

(2021) 03 KL CK 0041

In the High Court Of Kerala

Case No : Rent Control Revision No. 232 Of 2019

A Sreedharan

APPELLANT

Vs

Bijoydas

RESPONDENT

Date of Decision : 03-03-2021

Acts Referred:

Kerala Building (Lease And Rent Control) Act, 1965 — Section 11(4)(iii), 11(8)

Citation : (2021) 03 KL CK 0041

Hon'ble Judges : A Hariprasad, J; Ziyad Rahman A.A, J

Bench : Division Bench

Advocate : V. Sreenath, P.K. Sajeev, Veena Hari, Nirmal S

Final Decision : Dismissed

Judgement

Ziyad Rahman A.A, J

1. The revision petition is filed by the tenant being aggrieved by the order of eviction passed by the Rent Control Court/Principal Munsiff-2, Kozhikode

in RCP 49/2015, which was confirmed by the 2nd Additional Rent Control Appellate Authority/2nd Additional District Judge, Kozhikode in RCA

65/2017.

2. The Respondent/landlord (hereinafter referred to as landlord), filed the above rent control petition, seeking eviction of the Respondent/tenant (herein

after referred to as tenant), under Section 11 (4) (iii) and 11 (8) of the Kerala building (Lease and Rent Control) Act, 1965 (herein after referred to as

Act). The rent control petition was filed with the following averments:

The petition schedule room situated in Kozhikode Corporation originally belonged to the mother of the landlord Smt Bhargavi. Later, as per Exhibit A1

settlement deed her mother had conveyed the petition schedule room in favour

of the landlord and since then he is in absolute ownership of the same.

Earlier, while the ownership of the said building remained vested with the mother of the landlord, she entered into a lease agreement with the

Respondent in respect of the said building for a monthly rent of Rs 1500/-. The landlord and his wife are Dentists by profession and they are running a

dental clinic by name 'Thiruvannur Dental Clinic' adjacent to the Western boundary of the petition schedule room. The petition schedule room is

a portion of the entire building wherein landlord and his wife are conducting Dental Clinic since 2002. It is the case of the landlord that, at present he is

finding it difficult to accommodate additional staff, clients and additional clinical facility to run the clinic. Therefore he requires the petition schedule

room for additional accommodation for expanding the clinic. On the upstairs of the petition schedule room also two rooms are lying vacant and the

landlord wants to use those rooms also for the purpose of expansion of the clinic. It is also mentioned that, for using the upstairs portion of the petition

schedule room, he wants to construct a staircase from the clinic. It is also contented by the landlord that, after the entrustment of the petition schedule

building to the tenant, the tenant has recently acquired another building having sufficient space to accommodate the stationery shop which is being run

in the petition schedule room. The said building is situated in the very same locality at 200 meters away from the petition schedule room. Even though

the landlord had sent a notice demanding vacant possession of the petition schedule room on the grounds mentioned above, the tenant refused to do so.

The Rent Control Petition is filed in the above circumstances.

3. The tenant filed a counter statement admitting the fact that the petition schedule room originally belonged to the mother of the landlord, but

execution of the settlement deed in favour of the landlord by the mother was denied. It is contented that landlord does not have any exclusive title over

the petition schedule. It is averred that, he is occupying the petition schedule room as a tenant on the basis of a lease arrangement entered into

between the tenant and the mother of the landlord for a monthly rent of Rs 1500/-. The bona fide need put forward by the landlord is stoutly denied by

the tenant. It is contented that there is no shortage of space in their clinic for proper functioning. In fact there are two rooms in the upstairs of the

building in which the petition schedule room situates and if the landlord is

intending to expand his clinic, certainly those rooms can be utilised. He further contended that the stationery shop conducted in the petition schedule room is the source of income for him and he is depending upon the same for his financial needs. The tenant denied the allegations in the petition that, he subsequently obtained another building 200 meters away from the petition schedule. According to the tenant, the above building is only a shed which is not suitable for conducting a stationery shop. According to him, he had obtained the said shed on lease, much prior to the taking on lease of the petition schedule shop room and the tenant is conducting a welding workshop by name Shastha Industries in the said premises. According to him, the income derived from the said workshop is not sufficient to meet both ends and therefore the tenant is constrained to take the petition schedule shop room on lease for conducting a small stationery shop therein, as the additional income that is obtained from the business conducted in the petition schedule room would be sufficient for him to lead a normal life. It is also contented that, at the time of entrustment of the petition schedule room, he had paid an amount of Rs 80,000/-to the mother of the landlord as advance.

On the above grounds, the tenant prayed for dismissal of the rent control petition.

