

N.C. Thomas Vs Biji A. Kuruvila and Others

Court: High Court Of Kerala

Date of Decision: Jan. 30, 2014

Acts Referred: Kerala Buildings (Lease and Rent Control) Act, 1965 â€” Section 11, 11(2)(b), 11(3), 11(4)(i), 11(4)(ii)

Citation: (2014) 1 ILR 705 : (2014) 1 KHC 487 : (2014) 1 KLJ 557 : (2014) 2 RCR(Rent) 475

Hon'ble Judges: T.R. Ramachandran Nair, J; B. Kemal Pasha, J

Bench: Division Bench

Advocate: K.J. Kuriachan, Advocate for the Appellant; M.P. Ramnath and Suresh K. Sreedhar, Advocate for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

T.R. Ramachandran Nair

1. This revision petition is filed by the tenant of a building who is faced with an Order of eviction passed by the Rent Control Court, at the instance

of the first respondent/landlord. By invoking Sections 11(2)(b), 11(3), 11(4)(i), 11(4)(ii) and 11(4)(iii) of the Kerala Buildings (Lease & Rent

Control) Act, 1965 (for short "the Act"), the landlord moved the Rent Control Court. After assessing the evidence adduced by the parties, the

Rent Control Court accepted the grounds pleaded u/s 11(3) (bonafide need for own occupation), 11(4)(i) (sub-letting) and 11(4)(iii) (tenant in

possession of other buildings). As arrears of rent were deposited, eviction u/s 11(2)(b) of the Act was denied.

2. One of the questions raised before the Rent Control Court is regarding the denial of title of the landlord. In appeal, the said plea was mainly

raised by the tenant and the appellate authority rejected the same confirming the order passed by the Rent Control Court.

3. Learned counsel for the petitioner Shri K.J. Kuriachan mainly raised the following contentions: (i) There is no landlord-tenant relationship

between the first respondent and the revision petitioner/tenant; (ii) The question of denial of landlord-tenant relationship between the parties has not

been properly examined by the authorities below in tune with the principles stated by a Full Bench of this Court in Parthakumar Vs. Ajith

Viswanathan, ; (iii) As the denial of title is bonafide, the order of eviction cannot be sustained and the landlord should have been relegated to the

remedy to approach a civil court; and (iv) At any rate, as the receiver appointed by the civil court in a previous proceedings has not been

discharged, the eviction petition is not maintainable.

4. While responding to the above arguments, learned counsel for the respondent/landlord Shri M.P. Ramanathan submitted that the Rent Control

Petition was filed after obtaining leave of the court and the official receiver is the second respondent in the Rent Control Petition. Therefore, the

legal formalities as regards the same have been fully complied with and hence the contention that the eviction petition is not maintainable, is not

correct. According to the learned counsel, the receiver is not at all in possession and the proceedings before the Civil Court had culminated in a

decree long back by which the title of the predecessor-in-interest of the landlord has been declared and the tenant herein was also a party to the

suit. The decree being binding on him, there are no bonafides in the denial of title or the denial of landlord-tenant relationship. Learned counsel

further submitted relying upon the definition of the "landlord" u/s 2(3) of the Act, that going by the definition also, the person entitled to receive the

rent is fully eligible to maintain an application for eviction and hence the objection raised by the tenant cannot have any real merit.

5. In the eviction petition the landlord pleaded that the petition schedule building is the ground floor portion of a two storied building which is

owned by the landlord as per partition deed No. 5678/2004 of SRO, Kothamangalam. The building occupies 2.546 cents of land which is part of

17.546 cents in Sy. No. 1024/1 of Kothamangalam Village. The receiver was appointed by the Sub Court, Ernakulam in O.S. No. 293/1978 for

the management of the petition schedule building, pending the suit. Leave was obtained by the landlord as per order dated 17.1.2007 in I.A. No.

