

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

Present:- Sri.Vinod Kumar N., Rent Control Appellate Authority
Tuesday, 7th April, 2026/ 17th Chaithra, 1948

RCA. No.165/2024
(R.C.P. 40/2019 of Rent Control Court, Kodungallur)

Appellant/Respondent:-

Haridas, aged 65 years, S/o. Kollamparambil Kumaran,
Panangad Desom, Village & P.O., Kodungallur Taluk,
Pin 680 665.

By Advs.K.Gopakumar, Robins K Chunkath &
Kurian Chunkath

Respondent/Petitioner:-

Premraj, aged 65 years, S/o. Panikkasseri Vallomparambath
Vattaparambil Bharathan, Lokamalleswaram Village & Desom,
Kodungallur Taluk & P.O., Pin 680 664.

By Advs. V.G.Subash Chandra Babu & T.L.Sajithkumar

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 of the Kerala
Building (Lease and Rent Control) Act against the order passed by the
Rent Control Court, Kodungallur, in RCP 40/2019 dated 31/08/2024.

2. The appellant herein is referred to as respondent/tenant and
the respondent herein is referred to as petitioner/ landlord for the
purpose of discussion and appreciation of evidence.

3. The rent control petition was filed by the petitioner/landlord
for an order of eviction of the respondent/tenant under section 11(3) and
11(8) of the Kerala Building (Lease and Rent Control) Act.

4. The case of the petitioner/landlord, in brief, is as follows :-
The petitioner is an Ayurvedic doctor and he is conducting a pharmacy
under the name and style 'Prabha Ayurvedic Pharmacy' in the petition 'A'
schedule room in the ground floor of the three storied building owned by
him as per document No. 952/93 of SRO, Kodungallur and he is using a

portion of the petition 'A' schedule room as a consultation room. The petition 'B' schedule room is another room in the ground floor of the said building and it was leased out to the respondent for a monthly rent of ₹6,600/- on 08/06/2018 and the respondent is conducting business under the name 'Ayyappa fancy metals'. The petition 'A' schedule room is having 550 sq.ft and it is not sufficient for the petitioner to run the pharmacy and to use it as consultation room. Hence, it is necessary to get the vacant possession of the petition 'B' schedule property for the additional accommodation of the petitioner. If the vacant possession of the petition 'B' schedule room and the room situated to the north of this room are obtained, the said rooms can be made available for stocking ayurvedic and herbal medicines and for the sale of the same and the petition 'A' schedule room can be used exclusively for the pre and post consultation purpose. Though notice was issued to the respondent to vacate the building, the respondent did not give vacant possession of the building. There are suitable rooms for the respondent to conduct his business in the same building. The respondent is not depending on the income derived from the business carried on in the petition 'B' schedule property. No suitable and convenient vacant rooms are in the possession of the petitioner for his additional accommodation and the one room on the upper floor in the possession of the petitioner is not suitable for his additional accommodation. Hence, the petition is filed for an order of eviction of the respondent/tenant from the petition schedule rooms under section 11(3) and 11(8) of the Act.

5. The respondent/tenant had filed counter statement contending that the petitioner is not doing medical consultation in the petition 'A' schedule room. The petitioner is conducting only a medical shop in the petition 'A' schedule room. The respondent is depending on the income deriving from the business carried on in the petition 'B' schedule room and there is no other vacant room available in the locality to shift his business. Whereas many vacant rooms are in the possession of the petitioner. Hence the respondent prays for the dismissal of the petition.

6. To prove the case of the petitioner/landlord, he was examined as PW1 and Exts.A1 to A6 were marked. To prove the case of the respondent, the respondent was examined as RW1. Ext.C1 series, the Advocate Commissioner's report and plan were also marked.

7. After appreciating the evidence on record and hearing both sides, the Rent Control Court allowed the prayer for eviction under section 11(3) and 11(8) of the Kerala Building (Lease and Rent Control) Act, 1965 and the respondent/tenant shall give vacant possession of the petition schedule room to the petitioner/landlord within two months from the date of order. On failure from the part of the respondent to vacate the petition schedule room, the petitioner can evict the respondent from the petition schedule room through the process of court and can realise the cost from the respondent.

8. Aggrieved by the order of eviction under 11(3) and 11(8) of the Act, the respondent/tenant 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.

9. The counsel for the appellant/tenant contended that the order of the trial court is opposed to law, facts and circumstance of the case. The trial court ought to have found that there is vacant room in the first floor and the petitioner filed the petition without stating special reason. The trial court ought to have found that petitioner got the vacant possession of another room in the ground floor during the pendency of the proceedings. The trial court ought to have found that no medical consultation is being conducted in the petition 'A' schedule room and the room is being used as a sales counter of drugs. The trial court ought to have found that the hardship of the tenant would outweigh the advantage of the landlord. The trial court ought to have found that the income derived from the business conducting in the petition 'B' schedule property is the main source of income of the respondent. There are no vacant rooms available in the locality.

