

**Brihaspathi Vs. Ramadasan**

**Brihaspathi Vs. Ramadasan**

**SooperKanoon Citation :** [sooperkanoon.com/903396](http://sooperkanoon.com/903396)

**Court :** Kerala

**Decided On :** Apr-06-2010

**Reported in :** 2010(2)KLT425

**Judge :** Pius C. Kuriakose and; C.K. Abdul Rehim, JJ.

**Acts :** Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(3), 11(8), 11(9), 11(10) and 20

**Appeal No. :** R.C.R. No. 79 of 2010

**Appellant :** Brihaspathi

**Respondent :** Ramadasan

**Advocate for Def. :** Reshmi Damodaran and; P.P. Rajeev Laxman, Adv.

**Advocate for Pet/Ap. :** K.M. Sathyanatha Menon, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**C.K. Abdul Rehim, J.**

1. The revision petitioner and the 2nd respondent herein are tenants of the schedule building which was sought to be evicted in R.C.P. No. 107/05 on the files

of the Rent Control Court, Kozhikode. The 1st respondent herein is the landlord. The parties are referred hereinafter as landlords and tenants.

2. The Rent Control Petition was filed under Section 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965 (the Act for short) seeking eviction on the ground that the petition schedule building is required for expansion of the Automobile Workshop conducted by the landlord, by starting an industry in the premises for performing industrial works connected with repairs of vehicles. The tenants resisted the petition inter alia contending that the lease deed executed is for a period of 15 years and that the landlord is not entitled to seek eviction unless and until the period of lease is over. The need projected was also disputed as not genuine. According to the tenants it was only a ruse to evict the petitioner with an intention to let out the building for higher rent. It is also contended that no other space is available for shifting of the business conducted by the tenants. It is further contended that the tenants have expended huge amounts for constructions in the schedule premises which were permitted by the landlord.

3. Initially the Rent Control Court ordered eviction under Section 11(3). But the tenant preferred appeal, R.C.A. No. 136/06, in which the matter was remanded on the findings that the landlord can seek eviction only under Section 11(8). Subsequently the Rent Control Petition was amended incorporating grounds under Section 11(8). The tenants also filed additional counter statements contending that the hardships which will be caused to the tenants will outweigh the advantages available to the landlord, if such petition is allowed. Evidence before the Trial Court consisted of oral testimonies of the landlord as PW1. One among the tenants was examined as RW1. RW2 and RW4 are witnesses examined on behalf of the tenants. Exts. A1 to A4 documents were marked on behalf of the landlord and Exts.B1 to B3(A) documents were marked on behalf of the tenants. C1 to C4 Court Exhibits were marked which include C1 and C2 commission reports. Considering the entire evidence on record and on the basis of directions issued by the Appellate Authority while remanding the case, the Rent Control Court found that the need projected by the landlord for additional accommodation is bonafide and genuine. After evaluating the comparative hardships which will be caused to both sides, the Rent Control Court observed that the hardships which will be caused to

the tenant is lesser in magnitude when compared to the advantages of the landlord, if the scheduled building is evicted. It is found that the contention regarding expenditure of amounts for constructions in the schedule building, need not be considered while evaluating comparative hardships as provided under Section 11(10) of the Act. Therefore the tenants were ordered to be evicted under Section 11(8).

4. The tenants filed appeal before the Appellate Authority. After elaborate reappraisal of the entire evidence, the Appellate Authority concurred with the findings regarding bona fides and genuineness of need as well as regarding comparative hardships. The Revision Petition is filed against the order of the Appellate Authority.

