

**(2004) 03 KL CK 0036**  
**In the High Court Of Kerala**  
**Case No : C.R.P. No. 586 of 1998**

Sree Narayana Dharmasabha

APPELLANT

Vs

Sathiapalan

RESPONDENT

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**Date of Decision :** 19-03-2004

**Acts Referred:**

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(7)

**Citation :** (2004) 2 KLT 373

**Hon'ble Judges :** Pius C. Kuriakose, J;K.S. Radhakrishnan, J

**Bench :** Division Bench

**Advocate :** B. Krishna Mani and V. Premchand, for the Appellant; T.H. Abdul Azez, for the Respondent

**Final Decision :** Allowed

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## Judgement

Pius C. Kuriakose, J.—Whether the need of a public institution with the financial, educational and cultural uplift of the members of the institutions as its objective to conduct a business for raising funds for achieving the aforementioned objective be termed as a need for the purposes of the institution within the ambit of Sub-section (7) of Section 11 of the Kerala Buildings (Lease and Rent Control) Act is the question which arises for consideration in this case.

2. The facts having been narrated in detail in the orders passed by the Rent Control Court and the Appellate Authority need be stated only very briefly. The revision petitioner landlord is the Sree Narayana Dharmasabha at Kodungallur, a society registered under Act 12 of 1955. The building which is the subject matter of the proceedings for eviction under the Rent Control Act presently occupied by the respondent tenant belongs to the revision petitioner society. Eviction was sought on various grounds under the Rent Control Act including the ground under Sub-section (7) of Section 11, the only ground which presently survives for consideration. Section 11(7) was invoked on the pleading that the landlord society has been established for propagating ideals of Sreenarayana Guru amongst the public and also for the social, financial and educational uplift of the

people who believe in Sreenarayana Guru's ideals to whom membership in the society is open. The society needs to conduct a business in bicycles and other household articles in the petitioner schedule building so that the extra income which is expected to be generated out of such business will enable the society to render more service to the members. It was claimed in the rent control petition itself that the society has on 17.6.1994 taken a decision regarding commencement of the proposed business. The counter of the respondent tenant to the extent the same pertained to the eviction ground u/s 11(7) was that the society has no need for getting vacant surrender of the room and that even if the society has decided to start the proposed business in the room the same is only to foist a cause of action for instituting the rent control petition and eviction will result in considerable hardship for the tenant.

3. The Rent Control Court on an evaluation of the evidence which consisted of the oral testimony of the then Secretary of the Society as EWs.1 and 7 documents including Ext. A5 bye-laws of the society and Ext.A4 copy of the resolution adopted by the society regarding the commencement of the proposed business found that the nature of the landlord society as a public institution was evident and even admitted. That court also found that allround welfare of the members of the society being the principle objective of the society conduct of business for augmentation of the income to be utilized for achieving the welfare of the members also will come within the scope of the expression "purposes of the institution" provided under Sub-section (7) of the Section 11 of the statute. The Rent Control Court also found that even though Sub-section (7) of Section 11 is qualified by Section 10 and to that extent an enquiry into the bona fides of the claim is certainly warranted, the test of bona fides under Sub-section (7) is less rigorous than under Sub-section (3) of Section 11 and the standard of proof required is relatively liberal. Accordingly that court ordered eviction against the tenant u/s 11 (7). The Rent Control Appellate Authority however disagreed with the Rent Control Court. That Authority noticed that in order to succeed in a claim u/s 11(7) any public institution will have to establish two facts namely, (1) that there is a need, and (2) that the need is for the purposes of the institution. According to the Appellate Authority the claim of the institution that it wants to do business for generating income for achieving its purposes cannot in all cases be branded as a claim for the purposes of the institution itself. The Appellate Authority drew a distinction between the members of the institution and the institution itself and ultimately held that the evidence was only to the effect that the ultimate beneficiaries of the income from the proposed business are the members and not the institution. On that reasoning the Appellate Authority held that starting of the proposed business cannot be said to be for the purposes of the institution and that the claim will not fall u/s 11(7) and accordingly set aside the order of eviction and dismissed the rent control petition.

4. Heard Shri B. Krishna Mani, learned counsellor the revision petitioner society. Shri T.H. Abdul Azeez, learned counsel who had filed vakalat for the respondent tenant reported no instructions since there was no response from the

client in spite of a registered letter. Having regard to the nature of our jurisdiction which is revisional we are proceeding to examine the legality, regularity and propriety of the order of the Rent Control Appellate Authority and since the findings of the authorities below are divergent we have scrutinized the records thoroughly.

