

**IN THE COURT OF RENT CONTROL APPELLATE AUTHORITY,
IRINJALAKUDA**

**Present:- Sri.Vinod Kumar N., Rent Control Appellate Authority
Saturday, 4th April, 2026/ 14th Chaithra, 1948**

RCA. No.15/2025

(I.A.3/2024 in R.C.O.P. 17/2021 of Rent Control Court, Irinjalakuda)

Appellant:-

Haridas, aged 66 years, S/o. Valiyaparambil Sekharan,
Irinjalakuda Desom, P.O. & Village, Mukundapuram Taluk,
Thrissur District, Pin 680 121.

By Advs. K. Jagadeesh

Respondent:-

Madhusoodanan, aged 63 years, S/o. Puthillath Manayil
Narayanan Namboothiri, Irinjalakuda Desom & P.O.,
Manavalassery Village, Mukundapuram Taluk,
Thrissur District, Pin 680 125.

By Adv. P.Madhusudana Menon

This appeal has come up before me for hearing on this day the court delivered the following:-

J U D G M E N T

This appeal is preferred under section 18(1)(b) of the Kerala Building (Lease and Rent Control) Act against the order dated 15/01/2025 passed by the Rent Control Court, Irinjalakuda in I.A.3/2024 in RCOP 17/2021.

2. IA 3/2024 in RCOP 17/2021 was filed challenging the maintainability of the Rent Control Petition. The appellant herein is the petitioner and the respondent herein is the respondent in I.A.3/2024 in RCOP 17/2021 before the Rent Control Court, Irinjalakuda.

3. According to the petitioner in I.A.3/2024 in RCOP 17/2021, the petition schedule rooms originally belonged to the father of the respondent. The construction of the eight shop rooms including the petition schedule rooms was started during the year 1984-85. When the building was under construction, the petitioner/tenant had

approached the father of the respondent and expressed his willingness to purchase two rooms in the building and then the father of the respondent had agreed that in the event of payment of ₹1 lakh, he would treat the petitioner as a permanent tenant on payment of a nominal rent without any enhancement of rent and that the petitioner could keep the building in possession till the building exists. Accordingly, the petitioner had paid ₹1 lakh on 15/12/1985 and thereafter the construction of the shop rooms was completed using the funds received from the petitioner and on 05/02/1986 the petitioner took possession of the petition schedule room as a permanent tenant for a monthly rent of ₹600/-. Accordingly, the rent @ ₹600/- is being paid regularly without the rent has not been enhanced since he is a permanent tenant. Since the petitioner took possession of the building as a permanent tenant, the petition is not maintainable before the Rent Control Court and hence the RCP is liable to be dismissed.

4. The respondent filed counter statement denying the allegations in the petitions. The respondent denied the allegation that his father received a sum of ₹1 lakh for the purpose of completion of the construction of the petition schedule building and completed the construction using the fund received from the petitioner and that after completion of the work, his father had handed over the possession of the rooms to the petitioner as a permanent tenant for a monthly rent of ₹600/-. His father never received any amount from the petitioner and never treated the petitioner as a permanent tenant. Hence the petition is liable to be dismissed.

5. On the side of the petitioner, PW1 and PW2 were examined. On the side of the respondent, RW1 to RW4 were examined and Exts.B1 to B8 documents were marked. Exts.X1 and X2 were also marked. After appreciating the evidence on record and

hearing both sides, the Rent Control Court dismissed the application I.A.3/2024 vide order dated 15/01/2025.

6. Aggrieved by the said order of the Rent Control Court, Irinjalakuda, the petitioner filed this appeal before the Rent Control Appellate Authority, Thrissur. The Rent Control Appeal was made over to this Appellate Authority for hearing and disposal according to law.

7. The counsel for the appellant/petitioner contended that the order of the trial court is illegal, improper and unsustainable. It is opposed to facts, evidence and other circumstance of the case. The trial court ought to have found that the original petition is not maintainable in view of section 11(1) of the Kerala Building (Lease and Rent Control) Act. The trial court ought to have found that the contention of the permanent tenancy put forward by the appellant is a bonafide one. The trial court ought to have considered the fact that the monthly rent of the petition schedule room was ₹600/- from 05/02/1986 onwards and the same was not enhanced so far. The trial court ought to have considered the fact that the appellant adduced sufficient evidence to prove the fact that he had paid ₹1 lakh to the father of the respondent on 15/12/1985. The trial court ought to have considered the fact that the father of the respondent had constructed the building using the funds given by the appellant. The trial court erred in its finding that the appellant failed to establish a prima facie case of permanent tenancy.

