
(1999) 05 KL CK 0006
In the High Court Of Kerala
Case No : S.A. No. 770 of 1998-G

Bhavanji Hansaraj

APPELLANT

Vs

Lourdes Church, Perumanoor and Others

RESPONDENT

Date of Decision : 26-05-1999

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 25

Citation : AIR 1999 Ker 425 : (1999) 3 ILR (Ker) 414

Hon'ble Judges : P.K. Balasubramanyan, J

Bench : Single Bench

Advocate : K.V. Sadananda Prabhu, for the Appellant; N.C. Joseph, for the Respondent

Judgement

P.K. Balasubramanyan, J.—The defendant is the appellant. The defendant is the tenant of a building leased out to him by the first plaintiff church. After terminating the tenancy the first plaintiff Church through its Kaikars filed the suit for eviction. The building is admittedly located in an area to which the Kerala Buildings (Lease and Rent Control) Act stood extended. The plaintiff filed the suit without approaching the Rent Control Court established under the Kerala Buildings (Lease and Rent Control) Act, hereinafter referred to as the Act, on the ground that the building belonging to the first plaintiff-Church were exempt from the purview of the Act in lieu of the notification issued u/s 25(1) of the Act as per G.O. (MS) No. 14/92/HSG. The defendant resisted the suit contending that the suit was not maintainable. It was contended that the first plaintiff was not properly represented in the suit. The Notification u/s 25 of the Act relied on by the plaintiffs did not apply to the plaint schedule building. The plaint schedule property did not belong to the first plaintiff Church. The plaintiff were not entitled to a decree for eviction as against the defendant. The defendant was a tenant protected by the Act.

2. The suit was filed on 10-3-1995. The notification dated 7-3-1992 issued u/s 25(1) of the Act which was in force then was to the following effect.

"..... The Government of Kerala hereby exempt, in public interest, the buildings, of all churches/mosques of all the minority religions from the provisions of Sections 4, 5, 7, 8, 11 and 13 of the said Act."

It was contended on behalf of the defendant that the said notification had no application since the building in question was not part of a church building and was not a building of the first plaintiff church since church was not a legal entity and the building was not owned by the church but by the Edavaka and the first plaintiff church was not the church of a minority religion. The trial Court held that the defendant had taken the building on rent from the first plaintiff church, the defendant was not entitled to deny the title of the landlord, that the kaikars were competent to represent the church and in view of the notification u/s 25(1) of the Act, the relevant provision of the Act did not have application and hence the plaintiffs were entitled to a decree for recovery of possession. It cannot be said that the trial Court clearly tackled the question sought to be raised by the defendant or answered it properly. The defendant filed an appeal before the lower appellate Court.

3. The trial Court rendered its decision on 16-9-1996. On 30-10-1996 a Notification G.O. (Ms)40/967HSG dated 30-10-1996 was issued in exercise of powers u/s 25(1) of the Act by amending the earlier notification G.O.(Ms) 14/ 92/ HSG dated 17-3-1992. By virtue of the amendment in addition to the buildings of all churches/ mosques of all the minority religions, building of all dioceses, Arch-dioceses, monasteries, convents, Wakfs and Madrasas in the State were also exempted from the provisions of the Act. It may be better to quote the relevant portion of the amended notification at this stage.

"..... The Government of Kerala hereby exempt, in public interest, the buildings of all churches/mosques of all the minority religions and buildings of all dioceses, arch-dioceses, monasteries, convents, wakfs and madrasas in the State from the provisions of Sections 4, 5, 7, 8, 11 and 13 of the said Act."

The defendant filed the appeal before the appellate Court challenging the decree of the trial Court on 8-11-1996. The defendant contended that the notification dated 7-3-1992 would not enable the first plaintiff church to maintain the present suit for recovery of possession and he was a protected tenant under the Act. The contention of the defendant in essence was that church being not a legal entity could not own property and the building in question was not owned by the church but by the Parishoners and hence there was no question of the church suing for recovery on the strength of the Notification. It was also contended that the Notification dated 7-3-1992 embraced only the church buildings and not a commercial premises like the one constructed by the Parishoners even if it be for augmenting the income of the church. In addition to controverting this contention on behalf of the defendant, the plaintiff-respondents in the appeal relied on the amended notification which came into force on 30-10-1996 to point out that the argument is of no avail since the notification now exempts the buildings of all dioceses and Arch-dioceses and since the building was in any