5. Shri B. Krishna Mani learned counsel for the revision petitioner invited our attention to the Division Bench decision of this Court in *Rev. Mother General v. Philip* 1964 KLT 1092 and also the Single Bench decision of this Court in *Electric & Motor Works Ltd. v. Y.M.C.A., Trivandrum* 1970 KLT 909 and submitted that any organization which is substantially one devoted to the promotion of general welfare of the public and for that matter even a section of the public will be public institution and by any test the revision petitioner institution is a public institution for the purposes of Section 11(7). Counsel referred us to the decision of this Court in *Thankamma v. Vaikom Town Jutna Masjid Mahal Sangham* 1987 (2) KLT 780 and conceded that Sub-section (1) qualifies Section 11(7) also. Counsel however submitted that the standards to determine the bona fide of the claim u/s 11(7) ought to be liberal when compared to those required for claims u/s 11(3).

6. It has been found concurrently by the Rent Control Court and the Appellate Authority that the revision petitioner Sabha is a public institution for the purposes of Section 11(7). The above finding is absolutely correct when it is noticed that the objectives of the revision petitioner Sabha is to propagate the ideals of Sreenarayana Guru a saint and social reformer who has a large number of followers in Kodungallur Taluk which is the area of activity for the revision petitioner society. Ext.A5 bye-laws will show that membership in the society is open to those who believe in the ideals of Sreenarayana Guru-Sreenarayaneers as they are commonly known and the institution has among its objective the social, educational and financial uplift of the members generally. P.T. Raman Nayar, J., as his Lordship then was, speaking for the Division Bench in *Rev. Mother General's* case (supra) observed that the words "religious", "charitable" and "educational" are used in the sub-section only illustratively in order to show what public institutions the Legislature had in mind in enacting the said sub-section and that the use of those words only indicate that the institutions under Sub-section (7) should be generally speaking public institutions promoting the welfare of the public as distinguished from purely private institutions. In paragraph 7 of the judgment His Lordship refers to the objective to the legislation itself and goes on to state that the legislative policy in enacting various provisions such as the first proviso to Sub-section (1) of Section 11 and Sub-section (7) to Section 11 has been to liberate buildings in which there is more public interest than private from the shackles of the rent control legislation which actually makes inroads into the landlord's right of evicting his tenants in accordance with the contract, of tenancy. The policy underlying Section 11 (7) is to protect and encourage institutions functioning for public good. We have the support of Sadasivan, J. in *Electric & Motor Works* case (supra) also to reiterate

that "public" contemplated u/s 11(7) can be a section of the public also. Therefore Sree Narayana Dharmasabha the revision petitioner is certainly a public institution for the purpose Section 11(7).

7. The crux point on which the Appellate Authority's decision turned was that Authority's view that the need of the revision petitioner society to conduct business for generating income for achieving the society's objectives cannot be said to be a need or purpose of the society itself. The Appellate Authority over emphasized two sentences from the testimony of P.W.1. As translated by the Appellate Authority itself they were to the following effect: "The business is being conducted for earning money and for getting benefits to members. Profit of the Samajam will be increased and then the members will get benefit." According to the Appellate Authority the purport of the above statement of P.W.1 is that the income to be earned from the proposed business will not be used for the purpose of the institution but is intended for the benefit of the members of the institution and the benefit derived by the members will not constitute purpose of the institution for the purposes u/s 11(7). We are afraid that the learned Appellate Authority was hyper technical. Firstly reading one or two sentence from the deposition of a witness is not always a safe method of appreciating oral evidence. Secondly, even going by Exts.A4 and A5 the social, educational and financial uplift of the members of the institution is an objective of the institution. As the Appellate Authority itself has indicated elsewhere in its judgment the general body constituted by all the members of the society has the last say in all matters pertaining to the revision petitioner society. By virtue of the legislation under Act 12 of 55 the society acquires the status of a legal entity in the matter of institution and defence of proceedings before courts. But the fact remains that the society exists only because of and through its members. When Ext. A5 says that members' welfare is the goal of the society, a purpose intended to achieve the said goal will certainly be a purpose of the society also. This view of ours is supported by the decision of the Madras High Court in I.V. Chetty v. P.A. Chetti AIR 1971 Mad 354 a case which came up u/s 10(3) (b) of the Madras Buildings (Lease and Rent Control) Act. The objective of the public institution concerned in that case was inter alia feeding the poor. Putting up of Kalyana Mandapam was not one of the mentioned objectives of that institution. The case projected by the landlord was one of putting up a Kalyana Mandapam and letting out the same to others so that the income can be utilized for feeding the poor. Kailasam, J. of the Madras High Court took the view that putting up of Kalyana Mandapam for the purpose of increasing the income of the institution will amount to a purpose of the institution itself. We also feel having regard to the legislative objectives underlying Section 11(7) and the observations of the Division Bench in Rev. Mother General's case (supra) that such a construction does not in any way do violence either to the language of the section or to the legislative intendment behind the same.

8. The result of the above discussion is that the judgment of the Rent Control Appellate Authority is liable to be set aside. We set aside the same and restore

the order of the Rent Control Court thereby allowing this revision. In the circumstances of this case there will be no order as to costs.