8. I have gone through the pleadings of the parties, the evidence as well as the records of the Rent Control Court and heard the learned counsels for the parties. The points that arise for consideration in this appeal are as follows :

- 1 Whether the claim of permanent tenancy raised by the appellant/tenant is bonafide?
2. Whether the order of the Rent Control Court requires to be reversed, varied or modified and if so, the relief and costs ?

9. **Point No.1** : The Rent Control Petition was filed by the respondent under section 11(3) of the Kerala Building (Lease and Rent Control) Act for evicting the petitioner from the petition schedule building. During the pendency of the Rent Control Petition, the application I.A.3/2024 was filed by the petitioner therein contending that he is a permanent tenant and hence the Rent Control Court has no jurisdiction to entertain the Rent Control Petition.

10. According to the petitioner, the petition schedule rooms originally belonged to the father of the respondent and when the building was under construction, the petitioner/tenant had approached the father of the respondent and expressed his willingness to purchase two rooms in the building and then the father of the respondent had agreed that in the event of payment of ₹1 lakh, he would treat the petitioner as a permanent tenant on payment of a nominal rent without any enhancement of rent and that the petitioner could keep the building in possession till the building exists. Accordingly, the petitioner paid ₹1 lakh on 15/12/1985 and the construction of the shop rooms was completed using the funds received from the petitioner and the on 05/02/1986 the petitioner took possession of the petition schedule room as a permanent tenant for a monthly rent of ₹600/-. Accordingly, the rent @ ₹600/- is being paid regularly without the rent has not been enhanced subsequently since he is a permanent tenant. Hence the petition is not maintainable before the Rent Control Court.

11. Now the first question to be decided is whether the claim of permanent tenancy raised by the appellant/tenant is bonafide

or not. Section 11 of the Kerala Building (Lease and Rent Control) Act deals with eviction of tenants. As per S.11(1), *notwithstanding anything to the contrary contained in any other law or contract a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Act.* As per the second proviso to S.11(1), *where the tenant denies the title of the landlord or claims right of permanent tenancy, the Rent Control Court shall decide whether the denial or claim is bona fide and if it records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and such Court may pass a decree for eviction on any of the grounds mentioned in this Section, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.*

12. It is well settled that in a rent control proceedings, if the tenant denies the title of the landlord or claims permanent tenancy, the challenge relating to such denial of title or claims to permanent tenancy has to be adjudicated before proceeding further, and there should be a finding as to whether such denial of title of the landlord, or the claim for permanent tenancy by the tenant, is bonafide or not. The paramount title of the landlord is absolutely irrelevant for the purpose of a claim under section 11 of the Act. His title as the landlord alone is relevant in a dispute under section 11 of the Act. In this case the petitioner admitted that he is a tenant under the respondent and that rent @ ₹600/- is being paid by him. In this case, the petitioner did not dispute the status of the respondent as landlord. His contention is that he is a permanent tenant under the respondent and hence he cannot be evicted under the provisions of the Kerala Building (Lease and Rent Control) Act. It is the settled position of law that the claim of permanent tenancy under the second proviso to section 11(1) of the Act can be set up only by a person who admits his status to be that of a tenant. In **Govindan V. and others v. PA**

Rasheed (2009(1)KHC 587) the Hon'ble High Court of Kerala held that the *Act 2 of 1965 does not define the expression permanent tenancy. According to us, permanent tenancy means a tenancy in perpetuity. The claim of permanent tenancy, therefore, means a claim of permanent immunity from eviction or a tenancy which is to last forever till its subject matter, the building, exists.*

13. The main contention of the petitioner is that the father of the respondent had agreed that in the event of payment of ₹1 lakh, he would treat the petitioner as a permanent tenant on payment of a nominal rent without any enhancement of rent and that the petitioner could keep the building in possession till the building exists. According to the petitioner, the payment of ₹1 lakh made by the tenant towards construction cost of the building will confer fixity of tenancy on him. To prove the contention, the petitioner was examined as PW1. He adduced evidence in tune with the averments in the petition. He admitted that the rate of rent is ₹600/-. During cross examination, PW1 admitted his signature in Ext.B1 lease deed. He admitted that there is no mention regarding payment of ₹1 lakh in Ext.B1 deed. PW2 deposed that the petitioner had given ₹1 lakh to the father of the respondent, and utilizing the said amount, the construction of the building was completed. According to PW2, he witnessed the transaction whereby the petitioner handed over ₹1 lakh to the father of the respondent, who agreed to permit the petitioner to possess the building as a permanent tenant on payment of nominal rent. But according to PW2, he did not remember the date of transaction of ₹1 lakh.

