(2009) 06 KL CK 0035

In the High Court Of Kerala

Case No : RC Rev. No. 375 of 2005

A. Ramesh Shenoy APPELLANT

Vs

Susila and Dayananda Maller and Others RESPONDENT

Date of Decision : 01-06-2009

Acts Referred:

Rent Control Act, 1965 — Section 11, 11(3), 11(4), 11(7), 2

Citation : (2009) 06 KL CK 0035

Hon'ble Judges : Pius C. Kuriakose, J;P.Q. Barkath Ali, J

Bench : Division Bench

Advocate : K.V. Pavithran, for the Appellant; T. Sethumadhavan, for the Respondent

Final Decision : Dismissed

Judgement

Pius C. Kuriakose, J.—Under challenge in this revision filed by the tenant is the judgment of the Rent Control Appellate Authority reversing the order of the Rent Control Court by which the RCP was dismissed by that court. The parties will be referred to for convenience as the tenant and the landlord. The landlord is a private religious and charitable trust by name "Susila and Dayananda Maller Religious and Charitable Trust" and the same is represented by its present four trustees. The landlord invoked the grounds under Sub-section (3) and Clause (ii) of Sub-section (4) of Section 11 of Act 2/1965. The ground under Clause (ii) of Sub-section (4) of Section 11 was invoked in the context of erection of an unauthorised pandal in front of the tenanted premises. The Rent Control Court as well as the Appellate Authority have concurrently declined eviction on that ground and, in the absence of any revision filed by the landlord, that ground does not survive any longer. The need projected in the context of the surviving ground under Sub-section (3) of Section 11 was that none of the present trustees of the landlord are able to manage the very valuable properties belonging to the Trust and hence the Trust has resolved to appoint a manager and further that the petition schedule building is needed for accommodating the office of the manager. The ground is expatiated by stating that the Trust owns extensive properties in the town and it has been decided to construct buildings, for the construction and management of which also a manager with an office is necessary.

2. The tenant resisted the RCP contending inter alia that the need and the claim are not bona fide and that the tenant is entitled to the protection of the second proviso to Sub-section (3) of Section 11 of the Act.

3. The Rent Control Court on evaluating the evidence adduced by the parties consisting of Exts.A1 to A4 and testimonies of Pws.1 and 2 on the side of the landlord and Exts.B1 to B4 and the testimony of RW.1 on the side of the tenant would hold that the claim and the need projected by the landlord is not bona fide.

4. The Rent Control Appellate Authority, however, on considering the appeal re-appreciated the evidence and disagreeing with the Rent Control Court, found that the need and the claim for own occupation u/s 11(3) was bona fide. The tenant''s claim for protection of the second proviso to Sub-section (3) of Section 11 was turned down on the basis of Ext.A1, the admitted rent chit, which discloses that the building in question is a residential building and that the purpose of the lease was residential only.

5. In this revision the tenant assails the findings and the decision of the Rent Control Appellate Authority on various grounds.

6. We have heard the submissions of Sri K.V. Pavithran, learned Counsel for the revision petitioner, and Sri Jayesh Mohankumar, learned Counsel for the respondent/landlord.

7. Drawing our attention to pages 9 and 10 of Ext.A2 Minutes Book maintained by the Trust, Mr. Pavithran submitted that the first resolution adopted by the landlord Trust in this case was to initiate proceedings for evicting the tenant and to appoint a manager for the Trust properties only. In the first resolution there is no decision at all to put up buildings. Mr. Pavithran submitted that the total amount collected by the landlord Trust from all the tenants excluding the revision petitioner is only Rs. 370/- per mensem and, according to the learned counsel, the decision to appoint a manager on a monthly salary of Rs. 600/- for collecting a total monthly rent of Rs. 370/- from all the buildings belonging to the Trust is implicitly bereft of bona fides. Mr. Pavithran submitted that the so called decision to put up buildings was introduced only on second thoughts and through a subsequent resolution. Mr. Pavithran pointed out that though the said decision was taken long ago, till the year 2001 when the litigation reached the Rent Control Appellate Authority, the landlord had not taken even the preliminary steps for accomplishing the said decision. This again, according to the learned counsel, is a circumstance indicative of complete absence of bona fides in the need projected by the landlord. Referring to Sub-sections (3) and (7) of Section 11, Mr. Pavithran would submit that Sub-section (3) of Section 11 will be available only to natural persons and not to the present landlord which is a

private religious trust. The argument of the learned Counsel was that Sub-section (7) of Section 11 provides for filing of eviction petitions for own use by public, religious and charitable institutions and if it were to be said that Sub-section (3) of Section 11 is available to private institutions like the present landlord, the same will defeat the very purpose and legislative intendment underlying Sub-section (7) of Section 11.

8. Sri Jayesh Mohankumar, learned Counsel for the respondent, would draw our attention to the definition Clause (3) of Section 2 of Act 2/1965 and submit that the statute envisages all types of Trusts and other institutions also as landlords and u/s 11 of the Act, all landlords are entitled to maintain petitions for eviction against their tenants on the various grounds mentioned under that section. As regards the grounds raised on the merits of the matter, Mr. Jayesh submitted that under the statutory scheme, the Rent Control Appellate Authority is the final court of facts and unless this Court finds any illegality, irregularity or impropriety about the findings of the appellate authority, there will not be any justification for interfering with the same. There is not much time lag between the two decisions recorded on pages 9 and 10 of Ext.A2. The necessity to have a manager was experienced by the landlord Trust because none of the Trustees were in a position to manage the affairs of the Trust, themselves. Even without the decision to put up constructions, a manager and an office for him is necessary. Now that a decision has been taken to put up constructions, a manager and an office has become all the more necessary, so submitted Mr. Jayesh.

