
(2001) 06 KL CK 0030
In the High Court Of Kerala
Case No : O.P. No. 1666 of 1998

George Joseph

APPELLANT

Vs

Kerala Financial Corporation

RESPONDENT

Date of Decision : 28-06-2001

Acts Referred:

Buildings (Eviction of Unauthorised Occupants) Act, 1968 — Section 2, 3
State Financial Corporations Act, 1951 — Section 26, 29, 37, 4, 5

Citation : (2001) 06 KL CK 0030

Hon'ble Judges : M. Ramachandaran, J

Bench : Single Bench

Advocate : Roy Chacko, for the Appellant; V.B. Unniraj, N.R.K. Nair and Anil Sivaraman, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—The petitioners claim to be tenants of the third respondent, and the third respondent, and the Writ Petition has been filed challenging Ext. P1 and similar notices issued by the first respondent-Kerala Financial Corporation (KFC for short). There is also a prayer for a declaration that the petitioner being tenants of the shop rooms of the third respondent, are entitled to continue their occupation until such time they are evicted through methods authorised by the Kerala Buildings (Lease and Rent Control) Act, 1965 (for Short Rent Control Act) at the instance of the landlord.

2. According to the petitioners, the tenancy arrangement commenced in 1985 to 1992 period, in respect of the premises situated in the Changanacherry Municipality. The sequence of events, including the background in which Ext. P1 was served, are given by the petitioner in paragraph 3 of the O.P. which could be extracted hereunder:

"The fact of the matter is that while the shop rooms and office space mentioned above was in existence 3rd respondent happened to take a loan from the KFC for an extension of the shop building mentioned above. In fact, the loan was for

putting up a tourist home behind the shop building mentioned above. For taking the loan a mortgage was executed on 5.12.92 by the 3rd respondent to the KFC. The mortgage was of the property 32 cents having the shop building and proposed Tourist Home behind the shop building. With the money availed of from the KFC 3rd respondent put up Tourist Home behind the shop building mentioned above. However, in the matter of repayment of the loan there was default, the consequences of which was the KFC took steps for recovery of the loan and accordingly S. 29 of the State Financial Corporation Act provision was resorted to and they took symbolic possession of the hypothecated property viz., 32 cents. This took place on 14.12.1997. On the same day itself KFC issued notice to the petitioners who are in occupation of the shop rooms and godown as mentioned above, intimating them to vacate the premises within 15 days of the issuance of the notice. Copy of the said notice issued to 1st petitioner is produced herewith and marked as Ext. P1. Similar notices issued to other petitioners also. For brevity they are not produced herewith".

The text of Ext. P1 notice also might be relevant, and it was as following:

"This is to inform you that the Corporation has taken over the entire possession of M/s. Priya Tourist Home (Prabha International) under S. 29 of the State Financial Corporation's Act, 1951 with effect from 14.1.1998. During the process of taken over, we come to know that you are illegally occupying a part of this complex without the consent or permission from the Corporation. We hereby give you notice to vacate the premises and hand over possession to the Corporation within 15 days from the date of this notice."

3. The Operation of Ext. P1 has been stayed by interim orders. The Income Tax Department had also initiated recovery steps, and the officer is respondent No. 4, but in view of the payments made, they are no more interested in the present adjudication. The third respondent-landlord had filed two affidavits and she had pointed out that because of the pendency of the Original Petition her liabilities were mounting up in lakhs, as steps for disposing of the properties alone would have come to her rescue from the debt trap. The outstanding are above Rs. 85 lakhs. She wanted an early hearing, and also a direction to be issued to the petitioners in the Original Petition to pay the rent directly to the KFC. Her stand on the merit was that the Original Petition was misconceived, for that petitioners were given licence to occupy the building for 11 months, well before Ext. P1, and their occupation after the term was as statutory tenants, and especially after Ext. P1 the petitioners could not claim protection of the Rent Control Act, and the KFC bound and obliged to take up follow up steps by resorting to the procedure prescribed by the Kerala Public Buildings (Eviction of Unauthorised Occupants) Act, 1968.

4. The first respondent - KFC subscribed to the view of the landlord, that the Rent Control Act did not apply to the situation, and the State Financial Corporation Act was to prevail, and reliance had been based on S. 46B of the said Act. They alleged collusion of petitioners with the third respondent, with an

idea of delay sale of the properties which were took over by Ext. P1 order and in exercise of the powers under S. 29 of the Act. There appears to be no dispute on the circumstance that:

- i) There are loan outstanding to KFC;
- ii) The petitioners are in occupation; and
- iii) Proceedings under S. 29 has been initiated leading to Ext. P1 and similar notices.