event owned by the dioceses and the tenancy had been created by the first plaintiff church in favour of the defendant, decree for recovery can be sustained. Though the appellate Court stated that it did not find much merit in the argument based on the notification dated 7-3-1992, it rested its decision on the amendment dated 30-10-1996 and held that in the light of the amended notification the building stood exempted from the purview of the Act and since the first plaintiff was the landlord from whom defendant had taken the building on lease, the first plaintiff was entitled to recover the building in the present suit and the decree of the trial Court was liable to be sustained. It is the contention of the defendant in this Second Appeal that the appellate Court was in error in applying the amended notification to the suit in question since the maintainability of the suit had to be tested with reference to the date on which it was instituted and on 10-3-1995 the unamended notification alone applied and on the basis of that notification, plaintiffs were not entitled to recover the building in a suit by taking advantage of the Notification u/s 25(1) of the Act.

4. In *M/s. East India Corporation Ltd. Vs. Shree Meenakshi Mills Ltd.*, the Supreme Court held that Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act in pan materia with Section 11 of the Kerala Act impliedly barred the jurisdiction of the Civil Court to entertain the suit. In *Kuruvilla Abraham v. John* 1995 (1) KLT 161 : 1996 AIHC 2358 (FB) it was held that where a decree was passed overlooking the notification which makes the Act applicable to the building in question and such a decree is confirmed in appeal even then the decree would be a nullity and could not be executed. In *Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs.*, it was held that a decree passed by the civil Court without jurisdiction is a nullity and non est. If the notification dated 7-3-1992 did not apply to the building in question, then obviously on the date the suit was filed the civil Court could not have entertained the suit and on the date the trial Court passed the decree for eviction it could not have passed a decree for eviction. There was not much controversy before me that the amendment dated 30-10-1996 brought to the notification in question would enable the plaintiffs to contend that the building was exempted from the purview of the Act. But, what was contended was that the Notification dated 3-10-1996 or the amendment brought into effect by that notification could only be treated as prospective and could not be applied retrospectively to make the suit in the present case maintainable.

5. In *R. v. Bolton* ((1835) 42 All ER Rep 71) Lord Denman, C.J. observed at page 73 :--

"The question of jurisdiction does not depend on the truth or falsehood of the charge, but on its nature; it is determinable on the commencement, not at the conclusion, of the inquiry, and affidavits, to be receivable, must be directed to what appears at the former stage, and not to the facts disclosed in the progress of the enquiry."

If the above dicta were to be applied, it is possible to say that if the notification

dated 7-3-1992 did not cover the building in question, the suit instituted on 10-3-1995 would be one which is not maintainable in the civil Court and the decree passed by the trial Court on 16-9-1996 would be a nullity. In Rameshwar and Others Vs. Jot Ram and Another, the Supreme Court stated at page 52 :--

"It is basic to our procedural jurisprudence that the right to relief must be judged to exist as on the date suitor institute the legal proceeding. This is the emphatic statement that right of a party is determined by the facts as they exist on the date the action is instituted. Granting the presence of such facts, then he is entitled to its enforcement. Later developments cannot defeat his right. Court's procedural delays cannot deprive him of legal justice or rights crystallised in the initial cause of action."

But the Court cautioned that Courts can however take note of subsequent events and mould the relief accordingly, but this can be done only in exceptional circumstances. Jurisdiction vested by statute cannot be divested by this equitable doctrine. In the earlier decision in Pasupuleti Venkateswarlu Vs. The Motor and General Traders, the same learned Judge had stated at page 1410 :--

"For making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously followed".

In Shri Kishan @ Krishan Kumar Vs. Manoj Kumar Etc. Etc., it was held by the Supreme Court that a suit for eviction instituted during the period the building was exempted from operation of the Haryana Urban (Control of Rent and Eviction) Act can continue to be entertained by the civil Court which can proceed to pass a decree notwithstanding the fact that the Act became applicable during the pendency of the proceeding. Their Lordships have referred to the relevant earlier decisions of the Supreme Court. But it has to be noted that the decision in M/s. East India Corporation Ltd. Vs. Shree Meenakshi Mills Ltd., was not referred to. Of course East India Corporation case was one where the suit for eviction was instituted at a time the building in question did not come within the ambit of the Act owing to the exemption contained in Section 30 of Tamil Nadu Act and the validity of the exemption provision was subsequently struck down by the Supreme Court while the Petition for Leave to Appeal was pending before the Supreme Court. With respect the said decision is not seen referred to probably because of the fact that on the exemption provision being struck down as unconstitutional, it could be taken that it was never in the statute book and hence even on the date of the institution of the suit the suit could not be filed based on such an exemption. In Anand Prakash Malik Vs. Bhagwandas, their Lordships held that a suit filed after the period of exemption from the provisions of the Act had expired was not maintainable. Of course in that case on the date suit was instituted the building came squarely within the purview of the Rent Restriction Act.

