

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 petitioners purchased the petition schedule building and the property where the petition schedule building is lying from the erstwhile owners of the petition schedule building by virtue of the registered documents bearing Nos. 360/2015, 406/2015, 493/2015, 658/2015, 478/2015, 1743/2016, 1744/2016, 1745/2016, 1331/2016, 1332/2016 of S.R.O. Kannur. The respondent has taken the petition schedule building from the petitioners on lease and the respondent is now in the possession of the petition schedule building and he is doing business in the petition schedule building and paying rent to the petitioners. The petitioners are intending to start a wholesale paints and hardware business. The petitioners have no vacant building of their own to start wholesale paints and hardware business. The petitioners are depending upon the petition schedule building for starting a wholesale paints and hardware business. The petitioners are experienced in doing wholesale paints and hardware business. The petition schedule building which is in the possession of the respondent is suitable for conducting wholesale paints and hardware business. The need of the petitioners for the building is genuine, urgent and bonafide. The petitioners have no vacant building of their own to start the proposed business and they are solely depending upon the petition schedule building for starting the wholesale paints and hardware business. The petitioners bonafide requires the building in the possession of the respondent for starting the said business. At the time of filing the petition the petitioners are co-owners of the petition schedule building. Thereafter as per the final decree in FD IA No. 1106/2014 in OS 226/1989, the petition schedule building and the adjacent buildings are allotted to the share of the petitioners. As per the execution petition filed as EP 44/2019, the delivery of the building was taken by the petitioners. Now the petitioners are the

absolute owners of the petition schedule building and adjacent rooms. The petition schedule building is one of the rooms in 12 rooms. The petitioners required all the 12 rooms for starting the proposed business. The intention of the petitioners is to start the business in a large scale. So for starting the proposed business all the 12 rooms are absolutely necessary. Without getting vacant possession of all the 12 rooms, the petitioners will not be able to start the need of the petitioners. The tenants of the buildings bearing Nos. P.K 35/568,35/570, 35/571 and 35/572 have already surrendered the rooms in their possession to the petitioners. But those rooms alone are not sufficient for the proposed business of the petitioners. The petitioners could not start the business in those rooms now in the possession of the petitioners as the available spaces are insufficient to start the proposed business. So the petitioners need the petition schedule building also to start the proposed business. The petitioners already initiated legal proceedings to evict all the tenants in possession of the rooms in the said building. The respondent is not in need of the petition schedule building. The respondent is not depending upon the business in the petition schedule building as he has some other source of income. The respondent is not doing any serious business in the petition schedule building. The respondent is getting sufficient income from some other business. The respondent is not depending upon the income from the business in the petition schedule building for his livelihood. Similar vacant buildings are available in the locality where the petition schedule building is situated to shift the business carried out by the respondent in the petition schedule building. The respondent can shift his business in the petition schedule building to some other vacant building situated in the same town where the petition schedule building is situated. The petitioners approached the respondent demanded him to vacate the petition schedule building and to surrender the vacant possession of the building to the petitioners. But the respondent has not responded to the legal demand of the petitioners. The respondent is not ready to surrender the vacant possession of the petition schedule respondent and

building. The respondent is liable to surrender the vacant possession of the petition schedule building to the petitioners as the respondent is not doing any serious business in the petition schedule building and the respondent has some other source of income. The petitioners understand that the respondent will not surrender the vacant possession of the petition schedule building to the petitioners without the intervention of this court. Hence this petition.

3. The respondent filed counter statement contending as follows:- The above petition is unsustainable either in law or on facts. The respondent is not the proprietor of the business 'Aroma Cloth Mart' as stated in the petition. He is the managing partner of the said firm. Hence it is to be corrected like that in the cause title. The averments in the petition that the petitioners purchased the ownership of the building from its owners as per the documents mentioned in the petition is not at all true. Hence the petitioners are not the absolute owners of the building. As far as the knowledge of the respondent is concerned some, co -owners did not sell their undivided shares over the building to them so far. The petitioners have to prove their title over the building by producing the original documents. The rate of rent shown as Rs.1000/- in the petition is not correct. The rent is only Rs.150/-per month, which the respondent paid promptly. The need alleged in the petition is not bonafide but only a pretext to evict the respondent from the building. The intention of the petitioners is to evict the respondent from the building and sell the same to third parties. The avement that they want to start a business of wholesale paints and hardware business in the building is not at all true. The building is very old and part of an old line building having no frontage. This building is not at all convenient for starting the said wholesale business. Moreover, no renovation or major alteration can be made to this old building. There is no space for parking vehicles in front of the building, which is inevitable for a wholesale business. Hence the building cannot be used for the said business. The petitioners have no experience or financial capacity to start the business. Moreover the petitioners are in possession of vacant building,

which they bought along with petition schedule building. Hence the need is not bonafide but only a ruse to evict the respondent from the building by hook or crook. The respondent and other partners are mainly depending upon the income from the textile business being conducted in the building. No other similar vacant buildings are available in the locality also. Hence it is prayed that the petition may be dismissed with costs.

