

**IN THE RENT CONTROL COURT, HARIPAD**

Present: Sri. Manish. D.A., Rent Controller (Munsiff)

Monday the 21<sup>st</sup> day of December 2020/ 30<sup>th</sup> Agrahayana 1942

**OP (RC) 1/ 2014**

(Filed on 25.01.2014)

- Petitioners:** 1. K.S. Sushamma Devi, aged 62 yrs,  
W/o Chandran Pillai,  
Kainikara veetil,  
Thulamparambu North muri,  
Haripad village.
2. Jasin Chandran, aged 34 yrs,  
S/o Chandran Pillai of -do- -do-
3. Smt. Janeesha Chandran, aged 30 yrs,  
D/o Sushama Devi of -do- -do-
4. Jagadheesh Chandran,  
S/o Chandran Pillai of -do—do-

**(By Adv. Sri. K. Raveendran)**

- Respondents** 1. Babu, aged 44 yrs,  
S/o Vasudevan,  
Babu Villa, Vettuveni muri,  
Karthikappally Village.
2. Baby Varghese, aged 41 yrs,  
W/o Babu of -do—do-

**(By Adv. R. Aravindakshan)**

This petition having been finally heard on 14.12.2020 and the court on 21.12.2020 passed the following:

**ORDER**

Rent Control Petition filed under Section 11(3) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act, 1965.

2. The averments in the Rent Control Petition in brief were as follows:

The petitioner Nos.2 to 4 were the children of 1<sup>st</sup> petitioner. The respondents were husband and wife. The petition schedule property was in the joint possession of the petitioners. The respondents were tenants in the petition schedule shop room. The petition schedule property originally belonged to the husband of the 1<sup>st</sup> petitioner and after his death it devolved on the petitioners. The petition schedule shop room formed part of a commercial building having four shop rooms. The petition schedule room was given on rent to the respondents on 11.03.2004 at a monthly rent of ₹1,200/-. The period of tenancy agreed was for eleven months. There was no provision in the rent deed to renew the tenancy after the lease period. After expiry of the lease period, the respondents have paid rent at the rate of ₹1,200/- per month by money order. Since the 1<sup>st</sup> petitioner had an intention to start an Ayurveda Treatment Centre in the petition schedule shop room, there was a condition in the rent deed the tenants shall not start similar business. It was agreed by the tenant also. The 1<sup>st</sup> petitioner had retired from service during June 2007 as Ayurveda Medical Officer. Thereafter she worked in many hospitals on part-time basis. The 2<sup>nd</sup> petitioner was working in a hospital at Parumala. The 3<sup>rd</sup> petitioner was residing with her husband after marriage. The 4<sup>th</sup> petitioner was jobless and was a dependent on the 1<sup>st</sup> petitioner. The petitioners have decided to start an Ayurveda Hospital in all the four shop rooms after evicting the respective tenants. All the tenants in the other shop rooms have already handed over vacant possession of the rooms to the petitioners. On 19.04.2007 the petitioners have issued a notice to the respondents demanding vacant possession of the petition schedule rooms. On

01..05..2007, a reply notice was issued by the respondents. At the intervention of mediators the respondents have agreed that they would vacate from the petition schedule rooms on 31..12..2008. Even after the said date, the respondents have not vacated from the petition schedule rooms. The respondents have filed O.S.No.18/2009 before the Munsiff Court, Haripad for a decree of injunction restraining the petitioners from forcefully evicting them. The suit was decreed in favour of the respondents. On 20..12..2011 another notice was issued by the petitioners to the respondents requesting them to vacate from the petition schedule rooms. To the said notice also, the respondents have issued a reply stating false allegations. During the year 2006 itself, the petitioners have prepared a project report through a Chartered Accountant, for starting ayurveda treatment centre. In order to start such a hospital, consulting room, waiting room, treatment room, store room, office room, resting room, nurses room, etc. were required. The petition schedule room was highly required along with other vacant rooms to start such a business. Necessary modifications have to be made in the shop rooms to start the ayurveda treatment centre. The petitioners were not in possession of any other suitable building in the same city, town or locality for starting the business. There were many other suitable rooms available near the locality to shift the business of the respondents. In addition to the vegetable shop conducted in the petition schedule room, the respondents have other business at Haripad town. The 1<sup>st</sup> petitioner has sufficient experience and competence to start the treatment centre. The petition schedule room was highly necessary for the bonafide need for starting

such a treatment centre by the petitioner Nos.1 and 4. Stating as above, the Rent Control Petition was filed seeking eviction of the respondents under Section 11(3) and 11(8) of the Act.

