

(1998) 02 KL CK 0055
In the High Court Of Kerala
Case No : C.R.P. No. 279 of 1998

Citizen Chamber of Civil Station Area

APPELLANT

Vs

Joseph

RESPONDENT

Date of Decision : 11-02-1998

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(2), 11(2)(b), 11(3), 11(8)

Citation : (1998) 1 KLJ 463

Hon'ble Judges : K.V. Sankaranarayanan, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : Cyriac Thomas, for the Appellant;

Judgement

AR. Lakshmanan, J.—The unsuccessful tenant is the revision petitioner. The petitioner is a social organisation constituted for promoting cultural and social activities. The landlord filed a petition under S.11(2), 11(3) and 11(8) of the Kerala Buildings (Lease & Rent Control) Act for eviction of the petitioner. The rent controller allowed the petition for eviction under Ss. 11 (2)(b) and 11(3) of the Act. The appellate authority also confirmed the order. Aggrieved by the order of the appellate authority confirming the order of the rent controller the tenant has come up in this revision. We have heard counsel for the petitioner at length and also perused the pleadings and evidence and the orders of the authorities below. The Rent Controller after considering the entire evidence on record found that the landlord is entitled to get an order for eviction under S.11(2)(b) and 11(3) of the Act. The appellate authority, on going through the evidence available on record has also concurred with the findings recorded by the Rent Controller under Ss.11(2)(b) and 11(3) of the Act. Learned counsel for the tenant argued before us that the need put forward by the landlord is not genuine and bonafide and is not based on any evidence. A commissioner was also appointed by the court below who filed his report and plan which is marked as Exts.C1 and C2. The learned counsel argued that the landlord was running a lodging house violating the Municipal Building Rules, and therefore a person violating the

provisions of the rules framed under the local authority in respect of a lodging house should not be encouraged and eviction ordered on the alleged bonafide need. Both the Rent Controller and the appellate authority on the basis of the evidence adduced by Exts.C1 and C2 along with the oral evidence of the landlord came to the conclusion that the need put forward by the landlord is bonafide. We have also gone through the evidence and in our view the evidence adduced in this case clearly establishes the need put forward by the landlord is genuine and bonafide. The evidence of the Rent Controller and of the appellate authority that the landlord is entitled to get an order of eviction under S. 11(3) of the Act is perfectly correct and does not call for any interference, by this court. R.W.1 who was examined on the side of the petitioner herein had categorically admitted that there are other vacant buildings available near to the petition scheduled building. Further the tenant had no case that it is conducting any business in the petition schedule building. Even according to the objects of the association they are carrying on only social and cultural activities, which in our opinion can be carried on in the vacant buildings available near to the petition schedule building. The protection available under the second proviso to S.11(3) of the Act can be claimed by a tenant only in case the tenant is conducting a business and that the income from the tenanted premises is the main source for their livelihood. Admittedly no business is being carried on in the premises. The tenant has no case that he is getting any income from any activity conducting from the premises.

2. At the instance of the tenant a Commissioner was deputed by the lower court who filed his report which was marked as Ext.C3. In the affidavit filed in support of that application it was averred that the entire averments made in R.C.P. are false. It is admitted that the entire building is now in the possession of the landlord and is not running a lodge and instead he is now running an educational institution by name Indian Institute of Tourism Management. It is stated in the report Ext.C3 that all the rooms are occupied by the Institution as class rooms and office rooms. The appellate authority has perused Ext.C3 which shows that at present instead of a lodging house an educational institution is being run in the building owned by the landlord. The appellate authority has held that even though there is change of the nature of the user, the need put forward in the petition still subsists. We are of the view that the need put forward by the landlord namely parking space and also toilet facilities are genuine and bonafide and the tenant has not been able to point out any error in the order passed by the authorities below. The orders passed by the authorities below, in our opinion, is perfectly correct and therefore no interference is called for in this revision. On the pronouncement of the order learned counsel for the tenant/petitioner asked for one year's time to vacate the premises in question and handing over vacant possession to the landlord. We are of the view that one year time asked for is too long a period and considering the nature of activities carried on by the petitioner we feel four month's time may be sufficient to vacate and hand over vacant possession to the landlord. Hence we grant four month's time to vacate the

premises subject to his filing an affidavit of undertaking before the Rent Controller within three weeks from today. C.R.P. is dismissed. C.M.P. No. 570/98 also stands dismissed. No costs.