

**IN THE COURT OF THE RENT CONTROLLER/ MUNSIFF, VATAKARA.**

Present: Smt. Aiswarya T., Rent Controller/Munsiff

Monday, the 30<sup>th</sup> day of March, 2026

**R.C.P. No. 93/2023**

**Between:**

Valiyandiyil Sufana Sherin, D/o M.R.P. Ashraf,  
Meethale Ramath Peedika House,  
Muthuvadathoor amsom desom,  
Muthuvadathoor Post, Vatakara Taluk,  
Kozhikode District, Pin- 673 503.

} Petitioner

**And:**

Suresh M.P, S/o Damodaran,  
Malayil Parollathil House,  
Nadakkuthazha amsom, Meppayil desom,  
Nut Street Post, Vatakara Taluk,  
Kozhikode District, Pin- 673 104.

} Respondent

This petition coming on the 26<sup>th</sup> day of March, 2026 for final hearing before me in the presence of Sri. I. Rajan and Smt. Aswathi V.P, Advocates for petitioner and of Sri. K. Prabhakaran and Sri. P.V. Sijith Kumar, Advocates for respondent and having stood over to this day for consideration, this Court passed the following.

**ORDER**

This is a petition filed under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965.

2. **The petition averments in brief are as follows:-** The petitioner is the owner of the petition schedule room and the respondent is the tenant therein. The petition is filed for seeking an order directing the respondent to vacate the petition schedule room and to obtain actual possession to the petitioner, as the

petitioner has a bonafide need to earn income and earn a livelihood by conducting her own business in the petition schedule room. The building including the petition schedule room was owned by K J Xavier. The petitioner has thereafter acquired ownership from him, over the entire building including the petition schedule room, as per the sale deed No. 2032/2006 of SRO Vadakara. At the time of execution of the said sale deed, as the petitioner was a minor, the petition schedule building was managed by the petitioner's mother's father, Moidu Haji. An oral lease agreement was entered into between the said Moidu Haji and the respondent and the petition schedule room was let out to the respondent for a rent fixed at Rs.1500/- per month. After attaining majority, the petitioner has been collecting rent of the petition schedule building, from the tenants including the respondent. The respondent has paid the rent until 31-12-2022, and thereafter he has kept the rent in arrears. The petitioner is intending to initiate another legal proceeding for obtaining the rent arrears. The petitioner has now completed her B.Pharm degree and has no job or other means of income. She is currently living under the care of her father and therefore has a bonafide need to start her own business to earn income. The petitioner intends to start her own extensive medical shop and a medical examination center and for this, the entire building including the petition schedule room is required. The petition schedule room and the building included therein are very suitable for starting the medical shop and examination center, as the Vadakara District Hospital and many doctors' clinics are operating very close to the said building. The petitioner expects that if the said business is started, it will generate an income of Rs. 1 lakh per month. The petitioner does not have any other rooms, other than the rooms in the petition schedule building, which is suitable for carrying on the said business. The respondent does not rely on the income from the petition schedule room. Moreover, the respondent has many other sources of income, including real estate business. If the respondent needs a room for business, there are many rooms

available for rent in the vicinity of the petition schedule room. The petitioner had sent a lawyer notice to the respondent, asking for vacating the petition schedule room, but the respondent had not abided by the same and had sent a reply notice, raising false allegations and stating that the petitioner has no bonafide need, but the said allegation is denied by the petitioner. Hence the petition.

3. The respondent filed counter statement contending as follows:- He admitted that the monthly rent of the petition schedule shop room is Rs. 1500/- per month, but denies the bonafide need of the petitioner. The petitioner's statement that the monthly rent of the petition schedule room has not been paid after 31.12.2022 is false. The rent until August 2023 has been paid by the respondent. It is not true that the petitioner has a bonafide need as mentioned in the petition and she also does not have the need to run a medical shop and clinic business to earn a living. It is also not true that she could conduct business in the petition schedule building only after the petition schedule room and other rooms of the petition schedule building are vacated by the respondent and other tenants. The petitioner has no knowledge, experience, ability or funds for conducting a medical shop business. Moreover, the petition schedule room is not suitable for conducting a medical shop and clinic. The petitioner is in possession of other rooms where the proposed business could be conducted. The address of the petitioner as shown in the petition is not correct. The petitioner is married and is living with her husband and children in her husband's house at Kallachi. She is not living in the house address shown in the petition and so, she has no intention of starting a business in the petition schedule building. It is not true that the respondent is not depending upon the income derived from the business conducted in the petition schedule shop room and it is also false that the respondent has many other sources of income, including real estate business. It is incorrect to state that there are numerous rooms available for rent near to the

petition schedule shop room. The respondent and his family entirely depend on the income from the petition schedule shop room and he has no other source of income as alleged by the petitioner. The respondent was conducting tailoring business in the petition schedule shop room since 2006 at a monthly rent of Rs.650/- and thereafter, the rent was enhanced and the present rent of the room is Rs.1500/- per month. The petitioner intends to evict the respondent, so as to let the rooms for a higher rent. Hence, the petition may be dismissed.