3. The respondents appeared and filed objection stating as follows: The Rent Control Petition was not maintainable either in law or on facts. The petition was filed with ill motives. The shop room bearing No.VIII/534 of Haripad Grama Panchayat was given on rent to the respondents by Sri.R.K.Chandran Pillai, who was the predecessor in interest of the petitioners. Such tenancy arrangement was started on 06..08..1996. From that date onwards the respondents were in continuous and uninterrupted possession and enjoyment of the petition schedule property. They have been conducting a vegetable shop by the name and style "Babu's Margin Free Vegetable Shop" since the year 1996. It was not correct to state that the respondents started occupying the petition schedule room as tenants from 11..03..2004 onwards. The respondent has prayed for dismissal of the Rent Control Petition. The rent agreement was executed on 06..08..1996 between Chandran Pillai and respondents. The respondents have paid ₹1,50,000/- as security deposit. The said amount was subsequently enhanced to ₹3 lakhs. Thus Chandran Pillai had received ₹3 lakhs towards advance security deposit from the respondents. Apart from this, Chandran Pillai had borrowed ₹7 lakhs from the 1<sup>st</sup> respondent for meeting the educational expenses of the 2<sup>nd</sup> petitioner. Thus an amount of ₹10 lakhs was received by the husband of the 1<sup>st</sup> petitioner from the 1<sup>st</sup> respondent. Since such a huge amount was due from Chandran Pillai to the 1<sup>st</sup> respondent, he has not demanded for renewal of

the rent agreement from time to time. Further, he agreed to sell the building and the property to the 1<sup>st</sup> respondent for a total sale consideration of ₹20 lakhs by adjusting the above said ₹10 lakhs towards part payment. The petitioners have approached the Court suppressing all the material facts. They have tried to deceive and cheat the 1<sup>st</sup> respondent. The respondents have issued reply notice dated 02..01..2012 stating details of the transaction between Chandran Pillai and the 1<sup>st</sup> respondent. The petitioners were delaying repayment of ₹10 lakhs due to the 1<sup>st</sup> respondent. By promising to pay the amount due to the respondents, they have induced the 1<sup>st</sup> respondent to sign the rent deed dated 11..03..2004. Thereafter, the petitioners have changed their attitude and tried to forcefully evict the petitioners from the petition schedule property. They have influenced the police and threatened the respondents to vacate from the shop room. The respondents had to file a suit before the Munsiff Court against the petitioners restraining them from forcefully evicting the respondents. The suit was also decreed in favour of the respondents. The petitioners with intention to evict the respondents have refused to accept monthly rent even though tendered by them. So they were constrained to send the monthly rent by way of money order. Thereafter, the respondents started regularly depositing the rent in a bank account. An amount of ₹42,000/- was paid to the petitioners by way of demand draft dated 31..12..2011.

4. The 1<sup>st</sup> petitioner, after her retirement had worked as Senior Consultant in many hospitals. She had huge income from such job. She has been receiving monthly pension of ₹15,000/-. After death of Chandran Pillai, the amount

payable as family pension was also being received by the petitioners. The 2<sup>nd</sup> petitioner has sufficient income as a doctor. The 3<sup>rd</sup> petitioner got employment as Sub Engineer with KSEB. The 4<sup>th</sup> petitioner was working as consultant to many commercial institutions and has income of around ₹1 lakh per month. All the petitioners were in sound financial capacity. There was no need to start any business in the petition schedule room to generate further income. The petitioners were not depending anybody for their livelihood. Three other shop rooms belonged to the petitioners were rented out to different tenants for conducting business. It was not correct to state that except the petition schedule room, other rooms were in the vacant possession of the petitioners. The business conducted by the respondents in the petition schedule room was their only source of income for their livelihood. During the year 2007, the petitioners have demanded for vacant possession stating that the building required reconstruction. Even though the second notice was issued in the year 2011, Rent Control Petition was filed in the year 2014 only. It was not correct to state that at the intervention of mediators, the respondents have agreed to surrender vacant possession by 31.12.2008. The project report produced by the petitioners was a concocted document with ill motives. The need of the petitioners was not bonafide. The petitioners were not occupying or conducting any business in the shop rooms adjacent to the petition schedule shop room. The averment that the petitioners required additional accommodation was false and unsustainable. The 1<sup>st</sup> petitioner has been conducting ayurveda clinic in the building situated in the residential plot of the petitioners. The bonafide need claimed was only a pretext for

eviction. It was not correct to state that the respondents were conducting other business at Haripad town. It was also not true to state that suitable vacant rooms were available in the locality for shifting the business of the respondents. Huge amount was required by the respondents for meeting loan repayment, educational expenses of their children and other household expenses. The respondents have invested huge amount in their business. No injury would be caused to the petitioners, if no order of eviction was passed. The comparative hardship that may be caused to the respondents was more, if an order of eviction was passed. The respondents have prayed for dismissal of the Rent Control Petition.