6. Normally a notification or a subordinate legislation cannot be retrospective. It is not shown that there was any specific conferment of power to issue a notification with retrospective effect. That apart, the amendment dated 30-10-1996 does not indicate that it is intended to be retrospective nor can an intention be gathered from the said notification that it was intended to be retrospective. The question here is notwithstanding the fact that the amendment dated 30-10-1996 is not retrospective would it be said that the suit ought to be thrown out as not maintainable by the appellate Court on the ground that on the day the suit was instituted the suit was not maintainable and notwithstanding the amendment that has come into effect pending the litigation. Here the suit was instituted by the landlord on a claim that the suit could be filed in view of the notification issued by the Government u/s 25(1) of the Act exempting the building from the operation of Section 11 of the Act. A question on the applicability of that notification to the present plaint and the building in question was raised by the tenant, the defendant in the suit. By virtue of the applicability of the Act could it not be said that a right had accrued to the tenant not to be evicted except on one of the grounds referred to in Section 11 of the Act. When such a right had accrued to the tenant could the subsequent amendment to the notification be taken advantage of by the landlord to deprive the tenant of the immunity from eviction he enjoyed on the day the suit was filed in the civil Court. In *Parripati Chandrasekharrao and Sons Vs. Alapati Jalaiah*, the Supreme Court has pointed out the difference between the rights vesting in a landlord under the common law and the protective rights conferred on a tenant under the Rent Control legislation and has dealt with the effect of change in the legislation ending the protection or granting exemption. It was held in that decision thus at page 1784 (of AIR):--

"There is a material difference between the rights which accrue to a landlord under the common law and the protection which is afforded to the tenant by such legislation as the Act. In the former case the rights and remedies of the landlord and tenant are governed by the law of contract and the law governing the property relations. These rights and remedies continue to govern their relationship unless they are regulated by such protective legislation as the present Act in which case the said rights and remedies remain suspended till the protective legislation continues in operation. Hence while it can legitimately be said that the landlord's normal rights vested in him by the general law continue to exist till and so long as they are not abridged by a special protective legislation, in the case of the tenant the protective shield extended to him survives only so long as and to the extent the special legislation operates. In the case of the tenant, therefore, the protection does not create any vested right which can operate beyond the period of protection or during the period the protection is not in existence. When the protection does not exist, the normal relations of the landlord and tenant come into operation. Hence the theory of the vested right which may validly be pleaded to support the landlord's case is not available to the tenant in the present case where the tenant who undoubtedly

had the rights and remedies under the Act to claim reliefs against the landlord, lost the same the moment the protection was taken away, the rights and remedies being not vested ones."

7. In the case on hand the common law rights of the landlord to evict the tenant through the civil Court on terminating the tenancy stood abridged or curtailed by the application of the Act. If on the date the suit was filed the building was not one that stood exempted by a Notification under S. 25(1) of the Act the civil Court, could not have entertained the suit in the light of the decision in *East India Corporation* and the decision of the Full Bench in *Kuruvilla Abraham v. John* (1995) (1) KLT 161 : (1996 AIHC 2358) (FB). The mantle of protection available to the tenant stood removed by the amendment of the notification brought into force on 30-10-1996. When on 8-11-1996 the tenant filed the appeal against the decree of the trial Court, protection of non-eviction through the civil Court was not available to the tenant. If the right to protection is to be treated as not a vested right as postulated in *Parripati Chandrasekhar Rao's* case then the defendant may not be able to successfully contend that he cannot be deprived of his right under the Act but if as postulated by Lord Denman C.J. in *R. v. Bolton* the relevant point of time to consider the question of jurisdiction is the date on which the proceeding was initiated, one has to hold that on the date the suit was instituted it was not maintainable though by the subsequent amendment of the notification which came into force subsequent to the decision of the trial Court the suit itself became maintainable. But if we go by *Shri Kishan @ Krishan Kumar Vs. Manoj Kumar Etc. Etc.*, we can only consider the state of affairs as on the date of the institution of the suit. Here, in addition if the original notification did not apply even on the date the trial Court passed the decree the trial Court had no jurisdiction to entertain the suit. It would therefore be a case where the decree of the trial Court would be a nullity if the contention of the defendant based on the interpretation of the notification dated 7-3-1992 is upheld.