4. The points that arise for consideration are as follows:-

- 1) Whether the need alleged by the petitioner is bonafide?
- 2) Whether the petitioner has another building of his own or in his possession in the same city, town or village?
- 3) Whether the respondent is entitled to get protection under 2nd proviso to Section 11(3) of the Act?
- 4) Whether the petitioner is entitled to evict the respondent, if so on what grounds?
- 5) What is the order as to costs ?

5. On the side of the petitioner, PW1 was examined and Exts.A1 to A6 were marked. On the side of the respondent, RW1 was examined, and Ext.B1 to Ext.B4 documents were marked.

6. Heard both sides.

7. **Point No.1:-** The petitioner was examined as PW1. She filed a proof affidavit. The eviction of the respondent is sought under Section 11 (3) of the Act. As per Section 11 (3) of the Act, a landlord may apply to the Rent Control Court, for an order directing the tenant to put the landlord in possession of the building if

he bonafide needs the room for his own occupation or for the occupation by any member of his family dependent on him.

8. In this case, PW1 deposed that she is the owner of the petition schedule building. The respondent is a tenant conducting tailoring business in the petition schedule shop room. The relationship of landlord and tenant is not in dispute. The petitioner seeks eviction on the ground that although she has completed B.Pharm and is a registered pharmacist, she has no independent income, and intends to start a medical shop and medical examination center in the petition schedule building.

9. On the other hand, though the respondent admits the tenancy, he denies the bonafide need of the petitioner. The respondent contends that he is solely dependent on the income from the tailoring business conducted in the premises. According to him, the petitioner has no real intention or capacity to start a medical shop business.

10. One of the defence raised by the respondent whereby he has resisted the bonafide claim of the petitioner is by contending that this petition is filed as a ruse to evict him and to let the building for higher rent. But, there is no evidence adduced before the court by the respondent to substantiate this allegation and a mere allegation is insufficient to prove the same. Moreover, it is pertinent to note the decision of Hon'ble High Court of Kerala in **Aluminium Glass Ware Emporium (M/s.) and Another v. Umanath Shenoy and Another** reported in **2012 KHC 703** wherein it was held that demand for increased rent by itself is not a ground to reject a claim for eviction on the ground of bona fide need. Hence, the said contention of the respondent cannot be accepted.

11. Another contention taken by the respondent is that the petitioner has no sufficient ability to start the business. However, Ext.A5 and Ext.A6 conclusively establish that the petitioner is qualified to run a medical shop and so, the objection of the respondent that the petitioner has no qualification or ability to start a medical shop is thus found to be factually incorrect. Eventhough Ext.A5 and Ext. A6 were produced at a later stage, their genuineness is not disputed by the respondent. Hence, no adverse inference can be drawn.

12. Further, in the instant case, the respondent had taken a contention that there is no need for the petitioner to start the business of a medical shop and medical examination centre as she is very rich. However, PW1 has clearly deposed that she has no employment and she intends to start a medical shop and examination centre. The respondent relied on PW1's lack of technical knowledge regarding the area requirements for starting the business and the specifications for the lab and X-ray units. However, this court finds that such lack of technical details cannot defeat bonafide need, especially at the initial stage of business planning, as a landlord is not expected to have expert-level knowledge before starting a venture and what is required is a genuine intention, and not perfection in planning.

13. In **Adil Jamshed Frenchman v. Sardur Dastur Schools Trust** reported in **2005 2 SCC 476**, the Hon'ble Apex Court held that a bonafide requirement must be an outcome of a sincere and honest desire in contradistinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the premises for himself or for any member of the family which would entitle the landlord to seek ejection of the tenant. In **Deena Nath v. Pooran Lal** reported in **(2001) (5) SCC 705**, the Apex Court held that the

bonafide requirement has to be distinguished from a mere whim or fanciful desire.