5. The case of the KFC that it was an instance where the landlord inducted the tenants after mortgaging the properties with them does not at all appear to be justified. The documents speak against this version, and it appears to be a matter, resolution of which is hardly necessary. If at all anybody have real hardship arising from the interim order, it is only the landlord as she is pulled deeper into debts as days pass. As petitioners find fault with Ext. P1 and seeks shelter under the Rent Control Act, the legal position could be examined.

6. Mr. Roy Chacko fairly conceded that there is a Bench decision against his proposition and it has been held that the Rent Control Act will be subservient to the State Financial Corporation Act. The decision is Antony v. Kerala Financial Corporation 1999 (2) KLT 457. It was a case where the mortgage of the properties preceded the lease. The decision of the Bench was:

"We are of the opinion that the third respondent has no authority to lease out the property in question to the appellants which has been mortgaged to the Corporation. The third respondent has also not obtained any consent from the respondent 1 and 2. This apart the claim made by the appellants that they are entitled to protection under Kerala Buildings (Lease and Rent Control) Act cannot also be accepted in view of the provisions of S. 46B of the State Financial Corporation Act, 1951. which is a central enactment which will always has an overriding effect over the State laws and therefore, the provisions contained in the said Act alone shall prevail over any other laws including the provisions of Rent Control Act."

Mr. Roy submits that this was a case where the lease was well before the mortgage, and that made all the difference. As regards the impact of S. 46B, he submits that the legal position as stated by the decision may have been made overlooking the circumstance that the Rent Control Act had received the assent of the President, in fact the law had been enacted by the President on 4.7.1965 and subsequently stood substituted by the Re-enacting Act (8/68) as it was recognised as President's Act (Kerala Gazette No. 60 dated 7.7.1995). Being an item coming as item 18, in List II of the 7th Schedule to the Constitution, Mr. Roy submitted that the State was competent to legislate on the subject. Even if the entry was to be regarded as one under item 6, List III in so far as the assent of the President was to be deemed as obtained for the Rent Control Act, it was to prevail in the State of Kerala and the opinion expressed by the Division Bench

was per incuriam and not to be taken as a guidance. He had also referred to the exclusivity spoken to by entries in List II and cited the decision reported in Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others, and State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., which according to him were authority for exclusivity of the lists. Reference was also made to the decision of the Supreme Court reported in *Solidaire India Ltd. v. Fairgrowth Financial Services Ltd.* 2001 (3) SCC 71 for the proposition that being a later Act, the Rent Control Act had to prevail over the SFC Act. The Supreme Court had approved the following passage of the decision of the subordinate Court:

"Where there are two special statutes which contain non obstante clauses the later statute must prevail. This is because at the time of enactment of the later statute, the Legislature was aware of the earlier legislation and its non-obstante clause. If the Legislature still confers the later enactment with a non obstante clause it means that the Legislature wanted that enactment to prevail. If the Legislature does not want the latter enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply".

7. But a decision on this aspect, and a doubt on the accuracy of the Bench decision do not appear to be necessary resolved in this case, since in this matter I am inclined to rest the decision on the contentions raised by Sri. Anil Sivaraman appearing for the 3rd respondent.

8. S. 29 of the State Financial Corporation Act gives power to the first respondent, in specified contingencies, a right to take over the management or possession, and right to transfer by lease or sale, including the property mortgaged with it. The import of S. 46B is not required to be subjected to examination as well. Starting from the above premises the third respondent submits that from the moment of issue of Ext. P1 the Corporation has automatically become answerable vis-a-vis the claims and interests of the third respondent as well. Reliance is placed on S. 29(5) which provides that the Financial Corporation shall be deemed to be the owner of such concern for the purpose of suits by or against the concern. The submission is that prudence as is expected from the owner definitely has to be exercised and the properties are not to be permitted to rust. As a decision for enforcement of liability under S. 29 has already been made and she stands disposed of the assets, it ought to have been ensured that the assets are appropriately invested or dealt with to realise the advances made and ensure its security.

9. Therefore the submission was that the petitioners from the moment of expiry period of notice given by Ext. P1 became unauthorised occupants, coming within the definition of the said term under the Buildings (Eviction of Unauthorised Occupants) Act, 1968. The definition of the said term, as per S. 2(f) is as following:

"(f). "unauthorised occupation", in relation to any public building, means the occupation by any person of the building without authority for such occupation and includes the continuance in occupation by any person of public building after the authority (whether by way of lease or any other mode of transfer) under which he was allowed to occupy the building has expired or has been determined for any reason whatsoever."

