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**(2009) 01 KL CK 0079**  
**In the High Court Of Kerala**  
**Case No : RC Rev. No. 216 of 2008**

N. Sivadasa Panicker

APPELLANT

Vs

Travancore Mats and Mattings Co. and Others

RESPONDENT

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**Date of Decision :** 16-01-2009

**Acts Referred:**

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(3), 11(4), 20

**Citation :** (2009) 1 KLT 393

**Hon'ble Judges :** Pius C. Kuriakose, J;M.C. Hari Rani, J

**Bench :** Division Bench

**Advocate :** J. Om Prakash, for the Appellant; No Appearance, for the Respondent

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## Judgement

Pius C. Kuriakose, J.—A tenant who has suffered an order of eviction u/s 11(4) (iv) of the Kerala Building (Lease and Rent Control) Act concurrently at the hands of the rent control court and the appellate authority has come up in revision. The building in question is only one room in a larger building having as many as 9 rooms. All the 9 tenants were arrayed as respondents in the rent control petition and the landlord's case as averred in the RCP was, that the building in question is in such a condition as warranting reconstruction, that the landlord's bonafide needs to reconstruct the building; that they have the ability to reconstruct and that they have the requisite plan and licence from the Cherthala Municipality. The claim was resisted by the respondents who contended inter alia that the condition of the building is not such that as requiring reconstruction, that the proposal is not profitable, that the landlord does not have the requisite plan and licence and that it will not be possible for the landlord to provide equal area presently being enjoyed by the tenants in the new building after reconstruction.

2. The evidence before the rent control court consisted of the oral testimony of PW1, civil agent of the petitioners, and documents- Exts.A1 to A22 apart from Ext.C1 Commissioner's report. On the side of the respondents there was no counter oral evidence and their evidence consisted of Exts.B1 and B2 only which were copies of two earlier rent control petition filed by the landlords which were

dismissed for default. The rent control court on an evaluation of the evidence came to the conclusion that the condition of the building is such that the same requires reconstruction, that the landlords have the ability to carry out reconstruction and that the proposal of reconstruction will be profitable to them and the proposal is not a ruse, but is a bonafide one. It was noticed that the validity of the plan had expired and therefore eviction was ordered subject to the condition that the execution court must be convinced regarding the renewal of the building permit granted by the local authority.

3. Before the appellate authority, the renewed permit and plan was produced and got marked as Ext.A23 and A23(a). Before the appellate authority, Ext.B3, a letter from the local authority was produced and a contention that there is a proposal to widen the road by the side of which the petition schedule is being constructed and that the proposed reconstruction has become impossible on account of such proposal was taken. In the light of Ext.B3, the respondents landlords were directed by the appellate authority to obtain clarification from the local authority. The clarification was obtained and produced.

4. The appellate authority would make a reappraisal of the entire evidence including the additional evidence produced before that authority and would concur with the conclusions of the rent control court. It was reiterated that the condition of the building warrants reconstruction and that the landlords bonafide require to reconstruct the building. It was also found that it will be possible for the landlords to allow the respondent the benefit of re-induction in the newly constructed building under the 3rd proviso to Section 11(4)(iv).

5. Sri. J. Omprakash, learned Counsel for the petitioner addressed us extensively on the various grounds raised in the revision petition. Learned Counsel would draw our attention to the judgment of the Supreme Court in Janaki Vashdeo v. Indusind Bank 2005(2) KLT 265 (SC) and also to the judgment of this Court in Ratheesh Kumar Vs. Jithendra Kumar, . Learned Counsel pointed out that though there are as many as 9 landlords and all of them have joined the rent control petition, not even one among them has been examined, instead, PW1, their civil agent, who is incompetent to speak as to the state of mind of his principals alone has been examined. According to the learned Counsel, the non-examination of any one among the landlords to testify regarding bonafides is fatal.

