

**(1965) 02 KL CK 0022**

**High Court Of Kerala**

**Case No:** O.P. 719 of 1964

Joseph

APPELLANT

Vs

Francis and Another

RESPONDENT

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**Date of Decision:** Feb. 17, 1965

**Acts Referred:**

- Kerala Buildings (Lease and Rent Control) Act, 1965 - Section 11(8)

**Citation:** (1965) KLJ 988

**Hon'ble Judges:** P. Govindan Nair, J

**Bench:** Single Bench

**Advocate:** G. Viswanatha Iyer and L. Manoharan, for the Appellant; K. Hrishikesan Nair and P. Raman Menon, for the Respondent

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### **Judgement**

P. Govindan Nair, J.

The writ applicant has been thwarted in his attempt to get possession of part of the building that he rented out to the respondents. I use the word "building" here in its ordinary sense without any reference to the definition of the term contained in Section 2 (1) of the Kerala Buildings (Lease and Rent Control) Act, 1959. This "building" consists of three rooms. The writ applicant is in possession of one of those rooms. He had rented out one room to the first respondent and had also rented out the remaining one to a third party. The application for eviction was based on Section 11 (8) of the above Act which reads as follows:

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.

I must also refer to the provisos which would apply to this sub-section. These provisos are found after sub-section 10 of Section 11 and they read as follows:

Provided that, in the case of an application under sub-section (8), the Rent Control Court shall reject the application if it is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord :

Provided further that the Rent Control Court may, give the tenant a reasonable time for putting the landlord in possession of the building and may extend such time so as not to exceed three months in the aggregate

2. The writ applicant succeeded both before the Rent Control Court as well as the appellate authority. I am not referring to the intermediate order of remand passed by the appellate authority and the revision petition from that order for it is unnecessary for the purpose of this case. A revision petition was taken before the District Judge from the final appellate order and the learned Judge took the view that Section 11 (8) has no application and that it is Section 11 (3) that is attracted. He therefore called for certain findings from the appellate authority. These findings have been entered under three heads and those findings have been extracted in extenso by the District Judge in his order passed on revision, Ext. P. 3. I shall refer to the relevant parts of those findings later on. Continuing the narration, the District Judge reversed the findings of the appellate authority that the landlord required the particular room of the building for his own accommodation bona fide and the further finding that it was possible for the respondents to get suitable accommodation elsewhere. He therefore allowed the revision petition and set aside the orders passed by the Rent Control Court as well as the appellate authority. This order is Ext. P. 3 and that is the order that has been challenged before me.

3. The first point urged is that the revisional authority has erred in coming to the conclusion that Section - II (8) has no application. This conclusion has been reached by the learned Judge on the basis of a decision of the Madras High Court in A. Arunachala Naicker v V. Gopal Stores represented by its Propertior V. Gopal (1955 M.L.J. 206). Mr. Justice Mack dealing with a provision, similar to Section 11 (8) of the Act, namely Section 7 (3) of the Madras Buildings (Lease and Rent Control) Act (XXV of 1949) came to the conclusion that the term "building" occurring in Section 7 (3) (c) of Act XXV of 1949 must be understood in the light of the definition of the term "building" contained in Section 2 (1) of that Act, With all respect to the learned Judge, I am unable to agree. The definition of the term "building" in the Act is specifically made "subject to the context". It appears to me that in the context in which the word "building" is used in Section 11 (8) it is capable of only one meaning namely "the whole building" meaning thereby the whole structure. I say so for the reason that the sub-section refers to "a part of a building". Reading that part of the Section alone "the building" there must mean "the whole building". Further reference to "a building" in the Section is not to "any building" or to "a building" but to "the building" which according to the ordinary meaning of the language must refer to "the building" that has been referred to earlier. The wording of the Section seems to me to compel the interpretation that "building" used in the Section means

the whole building. Apart from that if the view is taken that part of a building is "building" because of the definition of the term building contained in the Act and therefore there is no "part of a building" involved Section 11 (8) becomes nugatory. Such an interpretation must be avoided. Section 11 (8) will apply to the facts of this case.

