

IN THE COURT OF THE RENT CONTROLLER/ MUNSIF, VATAKARA.

Present: Smt. Aiswarya T., Munsiff
Thursday, the 5th day of September, 2024

R.C.P. No. 90/2023, 91/2023, 92/2023 & 94/2023**RCP. 90/2023****Between:**

1. Hajara, W/o Late Khadar, aged 62 years, housewife, residing at Hakash Bhavan, Azhiyur amsom desom, Vatakara Taluk, Kozhikode District, Kerala State, Pin- 673 309. } Petitioners
2. Shuibe, S/o Khadar & Hajara, aged 39 years, residing at Hakash Bhavan, Azhiyur amsom desom, Vatakara Taluk, Kozhikode District, Kerala State, Pin- 673 309. }

And:-

Ambalathumkandi Rajeeb, S/o Ummer, aged 45 years, Azhiyur Village, Azhiyur desom, Vatakara Taluk, Kozhikode District, Kerala State. } Respondent

RCP 91/2023**Between:**

1. Hajara, W/o Late Khadar, aged 62 years, housewife, residing at Hakash Bhavan, Azhiyur amsom desom, Vatakara Taluk, Kozhikode District, Kerala State, Pin- 673 309. } Petitioners
2. Shuibe, S/o Khadar & Hajara, aged 39 years, residing at Hakash Bhavan, Azhiyur amsom desom, Vatakara Taluk, Kozhikode District, Kerala State, Pin- 673 309. }

And:-

Puthampurayil Abdul Raheem, S/o P.V. Ali, aged 56 years, owner Western India Jimneshiam, Azhiyur Village, Azhiyur desom, Vatakara Taluk, Kozhikode District, Pin- 673 309. } Respondent

RCP 92/2023**Between:**

1. Hajara, W/o Late Khadar, aged 62 years, housewife, residing at Hakash Bhavan, Azhiyur amsom desom, Vatakara Taluk, Kozhikode District, Kerala State, Pin- 673 309.
2. Shuibe, S/o Khadar & Hajara, aged 39 years, residing at Hakash Bhavan, Azhiyur amsom desom, Vatakara Taluk, Kozhikode District, Kerala State, Pin- 673 309.



Petitioners

And:-

Puthampurayil Hamsa, S/o Assainar, aged 67 years, business, Azhiyur Village, Azhiyur desom, Vatakara Taluk, Kozhikode District, Kerala State, Pin- 673 309.



Respondent

RCP 94/2023**Between:**

1. Hajara, W/o Late Khadar, aged 62 years, housewife, residing at Hakash Bhavan, Azhiyur amsom desom, Vatakara Taluk, Kozhikode District, Kerala State, Pin- 673 309.
2. Shuibe, S/o Khadar & Hajara, aged 39 years, residing at Hakash Bhavan, Azhiyur amsom desom, Vatakara Taluk, Kozhikode District, Kerala State, Pin- 673 309.



Petitioners

And:-

Thondan Ummer, S/o Abdulla, aged 74 years, business, Haseenas house, Azhiyur Village, Azhiyur desom, Vatakara Taluk, Kozhikode District, Kerala State, Pin- 673 309.



Respondent

These petitions coming on the 3rd day of September, 2024 for final hearing before me in the presence of Sri. K.K. Anilraj, Smt. Henli H. and Smt. Mijisha P, Advocates for the petitioners and respondents Counsel reported no instruction. Hence, the respondent is set exparte and having stood over to this day for consideration, this Court passed the following.

COMMON ORDER

This is the common order in four petitions filed by the same petitioners against the respondents. RCP 90/23 is filed under Section 11(3) and 11(4)(i) and RCP 91/23, 92/23 and 94/23 are filed under Sections 11(3) of The Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'The Act').

2. The petition averments in R.C.P 90/23, in brief, are as follows:- The commercial building in Azhiyur Grama Panchayath bearing Door No.18/14 to 18/17 were belonging to late Kader, the predecessor in interest of the petitioners and the above said Kader died on 27.6.2022. The right and ownership of later Kader over the said building is devolved on the petitioners as his legal heirs. The respondent is occupying one room among it bearing Door No.18/15. The present rent of the shop room payable by him is Rs.4,800/- per month. The fact of death of Kader was intimated to the respondent by the petitioners. The respondent is now occupying the room mentioned in the petition schedule as a tenant under the petitioners and that he is regularly paying rent to them. The 2nd petitioner, Mr.Shuibe is married and is having a wife and school going children. The 2nd petitioner has no job and no sufficient income to meet his need and requirements. Hence, he intends to commence the business of household utensil articles, agricultural tools, bed, pillow, mat and allied items in large scale from the petition schedule shop room which is occupied by the respondent and also in other 3 rooms bearing door No.18/14, 18/16 and 18/17 . The building in question is most suitable and convenient for him to commence the business and if the business is commenced therein the same would be successful and profitable, thereby he can have his own job to make sufficient income. The petitioners are not in possession of any other shop rooms or building in Azhiyur city, town or village to commence the said business. The respondent is not doing or carrying out any serious business from the petition schedule shop room and his main source of income is from other

business and sources. If the respondent wants to shift the business therefrom, there are several other suitable vacant rooms available in the locality for rent.