5. Based on the pleadings and the documents on record, the following points were settled for consideration:-

- 1) Are the petitioners in bonafide need of the petition schedule shop room, as claimed?
- 2) Are the petitioners in possession of any another building in the same city, town or village?
- 3) Are the respondents entitled for the benefit under the second proviso to Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965?
- 4) Whether the petitioners are entitled for an order of eviction under Section 11(3) of the Act, as prayed for?
- 5) Whether the petitioners are in occupation of a part of the building and required vacant possession of the petition schedule room as additional accommodation for their personal use and thus entitled for an order under Section 11(8) of the Act?
- 6) What is the order as to costs?

6. From the side of the petitioners, PW1 to PW4 were examined and marked Exts.A1 to A11. Ext.C1 was also marked.

7. The respondents have initially participated in the trial and they have cross examined PW1. Thereafter, when the case was posted for further evidence, the learned counsel having vakalat for the respondents filed a memo dated 11..11..2020 stating that he has no instructions from his clients regarding further conduct of the Rent Control Petition. After filing memo dated 11..11..2020 by the learned counsel holding vakalat, notice was directly issued to respondent Nos.1 and 2. Even after receipt of notice, they have not appeared before Court or adduced any evidence. The respondents have not cross examined PW2 to PW4 also. They have also not adduced any evidence from their side. However, since the respondents have already contested the Rent Control Petition and cross examined PW1, no order was passed making them exparte in the proceedings.

8. Heard the learned counsel for the petitioners.

9. **Point Nos.1 to 5** :- These points are discussed together for the sake of convenience and for avoiding repetition of facts and evidence.

10. Petitioners were stated to be the legal heirs of deceased Chandran Pillai, who obtained the petition schedule property as per sale deed No.3119/1989. The petition schedule property was the shop room bearing No.VIII/534 of Pallippad Panchayat, which was situated on the western side of a building. The respondents were tenants in the petition schedule room, who were conducting vegetable shop. Originally the Rent Control Petition was filed claiming eviction under Section 11(8)

of the Act. As per order dated 11..12..2015 on I.A.No.2225/2015, an amendment was carried out in the heading of the Rent Control Petition and Section 11(3) was also incorporated. In the relief portion, the petitioners have not specifically stated under which provision eviction was sought for.

11. The 1<sup>st</sup> petitioner was examined as PW1. She filed her affidavit in lieu of examination in chief. The other petitioners were her children. PW1 was retired from government service and she wanted to start an ayurveda treatment centre in the petition schedule room. According to PW1, the tenancy arrangement was started on 11..03..2004 at a monthly rent of ₹1,200/-. She specifically stated in her affidavit dated 05..02..2020 that other shop rooms bearing Nos.530, 531, 532 and 533 were in their vacant possession. It was also stated by her that the petition schedule room was required for the bonafide need of the petitioners 1 and 4. It was also stated that the 4<sup>th</sup> petitioner has no other source of income. PW1 has produced the original sale deed No.3119/1981 in favour of her husband and was marked as Ext.A1. Ext.A2 was the original sale deed No.3120/1981 in favour of the husband of PW1 with respect to 3½ cents of property on the eastern side of the petition schedule room. The rent deed dated 11..03..2004 executed by the respondents in favour of the 1<sup>st</sup> petitioner was marked as Ext.A3. Ext.A4 was the certified copy of decree dated 11..11..2010 in O.S.No.18/2009 filed by the respondents against the 1<sup>st</sup> petitioner. As per Ext.A4 decree, the 1<sup>st</sup> petitioner was restrained from forcefully evicting the respondents from the plaint schedule shop room in that suit or obstructing peaceful enjoyment of the shop room by the respondents. It was also

