

(2011) 12 KL CK 0039
In the High Court Of Kerala
Case No : R.C.R. No. 31 of 2005

Avinash V. Saraf and Another

APPELLANT

Vs

Ernakulam Karayogam Society

RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(10), 11(3), 11(7), 20

Citation : (2012) 1 KLJ 185

Hon'ble Judges : V. Chitambaresh, J; R. Basant, J

Bench : Division Bench

Advocate : Peeyus A. Kottam, for the Appellant; K. Ramachandran and R. Meera, for the Respondent

Judgement

V. Chitambaresh, J.—Thottekkatt Diwan Memorial Hall popularly known as "TDM Hall" at Darbar Hall Ground Road, Ernakulam has been the venue of many marriages and civic functions for over half a century. There is a row of shop rooms having road frontage in the same building complex abutting the TDM Hall which are the subject matter of these Rent Control Revisions. The building belongs to "Ernakulam Karayogam" - a society (hereinafter referred to as "the landlord") which had obviously been engaging in various welfare activities for long. Eviction of the tenants from the shop rooms in question was sought under the provisions of the Kerala Buildings (Lease & Rent Control) Act, 1965 (hereinafter referred to as "the Act"). The need alleged was that the landlord wanted the petition scheduled premises to house a Computer Centre and a Day Care Centre for children as part of its welfare activities. There already exists a marriage hall, matrimonial centre, astrological centre, free legal aid cell etc. in the building in addition to a Working Womens Hostel being run there. The Rent Control Court disallowed eviction which was reversed by the appellate court after upholding the need of the landlord and the same is impugned in these Rent Control Revisions. R.C.R.Nos. 31/2005, 42/2005, 51/2005 & 23/2008 relate to the need of Computer Centre and R.C.R.Nos.52/2005 & 122/2005 relate to the

need for Day Care Centre for children. The Rent Control Revisions are being disposed of together since the landlord in all the cases is one and the same and the tenants are occupying different rooms of the same building. We have heard M/s. T. Krishnan Unni and P. Jacob Varghese, Senior Advocates and M/s. Varghese. C. Kuriakose, M.K. Chandramohan Das and Peeyus A. Kottam, Advocates on behalf of the various tenants as well as Mr. K. Ramachandran, Advocate on behalf of the landlord at length on the various issues.

2. The bonafide need alleged u/s 11(3) of the Act was subsequently "not pressed" by the landlord and the claim for eviction was confined to Section 11(7) of the Act which is extracted below:-

Where the landlord of a building is a religious, charitable, educational or other public institution, it may, if the building is needed for the purpose of the institution, apply to the Rent Control Court, for an order directing the tenant to put the institution in possession of the building.

The landlord was a society registered under the Act for the Registration of Literary, Scientific and Charitable Societies in Cochin (Cochin Act II of 1088) evidenced by the Certificate of Registration issued by the District Registrar General, Ernakulam. The society was in existence at the commencement of the Travancore-Cochin Literary Scientific and Charitable Societies Registration Act (Act XII of 1955). Act II of 1088 was repealed and the landlord society is deemed to be registered under Act XII of 1955 by virtue of Section 34 thereof. The bye laws of the society amply reflect that its objects include conduct of charitable institutions like hospitals, hostels, orphanages, educational institutions etc. The courts below have concurrently held that the landlord falls within the sweep of "religious, charitable, educational or other public institution" as contemplated u/s 11(7) of the Act. The entitlement of the landlord to call in aid Section 11(7) of the Act was therefore not seriously challenged by any one of the tenants in these Rent Control Revisions.

3. The tenants contended that the minutes of the general body of the society held on 26.6.1994 wherein a resolution was allegedly passed to take steps for evicting the tenants has not been produced and is fatal. It was further contended that the state of mind of a society could be best reflected by a resolution and that a need cannot be established without disclosing the decision of the general body. But it is seen that the decision to evict the tenants has been pursued and deliberated upon in the meetings of the executive committee of the society held subsequently. Moreover Clause 23 of the bye laws of the society empowers the Secretary to act on behalf of the landlord who has instituted the present proceedings for eviction. Therefore we hold that the failure to produce the minutes of the general body of the society held years ago (and which could not be traced out according to the landlord) is inconsequential for pursuing the action.

4. The need set up to evict the tenants from the shop rooms is that the landlord requires the space to accommodate the Computer Centre for students which is

temporarily housed in the conference hall. The landlord alleged that a minimum area of 3800 Sq.feet is needed to conduct the Computer Centre as per the norms laid down by the National Council for Vocational Training ("NCVT" for short). The landlord had pleaded that the area in its possession is insufficient and the norms of NCVT had been produced to buttress their contention. The conduct of a Computer Centre as per the NCVT norms does certainly fall within the objects for which the society was formed as per its registered bye laws. But then the tenants would contend that the landlord has subsequently obtained sufficient area in the same building which could be made use of to run the Computer Centre. It was alleged that an area of 1900 Sq.feet was surrendered before the institution of proceedings and another area of 700 Sq.feet was surrendered pending proceedings by a tenant - M/s. Menon & Krishnan. It is the case of the tenants that the need of the landlord would be without bonafides if the alternate space later surrendered by this tenant is also reckoned.