3. The petitioners further stated that without the knowledge, consent and concurrence of the petitioners and against the terms and conditions of entrustment, the respondent has subleased the shop room described in the petition schedule to Mr.Sharook by parting with the physical possession of the shop room. Now the sub tenant is carrying on business therein and the petitioners have objection against the same. Mr.Sharook is exclusively possessing the shop room described in the petition schedule as a sub tenant under the respondent and the respondent has no right to sublease the shop room to any person. The physical possession of the shop room is handed over by the respondent to Mr.Sharook and the respondent is collecting excess rent from the above said Sharook. Mr. Sharook alone is in possession of the petition schedule shop room as a sub-tenant and doing business therein. The respondent does not come to the shop room. The petitioners have objection and grievance against the said sublease made by the respondent. The petitioners have made demand to evict the above said Sharook from the shop room described in the petition schedule, however,the respondent has not heeded for the said demand. Thus, the petitioners have caused to issue a registered notice to the respondent on 14.8.2023 through their advocate K.K. Anilraj, Vatakara, calling upon him to evict the sub lessee Mr.Sharook from the room and to regain the possession of it within 30 days from the date of receipt of the notice and also to surrender the shop for the bonafide need of the petitioners. The registered notice sent in the correct residential address of the respondent was caused to be returned by the postal authority with an endorsement that intimation served and returned to sender as unclaimed on 17.8.2023. Hence the petitioners are entitled to seek eviction of the respondent under the provisions of Section 11(3) and 11(4)(i) of the Act.

4. The petition averments in R.C.P 91/2023, in brief, are as follows:-
The commercial building bearing Door No.18/14 to 18/17 of Azhiyur Grama Panchayath was belonging to late Kader, the predecessor in interest of petitioners. Kader died on 27.6.2022 and his right and ownership over the said building is devolved on the petitioners as his legal heirs being his wife and only son. The fact of death of Kader was intimated to the respondent and thereafter the respondent is now occupying the room mentioned in the petition schedule as a tenant under the petitioners and he is regularly paying the rent to them. The respondent is occupying the room bearing Door No.18/17 of Azhiyur Grama Panchayath described in the petition schedule and he has obtained it from Abdul Kader. The respondent has taken the shop room on lease for the purpose of carrying out a Gymnasium vide terms and conditions set forth in the Vataka Kachit dated 7.5.2022 executed between Adbul Kadar and the respondent. The present rent of the shop room payable by him is Rs.6,090/- per month. The 2nd petitioner Mr.Shuibe is married and is having a wife and school going children. The 2nd petitioner has no job and sufficient income to meet his need and requirements. He intends to commence the business of household utensil articles, agricultural tools, bed, pillow, mat and allied items in large scale by utilizing the petition schedule shop room occupied by the respondent and the other 3 rooms bearing door No.18/14, 18/15 and 18/16. The building in question is most suitable and convenient for him to commence the business and if the business is commenced therein the same would be successful and profitable, thereby he can have his own job to make sufficient income. The petitioners are not in possession of any other shop rooms or building in Azhiyur city, town or village to commence the said business. The respondent is not doing or carrying out any serious business from the petition schedule shop room and his main source of income is from other business and sources. If the respondent wants to shift the business therefrom, there are several other rooms available in the locality which is suitable for rent.

Therefore, he is in bonafide need to get possession of the said room occupied by the respondent and the other rooms mentioned above to commence the said business for him and for that purpose he is depending on his mother. The petitioners have made a demand to the respondent to surrender the room for the bonafide need, however, he has not surrendered the room. Thus, the petitioners have caused to issue a registered notice to the respondent on 14.8.2023 through their advocate K.K. Anilraj, Vatakara, calling upon him to surrender the shop for the bonafide need of petitioners. The registered notice sent in the correct residential address of the respondent was caused to be returned by the postal authority with an endorsement stating intimation served, returned to sender as unclaimed on 17.8.2023. The second petitioner has genuine bonafide need now as he is not getting sufficient income to meet the requirements of himself and his family consisting of his wife, children and the first petitioner. Therefore, the respondent is liable to surrender the vacant possession of the petition schedule room for the bonafide need of the petitioners and thus the petitioners are entitled to get an order of eviction under Section 11(3) of the Act.