4. I therefore hold that the application moved by the writ applicant must be considered with reference to the provisions in Section 11 (8) of the Act.

5. The learned Judge refers to what he calls the bona fides of the petitioner which is relevant in view of the provisions in sub-section 10 of section 11 and has come to the conclusion that the writ applicant has not made out a case satisfying the requirement of the sub-section. Ordinarily it is not for this Court to interfere with a finding of fact entered by the statutory authorities. But it appears to me that the revisional authority in this case has set aside the finding entered by the appellate authority on this point for no justifiable reason. I extract the relevant part of the order of the appellate authority (This is incorporated in the revisional order) as well as the relevant part of the order of the revisional authority. The appellate authority after remand said as follows:

According to the petitioner, they require eviction of the counter petitioner from the building T. C. No. 862/A since they require the same bona fide for the purpose of carrying on their trade. The shop room T, C. 862/A which has been rented out to the counter petitioner is one of the three shop rooms in the building owned by the petitioners- The petitioners are carrying on a trade in timber in one of the shop rooms and in the next room, another person is carrying on a trade and the disputed shop room is the third room. According to the petitioners, they are carrying on a betel nut shop also (Murukkan kada) in a building opposite to the disputed building paying a monthly rent of Rs. 15/- and according to them it will greatly add to their convenience, if they carry on both the business in the same building. The fact that the petitioners are carrying a Murukkan kada in a rented building just opposite to the shop room in question is admitted even by the counter petitioner as C. P. W. 1. This shows that the necessity of the petitioners for getting additional accommodation is genuine and I see no reason to disbelieve the evidence of P. W. 1 on this point. Accordingly, I find that the petitioners bona fide need the disputed shop room for carrying on their own trade and I think in the special circumstances of this case it will be just and proper to allow eviction. I find this point in favour of the petitioners (landlords).

The revisional authority discussing this point observed:

The question as to the bona fides of the petitioners for their occupation is considered in the point I the petitioners are conducting timber trade in the shop which is next to the room which is rented out to the respondent. The petitioners have got another shop room just opposite to the shop room in which they

conducted (sic) the timber trade. In the other shop room opposite to their own, it is alleged they are conducting a betelnut trade. It is therefore clear that it is not for the expansion of their existing trade that the betelnut trade is to be shifted to then (sic) present premises. The betelnut trade is a separate trade by itself. It is not just or proper to evict the tenant of the premises on the ground that it is convenient for the landlord to shift his betelnut trade, to the room at (sic) which he is conducting timber trade. I do not think that the landlords have made out a case of bona fide occupation of the premises for their own use. This point is therefore found against the landlords disagreeing with the Appellate authority under the finding No. 1.

6. All that the Section requires is that the landlord must require "additional accommodation for his personal use". It is certainly for the landlord to decide what business he will carry on. I do not think that a Court will be justified in saying that he requires the building bona fide for his own use only if he requires it for expanding his existing trade. It is admitted that he has been conducting a betelnut trade in the other shop room opposite to his own. The view of the learned District Judge that betelnut trade being a separate trade conducted in a rented building cannot be treated as a part of the other trade carried on by the landlord and hence the need for shifting it to one's own building is not a bona fide need is clearly erroneous. Though the powers of the revisional authority u/s 20 have been held by this Court to be very wide I do not think that any grounds existed for interfering with the findings entered by the appellate authority. I therefore reverse the findings entered by the revisional authority and set aside Ext. P. 3 order in so far as it was found against the writ applicant.

7. I hold that Section 11 (8) will apply. Then the question whether the first proviso which I extracted above would preclude the landlord from getting eviction has not been considered by the revisional authority. The further question as to what time should be granted to the tenant to vacate the building under the second proviso will also have to be determined. It is certainly not for this Court to express any views on these matters.

8. In the light of the above I set aside Ext. P. 3 order and remit the case to the revisional authority to be dealt with in the light of what is stated above. This Writ Application is ordered as above. I make no order as to costs.