4. From the side of the landlord, PW1 and PW2 were examined and Ext A1 to A12 documents were marked. The tenant was examined as RW1 and

Ext B1 to B3, Ext C1(1) and C1(2) were marked. After hearing both sides, Rent Control Court allowed the above rent control petition on both

grounds; namely under 11 (4) (iii) and 11 (8) of the Act.

5. Even though the tenant filed RCA 65/2017 before the 2nd Additional Rent Control Appellate Authority, Kozhikode, the same was also dismissed as

per the order dated 30/10/2018. This revision petition is filed in the above circumstances.

6. Heard Sri.V.Srinath, learned counsel for the Revision Petitioner and learned Senior Counsel Sri T.Sethumadhavan, who appeared for the

Respondent/landlord. The main contention put forward by the Counsel for the tenant is that, the rent control petition itself was not maintainable in view

of the fact that the Rent Control Court does not have the jurisdiction to entertain the same. It is contended by him that, the relationship between the

parties in this case, is that of Licensor-Licensee. According to him, Ext B1 document, based on which the said arrangement had commenced, is not a

lease agreement but on the other hand it is a deed of license. Therefore the arrangement between the parties cannot be treated as a lease for the purpose of invoking the provisions contained in the Kerala Building (Lease and Rent Control) Act, 1965. It was pointed out by him that, even though the landlord claimed that it is an arrangement of lease, the document evidencing the said relationship was not produced by him consciously. During the cross-examination of PW1, he was confronted with the photocopy of the document based on which the relationship between the parties commenced. As PW1 admitted the execution thereof, it was marked as Ext B1. On the strength of the above document, it is contended by the Counsel for the tenant that it is a deed of license and the landlord had not adduced any evidence to show that the actual transaction between the parties is a lease. According to the counsel for the petitioner/ tenant, since the landlord is invoking the provisions of a special statute, he should have proved the entitlement of the landlord to have his rights adjudicated under the said special statute. In other words, according to the counsel for the petitioner/landlord, the tenant should have pleaded and proved that the relationship between the parties is that of landlord and tenant. According to the counsel, as he failed to prove the same, the Rent Control Court should not have entertained the said application. It was further pointed out that, even though in the counter statement, he had averred that, his is occupying the said building as a tenant, that by itself will not confer any jurisdiction, upon the Rent Control Court, to entertain the said petition, when the deed is a license. In support of his contention, the Learned Counsel for the petitioner/tenant relied upon the judgment of the Honâ??ble Supreme Court reported in Kanwar Singh Saini V. High Court of Delhi [(2012) 4 SCC 307]. He relied upon paragraph 22 of the said judgment, which reads as follows: â??There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decreed having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a court or tribunal becomes irrelevant and unenforceable/inexevutable

once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation.

The court cannot derive jurisdiction apart from the statute. [Vide United Commercial Bank Ltd. v. Navarang Studios, Sardar Hassan

Siddiqui v. STAT, A.R.Antulay v. R.S.Nayak, Union of India v. Deoki Nandan Aggarwal, Karnal Improvement Trust v. Prakash Wanti,

U.P.Rajkiya Nirman Nigam Ltd. v. Indure (P) Ltd., State of Gujarat v. Rajesh Kumar Chinmanlal Barot, Kesar Singh v. Sadhu, Kondiba

Dagadu Kadam v. Savitribai Sopan Gujar and CCE v. Flock (India) (P) Ltd.]

7. In response to the aforesaid argument, Learned Senior Counsel contended that, on going through the averments in the Ext A3 reply notice and also

in the counter statement, it can be seen that the tenant has never raised a contention that the relationship between the parties is that of a licensor and

licencee. On the other hand, the aforesaid documents contain specific admission from his part that the arrangement between the parties was a lease.

It is further contended by him that since the nature of transaction was never in dispute, it was not necessary for the landlord to adduce any further

evidence with regard to the same. The crucial question to be considered in this regard is the manner in which the parties have understood their

relationship and proceeded with the same. In this case, from the specific recitals contained in the reply notice as well as in the counter statement, it

is evident that the parties have understood and treated their relationship as that of landlord and tenant. Therefore, the question of a license

arrangement was never a subject matter of dispute and consequently the question of jurisdiction of the Rent Control Court never arose.

8. It is true that, conferment of jurisdiction is a legislative function, and the same cannot be conferred with the consent of the parties. It is also true that

the acquiescence of a party should not be permitted to defeat the legislative intention. However the question that emerges in this case is whether the

principles laid down in the above judgment can be made applicable. It is true that when the Court is lacking inherent jurisdiction to entertain a petition,

the same cannot be entertained even on the basis of consent of the parties. However the question that emerges in this case is not that of lack of

inherent jurisdiction. In this case, if the relationship existing between the parties is that of a landlord and tenant, there will be no doubt that it is a matter

which is coming within the jurisdiction of the Rent Control Court. On the other hand if it is a deed of license, it is a matter which may not come within

the purview of the Act. Therefore the crucial question which is to be decided first is with regard to the nature of transaction between the parties.