8. It has of course been held by the Travancore-Cochin High Court in *Iven Krishnan v. Kunhukutty Amma*, 1956 TC 402 and the Kerala High Court in *Sankara Pillai and Others Vs. Mathunni Ittiera and Another*, that a decree for redemption can be granted in a suit for redemption which is instituted before the expiry of the mortgage by taking note of the subsequent event of the expiry of the term of the mortgage during the pendency of the litigation. But it has been pointed out by a Division Bench of this Court in *Hameed v. Ittoop* 1970 KLT 501 that that power to take note of the subsequent events cannot be extended to a case where there was lack of jurisdiction on the date of the institution of the proceeding to entertain that proceeding. No doubt the decision in *Hameed* related to the institution of a petition for eviction under the Rent Control Act by a transferee inter vivos before expiry of the period referred to in the third proviso to Section 11 (3) of the Act and the argument was that even though the proceeding was instituted before the expiry of the period, the period had expired during the pendency of the suit and the proceeding cannot be dismissed on the ground that it was not maintainable. But the Division Bench surveyed the

authorities relevant and held that the principle that the Court can take note of subsequent events has to be confined to cases where there was no bar as such to the institution of the proceeding and the principle cannot be applied to a case where the very institution was barred by the statute. In that decision, the Division Bench has also referred to the decision of the Punjab High Court in *Kunthanlal v. Bhagavandas* ILR 1962 (1) Pun 304 recognising such a distinction. The principle thus recognised in *Hameed*'s case can only lead to the conclusion that if the suit for eviction was not maintainable on the day it was instituted, because of the inapplicability of the notification as it existed, subsequent amendment to that notification taking the building out of the purview of the Act would not enable the Court to sustain a decree for recovery of possession granted to the plaintiff-landlord.

9. In *Syndicate Bank v. Soji Chacko* 1998 (2) KLT 25 this Court has held that even if an amendment to a statute is not retrospective, still, a Court entertain an appeal was entitled to take note of the subsequent events brought about by the amendment while deciding whether the plaintiff was entitled to relief or not. That was a case where the amendment was to the Indian Succession Act doing away with the requirement of getting a will executed by a Christian probated. But in the case of Section 213 of Indian Succession Act, the bar is not against the institution of the, suit but the bar is only against the grant of relief by the Court. The principle of the said decision again cannot lead to the conclusion that the present suit must be held to be maintainable on the day it was instituted with reference to the amendment to the notification brought about sub-sequent to the passing of the decree by the trial Court. This aspect is referred to in that decision in the following words :--

"In our processual jurisprudence, an appeal is a rehearing of the suit. A litigant can therefore, show with reference to an amendment to the statute that on the day his appeal is heard, he is entitled to relief or that no bar then exists to the grant of reliefs to him. The suit here is pending in Second Appeal, though at the instance of the first defendant. At the hearing of the appeal, the plaintiff-respondent is entitled to exhort the Court to take note of the amendment, be it prospective, and to grant him relief on the basis that the legislature has removed the bar to the grant of reliefs to him by the amendment. This Court therefore is bound to take note of the amendment that was introduced pending the litigation and to decide whether the bar to the grant of relief to the plaintiff now subsists or has been removed. If the bar under S. 213(1) of the Act were to the institution of the suit itself, it might not have enabled the plaintiff to seek relief on the basis of this amendment. But since the bar, as indicated by the Supreme Court in *Mrs. Hem Nolini Judah* (since deceased) and after her Legal Representative *Mr. Marlean Wilkinson Vs. Isolyne Sarojbashini Bose and Others*, and the other decisions referred to, is only to the grant of a decree, the plaintiff can take advantage of the prospective amendment and request this Court to grant her relief on the plea that the bar to relief does not any more subsist".

