

## Ernakulam Dt. Wholesale Co-op. Consumer Stores Ltd. Vs Ittimani

**Court:** High Court Of Kerala

**Date of Decision:** Aug. 28, 2002

**Acts Referred:** Kerala Buildings (Lease and Rent Control) Act, 1965 â€” Section 11(3), 11(4)

**Citation:** (2003) 1 KLT 268

**Hon'ble Judges:** S. Sankarasubban, J; K. Padmanabhan Nair, J

**Bench:** Division Bench

**Advocate:** George C. Varghese, for the Appellant; M.P. Abraham and C.V. Johny, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

S. Sankarasubban, J.

Both these Civil Revision Petitions are filed against the order in R.C. A. No. 44 of 2001 of the District Court,

Ernakulam. While the tenant is the petitioner in C.R.P. No. 3384 of 2001, landlords are the petitioners in C.R.P. No. 218 of 2002. Original

proceeding is R.C.P. No. 57 of 1995 on the file of the Munsiff's Court, Ernakulam. The petition for eviction was filed u/s 11(3) bona fide use,

Section 11(4)(i) subletting and Section 11(4)(ii) using the building in such a manner as to reduce its utility and value, of the Kerala Buildings (Lease

and Rent Control) Act (hereinafter referred to as "the Act").

2. Before the trial court, it was contended by the tenant that the Rent Control Petition is not maintainable. The tenant also contended that there are

two buildings, which were taken on rent and a single petition is not maintainable. This contention was accepted.

Further, the Rent Control Court

held against the petitioners - landlords u/s 11(3) and 11(4) (ii) of the Act. It allowed the claim under subletting. But since it found that the petition

was not maintainable, the petition was dismissed.

3. Before the Appellate Court, as already stated, an appeal was filed by the landlords. The Appellate Court found that the petition was

maintainable. It also found that the ground of eviction u/s 11(3) of the Act was proved. But it found against the petitioners for eviction u/s 11(4) (i)

and Section 11(4) (ii) of the Act. Then the Appellate Court allowed eviction u/s 11(3) of the Act. It is against that these revisions are filed by the

landlords and tenant.

4. Before going the merits of the discussions and evidence, we shall extract the relevant facts in this case. There are two petitioners in the Rent

Control Petition viz., Dr. K.V. Ittimani Moolapat and K.V. Thomas. First petitioner was represented by the second petitioner, the power of

attorney holder. Tenant is the Ernakulam District Wholesale Co-operative Consumers Store Ltd. According to the petitioners, they are the owners

and landlords of Moolapat buildings facing M.G. Road having Door Nos. 2238 and 2239 of Cochin Corporation. These buildings were let out to

the respondent-tenant in the year 1967 on a monthly rent of Rs. 6,000/-. The tenant was directed to pay Rs. 3,000/- each to the petitioners. The

rental arrangement was only for four years. The period of rental arrangement expired on 10.12.1971. By letter dated 25.9.1972, the respondent

informed the petitioner that the respondent is trying to get a suitable plot or building to house its store and requesting for an extension of the rental

arrangement for a further period of one year with effect from 10.12.1972 and the rental arrangement was provisionally extended upto 10.12.1973.

5. According to the petitioners, the respondent opened the RCC work on the terrace of the top floor of the building and fixed a neon lamp board

without the petitioners' consent spoiling the beauty and strength of the building. Further alterations were made in all the floors of the building

without the permission of the petitioners. The tenant has caused damages to some portions of the floors and stair case by mishandling heavy boxes

and other heavy articles. It is further stated that the petitioners bona fide need the petition schedule building for their own occupation to start an

institute for home management with the objective of imparting training to young men and women in several fields and Secretarial courses including

the usage of computer and electronic typewriters, xerox and fax machines and job oriented courses in the field of beauty therapy. These courses

mainly meant for women and men of the socially backward sections. The petitioners want the above building bona fide for the abovesaid purpose.

It was further stated that the project will be started under the supervision of the wife of the second petitioner, Mrs. Many Thomas. They have

prepared a project for starting the institute. It was further stated that the respondent is using part of the building for running offices of the District

wholesale co-operative consumer store and offices of other department stores. The respondent has also sublet portion of the buildings and

premises without the consent and knowledge of the petitioners to private traders collecting from them much more than the amount of rent paid to

the petitioners to private traders. Thus, the petition was filed for eviction on the ground of own occupation, that the respondent has used the

building in such a manner as to reduce its value or utility and also that the respondent, without the consent of the landlords, transferred the right of a

portion of the building.