797/2011 in the said suit, for initiating proceedings against the receiver for recovery of the building. Respondents 3 to 5 are the sub tenants of the

building who have been inducted by the tenant and the first floor above the petition schedule building is lying vacant. The building is in a dilapidated

condition. Since the building occupies the entire front portion of a piece of land the remaining portion of the back side cannot be put to profitable

use. The landlord intends to start a hotel and restaurant inclusive of boarding and lodging of modern standards with commercial facilities and

amenities to be constructed. It was also contended that the tenant is having various types of business, owns a petrol pump within Kothamangalam

town itself and is having several other buildings, the details of which are given in para 14 of the eviction petition.

6. In the objection filed by the tenant, in para 1 it is stated that the title of the landlord to the schedule building is disputed. Regarding the merits

also, various contentions have been raised. The foundation in support of the dispute regarding title raised by the tenant, as advanced by the learned

counsel for the petitioner, is that when once the receiver was appointed by a court, the property is in custodia legis and unless the receiver is

discharged, the party is not entitled to proceed against the property. Herein, in the suit after appointment of the receiver, the tenant was continuing

and accounting to the receiver. At no point of time the tenant had occasion to pay any rent to the landlord. Therefore, it is a case where the

landlord should have filed an application to discharge the receiver and then only he could have maintained the petition for eviction. The same is

therefore fatal to the maintainability of the eviction petition, learned counsel contends. It is further submitted that the order passed on the application

for grant of leave will not help the landlord herein.

7. It is submitted that such a contention raised by the tenant herein is one disputing the landlord-tenant relationship. In the light of the fact that the

receiver was appointed which fact is not in dispute also, there is nothing more required to show that the contention raised by the tenant is bonafide.

If that be so, the proceedings should have been stopped by the Rent Control Court and the Appellate Authority also went wrong in holding in

favour of the landlord.

8. Learned counsel for the petitioner relied upon various paragraphs of the judgment of the Full Bench of this Court in Parthakumar Vs. Ajith

Viswanathan, including paragraphs 35 and 38. It is submitted that going by the above Full Bench decision, the tenant need not admit that he is a

tenant under the landlord so as to maintain such a plea. It is also clear from the decision of the Full Bench that the proprietary title of the person

claiming eviction is irrelevant to decide the jurisdiction. What is material therefore is the question whether there is any landlord-tenant relationship

between the parties.

9. To explain the scope of appointment of receiver and the consequences thereof and in support of other arguments, learned counsel for the

petitioner relied upon the following decisions: Parvathy Rudrani Vs. Lekshmi Yesoda and Others, , M.M. Quasim Vs. Manohar Lal Sharma and

others, , Parameswaran Nair Narayanan Nair Vs. Krishnapillai Chellappan Pillai, , Ibrayan v. Balan, 1985 KLT 896, Mrs. K.P.M. Saheed and

Others Vs. The Aluminium Fabricating Company and Others, , Shyam Sunder Dutta Vs. Baikuntha Nath Banerjee (Dead) By LRs. and Others,

and Subhadra Rani Pal Choudhary Vs. Sheirly Weigal Nain and Others, . It is submitted that the decision of the Full Bench in Parthakumar Vs.

Ajith Viswanathan, has been explained by another Full Bench in Bharathi and Others Vs. Vinod S. Sivasudha, .

10. Learned counsel for the respondent relied upon the decisions of the Apex Court in P. Lakshmi Reddy Vs. L. Lakshmi Reddy, , Kanhaiyalal

Vs. D.R. Banaji and Others, and Everest Coal Company (P) Ltd. Vs. State of Bihar and Others, to contend that once leave is granted by the

court to file case against the property which was put into custody of the receiver, no further formalities need be gone into. It is submitted that the

appointment of a receiver in O.S. No. 293/1978 was only pending the suit. After the suit was decreed declaring the title of the plaintiffs therein an

appeal was filed by the plaintiffs themselves with regard to the denial of injunction, and this Court in A.S. No. 185/1982 confirmed the decree and

judgment of the trial court. It was specified by this Court that as the suit has been dismissed, the receivership need not continue and the second

defendant who is the tenant herein can continue possession of his right after termination of the receivership. It was specified in the judgment that he

can move the trial court for that purpose. Therefore, it is not a case where the landlord should again apply for discharge of the receiver.