10. In Pathummakutty and etc. Vs. Thekkechalil Kathiyumma and Another etc., a Division Bench of this Court held that an amendment to Order XXI, Rule 92(2) of the CPC can be given retrospective operation since it could be considered only as declaratory and hence could be applied to make maintainable an application made under Order XXI, Rule 89 of the CPC when the requisite deposit under that Rule was not made within the time prescribed by Rule 92 of Order XXI of the Code as it stood at the time of the application. Though Article 127 of the Limitation Act was amended extending the period for making the application to 60 days, there was no corresponding amendment to Order XXI, Rule 89 of the Code and Rule 89 continued to provide a period of 30 days for making the deposit. It is in that situation that Order XXI, Rule 92(2) was amended by enlarging the time for deposit also to 60 days. It is in that context that the Division Bench held that the amendment to the rule was only declaratory in nature and since it was declaratory, the amendment can be given retrospective effect. With respect, I am not sure whether the amendment could be treated only as declaratory. It was actually an amendment altering the period for the deposit contemplated by Order XXI, Rule 89 of the Code to get rid of a Court sale. I find that the Court had no occasion to consider whether a subordinate legislation could be considered to be retrospective when there was no specific power conferred on the rule making authority to make a retrospective rule. Here, of course, we are concerned with the case of an amendment to a notification. It is also not possible to consider the amendment to the notification as declaratory since the object of the amendment of the notification issued u/s 25(1) of the Act is to enlarge the scope of the earlier notification. It may not therefore be possible to apply the ratio of the decision in Pathummakutty to sustain the argument that the suit could be held to be maintainable, on the basis that the amendment to the notification is only declaratory in nature and hence is necessarily retrospective. In Anand Prakash Malik Vs. Bhagwandas, the suit itself was laid after the period of exemption under the Rent Control Act had expired. The Supreme Court held that since the exemption from the Rent Act was not available on the date of the filing of the suit, the suit was not maintainable and the landlord had to necessarily approach the authorities under the Rent Act for relief. The argument that at the time of the construction of the building, exemption operated was held by their Lordships not to be sufficient to make the suit maintainable since on the day the suit was filed, the period of exemption had expired. This decision in my view supports the position that the relevant date to consider the jurisdiction of the Court is the date on which the suit was instituted.

11. But there is another aspect to be considered at this stage. If it is found that the amendment of the notification dt. 30-10-1996 applied to the building in question, what will be the effect of this Court or the lower appellate Court not taking note of that notification and non-suiting the plaintiff on the ground that the suit, on the date he instituted it, was not maintainable ? In case of the suit being dismissed in that manner, nothing stands in the way of the plaintiff filing a fresh suit for eviction since going by the notification as amended on 30-10-1996,

the suit is clearly maintainable. One of the policies of law being to avoid multiplicity of suits, is it not proper for the appellate Court to take note of this situation and grant relief to the plaintiff if he had otherwise made out a case for relief without driving him to file a fresh suit for the purpose ? This is in a sense, a principle of public policy recognised with a view to avoid multiplicity "of legal proceedings. Recognition of this principle of public policy can justify the acceptance of the contention of the plaintiff that the amended notification must be taken note of by the appellate Court to sustain the decree granted in its favour by the trial Court even though it may hold that on the day the suit was instituted, the trial Court had no jurisdiction to entertain the suit and even on the day it passed the decree it had no jurisdiction. But if one were to accept the principle laid down in *R v. Bolton* (1835) 42 All ER Rep 71; *Hameed v. Itoop* 1970 KLT 501 and *Shri Kishan @ Krishan Kumar Vs. Manoj Kumar Etc. Etc.*, it has to be held that the suit not being maintainable on the day it was instituted, it has to be dismissed as not maintainable.

12. Rubinstein in "Jurisdiction and Illegality" at page 215 has pointed out that:

"The question of jurisdiction, it has been said, is determinable "at the comment, not at the conclusion, of the inquiry". The Court which examines the jurisdiction of another inferior tribunal must confine itself to asking whether, at that preliminary stage of the proceedings, want of jurisdiction could have been established. Facts which cropped up at a later stage, even though established by evidence, must be ignored. If, on the other hand, it is decided that, from the information available at the start of the proceedings, the tribunal clearly had no jurisdiction, that is sufficient."

