
(2003) 06 KL CK 0041
In the High Court Of Kerala
Case No : O.P. No. 2999 of 2003-F

G. Soman and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 03-06-2003

Acts Referred:

Citation : (2003) 2 KLJ 645 : (2003) 2 KLT 1007

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : K.P. Satheesan and K.K. Gopinathan Nair, for the Appellant;
Thomaskutty (GP) and C.J. Joy, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—The petitioners occupy shop rooms in the shopping complex owned by the third respondent-Panchayat in various business pursuits. After the shopping complex was put up, during November 1992 allotment of rooms went in favour of the highest bidders. This was for a period of three years, as could be seen from Ext.R3(a) proposal. Occupation continued even after the expiry of the lease period on revised and altered rentals. Early during 2002, the Panchayat had decided to terminate the lease arrangement. They re-notified the shop rooms for lease by way of auction. A notice in this regard is produced as Ext. R3(e) by the respondent. In furtherance to the above the petitioners had been advised that they were obliged to surrender possession. The petitioners thereupon filed Original Petition No. 13022 of 2002. This court directed the Government to examine the representations that had been pending with them in the matter and this resulted in Ext P5 The Government held that the request of the petitioners to permit them to continue the occupation of the rooms on condition of payment of enhanced rent is not tenable. "The order is under challenge.

2. The petitioners now having rely on Ext.P1 Circular issued by the Government during the year 1985. The Government had observed that the local authorities

should see to it that at the end of period of lease, in case the occupier is willing to continue the occupation with 5% increase in rent he may not be dispossessed from the shop room. According to the petitioners, it governed the situation then and now. He also referred to a judgment of this Court in O.P.No. 5678 of 2000 as well as an order passed in C.M.P.No. 60 of 1999, which are produced as exhibits, A criticism also was voiced that the Government was taking elastic, if not inconsistent stands. An order passed on 15.04.2002 (Ext.P8) directed the Velinalloor Grama Panchayat, in a similar situation to rely on Ext.P1. The counsel submits that the petitioners had a legitimate expectation to continue in the premises, of course by paying a reasonable enhanced rent and their rights ought to have been upheld.

3. The third respondent-Panchayat has filed a counter affidavit and had urged that the contentions raised in the Original Petition have no legal basis. It was pointed out (sic) the issue as at present is governed by a judgment of the Division Bench, wherein Ext P1 circular had been practically read down. The counsel also points out that the government had themselves relied on the judgment passed by this Court in Writ Appeal No. 577 of 1998 and the order has profusely extracted the judgment. The lease was never understood or accepted as perpetual. It had also been suggested that most of the petitioners have no locus standi and in any case they were not justified in urging such claims. Also contrary to the lease agreement they had shown indiscretion of subletting the premises unauthorisedly.

4. I find it difficult to endorse the argument that the petitioners had legitimate expectations to continue the occupation of the premises indefinitely. Even the first notification restricted the takers to three years lease period. Further, the petitioners had come across possession of the public premises by chance. They were available when the shop looms were put in auction initially. We have to see that there will be other aspirants also in the Panchayat area, who might be desirous of starting business and it will be illogical to say that once the petitioners have stepped in their occupancy it is for all time. The judgment of the Division Bench in tact lays down this principle.

5. The learned counsel for the petitioners, however, attempted to draw a distinction as between the rooms of shopping complex where a regular business is being carried out and a stall that might be there in the markets and submits that lease arrangements in respect of stalls from year to year basis alone would have been workable. For example, a meal stall or a vegetable stall would continue as such in spite of change in the licences. But as there was no restriction about the business to be carried out in a shop room, it would be for a person to make investments, and face teething troubles, and then forced to go away, once the business has picked up. According to him, the Government had understood the above problem as such, and the Circular contains a salutary principle. It is quite possible to see the practical points as have been urged by the petitioners, but it has to be borne in mind that since the Rent Control

statutes are not applicable to the local authorities, and the petitioners had agreed to the terms with open eyes, the rights of the landlord cannot be circumscribed for any such reasons. I find it difficult to exercise my discretion in favour of the petitioners to any extent. The Government has practically followed the norms that had been laid down by the Division Bench decision cited supra. The petitioners can project their claims only on legal principles. They have been continuing beyond the period agreed by a binding contract. As such, I decline interference. Ext. P5 is upheld and the Original Petition is dismissed.