

**Manu Vs. Bhanumathy**

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**SooperKanoon Citation :** [sooperkanoon.com/730180](http://sooperkanoon.com/730180)

**Court :** Kerala

**Decided On :** Oct-08-2003

**Reported in :** 2004(1)KLT212

**Judge :** K.S. Radhakrishnan and; Pius C. Kuriakose, JJ.

**Acts :** Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(3)

**Appeal No. :** C.R.P. No. 1892 of 2002

**Appellant :** Manu

**Respondent :** Bhanumathy

**Advocate for Def. :** Anil Kumar M.S.,; George Mathew (Karakunnel),; R. Jayapr

**Advocate for Pet/Ap. :** M.M. Monayee and; Paul Varghese, Adv.

**Disposition :** Revision petition dismissed

**Judgement :**

ORDER

**K.S. Radhakrishnan, J.**

1. Tenant is the revision petitioner. Eviction was sought for under Section 11(2)(b) and 11(3) of Act 2 of 1965.

2. Petitioner-landlord is the owner of the petition schedule building which was rented out to the tenant on 22.6.1995 on a monthly rent of Rs. 100/-. Rs. 3,000/- was paid as advance. Rent is in arrears from 1994 onwards. Petitioner's son Shyam is unemployed and he wanted to start a provision store. He is dependent on the petitioner. Petitioner is the landlady. Respondent tenant filed counter affidavit stating that the attempt is only a ruse to evict him. Further it was stated that there is no arrears of rent. It was pointed out that landlord has got other building and one of the vacant buildings was subsequently sold to his tenant by name Valsan for a sum of Rs. 50,000/-. Factum of getting vacant possession of the room and the conduct of sale of the room to the tenant concerned, according to the tenant, evidence lack of bonafide in the plea of the landlady. Rent Control Court as well as the Appellate Authority have concurrently found the need urged by the landlady is bonafide. It has come out in evidence that the landlady's son is unemployed. He was examined as P.W.I. He deposed that he is depending upon his mother and the need is bonafide. There is nothing to show that the son is otherwise employed. In such circumstances, we are of the view that the need urged by the landlady is bonafide. We find no reason to take a different view from that of the Rent Control Court as well as the Appellate Authority.

3. Landlord has admitted the fact that when the bonafide need subsisted one of the shop rooms fell vacant and the same was sold to one Valsan who was its tenant for a sum of Rs. 50,000/-. Counsel for the tenant submitted that the said room could have been utilised by the landlady's son. We are of the view, the mere fact that landlady sold one of the rooms fell vacant to the tenant does not mean that there is no bonafides in the plea for evicting another tenant. Selling away of another tenanted room may be due to various reasons. Landlady may not be getting sufficient rent from the tenanted premises. Landlady may also be in need of money for various purposes including marriage of her daughter, for discharging the liabilities and may also be enamoured of the delay in getting the tenant evicted. Landlord may also choose a tenant who is paying lesser rent for eviction, for bonafide own occupation. Mere fact that one of the tenanted buildings was sold to the tenant while the bonafide need existed does not mean that there is no bonafide in the need urged for evicting another tenanted premises. Even if the above facts were proved the claim under Section 11(3) cannot be defeated if the

plea is bonafide.

4. We also notice while the appeal was pending before the Appellate Authority, tenant filed I.A. No 2312 of 2001 pointing out the fact that while the rent control petition was pending landlady had constructed a room in the land owned by her and rented out the same to a co-operative society. It was pointed out that the said room was suitable for the landlady's son to conduct business. We are of the view, mere fact that landlady had constructed a building in a property owned by her and rented out it to the tenant for a handsome rent does not mean that there is no bonafide in the plea. Landlady might have obtained loan for construction of new building in another property. If the building is rented out to a tenant she could utilise the rental income to pay off the loan. The landlady also could augment her income. Mere fact that landlady had constructed a building in another property and rented it out to another tenant by itself is not a ground to hold that there is no bonafide. Plea, of bonafide could still be sustained under Section 11 (3) if the need is genuine.

5. In the instant case, we are not prepared to say that selling of one of the tenanted buildings to the tenant concerned and constructing another building in the land owned by the landlady and letting out it to a co-operative society by itself are not factors which would defeat the plea of the landlady to seek eviction of another tenant. We also notice in this case benefit of the second proviso was also not given to the tenant by the courts below.

6. In such circumstances this revision petition lacks merits; and it is accordingly dismissed. However, considering the facts and circumstances of the case, we are inclined to give time to the tenant upto 31.3.2004 to vacate the premises provided he files an undertaking before the Rent Control Court within one month from today that he would pay arrears of rent, if any, and future rent and would vacate the premises within the aforesaid period.