held in the decree that it would not in any way affect the right of the defendant (1<sup>st</sup> petitioner herein) to evict the plaintiffs (respondents herein) from the shop room by due process of law. The petitioners have also produced the reply notice dated 01..05..2007 issued by the respondents to the notice dated 19..04..2007 received from PW1. The said reply notice was marked as Ext.A5. Ext.A6 was its envelope. The office copy of notice dated 20..12..2011 issued by PW1 to the respondents demanding vacant possession was marked as Ext.A7. Ext.A8 was the reply notice dated 02..01..2012 received by PW1. Ext.A9 was a project report for Panchakarma Ayurveda Hospital at Haripad compiled by Chartered Accountant named T.V.Harikrishnan. PW1 was named as the promoter of the project. Cost of the project, source of income, profitability statement for five years, etc. were mentioned in Ext.A9. Ext.A10 was a receipt dated 05..02..2014 issued by the Secretary, Haripad Grama Panchayat in favour of PW1 with respect to her application for registration for private hospitals and para medical institutions. The copy of the registration certificate issued by the Travancore–Cochin Medical Council for Indian Systems of Medicine in favour of the 1<sup>st</sup> petitioner was marked as Ext.A11. As per Ext.A11, it was certified that PW1 was qualified to practise in Ayurveda System of Medicine and duly registered in the State Register maintained under the Travancore–Cochin Medical Practitioners' Act, 1953.

12. PW2 was the advocate commissioner who was appointed as per order on I.A.No.184/2014 and visited the petition schedule property to prepare Ext.C1 report. The commissioner had inspected the building in which the petition schedule

room was situated. It was reported in Ext.C1 that the shutters of all other shop rooms were closed except the petition schedule room. The commissioner has also ascertained the details of the vacant rooms available at Haripad Hospital Junction, Town Hall Junction, etc. and mentioned it in the report. He has also reported in Ext.C1 about the existence of other vacant shop rooms in the locality. PW3 was the Chartered Accountant, who prepared the project report as per request of the 1<sup>st</sup> petitioner for starting Panchakarma Ayurveda Hospital. He deposed that the building where the petition schedule room was situated was suitable to start such a hospital. When Ext.A9 was shown to him, he identified it as the report prepared by him.

13. PW4 was the 4<sup>th</sup> petitioner who also filed affidavit in lieu of his examination in chief stating that he was one of the landlords of the petition schedule room. According to him, he was a dependent on his family and the petition schedule room was required for their bonafide need of starting Ayurveda Hospital. He also stated that all the other shop rooms in the building were in their vacant possession and it was not possible to start the proposed business without evicting the respondents. He also stated that he has sufficient financial capacity to do necessary maintenance and repair works in the shop room for converting it as Ayurveda Hospital.

14. PW1 has produced documents to prove that she had expertise to start the proposed business by using the petition schedule room also. After her retirement from government service, she worked in some private hospitals. Now she is doing

consultation at her residence. The petitioners have no case that the petition schedule room was required for the bonafide need for accommodating the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners. Questions were also put to PW1 about her income including family pension. She has denied the suggestions put by the learned counsel for the respondents that ₹3 lakhs was received by her husband towards security deposit. Ext.A4 decree and Exts.A5 to A8 would also prove the earlier efforts made by the petitioners to evict the respondents from the petition schedule room. PW1 deposed during cross examination that all the other rooms in the building were lying vacant. In addition to the petition schedule room, there was a kitchen and other four rooms in the building. She stated about the suitability of the building for starting Ayurveda Hospital.

15. According to the respondents, they were in occupation of the petition schedule room from 06..08..1996 onwards. The landlord-tenant relationship was an admitted fact. Both respondents have signed on Ext.A3 rent deed. There was a condition in Ext.A3 that the tenants shall not conduct any business related to Ayurveda treatment or sale of Ayurvedic medicine. PW1 categorically deposed that the tenancy arrangement was started as per Ext.A3. Even though the respondents have taken a contention that the husband of PW1 had received ₹3 lakhs towards security deposit, there was no evidence adduced to support such contention. Further Ext.A4 decree would reserve the right of PW1 to evict the respondents from the shop room by due process of law. Ext.A9 was proved through PW3.