6. To this petition, the tenant filed a counter affidavit. The counter affidavit is dated 16.12.1995. The allegation that the tenant has used the building

in such a way as to reduce its value or utility was denied. It was stated that the building had not been properly maintained by the landlords. The

bona fide need raised by the petitioners was denied. Subletting was also denied. Thereafter an additional counter affidavit dated 11.4.1998 was

filed. A contention was taken that actually there are two buildings belonging to different landlords and hence, one single petition is not maintainable.

7. In the background of the above pleadings, the Rent Control Court raised necessary points. On the side of the petitioners, Exts. A1 to A17 were

marked and on the side of the respondent, Exts. B1 to B9 were marked. Ext. C1 is the commission report. The second petitioner was examined

as PW. 1 while three witnesses were examined on the side of the respondent.

8. We heard learned counsel for the landlords/petitioners Sri. M.P. Abraham and learned counsel for the tenant/respondent Sri. George C.

Varghese.

9. On the basis of the contentions of the parties in both these Civil Revision Petitions, the following points arise for consideration: (1) Whether the

Rent Control Petition is maintainable? (2) Was the court correct in ordering eviction u/s 11(3) of the Act? and (3) Is the petitioner entitled to

eviction u/s 11(4) (ii) of the Act?

10. The first issue to be considered is whether the petition is maintainable. This contention was raised on the ground that there are two buildings in

the property, which are also scheduled in the petition for eviction, namely, building bearing Door Nos. 2238 and 2239 of Cochin Corporation.

This belongs to the landlords. That buildings were constructed by both the petitioners after the plot was partitioned among petitioners 1 and 2. The

two buildings were constructed in the respective plots. But it is further found that the building is treated as one unit by the respondent. The question

that is put before us is that since there are two buildings, a single petition for eviction will be maintainable. If there are two buildings and they have

been given to two tenants, it can be argued that two petitions are necessary. But so far this case is concerned, we don't think, it is necessary to go

that extent. Ext. A10 is the lease agreement. A perusal of the agreement will show that there is only a single tenancy created. It is pertinent to note

that even before the lease agreement was executed the construction of the building was going on and as and when three floors of the building are

completed, notice has to be given to the lessee to occupy the premises within a week of the said notice. The lessee will be put up such fixers and

other things as required by it as is necessary for the purpose of its business and to occupy such floors as are capable of occupation on or before

the 31st March, 1967. The lessee will pay Rs. 3,000/- each to each of the lessors as advance and another Rs. 3,000/- each to the lessors as

further advance on the date of the occupation. The lease was for 4 years at a monthly rent of Rs. 3,000/- payable to each of the lessors (total Rs.

6,000/-). The lessors will make necessary applications to the Municipality for providing a hall in the fourth floor and the construction will be made

as per the sanction. At the earliest, the lessors undertook to provide a hoist to lift goods at the back portion of the building. The lessee shall pay all

rates and taxes including electricity charges, water charges, etc. except the house tax. This shows that the building was constructed for the purpose

of the respondent. Three floors of the building were given on rent. This is an indication that there is a single tenancy. Further, Exts. A12, A13 and

A14 show that the building is one single unit. Hence indications are that there is only one tenancy.

11. In the decision reported in *Habibunnisa Begum and Others Vs. G. Doraikannu Chettiar (D) By Lrs. and Others*, the appellant was the landlord

of certain premises. Originally, there was one number. Later it was numbered as Door Nos. 27/28. It was not disputed that the landlord leased out

the premises by single lease deed along with some structure on Door No. 27. The said tenancy was single indivisible contract of tenancy. The High

Court upheld the tenancy. Rejecting the view of the High Court, the Supreme Court held as follows: "where a contract of tenancy was a single

indivisible contract and in the absence of any statutory provision to that effect, it is not open to the court to split the tenancy. Law, therefore, is that

where there is a single indivisible contract of tenancy, it cannot be split by a court unless there is statutory provision to that effect. In the present

case it is not disputed that the contract of tenancy is single indivisible contract for Door Nos. 27 and 28. It is also not disputed that there is no

provision in the Tamil Nadu Buildings (Lease and Rent Control) Act empowering the court to order partial ejectment of a tenant". It is a case of

only one tenancy. It is not treated to be a tenancy for the old building together.

