

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

&

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 28TH DAY OF FEBRUARY 2017/9TH PHALGUNA, 1938

RCRev..No. 34 of 2017

AGAINST THE COMMON JUDGMENT DATED 15-09-2015 IN RCA
19/2007 OF THE ADDITIONAL RENT CONTROL APPELLATE
AUTHORITY, ADDL.DISTRICT COURT, THRISSUR.

AGAINST THE COMMON ORDER DATED 30-11-2006 IN RCP
158/2004 OF THE RENT CONTROL COURT, THRISSUR.

REVISION PETITIONER/APPELLANT/RESPONDENT:

M/S.KANJANY TRADERS (P) LTD.,
MAIN ROAD, KANJANY, THRISSUR,
REPRESENTED BY ITS
CHAIRMAN, V.G. ASHOKAN, AGED 66 YEARS,
S/O. GOPALAN, VANNERI HOUSE,
KANJANI P.O. - 680 612.

BY ADVS.SRI.C.S.SUMESH
SMT.P.M.PRINCY LAL

RESPONDENT/RESPONDENT/PETITIONER:

M/S.SOUTH INDIAN BANK LTD.,
KANJANY BRANCH, KANJANI PO,
THRISSUR - 680 612.

BY ADV. SRI.GEORGE VARGHESE,SC,SOUTH INDIAN BAN
SMT.SALI. P. MATHEW (MUNNAR)
SRI.K.K.JOHN,SC,SOUTH INDIAN BANK

THIS RENT CONTROL REVISION HAVING COME UP FOR
ADMISSION, ALONG WITH R.C.R. NOS.53, 54 AND 55 OF 2017,
ON 28-02-2017, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

**K. HARILAL &
RAJA VIJAYARAGHAVAN. V., JJ.**

**R.C.R. Nos. 34, 53, 54 &
55 of 2017**

Dated this the 28th day of February, 2017

ORDER

Harilal, J.

Since these Rent Control Revisions are filed challenging a common judgment passed by the lower appellate court and the matters, in issue, involved in these revisions are common, all these revisions are heard together and disposed of accordingly.

2. The revision petitioners/respondents are the tenants occupying various shop rooms in the building owned and possessed by the respondent herein. The respondent/petitioner filed R.C.P. Nos.154/04, 155/04, 157/04 and 158/04 respectively seeking eviction of the petitioners/respondents under

Secs.11(2)(b), 11(3), 11(4)(i) and 11(7) of the Building (Lease and Rent Control) Act, 1965 (for short 'the Act'). The Rent Control Court allowed all the petitions under Sec.11(3) of the Act.

3. Feeling aggrieved, the petitioners/respondents have preferred R.C.A. Nos.16/07, 17/07, 18/07 and 19/07 before the Rent Control Appellate Authority, Thrissur, and the respondent/petitioner filed Cross-Appeals in all the appeals. After re-appreciating the evidence, on record, the Appellate Authority confirmed the findings of the Rent Control Court and dismissed the appeals. These revisions are filed challenging the common judgment, whereby the Appellate Authority dismissed all the appeals.

4. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondent.

5. The petition schedule shop rooms are situated on the Ground Floor of the building belonging to the petitioner. The petitioner Bank which was functioning

in the First Floor of the petition schedule building was shifted to a new building on the northern side. The new building is situated behind the present building. According to the petitioner, the main road giving access to the new building is on the southern side; but the petition schedule building is situated on the southern side in a way blocking the access to the new building. Besides, here is no space for parking the vehicles of the customers and staff, inside the compound. On the north-eastern side of the new building, a new private bus stand was constructed by the Panchayat and a Panchayat road lies on the eastern side leads towards private bus stand. Due to the restriction imposed against parking of vehicles on the eastern Panchayat road, much inconvenience and hardships are caused to the customers of the bank and that was adversely affected the business of the bank. The petitioner bank wants to demolish the old building wherein the petition schedule shop rooms are situated

to provide parking area and better and convenient road access to the new building wherein the bank is functioning. Earlier, a Rent Control Petition was filed for getting vacant possession of the western side room bearing No.3/127/4/49 and the same was allowed and the vacant possession was obtained. But, the Engineer reported that if that part of the building is demolished, that will adversely affect the entire structure of the building and the entire building will collapse due to partial demolition. Thus, the demolition of the entire old building is highly necessary. According to the petitioner, so many vacant buildings are available in the locality for shifting the business from the shop rooms and the income from the business conducted in the plaint schedule shop rooms is not the main source of income for the livelihood of the respondents.

6. The respondents contended that the bona fide need projected in the petition is only a pretext for

eviction. The bank was shifted from the old building to the new building for getting more business and also for business development. At present, the petitioner/ Bank is having sufficient vacant space for car parking and the eastern Panchayat road provides easy access for ingress and egress to the present building wherein the bank is functioning. If a portion of the building for which eviction order was obtained is demolished, that will not in any way affect the entire structure as alleged in the petition. The contention that the building is in a dilapidated condition is not correct. In short, at present, the bank has enough road access and sufficient open space for car parking. According to the respondents, the income from the business which is being conducted in the respective shop rooms is the main source of income of their livelihood and suitable buildings are not available in the locality for shifting the business from the petition schedule shop rooms.

7. After considering the rival pleadings, both courts below concurrently found that the bona fide need highlighted in the petition is genuine and the demolition of the petition schedule shop rooms is essential for the business development of the petitioner/Bank, which is functioning on the northern side of the petition schedule building. The main question that arises for consideration in these revisions is, whether the landlord can seek demolition of the tenanted building so as to provide better road access, parking area and other facilities to another building wherein the petitioner landlord is conducting business?