16. PW2 has prepared Ext.C1 commission report describing the nature of building in which the petition schedule room was situated. The building was situated adjacent to the PWD road. The commissioner has reported the conduct of business by the respondents in the petition schedule room. In Ext.C1, PW2 has also stated about vacant rooms available near the petition schedule room. With respect to the contents in Ext.C1 or the oral evidence of PW2, the respondents have not conducted any cross examination. There was no reason to disbelieve PW2 and the contents in Ext.C1 regarding the availability of vacant building in the locality. It was also not revealed in evidence that the petitioners were in possession of any other suitable room or building in the same city, town or village for starting the proposed business. The burden of proving that the respondents were entitled for the benefit of second proviso to Section 11(3) of the Act was on the tenants. There was no evidence adduced to discharge such burden. Even though PW1 was cross examined, there was nothing brought out to disbelieve PW1. The evidence of PW2 to PW4 remain unchallenged. There was no reason to disbelieve PW1 or PW4 that they required the petition schedule room for their bonafide need of starting the Panchakarma Ayurveda Hospital. The petitioners are entitled for an order of eviction under Section 11(3) of the Act.

17. Admittedly, there were other shop rooms in the building where the petition schedule shop was situated. The respondents in their objection took a contention that other rooms were in occupation of various tenants and without evicting them the need claimed by the petitioners was only a pretext for eviction.

The respondents have not adduced any evidence in support of their contention. Per contra, PW1 and PW4 categorically deposed that all the other rooms in the building were in their vacant possession and they required additional accommodation of the petition schedule property for starting the proposed business. The Hon'ble High Court of Kerala in **Kunhammi v. Abdullakkutti, 2015(1) KLT 795 (FB)** has held that Section 11(3) and 11(8) are mutually exclusive and independent, however, not always mutually destructive. Even if Section 11(3) and 11(8) are mentioned in the Rent Control Petition, the Court would be entitled to consider the question whether Sections 11(3) or 11(8) would apply in the facts of the case. Court would not be precluded from allowing a petition under Section 11(3) even if 11(8) alone or also is mentioned and vice versa, provided the facts pleaded and proved in the case would justify such a conclusion. The petitioners have no case that they have already occupied the other vacant shop rooms in the building for starting ayurveda treatment centre. No business was conducted by the petitioners in other part of the building. The need claimed was not for expansion of the business, but for starting a treatment centre in the entire building. Even though vacant possession was with the petitioners, they have not started occupying those portions and hence the claim for eviction cannot be considered as one for additional accommodation. From the available evidence, it is not proved that the petitioners are entitled for an order of eviction under Section 11(8) of the Act. Hence point Nos.1 to 4 are found in favour of the petitioners and point No.5 is found against the petitioners.

18. **Point No.6** :- See the relief portion.

In the result,

- (i) The Rent Control Petition is allowed under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 and the respondents are directed to put the petitioners in vacant possession of the petition schedule room within two months from the date of this order.
- (ii) Considering the facts and circumstances, nature of relief and the findings, there is no order as to costs.

*Dictated to the Confdl. Asst., transcribed and typed by her, corrected and pronounced by me in open court on this the 21<sup>st</sup> day of December, 2020.*

**MANISH D.A.  
RENT CONTROLLER**

**Appendix**

**Exhibits for the plaintiffs**

- |     |                 |  |
|-----|-----------------|--|
| A1  | -               | PW1 has produced the original sale deed No.3119/1981   |
| A2  | -               | Original Sale deed No. 3120/1981   |
| A3  | dtd 11.03.2004  | - The rent deed  |
| A4  | -               | - Certified copy of decree dtd. 11.11.2010 in OS 18/2009   |
| A5  | dtd. 01.05.2007 | - Reply notice   |
| A6  |                 | - Envelop  |
| A7  | dtd. 20.12.2011 | - The Office copy of notice  |
| A8  | dtd. 02.01.2012 | - Reply notice   |
| A9  |                 | - Project report for Panchakarma Ayurveda Hospital at Haripad  |
| A10 | dtd. 05.02.2014 | - Receipt issued by the Secretary Haripad Gramapanchayat   |
| A11 |                 | - The copy of the registration Certificate issued by the Travancore- Cochin Medical Council for Indian Systems of Medicine |

**Court Exhibits**

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| C1 | - | Mahazar, Report prepared by Adv. G.Anilkumar |
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**Witness for the plaintiff**

PW1	dtd. 05.02.2020	-	K.S. Sushama Devi
PW2	dtd. 11.11.2020	-	G. Anilkumar
PW3	dtd. 11.11.2020	-	Harikrishnan, Chartered Accountant
PW4	dtd. 16.11.2020	-	Jagadheesh Chandran

**RENT CONTROLLER**