14. According to RW1, as there are several shop rooms in the vicinity, if the petitioner again starts another medical shop in the said area, it would lead to competition and uncertainty of success. However, PW1 deposed that the building is suitable due to proximity to hospitals. This court finds that a tenant cannot dictate the place where a landlord should conduct her business and the petitioner is the best judge of her requirement. PW1's evidence that the building is near hospitals and clinics would strongly support the petitioner's claim regarding suitability. Moreover, competition or uncertainty of success is not a legally recognised ground to negate bonafide need. Further, in this regard, it is held by the Hon'ble Supreme Court in **Sarla Ahiya v. United India Insurance Co. Ltd.** reported in **1998 (8) SCC 119** that the Rent Controller should not proceed on the assumption that the landlord's requirement is not bonafide. When the landlord shows a prima facie case, a presumption that the requirement of the landlord is bonafide is available to be drawn. It is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without giving possession of the tenanted premises. While deciding the question of bonafides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

15. In **Ammu v. Nafeesa** reported in **2015 (5) KHC 718** it was held that, it is a settled proposition of law that the need put forward by the landlord has to be examined on the presumption that the same is a genuine one, in the absence of any materials to the contrary.

16. Considering the entire evidence before the court, it could be seen that PW1 deposed her intention to conduct the proposed medical shop business in

the petition schedule building and stated that it is not merely a desire. PW1 further stated during her cross examination that for the proposed establishment of the business, an investment of about ₹10 lakhs is required. She further stated that by investing ₹10 lakhs, she is expecting that she would earn ₹1 lakh per month from the proposed business. This shows serious preparation and financial readiness, strongly supporting bona fide need and intention to start the business. Nothing was brought out to discredit the evidence of PW1 regarding bonafide need. As per the provision of this Act, the landlord needs only to establish a prima facie case. In this case, the petitioner could establish a prima facie case of bona fide need. Hence I find that the need projected by PW1 is bonafide, genuine and urgent. Therefore point No. 1 is answered in favour of the petitioner.

17. **Point No. 2:-** The next question that arises for consideration is whether the petitioner is having any other vacant room of her own in her possession and whether the claim of the petitioner is hit by 1st proviso to Section 11(3) of the Act. Under the said proviso, if the landlord has another building of her own in her possession, in the same city, town, village, the Rent Control Court shall not give an order of eviction except when the court is satisfied that for special reasons in any particular case it would be just and proper to do so. The burden of proving special reasons is on the landlord. The primary burden to show that the landlord has a building of her own in her possession is on the tenant. Once it is shown, the burden shifts to the landlord to establish special reasons.

18. In **Vasantha Mallan v. N.S. Aboobacker Siddique and others** reported in **2020 (1) KHC 21** it was held that law does not require the landlord to plead that he is in possession of any vacant building and has special reasons for its non-occupation. It is upto the tenant alone to take up the contention and prove that landlord is in vacant possession of premises.

19. According to the petitioner, she is not in possession of any other suitable building for conducting the proposed business. On the other hand, according to the respondent, the petitioner owns several shop rooms and is therefore not entitled to seek eviction on the ground under Section 11(3). In order to decide this issue, it is necessary to evaluate the oral evidence of PW1, upon which strong reliance is placed by the respondent. During cross-examination, PW1 initially stated that all the rooms in the petition schedule building, including the petition schedule shop room, are in the possession of tenants. This version probabalises the case of the petitioner that she is not in actual possession of any vacant room in the building. However, at a later stage, PW1 stated that one room in the upstairs is presently lying vacant. When questioned further regarding the same, she deposed that she is in possession of a document to substantiate such vacancy, but admittedly, no such document has been produced before the Court. This inconsistency in the version of PW1 creates a doubt regarding the exact status of occupation of the rooms in the building. Nevertheless, it is pertinent to note that even assuming that one room in the upstairs is vacant, there is absolutely no material on record to show that the said room alone is suitable for the conduct of the proposed business. Further, the evidence of PW1 shows that the remaining rooms in the building are in the possession of tenants. She has even identified one of the tenants in the adjacent shop room as Rajan, though she could not state the name of the tenant occupying the upstairs room. This by itself does not lead to an inference that the petitioner is in vacant possession of multiple rooms. There is an admission made by PW1 that she can effectively start the business only if all the rooms in the building are vacated and this would indicate the nature and extent of the proposed business. Thus, the statement of the petitioner made during cross examination cannot be construed to mean that she is presently in possession of alternative suitable accommodation.

20. The burden is on the respondent to establish not merely the existence of another building, but that the petitioner has in her possession another suitable building in the same locality. The respondent has not produced any independent evidence, either oral or documentary, to substantiate the contention that the petitioner is in possession of other vacant shop rooms suitable for the proposed business. Mere suggestions in cross-examination or partial answers elicited from PW1, without corroboration, are insufficient to discharge the burden of proof.