5. The petition averments in R.C.P 92/2023, in brief, are as follows:- The commercial building bearing Door No.18/14 to 18/17 of Azhiyur Grama Panchayath was belonging to late Kader, the predecessor in interest of the petitioners. Kader died on 27.6.2022 and his right and ownership over the said building is devolved on the petitioners as his legal heirs being his wife and only son. The respondent is occupying the room among it bearing Door No.18/16 of Azhiyur Grama Panchayath described in the petition schedule as entrusted by Abdul Kader. The present rent of the shop room payable by him is Rs.3,190/- per month. The fact of death of Kader was intimated to the respondent and the respondent is now occupying the room mentioned in the petition schedule as a tenant under the petitioners. Further, the respondent is regularly paying the rent

to them. The 2nd petitioner, Mr. Shuibe is married and is having a wife and school going children. The 2nd petitioner has no job or sufficient income to meet his need and requirements. He intends to commence the business of household utensil articles, agricultural tools, bed, pillow, mat and allied items in large scale from the petition schedule shop room occupied by the respondent and the other 3 rooms bearing door No.18/14, 18/15 and 18/17. The building in question is most suitable and convenient for him to commence the business and if the business is commenced therein the same would be successful and profitable, thereby he can have his own job to make sufficient income. The petitioners are not in possession of any other shop rooms or building in Azhiyur city, town or village to commence the said business. The respondent is not doing or carrying out any serious business from the petition schedule shop room and his main source of income is from other business and sources. If the respondent wants to shift the business therefrom, there are several other rooms available in the locality for rent. Therefore, the petitioners are in bonafide need to get possession of the said room occupied by the respondent and the other rooms mentioned above to commence the said business for second petitioner and for that purpose he is depending on his mother. The petitioners have made a demand to the respondent to surrender the room for the bonafide need, however, he has not surrendered the room. Thus, the petitioners have caused to issue a registered notice to the respondent on 14.8.2023 through their advocate K.K. Anilraj, Vatakara, calling upon him to surrender the shop room for the bonafide need of petitioners. The notice was served on the respondent and he has sent a reply to the lawyer notice through their counsel Adv. K. Prabhakaran, on 12.9.2023 raising false and untenable contentions. The second petitioner has genuine and bonafide need, as he is not getting sufficient income to meet the requirements of himself and his family consisting of his wife, children and the first petitioner. Therefore, the respondent is liable to surrender the vacant possession of the petition schedule room for the bonafide need of the

petitioners and thus the petitioners are entitled to get an order of eviction under Section 11(3) of the Act.

6. The petition averments in R.C.P 94/23, in brief, are as follows:- The commercial building bearing Door No.18/14 to 18/17 of Azhiyur Grama Panchayath was belonging to late Mr. Kader, the predecessor in interest of the petitioners. The above said Kader died on 27.6.2022 and his right and ownership over the said building is devolved on the petitioners as his legal heirs being his wife and his only son. The fact of death of Kader was intimated to the respondent. The respondent is now occupying the room mentioned in the petition schedule as a tenant under the petitioners and the respondent is regularly paying the rent to them. The respondent is occupying the room bearing Door No.18/14 of Azhiyur Grama Panchayath described in the petition schedule from Abdul Khadar and the present rent of the shop room payable by him is Rs.11,000/- per month. The 2nd petitioner Mr.Shuibe is married and is having a wife and school going children and he has no other job or sufficient income to meet his need and requirements. He intends to commence the business of household utensil articles, agricultural tools, bed, pillow, mat and allied items in large scale by utilizing the petition schedule shop room occupied by the respondent and other 3 rooms bearing door No.18/15, 18/16 and 18/17. The building in question is most suitable and convenient for him to commence the business and if the business is commenced therein the same would be successful and profitable, thereby he can have his own job to make sufficient income. The petitioners are not in possession of any other shop rooms or building in Azhiyur city, town or village to commence the said business. The respondent is not doing or carrying out any serious business from the petition schedule shop room and his main source of income is from other business and sources. If the respondent wants to shift the business therefrom there are several other rooms available in the locality which is suitable for rent.

Therefore, he is in bonafide need to get possession of the said room occupied by the respondent and the other rooms to commence the said business for him and for that purpose he is depending on his mother. The petitioners have made demand to the respondent to surrender the room for the bonafide need, however, he has not surrendered the room. Thus, the petitioners have caused to issue a registered notice to the respondent on 14.8.2023 through their advocate K.K. Anilraj, Vatakara, calling upon him to surrender the shop room for the bonafide need of the petitioners. The registered notice sent in the correct residential address of the respondent was caused to be returned by the postal authority with an endorsement 'intimation served and returned to sender as unclaimed' on 17.8.2023. The second petitioner has genuine and bonafide need now as he is not getting enough and sufficient income to meet the requirements of himself and his family consisting of his wife, children and the first petitioner. Therefore, the respondent is liable to surrender the vacant possession of the petition schedule room for the bonafide need of the petitioners and thus the petitioners are entitled to get an order of eviction under Section 11(3) of the Act.