Alternatively, it is contended that even if it is a case where the receivership is not technically discharged, going by the definition of the landlord, the

landlord as well as the receiver can file an eviction petition. Therefore, the petition for eviction filed by the landlord is clearly maintainable.

According to the learned counsel, once leave is granted by a competent court, no such objections as now raised can have any relevance which is

the governing principle stated by the Apex Court in the various decisions relied upon by him.

11. We will now examine the general principles concerning the appointment of a receiver under Order 40 Rule 1 C.P.C., the requirement to obtain

leave of the court to proceed against the receiver and the legal aspects concerning the discharge of receiver. Going by Rule 40(1)(a), ""the court

may appoint a receiver of any property whether before or after the decree."" The decisions relied upon by Shri Ramanathan, learned counsel

appearing for the respondent have discussed the relevant legal principles in detail. In P. Lakshmi Reddy Vs. L. Lakshmi Reddy, in para 6 their

Lordships have extracted the following passage from Woodroffe on the Law relating to Receivers (4th Edition) at page 63:

The Receiver being the officer of the Court from which he derives his appointment, his possession is exclusively the possession of the Court, the

property being regarded as in the custody of the law, in gremio legis, for the benefit of whoever may be ultimately determined to be entitled thereto.

The Apex Court further held that ""A Receiver is an officer of the Court and is not a particular agent of any party to the suit, notwithstanding that in

law his possession is ultimately treated as possession of the successful party on the termination of the suit.

Therefore, learned counsel submits that the appointment of receiver is only one enuring to the benefit of the party who may be ultimately

determined to be entitled thereto and herein the civil court had already declared title in favour of the plaintiffs in O.S. No. 293/1978.

12. In Kanhaiyalal Vs. D.R. Banaji and Others, , the validity of a sale in execution without obtaining leave of the court while the property was in

custody of the receiver was examined. In para 8 the general rule was explained thus:

The general rule that property in custodia legis through its duly appointed Receiver is exempt from judicial process except to the extent that the

leave of that court has been obtained, is based on a very sound reason of public policy, namely, that there should be no conflict of jurisdiction

between different Courts. If a Court has exercised its power to appoint a Receiver of a certain property, it has done so with a view two preserving

the property for the benefit of the rightful owner as judicially determined. If other Courts or Tribunals of co-ordinate or exclusive jurisdiction were

to permit proceedings to go on independently of the Court which has placed the custody of the property in the hands of the Receiver, there was a

likelihood of confusion in the administration of justice and a possible conflict of jurisdiction. The Courts represent the majesty of law, and naturally,

therefore, would not do anything to weaken the rule of law, or to permit an proceedings which may have the effect of putting any party in jeopardy

for contempt of court for taking recourse to unauthorised legal proceedings. It is on that very sound principle that the rule is based. Of course, if

any Court which is holding the property in custodia legis through a Receiver or otherwise, is moved to grant permission for taken legal proceedings

in respect of that property, the Court ordinarily would grant such permission if considerations of justice require it,. Courts of justice, therefore,

would not be a party to any interference with that sound rule. On the other hand, all Courts of justice would be only too anxious to see that

property in custodia legis not subjected to un-controlled attack, while, at the same time, protecting the rights of all persons who may have claims to

the property.

13. The same legal position was examined in the later decision in Everest Coal Company (P) Ltd. Vs. State of Bihar and Others, wherein it was

held in para 4 that grant of leave is the rule, refusal is the exception. It was also held that leave must be obtained at the time of filing of the suit or

during its pendency. The following aspects have been highlighted in the said paragraph:

Grant of leave is the rule, refusal the exception. After all, the court is not, in the usual run of cases, affected by a litigation which settles the rights of

parties and the Receiver represents neither party, being an officer of the court. For this reason, ordinarily the court accords permission to sue, or to

continue. The jurisdiction to grant leave is undoubted and inherent, but not based on black-letter law in the sense of enacted law. Any litigative

disturbance of the court's possession without its permission amounts to contempt of its authority; and the wages of contempt of court in this

jurisdiction may well be voidability of the whole proceeding. Equally clearly, prior permission of the court appointing the Receiver is not a condition

precedent to the enforcement of the cause of action. Nor is it so grave a vice that later leave sought and got before the decree has been passed will

not purge it. If, before the suit terminates, the relevant court is moved and permission to sue or to prosecute further is granted, the requirement of

law is fulfilled. Of course failure to secure such leave till the end of the lis may prove fatal.