21. It is well settled that for attracting the bar under Section 11(3), it must be proved that the landlord has in her possession another building in the same city, town or village which is reasonably suitable for the purpose for which eviction is sought. In the absence of such proof, the contention of the respondent cannot be accepted. In addition to this, no commission was taken out by the respondent to show that the said rooms are vacant or are still there in the possession of PW1. Thus, there is no material on record to show that any other room is there in the possession of PW1 to conduct the proposed business. Thus, the respondent failed to prove the first proviso to Section 11(3) of the Act.

22. **Point No.4:-** The next question to be decided is whether the respondent is entitled to get protection of 2nd proviso to section 11 of the Act. The 2nd proviso to Section 11(3) of the Act provided that the Rent Control Court shall not give any direction to the tenant to put the landlord in possession, if such tenant is depending for his livelihood mainly on the income derived from any trade or business carried on in such building and there is no other suitable building available in the locality for such person to carry on such trade or business. In order to attract the said proviso, two conditions must be fulfilled. Firstly, such a tenant is depending for his livelihood mainly on the income derived from any trade or business carried on in any such building. Secondly, there is no

suitable building available in the locality for such a person to carry on such trade or business. If both the above conditions are present simultaneously, the Rent Control Court cannot order an eviction though the landlord needs the building bonafidely.

23. In the instant case RW1 stated that he has been conducting a tailoring shop in the petition schedule room since 2006, and that his eviction from the shop room would cause severe hardship to him. Though RW1 produced Ext.B1 to B4, it only shows that he is conducting a tailoring business. RW1 has not produced any document to show that he is mainly depending for his livelihood on the income from the petition schedule room. The non-production of such documents is fatal to his claim under the second proviso to Section 11(3), where the burden squarely lies on the tenant. By hiding income he cannot claim protection of the proviso.

24. No evidence is adduced by the respondent with respect to non availability of the other rooms to shift the business. Respondent has no case that proper enquiry as to the availability of the building is made. He has failed to discharge the burden of proving non availability of the buildings. Hence he is not entitled to get protection of second proviso to section 11(3). In the light of above discussion I am of the view that the respondent has failed to prove both the limbs of the 2nd proviso to Section 11(3) of the Act simultaneously. Hence I find that the respondent is not entitled for the benefit of protection under the 2nd proviso to Section 11(3) of the Act. This point is answered accordingly.

25. **Point Nos.4 and 5** :- In the light of the discussion made above, the petitioner is entitled to get an order of eviction under section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965. Hence these points are answered in favour of the petitioner.

**In the result**, the petition is allowed as follows:-

1) The respondent is directed to surrender vacant possession of the petition schedule rooms to the petitioner immediately after the expiry of one month from the date of this order under Section 11 (3) of the Kerala Buildings (Lease and Rent Control) Act, 1965.

2) The petitioner is also entitled to costs.

(Dictated to C. A, typed by her in Office Computer, corrected and pronounced by me in Open Court, on this the 30<sup>th</sup> day of March 2026)

Sd/-

RENT CONTROLLER / MUNSIF,  
VATAKARA.

**Petitioner's Witness :**

PW1 07.08. 2025 : Sufana Sherin, D/o Ashraf M.R.P.

**Petitioner's Exhibits:**

- A1 21.02.2023 : Copy of Lawyer notice sent by Advocate I. Rajan to Suresh M.P.
- A2 21.02.2023 : Postal receipt.
- A3 17.03.2023 : Postal acknowledgment card.
- A4 28.03.2023 : Reply notice sent by Advocate K. Prabhakaran to Advocate I. Rajan.
- A5 03.09.2023 : Copy of certificate of registered pharmacist.
- A6 19.08.2023 : Copy of certificate issued by Rajiv Gandhi University of Health Science, Karnataka.

**Respondent's Witness :**

RW1 25.11.2025 : Suresh M.P, S/o Damodaran K.P.

**Respondent's Exhibits :**

- B1 01.04.2025 : Certificate of IFTE & OS License issued by Vatakara Municipality.
- B2 - : Copy of identity card issued by Kerala Tailoring Workers Welfare Federation.
- B3 24.03.2025 : Copy of receipt issued by Vatakara Municipality.
- B4 24.03.2025 : Copy of receipt issued by Vatakara Municipality.

Sd/-

RENT CONTROLLER / MUNSIF,  
VATAKARA.