which happened to be dismissed. The decision in *Jayaram v. Achuthan Thampi* [1997 (2) KLT 909] is on the point. In subsequent decisions also this Court has held that a second application can well be maintained in

changed circumstances, and that if the landlord could convincingly satisfy the court that he has brought the second application in view of material change in circumstances, the bar under Section 15 of the Act will not apply. To get the benefit of the settled law that a second proceeding on the same ground can be brought in changed circumstances, the landlord must plead and prove material change in circumstances. Some change one way or the other will not save the second eviction proceeding from the bar under Section 15 of the Act. It must definitely be some material change, and this change in circumstances can be change in the circumstances of the landlord, or change in the circumstances of the tenant, or change in circumstances of the subject matter, or even change

in the circumstances of the ground set up for eviction.

27. In *Janakiamma and others v. Bhaskaran Nambiar* [2014 (4) KHC 602] a Division Bench of this Court

held that Rent Control Court is a court of limited jurisdiction.

The scope of enquiry for ordering eviction is based on the enumerated grounds. The grounds of eviction are decided based on the determination of 'fact in issue'. The grounds

envisaged for eviction are capable of determining substantive rights of the parties vis-a-vis determination of landlord-tenant relationship. What is referred in Section 15 of the Kerala Buildings (Lease and Rent Control) Act is only on re-agitating issues. Therefore, what is contemplated under Section 15 of the Act is re-agitating issues in grounds of eviction between parties which are substantially decided in the previous litigation. On the other hand, *res judicata* is a part of principles of procedure which determines rights and liabilities itself and it bars re-agitating the matter between the same parties. On the other hand, "issue estoppel" being rule of evidence, it allows parties to re-agitate rights and liabilities on grounds other than on issues which are not previously litigated. One of the

difference between Section 11 of the Code of Civil Procedure, 1908 and Section 15 of the Kerala Buildings (Lease and Rent

Control) Act is, former refers to "matter directly and substantially in issue" and in the latter, the word "matter" is conspicuously absent, and it denotes only "facts in issue". This is obvious because grounds of eviction in the Rent Control Act are based on personal action relatable to the landlord or tenant, which by very nature is recurring. The "matter substantially in issue" referred in Section 11 of the Code is words of wider import to relate a cause of action available at the time of action relating to the "matter". The expression "substantially" used in Section 15 of the Act would only indicate that issue must have been decided on merits. Section 15 of the Act only denotes re-agitating a "fact in issue", which is not same as res judicata as understood under Section 11 of the Code. Thus, the principles contained in Section 15 of the Rent Control Act are only "issue estoppel" and not of "res judicata".

28. In Janakiamma [2014 (4) KHC 602] the Division Bench noticed that, what is embodied under Section 15 of the Act is "facts in issue" and not the "matter in issue" and, thus,

subsequent petition is maintainable on new facts. A landlord may have causes of action to file eviction petition under Section 11(3) based on present need or future need. If the claim of the landlord based on present need is rejected, that does not bar him to file fresh eviction petition under Section 11(3) of the Act, that was available to him as a future need, at the time of seeking eviction previously. In this case, though it would have been possible to the landlord to claim eviction, based on the future need as well, however, that was not projected in the earlier rent control petitions. But that does not bar the landlord from filing a second petition based on the subsequent events that arose after the earlier rent control petitions, as the principles of res judicata comprehended under Section 11 of the Code would not apply.

29. In the instant case, one of the contentions raised by

the petitioner-tenant is that, in view of the order of the Rent Control Court declining eviction under Section 11(3) of the Act, R.C.P.No.24 of 2004, the present Rent Control Petition is hit by Section 15 of the Act. A reading of the provisions under Section 15 of the Act and also the law laid down in the decisions

referred to supra, make it explicitly clear that, the dismissal of R.C.P.No.24 of 2004, which was one filed under Section 11(3) of the Act, projecting bona fide need of the husband of the landlady to start an automobile spare parts shop will not be a bar for the landlady for seeking an order of eviction in the present Rent Control petition to start business in ladies items and cosmetics. Such a claim for eviction sought for in O.P(RC)No.5 of 2008, after the landlady acquiring title over the property by way of Ext.A1 deed dated 26.02.2007 executed by her husband is not hit by Section 15 of the Act. The contentions to the contra raised by the petitioner-tenant can only be repelled as untenable and we do so.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. Viewed in the light of the law laid in the decisions

referred to supra, it cannot be said that the order of eviction granted by the Rent Control Court, which now stands confirmed by the Appellate Authority, is either perverse or patently illegal or it suffers from any legal infirmity warranting interference under Section 20 of the Act. Therefore, we find no reason to interfere with the order of eviction passed by the authorities below.

37. The learned counsel for the petitioner-tenant would submit that considering the situation prevailing in the country on account of Covid-19 pandemic, the tenant may be given six months time to give vacant possession of the petition schedule shop room.

38. On the above request made by the learned counsel

for the petitioner-tenant, the learned counsel for the respondent-landlady would submit that a reasonable period of three months may be granted to the tenant for giving vacant possession of the petition schedule shop room, on condition that the tenant shall clear the entire dues towards arrears of rent and continue to pay the monthly rent for the remaining period, without any default.

39. The learned counsel for the tenant would submit

that the tenant is prepared to clear the entire dues towards arrears of rent, within a time limit that may be fixed by this Court and he shall continue to pay the monthly rent for the remaining period, without any default, till he gives vacant possession of the petition schedule shop room to the landlady.

40. In such circumstances, this Rent Control Revision is

dismissed declining interference on the impugned order of the Rent Control Court and the impugned judgment of the Rent Control Appellate Authority; however by granting six months time to the petitioner-tenant, to surrender vacant possession of the petition schedule shop room to the respondent-landlady, considering the situation prevailing in the country on account of Covid-19 pandemic, subject to the following conditions:

(i) The respondent-tenant 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 he will surrender vacant possession of the petition schedule shop room to the petitioner-landlady within six months from the date of this order and that, he shall not induct third parties into possession of the petition schedule shop room;

(ii) The respondent-tenant 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 four weeks 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 that, in the event of the

respondent-tenant in the Rent Control Petition failing to comply with any one of the conditions stated above, the time limit granted by this order to surrender vacant possession of the petition schedule rooms will stand cancelled automatically and the

petitioner-landlady will be at liberty to proceed with the execution of the order of eviction. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE
dkr PETITIONER'S EXHIBITS: ANNEXURE-A1: CERTIFIED COPY OF JUDGMENT IN R.C.A.NO.145/2016 DATED 02.02.2019 OF RENT CONTROL APPELLATE AUTHORITY, IRINJALAKUDA. ANNEXURE-A2: CERTIFIED COPY OF ORDER IN RCP.NO.5 OF 2008 DATED 31.08.2016 OF THE RENT CONTROL COURT, CHALAKUDY.