Unless and until that question, which is a pure question of fact, is decided, there cannot be any adjudication on the question of jurisdiction or lack of

jurisdiction. Therefore the preliminary question to be considered is a pure question of fact, as to the real nature of transaction between the parties. In

this case, there are several instances which provides clear indication as to the manner in which the parties have treated and understood the

relationship between them. Ext A2 is the notice issued by the landlord requiring vacant possession of the petition schedule. The said notice is issued by

treating the said relationship between the parties as that of landlord and tenant. In reply to the same, Ext A3 was issued by the tenant. Paragraph 2 of

the reply notice reads as follows:

“My client denies all the averments and allegations made in your notice except those that are admitted hereunder. The statement in your

notice that your client is the owner of the room scheduled in the margin of your notice and that my client is occupying the same under your

client is not admitted by my client as true. To the knowledge of my client Smt Kalangarakath Bhargavi is the owner of the said room. It was

from her my client had obtained possession of the room on a monthly rental basis and she has been and its collecting rent from my client.

She had to issued receipt for collection of rent up to March 2012 to my client. Subsequent to that she has not issued receipt though my client

had paid the rent up to date to her. At the time of the lease Smt Bhargavi had obtained Rs 80,000/-from my client as advance.”

9. From the contents of the Ext A3 notice, it is evident that . there is a specific admission in the reply notice that the transaction between them is on a

rental basis. Further, the pleadings of the tenant contained in the counter statement is also very much relevant, while considering the above aspect.

Paragraph 4 of the counter statement reads as follows:

“The averments contained in paragraph 2 of the above petition are not fully correct and hence denied by this Respondent. The

Respondent has been occupying the petition schedule premises as a tenant on

doubt as to the jurisdiction of the rent control court. The principles laid down in the Kanwar Singh Jain's case, is applicable in cases where the court concerned is lacking inherent jurisdiction to try a case. In this case, the necessity to adjudicate the question of jurisdiction of the rent control court is depending upon the nature of transaction between the parties, which is essentially a factual dispute. So long as that factual dispute is not specifically raised through pleadings and proved by adducing evidence, the question of jurisdiction will not arise. Therefore the question of jurisdiction of the Tribunal was never a subject matter of the litigation.

13. The counsel for the petitioner/tenant also relied upon an unreported judgment of this Court in RCR 141/2016. Reliance was placed upon the said judgment by the petitioner/tenant, to support his contention that, even if there is admission on the part of the tenant that it was a lease, that cannot have any impact upon the real nature of the deed executed between the parties. We are of the view that, the principles laid down in the said judgment cannot be made applicable to this case because, the factual situation in that judgment was completely different. Those principles were laid down in a completely different context. That was a case in which, the landlord himself have stated in the rent control petition that the transaction was that of a license, but it was specifically mentioned that, in order to avoid contentious issues and to avoid delay, he is accepting the transaction to be a lease. Therefore, it was an admitted case of the land lord that, the relationship between the parties are that of license. In that circumstances, it was observed by this Court that the stand taken by the landlord, does not change the character of the transaction that was entered into between the parties.

However on examining the factual situation in this case, it is evident that right from the inception, both the parties were proceeding on the specific understanding that the nature of relationship between them is that of landlord and tenant. At no point of time, until the revision petition, there was any contention put forward by the petitioner/tenant asserting that the real transaction was that of a Licensor-Licensee. Therefore, under no circumstances it can be treated that the question as to the nature of the transaction between the parties, was a subject matter of the dispute. Hence the contention put forward by the petitioner/tenant in this regard is only to be rejected.

14. The next contention raised by the learned counsel for the petitioner/tenant is

that, no case is made out by the landlord to order eviction under Section 11(8) of the Act. According to him, the landlord is in possession of two rooms on the first floor of the building in question, which are lying vacant at the moment. It was contended that if the need projected by the landlord was genuine, he should have made use of the said vacant rooms for his additional accommodation and only if that space is found to be not enough to continue the operations in the clinic, the eviction of the petition schedule room can be sought for. According to the learned counsel for the petitioner/tenant, the fact that the landlord has not taken any steps to make use of the vacant rooms on the upper floor, shows that the need projected by the landlord is not bona fide. We are of the opinion that the said contention cannot be accepted. This is because, on going through the pleadings of the landlord at paragraph No.3 of the Rent Control Petition, it is seen that he has specifically averred about the existence of the vacant rooms on the upper floor and also about the requirement of the petition schedule room despite the availability of rooms on the upper floor. The paragraph No.3 of the Rent Control Petition is extracted as follows:

â??3. Petitioner and his wife Babitha is dentist and are running a dental clinic by name Thiruvannur Dental Clinic at the western boundary of the petition schedule property. The said dental clinic is functioning from year 2001 onwards. Fourteen years had passed ever since the dental clinic was established. Now the petitioner and his wife are finding it difficult to accommodate addition staff, clients and clinic facility in the present condition. There is extreme shortage of space to provide all the above facilities, including, lab, work area, pantry etc. Inadequacy of the space had prompted petitioner to expand his clinic and make use of the petition schedule property which is lying adjacent to the dental clinic at its eastern side along with room at the up stair portion by making provision for stair from the clinic. Petitioner and his wife for the expansion of their dental clinic, as additional accommodation for his personal use, as well as for the use of his wife needed the vacant possession of the petition schedule property. Petitioner on several times had demanded the respondent to give vacant possession of petition schedule property to the petitioner, which was not complied by the respondent till date.â??

15. From the above pleadings, it is evident that, the landlord clearly explained that he wants to construct a staircase from the clinic for making use of the rooms on the upper floors. For making such additional constructions, he requires the petition schedule room. The above fact is evident from the perusal of the Commission report as well. It is true that, going through the Ext.C1 Commission report it can be seen that, there is already a staircase room for the said building, which is situated on the extreme eastern side of the building in question. However, the said staircase cannot be used for the exclusive use of the clinic, if rooms in the upper room are to be made part of the clinic. This is because, another building belongs to brother of the land lord is situated in between the staircase room and the petition schedule room. The present clinic of the land lord is on further western side of the petitioner schedule room. Therefore, it may not be possible for the landlord to make use of the existing staircase for the purpose of exclusive use of the clinic. If the landlord wants to construct a separate staircase exclusively for the clinic, under no circumstances, he can be found fault with. Further, in pursuance to the said need, if the land lord wants vacant possession of the petition schedule room, the tenant cannot prevent the same, by suggesting alternate arrangements which can be made by the land lord. Further, the tenant also is not entitled to insist that, in order to prove the necessity of petition schedule room, the land lord should make use of the rooms in upper floor first, and only if insufficiency of space is found despite the same, he could seek vacant possession of the petition schedule room. Therefore, from the materials on record, it can be safely concluded that the requirement of the petition schedule room, for the additional accommodation for personal use of him, under section 11 (8) of the Act, is genuine. Hence the contention of the counsel for the petitioner/tenant on this regard is liable to be rejected.

16. The next contention raised by the tenant is relating to the ground of eviction under Section 11(4)(iii) of the Act. The aforesaid ground was raised by the landlord on the specific averment that the tenant is in occupation of another building within 200 meters away from the petition schedule building.

It is an admitted fact that the tenant is in occupation of such building, but according to him it is only a shed, where he is conducting a welding

workshop . Since he has admitted the possession of the same, it was his burden to show that the said building was not suitable for conducting the

activity carried on in the petition schedule room. In this case, apart from the pleadings made by the tenant to the effect that, the said building is not suitable, no other evidence was adduced. Even though it was contended that he is conducting an industry namely Shasta Industries in the said building, no documents were produced to establish the same. Since the petitioner has admitted the possession of another building, the burden was upon the tenant to prove that, the said room was not sufficient for his use. In this case the tenant miserably failed in discharging the said burden. Therefore, the only conclusion possible is that, the eviction ordered by the Rent Control Court under Section 11(4) (iii) of the Act is legally sustainable.

17. On the above reasons, we are of the opinion that the order of eviction passed by the Rent Control Authority under Sections 11(4)(iii) and 11(8) and confirmation thereof by the Rent Control Appellate Authority, are not liable to be interfered with and therefore, the revision petition is devoid of merit.

18. Rent Control Revision is therefore dismissed. However taking into consideration of the fact that the tenant is in occupation of the building from 2000 onwards, the petitioner can be given a six month's time, from today to vacate the premises subject to the following conditions:

(i) The petitioner shall file an affidavit before the Rent Control Court, undertaking to vacate the premises within six months from today. Such an affidavit shall be filed within one month from today.

(ii) The petitioner shall pay entire arrears of rent, if any, within one month from today and shall continue to pay compensation for use and occupation of the building at the contractual rate, in future, without any default.

(iii) In case of default on the part of the petitioner in complying with any of the conditions above, the respondent/land lord shall be at liberty to proceed

further, as if no time is granted by this court for vacating the premises.

Parties shall suffer their respective costs.