13. I am therefore of the view that the question of maintainability of the suit in this case must be decided with reference to the notification dt. 7-3-1992 and the maintainability of the suit cannot be found based on the amendment to the notification dt. 30-10-1996. The lower appellate Court was therefore substantially in error in relying on the amendment dt. 30-10-1996 to uphold the maintainability of the suit.

14. Learned counsel for the plaintiff argued that the notification dt. 7-3-1992 exempting the buildings of all churches/mosques of all the minority religions was broad enough to cover the building in question, and that it is not correct to say that the suit on the day it was instituted was not maintainable. The notification dt. 7-3-1992 in so far as it relates to the church as involved in this case proceeds as if a church is a legal entity that could own property. The church is a building for public Christian worship. The church as such is not a legal person competent to hold property. The properties necessarily vest in the congregation of the (sic) church or in the diocese. It is argued that it is probably recognising this defect in the notification that the subsequent notification was issued by enlarging the scope of the notification by adding the words "buildings of all dioceses, Arch-dioceses, Monastries and convents (in the present context) so as to rope in the buildings owned by dioceses. Since the church is not a legal entity capable of

owning property, it has to be held that the notification dt. 7-3-1992 cannot be relied on by the plaintiff in an attempt to sustain the maintainability of the suit.

15. I must first notice that this aspect has not been properly considered by the Courts below. The trial Court noticed the arguments on this aspect. The lower appellate Court also referred to it. But, the Courts below proceeded on the basis that the defendant was estopped from questioning the title of the landlord and hence could not question the competence of the plaintiffs to sue especially since, the Vicar of the Church represents the Church and the kaikkars also have been impleaded in the suit. It is true that "Church" as per the dictionary meaning is the place of public Christian worship. But that is not the only sense in which that expression is understood in law. The plaint does not disclose whether the first plaintiff Church is a Roman Catholic Church. But in the cross-examination of PW1, the Vicar of the Church, it is brought out that the Church is of the Catholic Sabha. This Court had occasion to consider the status of a Roman Catholic Church in *Chinnamma v. Abraham*, 1962 Ker LT 240. Mr. Justice Raghavan (as he then was) held that the Church can be treated as a voluntary organisation and as a person in the context of the Agricultural Debt Relief Act, 1958. The learned Judge also postulated that the head of the Church can be treated as a corporation sole. The third argument according to his Lordship would be to treat the Church as a legal entity or juristic person capable of holding property. The Supreme Court in *Most. Rev. P.M.A. Metropolitan and others, etc. etc. Vs. Moran Mar Marthoma and another etc. etc.*, has referred to the meaning of the expression "Church" given in *Encyclopedia Britannica* as :--

"The word "Church" refers both to the Christian religious community and to the building used for Christian worship".

In paragraph 59 of the judgment their Lordships have observed:--

"A parish Church thus, is an ecclesiastical authority operating in a specific area. But they are of a religious order".

If the narrow meaning of the expression "Church" as only the building where Christian congregate for worship is adopted, the notification dt. 7-3-1992 would be rendered meaningless, since a building used for worship cannot own property. But if a broader meaning is given and the expression understood as an association capable of owning property, the notification can be given a meaning and applied to buildings owned by the community.

16. It is argued that the Act is a beneficent piece of legislation protecting a class of people from exploitation and from abrupt eviction and any exemption keeping out the operation of the legislation should be construed narrowly and in that context the meaning given to the expression "Church" in the notification dt. 7-3-1992 should be the narrower one rather than the larger meaning suggested in *Chinnamma v. Abraham*. There cannot be any serious difficulty in accepting this, proposition. In fact this Court has taken the view that the exemption notification must be narrowly construed so as to confine the exemption to the