8. As rightly pointed out by the courts below, the above question stands answered by the Division Bench of this Court in *Narayanankutty v. Abiida Abdul Kareem* [2002 (2) KLT 507], which reads as given below:-

“8. S. 11(3) also uses the expression "for his own occupation". Contention was raised by the

counsel for the tenant that the expression "for his own occupation" would mean that the landlord himself should occupy the tenanted premises or building newly constructed in the tenanted premises after demolition. We are of the view, the expression "occupation" has to be given a wider meaning. It is true that after the tenanted premises is vacated, landlord if *bona fide* needs the building he can occupy it or a person depending upon him as the case may be. The question is whether he can occupy the same tenanted premises once the premises is required for a passage to the newly constructed building. It is physically impossible to occupy the tenanted premises on its demolition since the area is to be used as a passage. Passage to newly constructed building could be used not only by the landlord but the public at large who come to the newly constructed building. One cannot expect the landlord or dependent alone is in occupation of the area left as a passage after demolition of the tenanted premises. The word "occupation" has got different shades of meaning. Chambers 20th Century Dictionary gives the meaning of "occupation" as the act of occupying, state of being employed or occupied, that which occupies or takes up one's attention. Landlord can also occupy passage leading to the building which is appurtenant. The purpose projected in this case

by the landlord is *bona fide*. What is required is demolition of the tenanted premises so as to use it as a passage to the newly constructed building. That means, on demolition the premises is not in exclusive occupation of the landlord but could be used by others as well.”

9. The proposition that can be culled out from the above decision is that the demolition of a tenanted premises so as to use it as passage to newly constructed building also would fall under 'own occupation' contemplated under Section 11(3) of the Act.

10. In the light of the above decision, the question to be considered in these Revisions is, whether there is any illegality or impropriety in the findings of the courts below that the demolition of the tenanted premises, which is being occupied by the petitioners, is required for the beneficial enjoyment of the new building, wherein the petitioner bank has been functioning at present. The factual situation surrounding the building is not disputed. The main

road is the southern road by name 'Vadanappally-Thrissur Road', towards which the old building is facing and the eastern road is a Panchayat road and that leads towards the private bus stand which is situating on the north-eastern corner of the bank building. According to the respondent, the road running along the eastern side of the petitioner bank would provide enough access to the new building and it will provide enough space to park vehicles of the customers and staff. The Commissioner, who conducted legal inspection, filed Ext.C1 report affirming that demolition of the petition schedule building would enable the petitioner bank to provide more parking space to the vehicles as the eastern Panchayat road is not sufficient to accommodate more vehicles of the customers and staff of the petitioner bank. Further, the Commissioner reported that the eastern Panchayat road is meant for buses reaching to the bus stand and the same cannot be used for parking vehicles. That

apart, the available space in between the new building and the gate would provide space to park two vehicles only at a time within the bank compound. As rightly noted by the lower appellate court, the tenant cannot be heard to contend that the Landlord should be happy with the available amenities and convenience for running its business in the new building. It has come out in evidence from the commission report that at present one has to move to the eastern Panchayat road leading to the bus stand so as to reach the new building of the petitioner bank. Further, because of the existence of the petition schedule building, free movement within the compound of the bank to the western side and from the western side to the eastern side is not possible. An ATM counter is also installed on the south-eastern corner. But there is no vacant space to park vehicles anywhere near the ATM counter. More over, the evidence on record made it clear that the petition schedule building is more than

60 years old and P.W.2, an expert Engineer, affirmed that the petition schedule building is in a dilapidated condition. Therefore on the aforesaid factual analysis of the circumstance surrounding the petition schedule building and the new building wherein the petitioner bank has been functioning, it could be safely concluded that the demolition of the old building which is situated on the southern side of the new building would provide more facilities including vacant space for the development of the business of the petitioner bank. In short, the bona fide need highlighted in the petition can be found genuine. We do not find any kind of perversity in the appreciation of evidence from which the courts below concurrently found that the demolition of the petition schedule building is essential for the development of the business of the petitioner bank. Thus, there is no reason to interfere with the concurrent findings of the courts below.

11. At last, the learned counsel for the petitioner

sought for ten months time to vacate the premises. But the learned counsel appearing for the respondent strongly opposed the said submission and pointed out that the Rent Control Petition was filed in the year 2004 and more than 13 years have been elapsed since then. It is also submitted that the demolition of the building at the earliest is highly essential for the conduct of the business of the petitioner bank. However, having regard to the entire facts and circumstances of the case, we are inclined to give eight months time to vacate the premises. The petitioners shall surrender the vacant possession of the shop rooms to the respondent within a period of eight (8) months from today, provided that they shall file an affidavit before the Execution Court within a period of one week from the date of receipt of a copy of this order, expressing their readiness and willingness to surrender the shop rooms within the aforesaid period. That apart, the petitioners shall

deposit the entire arrears of rent, if any, within a period of two months from today, and shall continue to pay the rent without default till the surrender of the shop rooms. In the event of failure to comply any of the conditions, the time granted for surrendering the shop rooms would stand automatically vacated and the respondent will be at liberty to proceed with the execution.

All these Rent Control Revisions are dismissed.

Sd/-
(K. HARILAL, JUDGE)

Sd/-
(RAJA VIJAYARAGHAVAN.V., JUDGE)

Nan/okb