6. We have considered the submissions addressed at the Bar. The point decided in Ratheesh Kumar Vs. Jithendra Kumar, following the view of the Supreme Court in Janaki Vashdeo v. Indusind Bank 2005 (2) KLT 265 is that when the need alleged is that of the landlord himself for his own occupation, the need has to be established by him by appropriate evidence since bonafide means a state of mind which can be manifested only by the person who entertains a desire to have his building for his own occupation.

7. We are in agreement with the view that need to have possession of a building for own occupation by a person whether it be the landlord himself or a

dependent member of the landlord's family can be authentically spoken to only by the landlord or by the dependent family member, the de facto claimant for the building. But a distinction has to be seen when the need projected is the requirement of a landlord to reconstruct a building on the reason that the condition of the building needs reconstruction. Unlike a need u/s 11(3) of the statute which is a need for own occupation by the landlord himself or by a dependent member of the family of the landlord, the need u/s 11(4)(iv) is a need which can be discerned from circumstances such as the physical and social condition of the building, the availability of a plan and licence with the landlord, the situation that the landlord has financial ability to carry out the construction and the profitability of the proposal. It goes without saying that to establish that the social and physical condition of a building warrants reconstruction and to establish that the landlord has the requisite plan and licence and that the landlord has the ability to carry out his proposal for reconstruction etc., it is not necessary that the landlord himself should mount the box and testify. It is sufficient that evidence regarding the above mentioned aspects are brought on record before the court by the landlords through anybody else who is competent to give evidence on behalf of the landlords and through the report of a commissioner deputed for local inspection. In other words while the bona fides of a need for own occupation u/s 11(3) is best established by the oral evidence to be given by the needy person and by the circumstances attending on the case, the bona fides of the requirement u/s 11(4)(iv) is capable of being established by the tangible items of evidence indicated herein above. It is important to note that while Section 11(3) speaks about the need of the landlord, in Section 11(4)(iv) the word "need" is used with reference to the building. Ofcourse Section 11(4)(iv) also insists that the requirement of the landlord should be bona fide. It is not difficult to hold that the bona fides insisted upon by the statute in the context of the ground u/s 11(4)(iv) is with reference to the building's need for reconstruction on account of its condition.

8. In the above view of the matter, we hold that the non-examination of any one of the landlords to testify regarding the bonafide need u/s 11(4)(iv) to reconstruct the building is not fatal.

9. Coming to the merits of the other grounds, we have gone through the orders passed by the rent control court and the appellate authority and we have considered the submissions of Sri. J. Omprakash. We find that the finding of the authorities below that the condition of the building warrants reconstruction, that the landlord has the requisite plan and licence from the local authority, that the landlord has the financial ability to carry out the reconstruction are all founded on evidence which is actually available on record. Those are all reasonable and correct findings. We in this jurisdiction u/s 20 are not expected even to make a reappraisal of the evidence. Reappraisal, if at all, is permissible only for the purpose of examining whether the findings can be said to be illegal, irregular or improper in the sense that they are not founded on evidence or are in violation of law. It is seen that even the local authority initiated proceedings u/s 411 of

the Municipalities Act against the landlord for demolition of the building, noticing its deplorable condition. 10 Gauged by the parameters applicable to the exercise of jurisdiction u/s 20 of the Kerala Buildings (Lease and Rent Control) Act, we do not find any warrant for interference of the order concurrently passed by the authorities. As his last submission, Sri. Omprakash requested for 9 months time to surrender the premises. We do not think that we will be justified in granting so much of time, that too without notice to the respondent. Obviously, most of the tenants have already surrendered the premises to the landlord for enabling him to carry out the reconstruction. However in deference to the request of the learned Counsel, we grant the petitioner four month's time from today to vacate the premises on condition that the petitioner files an undertaking in the form of an affidavit before the execution court stating that he will give peaceful surrender of the petition schedule premises to the respondent within four months and that he will discharge the entire arrears of rent, if any, and will continue to pay the rent which falls due subsequently till the date of surrender without fail. The affidavit as directed above shall be filed by the petitioner within 7 days from today. If the execution court notices the affidavit, that court will adjourn the E.P. to 21/05/2009.