5. Sri. K.M. Sathyanatha Menon, learned Counsel for the revision petitioner raised strenuous arguments based on Section 11(9) of the Act. It is argued that inspite of specific objections raised before the Rent Control Court, no issue was formulated regarding maintainability of the Rent Control Petition. It is also submitted that there was failure on the part of the Appellate Authority in examining the question inspite of specific ground raised in this regard in the memorandum of appeal. Ext.A1 is the registered lease deed executed with respect to the tenancy, which is dated 1.6.1990. Different rates of monthly rent for three distinct spells of 5 years each, is specifically provided in the lease deed. It is evident that the tenancy was created for a total period of 15 years with increase in the rate of rent by 15 % after lapse of every 5 year. Thus, the learned Counsel for the revision petitioner pointed out that the period of tenancy created by virtue of Ext. A1 had expired only on 1.6.2005. Drawing our attention to the averments in the Rent Control Petition, it is argued that, the pleadings are to the effect that prior to expiry of the lease period, on 26.5.2005 the landlord had caused lawyer notice calling upon to vacate the premises by 31.5.2005 and to register release deed, on the ground that the tenancy will stand terminated on 31.5.2005. But the tenants raised untenable contentions through reply notice and hence the eviction petition is filed. It is argued by Sri. Sathy anatha Menon that since the lawyer notice seeking eviction was caused prior to the expiry of the lease, the Rent Control Petition is not sustainable.

6. The question mooted for consideration is as to what exactly is the point of time to be considered for deciding the question as to whether the Rent Control Petition is filed before expiry of the specified period of lease. Section 11(9) reads as follows:

Where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply to the Rent Control Court before the expiry of such period.

(emphasis supplied)

In the case at hand admittedly the specified period of lease had expired on 31.5.2005. It is evident that Ext.A2 lawyer notice was issued by the landlord on 26.5.2005, before expiry of the period of lease. But it is evident that the Rent Control Petition was filed only in July 2005, well after expiry of the period of lease. The ground raised for eviction is one coming under Section 11(8). There is no mandatory requirement for issuing any notice before seeking eviction under Section 11(8). The wording of Section 11(9) is clear and unambiguous that the said provision will be attracted only if the application for eviction is filed before the expiry of the specified period of lease. Therefore, even though any notice is caused before expiry of the specified period of lease, the bar under Section 11(9) will not be attracted if the application before the Rent Control Court is filed after expiry of the specified period of lease. In this case, even though the notice was caused prior to such expiry, the application is filed only after expiry of the period of lease agreed upon between the parties. Therefore we have no hesitation to hold that merely because a notice was caused prior to expiry of the lease, Section 11(9) will not be attracted. Hence we do not find any merit in the contention based on Section 11(9) of the Act.

7. On merits of the findings on fact, both the courts below have concurrently found that the need projected for additional accommodation is most genuine and bonafide and that the comparative hardships is lesser for the tenant if eviction is ordered. In the revisional jurisdiction contemplated under Section 20 of the Act, we do not find any material illegality, irregularity or impropriety to interfere with those findings. No manifest misappreciation of evidence or omission to consider any

material piece of evidence has been brought out by the revision petitioner. Hence we are inclined to uphold the judgment impugned. Accordingly the Revision Petition fails and the same is liable to be dismissed.

8. However, Sri. K.M. Sathyanatha Menon, learned Counsel for the revision petitioner made a last submission seeking indulgence of this Court for granting one year period for surrendering vacant possession of the schedule premises. Reshmi Damodaran, learned Counsel for the respondents stiffly opposed the prayer. Having considered facts and circumstances and taking note of the fact that the revision petitioner/tenant is conducting an industry in the schedule premises, we are inclined to grant time till 31.12.2010. Accordingly, the Revision Petition is disposed of on the following terms:

(i). While dismissing the Rent Control Revision the revision petitioner/tenant is granted time till 31.12.2010 for handing over peaceful and vacant possession of the schedule premises to the respondent/landlord, subject to the condition that an affidavit will be filed by him before the Rent Control Court or the execution court as the case may be, undertaking to vacate the schedule premises on or before 31.12.2010 and also undertaking to pay arrears of rent if any due. The revision petitioner shall also undertake to pay occupational charges at the rate of the monthly rent prevailing, till surrender of vacant possession. The affidavit as directed above shall be filed and the arrears of rent if any due shall be paid on or before 25.5.2010.

(ii) The execution court is directed to defer delivery of the scheduled building till 1.1.2011, once filing of the affidavit and payment of arrears of rent and occupational charges as directed above is noticed.

9. It is made clear that dismissal of the Revision Petition and confirmation of the order of eviction under Section 11(8) will not stand in the way of the revision petitioner/tenant claiming compensation with respect to the constructions alleged to have been made by him in the tenanted premises, by recourse to appropriate proceedings under law, if such claim is permissible under law.