4. The respondent filed additional counter statement contending as follows:- In the original counter itself this respondent submitted that the petitioners did not purchase the right of all co-owners of the petition schedule building. Now the petitioners have conceded that fact and amended the petition to fill the lacuna of their case. That means they were not absolute owners of the building at the time of filing RCP and as such the RCP itself is not maintainable. The amended petition reveals that they acquired absolute right over the building only after the filing of the RCP. Hence, the RCP filed u/s 11(3) of the Act is hit by third proviso of section 11(3). This respondent does not admit that even now the petitioners are absolute owners of the building. They have to put strict proof with regard to their right over the building. The building allotted as per the FD IA.No.1106/2014 in OS No.226/1989 and taken delivery as per EP.44/2019 is not the petition schedule building. Still other co-owners have fractional right over the building. Hence the RCP filed without arraying all the co-owners is not maintainable in law. To the knowledge of this respondent they have filed petitions u/s 11(3) against some other tenants also seeking eviction to conduct different types of businesses. Most of the said RCP's were dismissed by this court as well as other courts. The petitioners did not file appeal against those orders. As such, the newly invented contention to start the wholesale business in the all twelve rooms has no legs to stand. The averment in the amended petition that the tenants in occupation of building Nos, 35/568,570, 571 and 572 have already surrendered their respective rooms to the petitioners is false and fabricated. As far as the knowledge of this respondent is concerned, only

two rooms were surrendered and the petitioners have already demolished the same. The petitioners should have to take out a commission to prove that all the twelve rooms are still in existences. More over they did not initiate legal actions against all the tenants in possession of these rooms. Hence the petition is to be dismissed with costs.

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

- 1) Is the denial of landlord-tenant relationship by the respondent's bonafide?
- 2) Whether the need alleged by the petitioners is bonafide?
- 3) Whether the petitioners have another building of their own or in their possession in the same city, town or village?
- 4) Whether the respondent is entitled to get protection under 2nd proviso of section 11(3) of Act 2 of 1965?
- 5) Whether the petitioners are entitled to evict the respondent, if so on what ground?
- 6) Relief and costs?

5. On the side of the petitioners, PW1 was examined and Exts. A1 to A20 were marked. Ext. A14 was mistakenly marked earlier.

6. Heard both sides.

7. **Point Nos. 1 to 4:-** The 3rd petitioner is examined as PW1 and Exts. A1 to A21 documents marked on the side of petitioners. Ext. A1 is the certified copy of jenm deed No. 360/2015. Ext. A2 is the certified copy of jenm deed No. 406/2015. Ext. A3 is the certified copy of jenm deed No. 493/2015. Ext. A4 is the certified copy of jenm deed No. 658/2015. Ext. A5 is the certified copy of jenm deed No. 478/2015. Ext. A6 is the certified copy of jenm deed No. 1743/2016. Ext. A7 is the certified copy of jenm deed No. 1744/2016. Ext. A8 is the certified copy of jenm deed No. 1745/2016. Ext. A9 is the certified copy of document No. 1331/2016. Ext. A10 is the document No. 1332/2016. Ext. A11 is the delivery warrant. Ext. A12 is

the delivery receipt. Ext. A13 is the delivery account. Ext. A14 is the certified copy of order in RCP 244/2017 and RCP 248/2017. Ext. A15 is the certified copy of plan in FD IA 1106/2014. Ext. A16 is the certified copy of account in FDIA 1106/2014. Ext. A17 is the certified copy of share list in FDIA 1106/2014 Ext.A18 is the commission report in FDIA 1106/2014. Ext.A19 is the final decree in FDIA 1106/2014 in OS 226/1989. Ext. A20 is the land tax receipt.