The judgment in Everest Coal Company (P) Ltd. Vs. State of Bihar and Others, has been followed by this Court in Parvathy Rudrani Vs. Lekshmi

Yesoda and Others, relied upon by the learned counsel for the petitioner. In Mrs. K.P.M. Saheed and Others Vs. The Aluminium Fabricating

Company and Others, relied upon by the learned counsel for the petitioner also in para 19 the said legal principles have been reiterated. Herein,

the landlord has been granted leave as per Ext. A2 order, in an application for permission/sanction to him to institute appropriate proceedings

before a competent court of law for recovery of possession of the suit property from the custody of the receiver. The same is therefore sufficient

compliance of the legal principles discussed above.

14. The next question is whether unless and until the receiver is discharged, the landlord herein is precluded from filing an application for eviction.

Ext. A33 is the judgment in O.S. No. 293/1978 of the Subordinate Judge's Court, Ernakulam. The plaintiffs filed the said suit for declaration of

title and for injunction. The petitioner herein was the second defendant in the suit. The first defendant is his brother. The plaintiffs set up a case

therein that the property belongs to plaintiffs 2 and 3 as per partition deed 2559/1958 of Kothamangalam Sub Registry. The properties were

jointly purchased by the first plaintiffs husband Shri A.K. Poulouse and his brother Shri Kuruvila. The allegation was that the first defendant was

conducting a provision shop, a chitty business and also some agency business in the premises. According to the plaintiffs, the property was

surrendered in 1978 and the first defendant was evicted and it was under lock and key. Later the second defendant with the help of defendants 3

to 5 tried to brake open the lock which led to the dispute between the parties. Ultimately the suit was decreed partly and it was held that the

plaintiffs are entitled to get a declaration of title and they are not entitled to get a declaration regarding possession of the suit property and for

permanent injunction.

15. The receiver was appointed vide order in I.A. No. 3102/1978 in the said suit, on 28.11.1978. A copy of the said order was made available

by the learned counsel for the landlord for perusal. The order shows that as a temporary measure the Official Receiver was appointed for the

building with full powers under Order 40 C.P.C. and the second respondent (the petitioner herein) was given an option to occupy the building as a

tenant under the Receiver without prejudice to the rights which he may raise in the suit, if he pays Rs. 300/- as monthly rent. It was clarified that if

he is not willing to take the building as a tenant under the Receiver, the Receiver is at liberty to rent it to others.

16. A.S. No. 185/1982 which was an appeal filed by the plaintiffs, was dismissed confirming the decree. With regard to the receivership, the

following directions have been issued:

The appeal is therefore dismissed without costs. The learned counsel for the second defendant said that his client was continuously depositing

amounts as directed by the court over and above security amount of Rs. 3,000/- and direction may be given to refund these amounts and terminate

the Receivership. Now that the suit has been dismissed, the Receivership need not continue and the 2nd defendant can continue possession on his

right after termination of Receivership. He can move the trial court for that purpose and also for the refund of amounts and the trial court will

consider the prayers on the merits.

Thus, it was directed that the receivership need not continue and liberty was given to the petitioner herein who was the second defendant, to move

the trial court for that purpose and also for refund of the amount claimed by him. It is submitted by the learned counsel for the respondent that no

application was filed by the tenant thereafter. The question is whether the absence of a formal discharge of the receiver will affect the maintainability

of the eviction petition, especially since the suit and the appeal are over.