extent possible and not to enlarge it, in John v. Kunhibi Wakaf 1997 (2) KLT 464 ; (1998 AIHC 1163). In that decision this Court has referred to the decisions of the Supreme Court in Sheikh Gulfan and Others Vs. Sanat Kumar Ganguli, and Mohd. Shafi Vs. Additional District and Sessions Judge (VII), Allahabad and Others, in support. It is a rule of construction that when a literal interpretation or a narrow interpretation might lead to absurd results the Court must as far as possible give effect to the intention sought to be achieved by the provision. In construing a notification also the said principle has application. If the narrower meaning is given it is possible to argue that the notification dt. 7-3-1992 does not exempt any building from the purview of the Act because a church understood as a building where the Christians join together to worship cannot own property. To give efficacy to the Notification I am therefore inclined to take the view that the buildings of churches referred to in the Notification dt. 7-3-1992 should be understood as the building owned by the Christian religious community. In that view I hold that though slightly ambiguous, the notification dt. 7-3-1992 does take in the building in question provided it is shown that the church is of a minority religion. What are exempted are the buildings of the various institutions referred to in the notification that is of the minority religions. There is nothing to indicate how to determine the status of an institution as to whether it is a minority institution or not. Learned counsel for the defendant brought to my notice the decision in Aldo Maria Patroni and Another Vs. E.C. Kesavan and Others,) and in particular, the observations in that judgment that the word minority is not defined in the Constitution and in the absence of any special definition, it has to be held that any community, religious or linguistic, which is numerically less than fifty per cent of the population of the State, is entitled to the fundamental right guaranteed by the article and submitted that the Court in which the notification is sought to be relied on has to decide in a given case whether the particular institution is that of a minority religion and there was no adjudication on that question in the case on hand. Counsel pointed out that there was no evidence in the case to show that the particular institution is a minority institution. Counsel asserted that the particular community was not notified as a minority in the notification issued by the Central Government. Counsel also referred to the decisions in Dipendra Nath Sarkar Vs. State of Bihar and Others, and Sree Jain Swetamber Terapanthi Vidyalaya and Another Vs. The State of W.B. and Others, to emphasise that this question had to be decided by the Court, on the evidence in the case, before it could apply the notification relied on by the plaintiff. I find considerable force in this submission. On the scheme of the notification in question, it appears to me to be necessary for the Court to decide in each case whether the particular institution in respect of which the exemption is claimed, is an institution of a minority religion. The Courts below have not addressed themselves to the question whether the plaintiff has established that it is qualified to claim the exemption on the materials made available to the Court. PW1 in his evidence has stated that the first plaintiff church is an institution run by a minority religion. The defendant though he questioned the applicability of the notification did not pursue the question

whether the first plaintiff church is that of a minority religion by getting an appropriate issue raised in that behalf. It is in that context that the Courts below apparently accepted the assertion of PW1 that the first plaintiff church is that of a minority religion. Though I hold that it is necessary for the Court in each case where the notification in question is relied on to decide whether the church that owns the building is a minority institution, on the pleadings and the evidence in the case I am of the view that the Courts below cannot be faulted in proceeding on the basis that the first plaintiff church is of a minority religion.

17. Finally it was argued on behalf of the defendant that the compensation for use and occupation decreed was not supported by any legal evidence and the sum of Rs. 1500 per month decreed was grossly in excess considering that the monthly rent of the building was only Rs. 250. It is pointed out on behalf of the plaintiff that this aspect was not even agitated before the lower appellate Court when the defendant filed the appeal. It is seen from the Memorandum of appeal filed before the appellate Court that the decree for compensation for use and occupation was valued and challenged in the appeal though no specific ground as such is taken regarding the quantum. But considering the circumstances as a whole I am inclined to the view that the compensation for use and occupation decreed by the Courts below is somewhat arbitrary and excessive. I am therefore inclined to interfere with that part of the decree and reduce the compensation for use and occupation to Rs. 1000 per month. It may be noted that the building was taken on lease sometime in the year 1990 on a monthly rent of Rs. 250 and the suit was instituted in the year 1995.

I therefore confirm the judgments and decrees of the Courts below in so far as it relates to the decree for recovery of possession. I modify the decree for compensation for use and occupation by reducing the compensation to Rs. 1000 per month from 1-12-1994 till the defendant surrenders vacant possession. Considering the circumstances as a whole and taking note of the fact that this Second Appeal taken on file on 6-11-1998 is disposed of expeditiously (normally Second Appeal once admitted would have taken six to seven years for disposal in this Court). I grant the defendant time of one year from this date to vacate the building. The defendant is directed to file an undertaking before the executing Court within one month from this date that he will not let in any stranger into possession of the property during the period of one year and on the defendant depositing in the executing Court compensation for use and occupation for the period from 1 -12-1994 till 31-5-1999 within a period of two months from this date. If the defendant has already deposited any portion of the compensation decreed, the same will be given credit to and only the balance need be deposited within the time. The parties are directed to bear their respective costs.

18. The Second Appeal is allowed to the limited extent as above.