12. In *Punjab National Bank v. Dr. Sabhapathy* 2001(1) KLJ 86 what happened was that eviction was u/s 11 (8) of the Act. A building

constructed and intended to be used as one integral unit of which portions are occupied by the tenant and the landlord respectively cannot be

treated as different buildings to preclude the operation of Section 11 (8) of the Act. If the possession of the additional space would normally

enhance the convenience of the landlord, then he can very well seek to get it from the tenant u/s 11 (8) of the Act. Thus, we agree with the

Appellate Authority that the petition filed is maintainable.

13. The next question for consideration is whether the petition filed u/s 11 (3) of the Act is legally valid or not. As submitted, bona fide need urged

is that the petitioners want to start an institute of management. They have produced project report with regard to the institute, which is marked as

Ext. A3. Now, the main argument that was advanced by the learned counsel for the respondent is that the first petitioner is abroad and hence it

cannot be said that he wants the building for the said purpose. It was further argued that the first petitioner was not in the box for the purpose of

showing his bona fides. It was further contended that the qualification for management institute was not proved. We are of the view that this

contention cannot be accepted. No oblique motive is raised by the tenant. The facts of the case shows that the tenant made an attempt to acquire

the building and even notification u/s 4 of the Act was published. Subsequently; this was withdrawn. It cannot be said that a person can file the

petition through his power of attorney. Here the power of attorney is none other than the second petitioner. Notice for eviction was issued on

behalf of both the persons by a common lawyer. In the face of this evidence, it cannot be said that the first petitioner does not requires the

premises on the ground urged by the second petitioner. On the basis of power of attorney and on the basis of the notice issued by the advocate on

behalf of the petitioners, we are of the view that both the petitioners have clearly indicated the claim on behalf of both of them.

14. The next attempt was that only the second petitioner was examined and the first petitioner was not examined. It is not necessary for us to cite a

number of decisions rendered by the court. As a matter of fact, in Ramkubai (Smt) Deceased by Lrs. and Others Vs. Hajarimal Dhokalchand

Chandak and Others, the Supreme Court held as follows: ""The Appellate Court was of the view that the bona fide requirement is in the first place

a state of mind and might be something more and that could be established only by the landlady. In all fairness to Mr. Mohta, we must note, that he

conceded that that reasoning of the Appellate Court could not be supported"". We agree with the Appellate Court in holding that the requirement is

bona fide.

15. Then the other two questions are with regard to the contentions raised by the landlords on the ground of subletting and on the ground u/s 11(4)

(ii) of the Act. As already stated by the court, the ground u/s 11(4)(i) of the Act has not been established. So far as the question u/s 11(4)(ii) of the

Act is concerned, the court below has gone through the evidence. It was of the view that since the building was given 30 years back, it was

impossible to fix the rent. It was also found that the landlord did not attend the periodical repairs. The learned District Judge, on an appreciation,

found that the structure made by the petitioners was only for the purpose of preventing the rain water and the other structures cannot be said to be

the structures meant to repair the building. Thus, we agree with the Appellate Court regarding this.

16. So far as the question of subletting is concerned, the contention advanced by the petitioners was that it is the duty of the lessee to show that

there was no subletting. In this case what happened is that one Co-operative Society formed by the employees was allowed to function and further

some vendors were allowed to trade. These allegations were not properly proved. The tenant had denied that the vendors were allowed to trade in

any portion of the building. What happened is that the vendors were making trade during the festival season in front of the shop, which could not

be prevented by them. So far as the other allegations are concerned, the employees have made the Co-operative Society and that was not on the

basis of the subletting.

17. Leaned counsel for the tenant contended that it is a very peculiar society functioning and in case the order of eviction is upheld, they will be put

to very hardship.

18. Taking into consideration the facts and circumstances of the case, we pass an order evicting the Co-operative Society and we allow six

months" time for the Society to vacate the building provided they file an undertaking before the Executing Court within two weeks from today that

they will surrender the building on the expiry of six months and that they will not alienate or encumber the said building to anybody. They will also

pay the rent for the period for which they occupy the building.

Civil Revision Petitions disposed of as above.