17. As far as the said legal aspects are concerned, the Apex Court in Hiralal Patni Vs. Loonkaram Sethiya and Others, has laid down the following

principles in para 11:

11. The law may briefly be stated thus: (1) If a receiver is appointed in a suit until judgment, the appointment is brought to an end by the judgment

in the act on (2) If a receiver is appointed in a suit, without his tenure being expressly defined, he will continue to be receiver till he is discharged,

(3) But, after the final disposal of the suit as between the parties to the litigation, the receiver's functions are terminated, he would still be

answerable in the court as its officer till he is finally discharged. (4) The court has ample power to continue the receiver even after the final decree if

the exigencies of the case so require.

18. The Apex Court in Subhadra Rani Pal Choudhary Vs. Sheirly Weigal Nain and Others, , which was relied upon by the learned counsel for the

petitioner, after relying upon Hiralal Patni Vs. Loonkaram Sethiya and Others, , has held as follows, in para 18:

18. This Court has summarized the legal position. So far as the appointment of receiver is concerned, it was clearly laid down that the receiver's

appointment is co-terminus with suit/appeal and if suit or appeal is disposed of then the appointment is brought to an end. But at the same time the

court has a power to continue the receiver after the final decree, if the exigencies of the case so require. But in the present case, as mentioned

above, the appeal was dismissed on October 3, 1988 and Court did not reserve any power to continue the receivers.

19. Herein also, going by the judgment in A.S. No. 185/1982 there was no direction to continue the receivership and it was directed that the

receivership need not continue. In the light of the submission made by the learned counsel for the defendant (the tenant herein) that a refund of

certain amounts is to be claimed he was given liberty to move the court for that purpose. As far as the plaintiffs are concerned., no directions were

there. Therefore, it can be seen that the receivership had come to an end by the judgment in A.S. No. 185/1982 and his functions have been

terminated, at least as far as the plaintiffs are concerned. The suit and appeal ended in favour of the plaintiffs as far as declaration of title is

concerned. In respect of the prayer for injunction, decree was not granted.

20. Now we Will come to the definition of the landlord, contained in Section 2(3) of the Act which is extracted below:

2(3) "Landlord" includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of

another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent,

or be entitled to receive the rent, if the building were let to a tenant.

It is an inclusive definition. A person entitled to receive rent also will come within the said definition. It is submitted by Shri Ramanathan that the

owner of the building will therefore come within the purview of that portion of the definition and he can, on his own, file application for eviction and

the receiver also may be able to file an eviction petition if he is in charge of the property. Therefore, the contention is that there is no legal embargo

in the owner of the building filing application and herein, by way of an abundant caution leave was sought which was granted as per Ext. A2 order.

21. The sole exception under the Act is only under sub-section (16) of Section 11 as far as an agent who receives rent on behalf of the landlord is

concerned, in that he can file the eviction petition only with the previous consent of the landlord.

22. This Court had occasion to consider the entitlement of an owner of the building to file an eviction petition. In Parameswaran Nair Narayanan

Nair's case, 1984 Ker, 48 a learned Single Judge of this Court, after considering Section 2(3) of the Act, has taken the following view in para 5:

5. Sections 2(3) and 11(6) of the Act reads:

2(3) "Landlord" includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of

another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent,

or be entitled to receive the rent, if the building were let to a tenant.

2(16) Notwithstanding anything contained in this section, no person who is receiving or is entitled to receive the rent of a building merely as an

agent of the landlord shall, except with the previous written consent of the landlord, be entitled to apply for the eviction of a tenant.

Unless section 11 of the Act, the petition for eviction has to be filed by the landlord. The definition of landlord in S. 2(3) is an inclusive definition.

As per the definition, "landlord" includes not only a person who receives rent or is entitled to receive rent on his own account (that is an owner),

but also agent, trustee, executor, administrator, receiver or guardian. Under Sec. (1) of the Act, the petition for eviction has to be filed by the

landlord. But there is a restriction imposed by sub-section (16) that a person who receives rent merely as agent of the landlord cannot file a petition

for eviction without the previous written consent of the landlord. So, only all those who are included in the inclusive definition under S. 2(3) except

the agent mentioned therein can file a petition for eviction without the previous consent of the landlord. There is reason for this because except the

agent, the trustee, the executor and all others are persons who are legally competent to sue. An agent, it goes without saying, can only do whatever

his principal authorises him to do. A life estate holder or a person who is given a right to reside in the building being not included in the definition of

landlord will not get a right to file a petition for eviction without the consent even if he is an agent for collecting rent. The words "merely as an agent

will not also help him. Then, the question is who should give consent. Sub-sec. (16) is clear that the landlord should give consent. The vendor of

the landlord cannot hence give consent.....

