

CASE NO.:
Appeal (civil) 521 of 2008

PETITIONER:
Indian Saree House & Ors

RESPONDENT:
G. Radhalakshmy & Ors

DATE OF JUDGMENT: 18/01/2008

BENCH:
ASHOK BHAN & AFTAB ALAM

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO.521 OF 2008
[Arising out of S.L.P.(C)No.11947 of 2006]

Leave granted.

Respondent-landlords filed an Eviction Petition seeking eviction of the appellant-tenants originally under Section 11(3) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short, 'the Act'). The said provisions read as under :

"11(3) A landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building if he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him:

Provided that the Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons, in any particular case it will be just and proper to do so:

Provided further that the Rent Control Court shall not give any direction to a tenant to put the landlord in possession, if such tenant is depending for his livelihood mainly on the income derived from any trade or business carried on in such building and there is no other suitable building available in the locality for such person to carry on such trade or business:

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Provided further that no landlord whose right to recover possession arises under an instrument of transfer inter vivos shall be entitled to apply to be put in possession until the expiry of one year from the date of the instrument:

Provided further that if a landlord after obtaining an order to be put in possession transfers his rights in respect of the building to another person, the transferee shall not be entitled to be put in possession unless he proves that he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him.

11(8) 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."

At the time of arguments before the Rent Control Court, the landlord-respondents made a statement that they are pursuing the remedy only under Section 11(3) of the Act, meaning thereby, they had given up their ground for eviction under Section 11(8) of the Act. The Rent Control Court, by its order dated 06th November 2003, ordered eviction of the appellants under Section 11(3) of the Act.

The first Appellate Court, by its order dated 25th February 2005, confirmed the order of the Rent Control Court.

The High Court, after recording a finding that the landlord-respondents had established their bona fide need under Section 11(8) of the Act as well, remitted the case back to the first Appellate Court to determine the question whether the

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hardship which may be caused to the tenants will outweigh the advantage to the landlords. Finding recorded by the courts below on the question of bona fide need under Section 11(3) was reversed and it was held that the Section 11(3), in the given facts and circumstances of the case, was not applicable.

Counsel for the appellants contends that the High Court has erred in recording a finding regarding bona fide need under Section 11(8) of the Act as the same had been given up by the landlord-respondents before the Rent Control Court itself and the said question was not before either the Rent Control Court or the first Appellate Court.

Counsel for the landlord-respondents fairly concedes that he does not dispute the state of facts but submits that there is a narrow difference between Sections 11(3) and 11(8) and,

therefore, the High Court was right in holding that the bona fide need of the landlords could be determined under Section 11(8) of the Act even if this ground had been given up before the courts below.

We do not find much substance in the submission made by the learned counsel for the respondents. Respondents having given up their ground for eviction under Section 11(8) of the Act, the High Court was not right in holding that the landlord-respondents had established their bonafides under Section 11(8). Insofar as the ground of eviction under Section 11(3) is concerned, landlord-respondents have not been able to establish

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that they are in need of the premises in question for their own occupation so as to attract the applicability of the said Section.

For the reasons stated above, the appeal is accepted. The impugned order passed by the High Court is set aside and the Eviction Petition filed by the respondents is dismissed. The appeal is allowed accordingly.