10. It is found that the Corporations were brought in by amendment (Act 19/1986) in the Act, and by an amendment (see S. 2(d)) public building was to include a building requisitioned by the Corporation. That a Corporation comes within the purview of the Act and also that a tenant holding out after the expiry of the lease period becomes an unauthorised occupant, are propositions which cannot be disputed. (See *Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others*, and *Accountant and Secretarial Services Pvt. Ltd. and Another Vs. Union of India (UOI) and Others*, . Proceedings were therefore permissible to be initiated under Ss. 4 and 5 of the Act by the Corporation. The unauthorised occupier was also liable to pay damages on account of such use and occupation. Thus it will lead to the position that eviction is to be resorted to if there is unauthorised occupation, and therefore the question of approaching the Rent Control Court does not arise. Substitution of KFC under S. 29 was for avoiding legal hurdles, and it might never have been envisaged by the statute that the KFC is to fare as a petitioner in a Rent Control Petition for having stepped into the shoes of a defaulter. *Ashoka Marketing Ltd. case (supra)* made it clear that purpose and policy of the Act was highly relevant. The third respondent is neither in occupation from the date of S. 29 notice, nor has locus standi to file an application for eviction, as her hands stand tied. As the first respondent had chosen to exercise the option of take over, which is neither disputed nor subjected to challenge, it was their corresponding obligation to take recourse to eviction as well. On the facts of the case, a lease or collection of rent would have been of little use for settling the liability, as the amount due is claimed to be over Rs. 80 lakhs, and the monthly rent receivable was Rs. 5980/- all told.

11. The first respondent had not made any submission on the applicability of the Public Buildings Act, but contended with the position that the Rent Control Act is not applicable. The intention of giving vast powers to the Corporation by S. 29 was to see that its interests about the advances made was secure. But after dispossessing the landlord, the inaction is not expected nor justified. The stand of the KFC that the Rent Control Act is not applicable, itself is sufficient to bring in the impact of Public Buildings Act, for there is no other method statutorily recognised to get vacant possession of buildings possessed. The stay of Ext. P1 had been brought about after hearing the Corporation on 23.1.1998, and no attempt has been made to get the order varied, thereafter. The third respondent was repeatedly moving petitions for variation of the order, and getting the matter disposed of. She is justified in alleging that the interim orders were catering to the needs of the petitioners comfortably, and they were not bothered about the rising debts of the petitioner, resulting therefrom. As property is worth more than

the advances, according to the third respondent, KFC also had nothing to worry about. Indeed it appears to be a sad state of affairs, and now that the matter has come up for hearing it has become responsibility of the Court to find a solution to the impasse.

12. The conduct of KFC in not initiating steps for realising the sticky advances after possessing the mortgaged property is irresponsible. They should have acted promptly and prudently. I hold that an eviction resorting to the provisions of the Rent Control Act was not advisable or possible to be followed up, as the third respondent was landlord has lost possession by the act of a Corporation, exercising a statutory right. When the petitioners could be marked as unauthorised occupants, the question whether or not they deserved such a label was to be decided solely by the estate officers appointed under S. 3 of the Eviction of Unauthorised Occupants Act. The said Act is a complete code by itself and is a later special legislation, dealing with specified class of buildings. In the field of its operation, it has to prevail over the Rent Control Act. An unauthorised occupant could not have claimed a benefit. The Rent Control Act was not capable of naming a person as unauthorised tenant, and it was purely in the realms of Unauthorised Occupants Act. Proceedings under the former Act would have yielded no results, and recourse to the latter was therefore unavoidable. It is difficult to presume that a circuitous litigation or parallel proceedings were warranted as canvassed by the tenants, and precisely the latter enactment was brought in public interest to safeguard public premises and for side tracking protracted legal battles.

13. Mr. Anil Sivaraman submits that S. 29 of the KFC Act not only confers rights on the Corporation, but duties as well. Taking note of the powers conferred on the Corporation, there is substance in the above argument. Anxiety for preservation of the assets of the Corporation can be sensed from the provisions, and sense of urgency and frugal discipline could be spelt from the procedures of the Act in general.

14. The limit of accommodation prescribed by S. 26 of the Financial Corporation Act is Rs. 30 lakhs for an individual. The counter affidavit shows that the amount paid as loan was Rs. 51.70 lakhs. It has increased over to Rs. 85 lakhs now. The inspection envisaged under S. 37A of the Act and the Audit mandatorily to be carried out should have alerted the Directors about the state of affairs, unless these functions were carried out as a formality and without application of mind. The third respondent is attempted to be saddled with liability, which according to her, was unwarranted. The least that could be done by the first respondent therefore was to expedite the matter, as observed herein above, to get vacant possession, and dispose of the properties to the best advantage of the Corporation and the debtor. I direct that to be done. Preservation of the funds of the Corporation and the debtor. I direct that to be done. Preservation of the funds of the Corporation is one side of the picture. But the hard earned fortunes of a citizen, who had been lured into relationship with the Corporation also

deserved at least a fractional attention. It should not have been allowed to go down the drain for the inept management of the affairs by the Corporation. I leave open the issue as to the liability of the third respondent which arose after the date of Ext. P1.

15. The prayers in the Writ Petition are misconceived and merely self serving. Ext. P1 is validly issued and for reasons already recorded the Original Petitions are therefore dismissed.