It is discernible from the said paragraph that a person who is entitled to receive rent on his own account, i.e. the owner, can file an eviction petition.

23. It can thus be seen that a person can come within the definition of landlord u/s 2(3) of the Act herein, if he is entitled to receive rent, being the

owner of the building. He can be said to be the owner if he is entitled on his own legal right, and can evict the tenant.

24. Herein, the learned counsel for the petitioner submits that the petitioner's contention is that unless the receiver is formally discharged, the

landlord cannot maintain the petition. According to him, the said contention will amount to denial of landlord tenant relationship between the

parties. Two aspects will loom large in this context. In the suit O.S. No. 2933/1978 the predecessors in interest of the respondent herein were the

plaintiffs and the tenant herein was the second defendant as already noticed. He alone contested the matter. A reading of the judgment in A.S. No.

185/1982 will show that the contention was that he is entitled to the protections under the Building (Lease & Rent Control) Act. (para 7 of the

judgment). It was also contended that Ext. A1 partition deed relied upon by the plaintiffs is void. In para 13, while considering the said contention

this Court found that the second defendant is not claiming exclusive title over the said properties and he claims only possession on the basis of a

tenancy right obtained from P.W. 1 Poullose who was the husband of the first plaintiff. He only says that a suit for injunction will not lie against him

and that the proper course will be to initiate steps under the provisions of the Rent Control Act. The dispute regarding title of the predecessor in

interest having been found in favour of the plaintiff's, as rightly pointed out by the learned counsel for the respondent, he is bound by the said

judgment. As far as the landlord herein is concerned, he is claiming ownership based on the registered partition deed No. 5678/2004 of SRO,

Kothamangalam, where the petition schedule property is included in D schedule and it comes within his ownership. The said partition deed has

been produced as Ext. A3.

25. Even though learned counsel for the petitioner relied upon the decision of the Full Bench in Parthakumar Vs. Ajith Viswanathan, in support of

his plea of denial of landlord-tenant relationship by pointing out that the tenant herein has not paid any rent to the respondent herein, according to

us, the dictum laid down by the Full Bench will not help the petitioner. In this case, even though the contention of the petitioner is characterised as a

denial of title of the landlord, even going by the decision of the Full Bench in Parthakumar's case (supra) when such a contention is raised, the

Special Tribunals having jurisdiction, will be able to decide whether the denial of title is bonafide or not. The Full Bench has clarified that if it is

bonafide the landlord can sue for eviction before the civil court and if it is not bonafide the Special Tribunal can proceed to exercise its jurisdiction

after recording a finding that the denial is not bonafide.

26. The Rent Control Court was of the view that the denial of title of the landlord by the tenant is not bonafide. As already noticed, he is relying

upon the receivership in O.S. No. 293/1978. When there is already a judgment of a civil court declaring the title in favour of the predecessors in

interest of the landlord herein and as the tenant herein was also a party to the suit, it can no longer be said that the tenant can raise a further

contention that the successor in interest should fight out the matter before the civil court again. It is clear from Ext. A2 that the landlord had

obtained leave from the court which appointed the Receiver. Such being the only formality, as rightly pointed out by the learned counsel for the

respondent, it cannot be said that a formal order of discharge of the receiver is also required which is not the requirement going by the decision of

the Apex Court which we have already relied upon, wherein the requirement to obtain leave was examined.

