
(1994) 03 KL CK 0040

In the High Court Of Kerala

Case No : C.R.P. No's. 231, 662 and 664 of 1994

Azhikode Service Co-Operative Bank Ltd.

APPELLANT

Vs

Narayanan

RESPONDENT

Date of Decision : 21-03-1994

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(10), 11(3), 11(7), 18, 20

Citation : (1994) 03 KL CK 0040

Hon'ble Judges : Varghese Kalliath, J; P.A. Mohammed, J

Bench : Division Bench

Advocate : M. Ramesh Chander and M. Vijayakumar, for the Appellant;

Judgement

Mohammed, J.—These three revision petitions u/s 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short "the Act") arise from a common judgment of the Rent Control Appellate Authority, Thalassery dated 6th July, 1993. The revision Petitioner in all these cases is the Azhikode Service Co-operative Bank Limited who is the landlord of three separate non-residential buildings independently rented out to different tenants who are now sought to be evicted from their respective buildings.

2. The landlord filed separate petitions for eviction of all the tenants u/s 11(3) of the Act. The identical ground urged in the petitions for eviction by the landlord in all the three petitions is this:

Since the Petitioner is not able to stock their copra, cashew, manure, etc., properly in the rooms which is in their possession the Petitioner requires the building in the possession of the Respondent for the needs of the Bank. The Petitioner also requires sufficient space for stocking their cloth and the building available with the Petitioner hardly suffices the said purpose.

(sic)e tenants have raised the uniform contention that (sic)eed alleged by the landlord is not bona fide and that the landlord has different buildings in its

possession to cope with its requirements. In order to ascertain the inconvenience of the landlord, a commission was taken out. Ext. C-1 is the report of the Commissioner and the Commissioner was examined in the Rent Control Court as P.W. 2. In Ext. C-1 the Commissioner has stated that the rooms where the landlord is at present stocking and storing goods like manure, copra, cashew, clothes, etc., are more than sufficient for its requirements. After considering the entire evidence the Rent Control Court came to the conclusion that the need alleged by the landlord is not bona fide and so the Rent Control Court refused eviction of the tenants u/s 11(3) of the Act.

3. As against the above common order of the Rent Control Court, the landlord filed an appeal u/s 18 of the Act before the Rent Control Appellate Authority. A new contention was advanced by the landlord in these appeals that the Appellant Co-operative Bank is a "Public Institution" as contemplated under Sub-section (7) of Section 11 of the Act and therefore the landlord is entitled to get an order of eviction. However, the appellate authority found that the Co-operative Bank indulging in commercial, trading or banking activity cannot satisfy the test of being "other public institutions" like religious, charitable or educational institutions contemplated under Sub-section (7) of Section 11. The appellate authority however found that the landlord had failed to establish the bona fide need whether the claim be construed as one u/s 11(3) or as one u/s 11(7). In that view of the matter, the appeals filed by the landlord were dismissed by the appellate authority as per the common judgment against which these revisions are filed.

4. In the present revision petitions two Sub-sections of Section 11 are relevant. They are (i) Sub-section (3) and (ii) Sub-section (7). Sub-section (3) authorises the landlord to 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. Sub-section (7) authorises the landlord of a building who is a religious, charitable, educational or other public institution, to apply to the Rent Control Court for an order directing the tenant to put the institution in possession of the building. However these two Sub-sections are subject to the provisions contained in Sub-section (10) of Section 11, which inter alia, provides that the Rent Control Court shall direct the tenant to put the landlord in possession of the building under Sub-section (3) or Sub-section (7) only if the claim of the landlord is bona fide. In other words, in both these cases the claim of the landlord for eviction shall be bona fide. Then the question that arises for examination is what is meant by the claim being bona fide as contemplated under Sub-section (10) when the landlord establishes his bona fide need as required under Sub-section (3) of Section 11. When the bona fide need is established under Sub-section (3), can it be said the claim for eviction is ipso facto bona fide? It cannot be said so in all the circumstances because even if the "bona fide need" is established, the application for eviction need not be honest in all cases. But ordinarily when the bona fide need is established, it necessarily follows the claim for eviction also is

bona fide unless it is a subterfuge. In the case of eviction under Sub-section (7) the landlord shall establish that his claim is bona fide as required under Sub-section (10).

5. In the present case the appellate authority has considered the claim for eviction under Sub-section (7) of Section 11 as also the ground of "bona fide need" under Sub-section (3). After going through the impugned judgment and after hearing the learned Counsel for the landlord, we are satisfied that there is no justifiable reason to interfere with the conclusion arrived at by the Rent Control Appellate Authority in this case. The Appellate Authority has independently re-assessed the evidence before coming to the present conclusions. As far as the claim of eviction under Sub-section (7) of Section (11), the appellate authority observed that the landlord has failed to establish "the anticipated bona fide need has now become real". It is further observed that the landlord has failed to establish the "bona fide need" whether the claim can be construed as one u/s 11(3) or as one u/s 11(7). These findings are legal and proper. It is made clear by the appellate authority that it would be open to the landlord to move the court for eviction again when the anticipated need in fact comes into existence. Under these circumstances we refrain from interfering with the judgment of the court below in exercise of power u/s 20 of the Act. It has been emphatically laid down that u/s 20 of the Act this Court cannot reappreciate the evidence on record once again and come to a different conclusion on re-examination of evidence. This Court cannot supplant a conclusion of its own so long as the evidence on record supported the one reached by the appellate authority exercising the appellate power u/s 18 of the Act. Therefore the power of this Court u/s 20 of the Act is very limited. (See: K.A. Anthappai v. V.C. Ahamad 1992 (2) K.L.J. 376 (S.C.)), Rukmini Amma Saradamma Vs. Kallyani Sulochana and others, .

In the result, the revision petitions are dismissed.