8. This petition is filed for eviction on the ground of bonafide need. The petition schedule building is required for starting a wholesale business in paint and hardware. The entire rooms in the petitioned building is necessary for the purpose of starting the proposed business. The petitioners obtained right over the petition schedule property by way of Exts. A1 to A13 documents. The petitioners obtained delivery of possession of the petition schedule property as per order in EP 44 of 2019. The respondent has resisted the case of petitioners on the ground that there is no landlord tenant relationship between the petitioners and the respondent, it is stated that respondent is not aware about the purchase of petition building by the petitioners. In **Kumaran A. v. Madambillath Subaida and Another reported in 2019 KHC 4923, 2019 (3) KLJ 866** our Hon'ble High Court has held that "...It is trite law that every co-owner is an owner of each and every parcel of co-ownership property insofar as a third party is concerned. Catena of decisions are available for the proposition that one co-owner can file a petition for eviction of a tenant without the junction of other co-owners as long as other co-owners have no objection regarding the rights of the suing co-owner..." Hence it is clear that a co-owner can file a petition without the juncture of all the co-owners, if the other co-owners has no objection for the same. On going through the counter statement filed by the respondent, it is clear that they never disputed the title of the petitioners in the petition building. In **Khadeeja and others v. Haris Haji.V reported in 2019 (3) KC 527 : 2019 (3) KLT 693**, our Hon'ble High Court of Kerala has held that "... In the absence of denial of title or claim of permanent tenancy, the mere denial of

landlord - tenant relationship only would not under any circumstance, oust the rent control petition from the jurisdiction of the rent control court and such rent control petition shall not be considered under the second proviso to S. 11 (1) of the Act. In short, denial of landlord – tenant relationship that arises out of denial of title of the landlord or claim of permanent tenancy alone would fall under S. 11 (1) of the Act...”. Hence mere denial of the landlord – tenant relationship does not attract second proviso to section 11 (1) of the Act. From Exts. A1 to A13 documents it is proved that the petitioners are the absolute owners of the petition schedule buildings. Hence the claim of the respondents cannot be considered as a bonafide denial of landlord-tenant relationship. Moreover the title of the petitioners are not disputed by the respondent. The petitioners evidence regarding bonafide need remains unchallenged. No evidence is adduced by the respondent to get protection of the proviso to Section 11 (3) of the Act. Hence I find that the petitioners have proved their case of bonafide need and these points are found in favour of the petitioners.

9. **Point Nos.5 and 6:-** In the light of the above discussion, the petitioners are entitled to get an order of eviction under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965.

In the result, the Rent Control Petition is allowed under Section 11 (3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 and the respondent is directed to surrender the vacant possession of the petition schedule building to the petitioners within a period of two months failing which the petitioners are at liberty to execute the order through the process of court. The petitioners are also entitled to costs.

(Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in open Court, this the 20th day of June, 2024).

Sd/-
Rent Control Court
(Principal Munsiff)

Petitioner's Witnesses:-

PW1 : Tom Mathew (3rd Petitioner).

Petitioner's Exhibits:-

- A1 : 03.02.2015 : Certified copy of Jenm Deed No.360/2015 of SRO, Kannur.
 A2 : 06.02.2015 : Certified copy of Jenm Deed No.406/2015 of SRO, Kannur.
 A3 : 11.02.2015 : Certified copy of Jenm Deed No.493/2015 of SRO, Kannur.
 A4 : 25.02.2015 : Certified copy of Jenm Deed No.658/2015 of SRO, Kannur.
 A5 : 11.02.2015 : Certified copy of Jenm Deed No.478/2015 of SRO, Kannur.
 A6 : 09.06.2016 : Certified copy of Jenm Deed No.1743/2016 of SRO, Kannur.
 A7 : 09.06.2016 : Certified copy of Jenm Deed No.1744/2016 of SRO, Kannur.
 A8 : 09.06.2016 : Certified copy of Jenm Deed No.1745/2016 of SRO, Kannur.
 A9 : 03.05.2016 : Certified copy of Jenm Deed No.1331/2016 of SRO, Kannur.
 A10 : 03.05.2016 : Certified copy of Jenm Deed No.1332/2016 of SRO, Kannur.
 A11 : : Certified copy of delivery Warrant in EP.44/2019.
 A12 : : Certified copy of delivery receipt in EP.44/2019.
 A13 : : Certified copy of delivery report in EP.44/2019.
 A14 : 09.06.2022 : Certified copy of Common order in RCP.244/17 and 248/17.
 A15 : : Certified copy of Plan in FDIA.1106/2014.
 A16 : : Certified copy of delivery account in FDIA.1106/2014.
 A17 : : Certified copy of Sharelist in FDIA.1106/2014.
 A18 : 13.04.2012 : Certified copy of Commission Report submitted by Jinith Kumar, Advocate Commissioner.
 A19 : 25.07.2018 : Certified copy of Final Decree No.1106/2014 in OS.226/1989 of the Munsiff Court, Kannur.
 A20 : 27.06.2019 : Basic Tax receipt.

Respondent's Exhibits and Witness:- Nil.

Sd/-
 Rent Control Court
 (Principal Munsiff)

//True Copy //

Rent Control Court
 (Principal Munsiff)

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Fair Order in RCP. No.193/2018
Dated: 20.06.2024