10. 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 petitioner/landlord succeeded in proving his bona-fide need of the petition schedule 'B' room?
2. Whether the respondent/tenant is entitled to get an order of protection from eviction under 1st proviso to S.11(3) of the Act ?
3. Whether the respondent/tenant is entitled to get the benefit of 2nd proviso to section 11(3) of the Act ?
4. Whether the petitioner/landlord is entitled to get an order under section 11(8) of the Act ?
5. Whether the order of the Rent Control Court requires to be reversed, varied or modified and if so, the relief and costs ?

11. **Point Nos. 1 to 4** :- The petitioner is an Ayurvedic doctor and he is conducting a pharmacy under the name and style 'Prabha Ayurvedic Pharmacy' in the petition 'A' schedule room in the ground floor of the three storied building owned by him as per document No. 952/93 of SRO, Kodungallur and he is using a portion of the petition 'A' schedule room as a consultation room. The petition 'B' schedule room is another room in the ground floor of the said building and it was leased out to the respondent for a monthly rent of ₹6,600/- on 08/06/2018 and the respondent is conducting business under the name 'Ayyappa fancy metals'. The existing consultation room cum pharmacy of the petitioner is having 550 sq.ft and it is not sufficient for the petitioner. Hence, it is necessary to get the vacant possession of the petition 'B' schedule property for the additional accommodation of the petitioner. If the vacant possession of the petition 'B' schedule room and the room situated to the north of this room are obtained, the said rooms can be made available for stocking ayurvedic and herbal medicines and for the

sale of the same and the petition 'A' schedule room can be used exclusively for the pre and post consultation purpose. Though notice was issued to the respondent to vacate the building the respondent did not give vacant possession of the building. There are suitable rooms for the respondent to conduct his business in the same building. The respondent is not depending on the income derived from the business carried on in the petition 'B' schedule property. There is no other suitable and convenient vacant building in the possession of the petitioner for his additional accommodation. Hence, the petition is filed for an order of eviction of the respondent/tenant from the petition schedule rooms under section 11(3) and 11(8) of the Act.

12. PW1 deposed in tune with the averments in the petition. According to PW1 he is an Ayurvedic doctor, he is conducting Ayurvedic pharmacy in the petition 'A' schedule room and is using a portion of this room as his consultation room. The space is not sufficient to conduct the business of Ayurvedic pharmacy as well as to use as a consultation room. He needs the petition 'B' schedule room for his additional accommodation. If the vacant possession of the petition 'B' schedule room is obtained, the said room can be made available for stocking Ayurvedic and herbal medicines and for the sale of the same and the petition 'A' schedule room can be used exclusively for the pre and post consultation purpose. He deposed that there are two other doctors practicing under him. He also deposed that he got vacant possession of the room just northern side of the petitioner 'B' schedule room as per order in RCP 41/2019. He deposed that no suitable room in his possession for his additional accommodation. He further deposed that the respondent is not depending on the income deriving from the business and that there are other suitable buildings in the locality to shift the business of the respondent. He also deposed that the hardship caused to the tenant will not outweigh the advantage available to him. During cross examination, he deposed that the room where Shine was conducting spare parts business was on the southern side of petition 'B'

schedule room and after getting vacant possession of the room, the said room was demolished so as to make an access towards the backside of the building where the building owned by the wife of the petitioner situates. He deposed that another tenant named Safiya vacated the room and now he is using the said room for storing Ayurvedic medicines. According to PW1, due to the insufficient space, the patients are standing outside the room. According to him, the room in the first floor is not suitable for his need.

13. The respondent was examined as RW1. He deposed that he is conducting business under the name 'Ayyappa fancy metals' and he is depending on the income derived from the business and that no vacant rooms are available to shift his business. He also deposed that the petitioner is not using petition 'A' schedule room as his consultation room. He further deposed that there are vacant rooms in the possession of the petitioner for his additional accommodation. He further deposed that the hardship that may be caused to him by granting eviction will outweigh the advantage of the petitioner/landlord. During cross examination, he deposed that he did not file any objection to the advocate commissioner's report. He also deposed that he is getting ₹3 lakh per year from the business carried on in the building.

14. Ext.C1 series are the advocate commissioner's report and plan. The advocate commissioner reported that at the time of his inspection, he could see patients are waiting outside to see the doctor. It is reported that there is a small cabin in the room for consultation purpose and he could see some patients are entering into the cabin and coming out after consultation and he further reported that this room is not so convenient and enough for consultation purpose as well as storing of medicines and conducting pharmacy. It is also reported that several vacant rooms are available for rent in the locality.

15. According to the counsel for the appellant the trial court ought to have found that no medical consultation is being conducted in

the petition 'A' schedule room and the room is being used only as sales counter of drugs and that there are vacant rooms in the possession of petitioner and the petitioner filed the petition without stating the special reason for the non-occupation of the said room. In this regard it is pertinent to note that in deciding the rent control eviction, the bonafide requirement is to be viewed from the view point of the landlord, who is the best judge of his own requirement. The oral evidence of PW1 sufficiently indicates that the need of the petitioner is genuine and bonafide. In the light of evidence of the parties, I hold that the need projected by the petitioner/landlord to get the vacant possession of the petition 'B' schedule room is bona-fide.