7. In all the above petitions, the respondent has filed his objection. However, the counsel appearing for the respondent in these petitions submitted no instruction when these petitions were listed for trial. Hence, the respondent was set *exparte*.

8. As per IA 4/24 dated 22.7.2024 filed by the 1st petitioner in RCP 90/23, a joint trial of RCP 90/23, RCP 91/23, 92/23 and RCP 94/23 were allowed.

9. To prove the case of the petitioners, the 2nd petitioner was present and examined as PW1. The petitioners filed a consolidated proof affidavit in all the petitions. Documents were marked as Exts.A1 to A15 and Ext.C1.

10. Heard the side of the petitioners.

11. The points that arise for determination are as follows:-

- (1) Whether the petitioners are entitled to claim relief under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act in all these cases?
- (2) Whether the petitioners in RCP 90/23 are entitled to claim relief from the respondent under Section 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act?
- (3) Reliefs and costs ?

12. **Point No.(1):-** Regarding bonafide need under Section 11(3) of the Act, the case of the petitioners in all these petitions is that the 2nd petitioner, Mr.Shuibe intends to commence the business of household utensil articles, agricultural tools, bed, pillow, mat and allied items in large scale from the petition schedule shop room occupied by the respondent bearing door No.18/14, 18/15, 18/16 and 18/17. According to petitioners, there are no other vacant buildings available in the locality for these petitioners to start the aforesaid business. The need raised by the petitioners have not been challenged by the respondent. Since the respondent is proceeded exparte, the bonafide need projected by the petitioners stand unchallenged. Hence, the point is found accordingly.

13. **Point No.(2) in RCP 90/23:-** It is true from the lease deed that the lessee shall not sub-let any portion of building to any person without the consent of the landlord. However, as per Ext.C1 commission report it is reported by the Advocate Commissioner that the respondent sub-letted the petition schedule shop room to one Sharook. The respondent has not challenged the same as well as he was proceeded exparte. Therefore, the petitioner is entitled to seek eviction of the tenant under Section 11(4)(i) of the Act. Point found accordingly.

14. **Point No.3:-** On the basis of the discussion held in point no.1 and 2, Rent Control Petitions are allowed as follows:-

In the result, an order of eviction is passed under Section 11(3) and 11(4)(i) of the Act. The respondent is directed to vacate the petition schedule shop rooms bearing No.18/14, 18/15, 18/16 and 18/17 and to hand over the same to the petitioners within a period of one month from the date of this order. The petitioners are entitled to get the costs of the petition.

In the result, all the above RCPs are allowed with costs.

(Dictated to C.A, typed by him in Office Computer, corrected and pronounced by me in Open Court, on this the 5th day of September, 2024)

Sd/-
RENT CONTROLLER / MUNSIF,
VATAKARA.

Petitioner's Witness

PW1 02.09.2024 : Shuibe, S/o Khadar & Hajara.

Petitioner's Exhibits:

- A1 11.08.2023 : Lawyer notice sent by Advocate K.K. Anilraj to Ambalathumkandi Rajeeb.
A2 14.08.2023 : Postal receipt.
A3 14.08.2023 : Unserved registered postal cover.
A4 16.07.2022 : Death certificate of Sri. Nelloli Kader.
A5 12.10.2022 : Possession certificate issued to Hajara and Shuibe.
A6 21.07.2022 : Family membership certificate issued to Shuibe.
A7 11.08.2023 : Lawyer notice sent by Advocate K.K. Anilraj to Puthan Purayil Abdul Raheem.

- A8 14.08.2023 : Postal receipt.
A9 14.08.2023 : Unserved registered postal cover.
A10 11.08.2024 : Lawyer notice sent by Advocate K.K. Anilraj to Puthampurayil Hamsa, S/o Assainar.
A11 14.08.2023 : Postal receipt.
A12 12.09.2023 : Return of Lawyer notice sent by Advocate K.Prabhakaran to Advocate K.K. Anilraj.
A13 11.08.2023 : Lawyer notice sent by Advocate K.K. Anilraj to Thondan Ummer.
A14 14.08.2023 : Postal receipt.
A15 14.08.2023 : Unserved postal receipt.

Respondent's Witness :NIL

Respondent's Exhibits : NIL

Court Witness : NIL

Court Exhibits

- C1 28.10.2023 : Commission report submitted by Sri. Ratheesh Onthammal, Advocate Commissioner.

Sd/-
**RENT CONTROLLER / MUNSIF,
VATAKARA.**