9. We have anxiously considered the rival submissions addressed at the Bar. The argument of Mr. K.V. Pavithran that the eviction ground under Sub-section (3) of Section 11 is available only to those landlords who are natural persons, does not appeal to us at all. As rightly pointed out by Mr.Jayesh Mohankumar, the ground under Sub-section (3) of Section 11 is available to all landlords and in terms of Clause (3) of Section 2 of the Act, which gives an inclusive definition for the term "landlord", landlords can also be trustees and administrators of Trusts and other institutions, registered or unregistered, public or private. Sub-section (7) of Section 11 is a special provision intended for those landlords which are religious, public and charitable institutions. The existence of that provision in the statute book cannot be a valid reason to say that the institutions which do not fall within the ambit of that provision are not entitled to apply for eviction under Sub-section (3) of Section 11. A Division Bench of this Court, to which one of us (PCK, J.) was also a party, has ruled by the judgment in Social Service Guild of Assissi Sisters v. Ouseph Chacko 2009 (2) KLT 199 that the eviction grounds under Sub-sections (7) and (3) of Section 11 are independent grounds and that the ground under Sub-section (7) of Section 11 is the ground which applies where a religious, public or charitable institution needs the tenanted building for its purposes. Here the landlord is neither a public trust nor a religious, public or charitable institution. It is a private Trust. Section 11(7) will not have any application to the present landlord. We do not find any other ground of eviction in the Rent Control Act which enables a private institution or a private Trust to

evict their tenants when the Trust needs the building occupied by the tenant bona fide for its own purposes than Sub-section (3) of Section 11.

10. The bona fides in the context of Sub-section (3) of Section 11 is a state of mind which is capable of being proved mainly by circumstantial evidence and by direct oral evidence by the party who harbours the need. In the present case, it is seen that on behalf of the Trust, one of its Trustees testified before the trial court regarding the genuineness of the need of the landlord Trust. The evidence of PW.1 was to the effect that none of the present trustees are in a position to manage the extensive and valuable Trust properties and that the Trust wants to improve its properties by putting up new constructions and that the Trust has decided to appoint a paid manager. It cannot be in dispute that if there is need to appoint a paid manager, there is need also to provide the said manager with an office room. We are unable to accept the argument of Mr. Pavithran that because the need to put up buildings does not find a place in the first resolution adopted by the Trust, the need projected is to be treated as without bona fides. After all, the second decision was taken on the very next day and, according to us, if the testimony of PW.1 that none of the Trustees are in a position to manage the affairs of the Trust properties and therefore the Trust has decided to appoint a manager is believable, then the need can be accepted as bona fide even in the absence of the subsequent decision to put up buildings. It may be true that the existing buildings of the Trust may not be fetching very high rent. But the tenant does not dispute the case of the landlord that the properties situated as they are in the heart land of the ancient municipal town of Thalassery are of immense capital value. We do not find anything unnatural in a Trust, whose trustees are not able of looking after the properties themselves, in appointing a manager. It has come out in evidence that the Trust has decided to put up buildings also. Of course, it is seen that the preliminary steps for putting up the buildings were taken at a slow pace only, but the landlord has its own explanation to offer. Even the construction is to be overseen by the manager and for want of the petition schedule building, they are unable to appoint and accommodate the manager immediately.

11. In this jurisdiction u/s 20 of the Act, we are not expected to re-appreciate the evidence and substitute our conclusions for the factual conclusions entered by the Appellate Authority which have become final. Having gone through the judgment of the Rent Control Appellate Authority, we are of the view that the conclusion entered by that authority are reasonable and founded on evidence. We see no warrant for interfering with the same. Hence the RCR will stand dismissed.

12. As his last submission Mr. Pavithran requested that six months time be granted for vacating the building. Mr. Jayesh submitted that the tenant is not conducting any commercial activity in the building and that he is not even residing in the building. According to him, the tenant''s wife and children are possessed of a residential building and the tenant is residing in that building. It

was also submitted that before the Rent Control Appellate Authority documents regarding the building owned and possessed by the wife and children were actually produced, but not accepted by that authority. He opposed grant of time. However, we are of the view that five months time from today can be granted to the revision petitioner for surrendering the petition schedule premises. Hence we decide the RCR in the following terms:

The RCR is dismissed. The Executing Court is directed not to enforce execution and order delivery of the petition schedule building in favour of the landlord till 31.10.2009 on condition that the revision petitioner gives an undertaking to the court below in the form of an affidavit stating that he will peacefully surrender the building to any of the trustees of the landlord Trust on or before 30.10.2009 within three weeks from today. There will be a further condition that the revision petitioner discharges the arrears of rent in respect of the building, which has fallen due after the year 2001 including the rent which falls due subsequently, till he gives actual surrender.