14. Whereas the contention of the respondent is that his father never received any amount from the petitioner as alleged in the petition and his father never treated the petitioner as a permanent tenant. Hence the petition is liable to be dismissed. According to the

respondent, he is the landlord and the petitioner is the tenant under him. To prove the same, on the side of respondent, RW1 to RW4 were examined. The respondent was examined as RW1 and he adduced evidence stating that his father never received ₹1 lakh. According to him, the petitioner is not a permanent tenant. Ext.B1 is the lease deed dated 05/02/1986. RW2 is a document writer and he deposed that he prepared Ext.B1 lease deed. RW3 deposed that he is a signatory to Ext.B1 as a witness. RW4 is the Inspector in Irinjalakuda Division of Postal Department through him Ext.X1 and Ext.X2 documents were marked.

15. It is pertinent to note that there is no indication in the terms and conditions in Ext.B1 to show that the lease is a permanent one. The petitioner has no case that no period of tenancy was fixed or no provision for eviction in the event of sub lease or in the event of default in payment of rent etc are incorporated in the Ext.B1 deed. Hence the petitioner cannot be treated as a permanent tenant.

16. Further, Ext.B1 lease deed is an unregistered one. Since the tenancy is governed by an unregistered lease deed the same cannot be relied on at all as evidence of a permanent tenancy in view of S.17(1)(d) and S.49 of the Registration Act. In **Sreedharan Nair and others. vs. A.G.Kannan (2010 KHC 741)** the Hon'ble High Court of Kerala in paragraph 5 observed that *the above view taken by us notwithstanding, we are in a position to sustain the finding of the statutory authorities that the revision petitioners are not entitled to set up a plea of permanent tenancy or permanent immunity from eviction. Ext.B1, as we have already found, creates a perpetual lease not only in favour of Damodaran Nair but in favour of all his successors. S.17(1)(d) read with S.49 of the Registration Act stands in the way of any claim of perpetual lease on the basis of Ext.B1 which is an unregistered document, being accepted. According to us*

Ext.B1 cannot be relied on as evidence of the perpetual lease which is claimed. At best Ext.B1 can be relied on as evidence of a collateral transaction as envisaged by proviso to S.49. But here the main transaction sought to be proved is of a lease in perpetuity. Such a transaction cannot be created by Ext.B1. In the absence of a registered document for proving the transaction of perpetual lease or lease for a period of exceeding one year, Ext. B1 cannot come to the aid of the revision petitioner. The marking of Ext. B1 has to be confined to the extent of proving the collateral transactions other than the longevity of lease in question.

17. In this case, since the petitioner himself has admitted his status to be that of a tenant and since he is seen discharging the monthly rent at the rates agreed upon in the Ext.B1 lease deed, it is difficult to accept his evidence based on an oral agreement for permanent tenancy. The landlord can be relegated to a civil court only if the respondent in the eviction proceedings denies in good faith the title of the landlord or otherwise claims permanent tenancy. It is apparent from the conduct of the petitioner that he has been raising untenable contentions without any bonafide. In ***Narayan Murti v. Thankamma Sebastian (2005 (3) KLT 102)*** the Hon'ble High Court of Kerala observed that *the second proviso to S.11(1) of the Act is a provision intended to prevent unscrupulous litigants from seeking eviction of persons who are not their tenants and to prevent unscrupulous tenants from protracting the Rent Control proceedings by making false claim of denial of title of the landlord.*

18. Considering the entire facts and circumstances of the case, I am of the view that there is no merit in the contention of the counsel for the appellant that the Rent Control Court has no jurisdiction to entertain the RCOP 17/2021. The Rent Control Court has given fairly good reasons to support its view that the claim of

permanent tenancy does not arise in this case and that the claim of permanent tenancy set up by the tenant is not a bonafide one. Considering the entire facts and circumstance, I am of the view that the Rent Control Petition is maintainable before the Rent Control Court. Point No.1 is answered against the appellant.

19. **Point No.2 : -** In the light of the finding in point No.1, the order dated 15/01/2025 in I.A.3/2024 in RCOP 17/2021 passed by the Rent Control Court, Irinjalakuda, does not require any interference and the order is confirmed and hence, the appeal against the order dated 15/01/2025 in I.A.3/2024 in RCOP 17/2021 of the Rent Control Court, Irinjalakuda is liable to be dismissed.

In the result, the appeal is dismissed with cost to the respondent.

(Dictated to the confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, dated this the 4th day of April, 2026).

Sd/-
Vinod Kumar. N.,
Rent Control Appellate Authority,
Irinjalakuda

Appendix – Nil

Id/-
Vinod Kumar. N.,
Rent Control Appellate Authority,
Irinjalakuda
By order

/True copy /

Sheristadar