16. Another contention of the counsel for the appellant is that many vacant rooms are in the possession of the petitioner. According to the petitioner/landlord, the one room on the upper floor in the possession of the petitioner is not suitable for his additional accommodation. From the evidence of PW1, it is evident that the petitioner had shown special reason for not occupying the said room. The evidence of PW1 would show that one room in the ground floor of the building was in possession of another tenant and the said tenant vacated the room during the pendency of the proceedings and the said room is now in his possession and he is presently using the said room for storing Ayurvedic medicines. So, it is clear that PW1 has not suppressed the availability of vacant rooms in his possession. The evidence of PW1 would show that no suitable rooms are in his possession for his additional accommodation. It is pertinent to note that to non-suit the landlord, vacant building should be of such a character which should meet the requirement of the landlord. Only when the primary burden of proof in this behalf is discharged by the tenant, the burden shifts to the landlord to show otherwise or that the vacant premises are not suited to his needs. The suitability of a building is the prerogative of the landlord. It is not for the tenant to dictate the terms to the landlord and advise him what he should do and where he should do

and at what point of time the petitioner should commence the business. So there is no merit in the contention of the counsel for the appellant that vacant rooms are in the possession of the petitioner/landlord.

17. Another contention of the counsel for the appellant is that the trial court ought to have found that the income derived from the business conducting in the petition 'B' schedule property is the main source of income of the respondent. According to RW1, he is getting ₹3,00,000/- per year from his business. But the respondent has not produced any document to prove her income. The Rent Control Court noticed that the tenants failed to produce the statement of accounts of his business to examine whether the income from his business is the main source of his livelihood. Another contention of the respondent is that there are no suitable rooms available in the locality for him to shift his business. Mere assertion that no suitable buildings are available in the locality is not sufficient for shifting the burden of proof. The tenant has to plead and prove that there are no suitable rooms available in the locality for him to shift his business. In this case the advocate Commissioner has reported that several vacant rooms are available for rent in the locality and RW1 admitted that he did not file any objection to the Advocate commissioner's report. Considering the entire facts, I am of the view that appellant failed discharge his burden.

18. The case of the appellant is that petitioner/landlord does not require the additional accommodation of petition 'B' schedule room and that the trial court ought to have found that the hardship of the tenant would outweigh the advantage of the landlord. As per section 11(8) of the Act, a landlord who is occupying only a part of a building, may apply to the Rent Control Court for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for his personal use. The evidence of PW1 would show that he needs the petition 'B' schedule room for his additional accommodation. The burden is on the appellant/the tenant to prove

that the hardship caused to him would outweigh the advantage of the petitioner/ landlord. In this case, the commissioner has reported that the cabin of the petitioner is small and it is not so convenient for using the same as medical consultant's room. The Advocate Commissioner also noted the presence of patients in and outside the petition 'A' schedule room. There is no evidence on the side of the respondent to show that claim of the petitioner is not bonafide. The petitioner has adduced cogent and reliable evidence to show that he would derive by getting additional accommodation of the petition 'B' schedule room. As the entire evidence would show that reasonable alternative buildings are available in the locality for carrying on the existing business of the respondent, the apprehension as to the deprivation of the livelihood of the tenant has no merit. The first proviso to section 11(10) states that the Rent Control Court shall reject the application under section 11(8) if it is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord. From the entire evidence, the irresistible conclusion is that the tenant is not entitled to the benefits claimed by him by reason of the first proviso to sub-section (10) of section 11 of the Act which is made applicable to sub-section (8) of section 11 of the Act.

19. The other contention of the counsel for the appellant is that S.11(3) and S.11(8) are mutually exclusive and independent and hence the petition is liable to be dismissed. In this regard it is pertinent to note that in *Pottarath Kunhammi v. Varikkapulakkal Abdullakutty alias Abdul Haji*. (2025 (1) KHC 684), the Hon'ble High Court of Kerala held that S.11(3) and S.11(8) are mutually exclusive and independent. However, S.11(3) and S.11(8) are not always mutually destructive. In the view the same there is no merit in the contention of the appellant.

20. Considering the entire evidence, I am of the view that the petitioner/landlord is entitled to get an order of eviction under Section 11(3) and 11(8) of the Act. The point Nos. 1 to 4 are found favour of the petitioner/landlord.

21. **Point No.5:-** Considering the entire matters before the court, I find that the Rent Control Court rightly held that the petitioner/landlord is entitled to get an order of eviction under Section 11(3) and 11(8) of the Kerala Building (Lease and Rent Control) Act. In the light of my findings on point Nos.1 to 4, the order dated 31/08/2024 in RCP 40/2019 passed by the Rent Control Court, Kodungallur, does not require any interference. The order under section 11(3) and 11(8) of the Act is confirmed.

In the result, the appeal is dismissed. No costs.

(Dictated to the confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, dated this the 7th 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