5. It may at once be noticed that the additional space of 2600 Sq.feet (1900 + 700) would still fall short of 3800 Sq.feet which is requisite for conducting the Computer Centre as per the NCVT norms, The reports of the Advocate Commissioner amply reflect that the area surrendered by M/s. Menon & Krishnan has been put to use by the landlord for other social welfare activities. The reports reveal that music classes, matrimonial centre, astrological centre, free legal aid cell etc. are being conducted directly by the landlord in the area got surrendered. The reports also disclose that the theory class of Computer Centre is being temporarily conducted in the Conference Hall and that an air conditioned marriage hall of 6000 Sq.feet has been constructed on the first floor. It is not a case where the landlord has subsequently let out the premises to any other tenant and is bent on evicting the shopkeepers under some pretext or the other. The appellate court has rightly found that the landlord would be forced to institute fresh proceedings for eviction for conducting other activities if the plea of the tenants is to be accepted. The endeavour of the landlord seems to be to resume possession of all the tenanted premises in the building and put them into use directly for the welfare activities envisaged in the bye laws.

6. The subsequent acquisition of area may certainly have a bearing on the bonafide need of the landlord only when the claim for eviction is u/s 11 (3) and not u/s 11(7) of the Act. This is because of the play of the first proviso to Section 11(3) of the Act which is extracted hereunder: -

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.

Such a proviso is conspicuously absent in Section 11(7) of the Act wherein all that is insisted is that the building is needed for the purpose of the institution and that the landlord is a religious, charitable, educational or other public institution. The subsequent acquisition of space by such a landlord will not affect

the claim u/s 11(7) provided the need is for the purpose of the institution and is bonafide u/s 11(10) of the Act. There is no doubt that the need alleged is to conduct a Computer Centre as per the NCVT norms which falls within the purposes for which the society was formed. The acquisition of space at a later point of time may vitally affect the claim u/s 11(3) because of the play of the first proviso thereunder and not u/s 11(7) of the Act, if the claim is bonafide. Therefore the contention of the tenants that the landlord can as well conduct the Computer Centre in the space obtained at a later point of time is puerile and liable to be rejected.

7. Two of the tenants are sought to be evicted by the landlord to start a Day Care Centre for children attached to the Working Womens Hostel being conducted in the same building by the landlord. The landlord contended that a Working Womens Hostel should necessarily have a Day Care Centre if the aid of the Central Government is to be availed of as per the norms laid down in that regard. The circulars issued by the Department of Women and Child Development, Ministry of Human Resources Department was pressed into service by the landlord to drive home its point. The tenant of the shop rooms disputed the need set forth contending that the Day Care Centre accommodated in the Recreation Hall has since been shifted to another place (Palarivattom). The evidence indicated that the Day Care Centre was temporarily shifted owing to complaints received from some inmates of the hostel and also due to lack of space. The temporary shifting was done after obtaining permission from the District Welfare Officer pursuant to a letter dated 30.5.2002 of the landlord. The landlord testified that the children of the inmates of the Working Womens Hostel are now taken in a bus in the morning to Palarivattom and brought back in the evening. Young children should not be separated from their mothers in normal circumstances and the need of the premises by the landlord to conduct a Day Care Centre cannot be faulted.

8. The need of the landlord to start a Computer Centre as per the NCVT norms and also to conduct a Day Care Centre attached to the Working Womens Hostel cannot be said to be without bonafides under the circumstances. Such ventures are in tune with the objects of the society as reflected in its bye laws. The intrinsic evidence reveals that the landlord is utilising the entire building in its possession for the purposes of the institution and still needs further space to satisfy the specific needs advanced. It is trite law that the standards for deciding the bonafides of the need u/s 11(7) are not so rigorous as the standards for deciding the bonafides of a claim u/s 11(3). [See *Sree Narayana Dharmasabha v. Sathiapalan*, 2004 (2) KIT 373 and *Social Service Guild of Assissi Sisters v. Ouseph Chacko*, 2009 (2) KIT 199. This is obviously because the need projected u/s 11(7) of the Act would be beneficial not only to the landlord but also to the public who are beneficiaries of the activities of the institution. The judgment of the appellate court directing the tenants to be evicted to satisfy the claim of the landlord u/s 11(7) of the Act does not suffer from any infirmity in law. We are satisfied that the need projected u/s 11(7) satisfies the test of bonafides u/s

11(10) of the Act and is not a subterfuge to evict the tenants from the premises. No grounds exist to interfere with the order of the appellate court u/s 20 of the Act when the same is not vitiated by any illegality, irregularity or impropriety. The Rent Control Revisions are hence dismissed confirming the order of the appellate court however granting time to the tenants to surrender vacant possession to the landlord.

9. The tenants are given time till 30.6.2012 to surrender the premises provided they adhere to the following conditions:- a) The tenants shall within 30 days clear the entire arrears of rent as on 31.12.2011 and shall continue to pay the same amount to the landlord till actual surrender. b) The tenants shall within 30 days from today file an affidavit in the execution court with copy to the landlord undertaking to unconditionally vacate the premises on or before 30.6.2012 and surrender possession to the landlord.

The landlord will be free to obtain delivery of the premises if any one of the conditions afore stated are not complied within the time stipulated.