27. The Rent Control Court has also dealt with the plea of the tenant that he was paying rent to one Smt. Annice Poulose. This aspect has been

considered by the Rent Control Court in para 18. We have noticed that Ext. A33 is the certified copy of the judgment in O.S. No. 293/1978 of

the 1st Addl. Sub Court, Ernakulam in which the second defendant is the tenant herein. After that, there was a dispute between the predecessor-

in-interest of the landlord herein and one Smt. Annice Poulose. The said suit, viz. O.S. No. 602/1995 was compromised and Ext. A9 is the

decree. As per the decree, the title of the predecessor-in-interest of the landlord herein in respect of the property comprised in Sy. No. 1024/1 of

Kothamangalam Village extending 17.546 cents and the two storied building situated therein, was affirmed and Smt. Annice A. Poulose had

withdrawn all her claims in the said property. The above property has been set apart as D schedule to the landlord, in Ext. A3 partition deed.

Therefore, in the light of Ext. A33 judgment in O.S. No. 293/1978, Ext. A9 decree in O.S. No. 602/1995 followed by Ext. A3 partition deed, the

title and ownership of the property including the two storied building, to the predecessor-in-interest of the landlord and the landlord cannot at all be

disputed by the tenant. This aspect has been confirmed by the Appellate Authority also in the impugned judgment and we find no reason to

disagree with the same. In the light of the above, it is not a case where the landlord should again be relegated to the Civil Court on the mere alleged

denial of landlord-tenant relationship by the tenant herein. Both the authorities have therefore rightly rejected the said contention.

28. As we have already noticed from the judgment in A.S. No. 185/1982 that this Court was of the view that since the appeal has been dismissed,

the receiver could not continue. The permission granted to the tenant to move the trial court was mainly for refund of the amounts which according

to him, he was entitled to. No steps have been taken by him in that matter. The successful party, viz. the plaintiffs have not been directed by the

Appellate Court also, to move the court for discharge of the receiver. No other directions have been issued for continuance of the receiver for any

purpose whatsoever. Therefore also, we are of the view that a formal discharge of the receiver is not at all required to maintain the eviction

petition.

29. The inclusive definition of the "landlord" in Section 2(3) of the Act will squarely come to the aid of the landlord herein, as he is the person

entitled to receive the rent of the building on his own account. Such an owner can maintain the eviction petition, in the light of the decision we have

already discussed, viz. Parameswaran Nair Narayanan Nair Vs. Krishnapillai Chellappan Pillai, .

30. Before the Appellate Authority, the only point argued by the learned counsel for the tenant was regarding the correctness of the finding on

denial of title. This aspect is pointed out in para 10 of the judgment. As far as the plea for eviction is concerned, the Rent Control Court has

elaborately discussed the evidence and found that the landlord is entitled for eviction under Sections 11(3), 11(4)(i) and 11(4)(iii) of the Act. The

bonafide need pleaded by the landlord is to start a hotel and restaurant including boarding and lodging of modern standards with modern amenities

to be constructed also, using the entire property. The property is having 17.546 cents. The finding on this plea is clear from para 20 of the

judgment. It was found in para 21 and later paragraphs that the tenant is not entitled for the benefit of the two limbs of the second proviso to

Section 11(3) of the Act. He has not been successful in proving that he is depending mainly on the income derived from the petition schedule

building for his livelihood and that no other building is available in the locality to shift his business. On the ground of subletting also, the finding is

against the tenant. It was found that respondents 3 to 5 in the Rent Control Petition are the alleged sub tenants. It has also come out in evidence

that he has got different buildings in his possession and ownership reasonably sufficient for his requirement, so as to attract Section 11(4)(iii) of the

Act.

31. We find no reason to interfere with the judgment rendered by the Appellate Authority and the revision petition is therefore dismissed. We grant

three months time from today to the petitioner to vacate the petition schedule premises on the following conditions:

i) The entire arrears of rent as on today will be paid/deposited within one month. If such deposit is made, the same will be disbursed to the first

respondent;

ii) An affidavit will be filed by the petitioner before the Rent Control Court within one month from today, unconditionally undertaking to vacate the

premises within the time stipulated by this Court.

iii) The petitioner will continue to pay at the same monthly rate for the use and occupation of the building till vacant peaceful possession is handed

over to the first respondent;

iv) If any of the above conditions is not satisfied, the petitioner will not get the benefit of this order. No costs.