
(2010) 07 KL CK 0054
In the High Court Of Kerala
Case No : R.C.R. No. 185 of 2010

Iritti Co-operative Hospital Society Ltd.

APPELLANT

Vs

Damodaran

RESPONDENT

Date of Decision : 14-07-2010

Acts Referred:

Ajmer Rent Control Act, 1952 — Section 11(3), 11(4), 13, 13(1), 20

Citation : (2010) 3 ILR (Ker) 786 : (2010) 3 KLT 823

Hon'ble Judges : Pius C. Kuriakose, J;C.K. Abdul Rehim, J

Bench : Division Bench

Advocate : B. Krishnan, R. Parthasarathy and C. Jayachandran, for the Appellant; K.V. Sohan and K. Babu, for the Respondent

Judgement

Pius C. Kuriakose, J.—The Iritti Co-operative Hospital Society Limited, a tenant who was suffered orders of eviction concurrently passed on the grounds under Sub-section (3) of Section 11, Clause (ii) of Sub-section (4) of Section 11 and Clause (iii) of Sub-section (4) of Section 11 at the hands of the Rent Control Court and the Appellate Authority, is in revision. The need projected by the respondents, who are husband and wife, in the context of the ground under Sub-section (3) of Section 11 was that they require the petition schedule building, in which the revision petitioner is presently conducting hospital, for the purpose of starting a tourist home. The bona fides of the need was very stiffly disputed by the revision petitioner, who even claimed the protection of the second proviso to Sub-section (3) of Section 11. The allegation of the landlords in the context of ground u/s 11(4)(ii) was that the tenants have negligently and recklessly used the building as a result of which the value and utility of the building has been materially and permanently reduced. The defence of the tenant to the above ground was that the above allegations are incorrect and that all the defects if any in the building can be repaired. The landlords' allegation in the context of ground u/s 11(4)(iii) was that the tenant is in possession of three other buildings not far away from the petition schedule building and that these buildings are more reasonably sufficient for accommodating the tenant's present hospital. The

tenant in the statement of objections filed by them flatly disputed the above averment of the landlord and contended that they are not possessed of any other buildings. However, later they sought to amend the pleadings so as to contend that the buildings acquired by them subsequently were being used for accommodating the surgical wing of their hospital and that it was on account of insufficiency of the present premises that they acquired the new premises and that the new premises are not reasonably sufficient for accommodating the activities in the present premises. The Rent Control Court, however, did not allow the amendment of pleadings.

2. At trial by the Rent Control Court, the evidence consisted of Exts.A1 to A15 and B1 to B15, Ext.C1 commission report, oral evidence of PW1, the first petitioner in the RCP and that of RW1, the Secretary of the revision petitioner society. The Rent Control Court on appreciating the evidence, came to the conclusion that the bona fides of the need projected by the landlords was established by convincing oral evidence adduced by PW1. That Court would repel the tenant's claim for protection of the second proviso to Sub-section (3) of Section 11 noticing that the tenant was not a natural person and was a society not entitled for the protection of the above proviso. Relying mostly on Ext.C1 Commission Report and the provision in the lease deed, under which it is the obligation of the tenant to carry out minor repairs of the building, the Rent Control Court held that the tenant is responsible for the present unsatisfactory condition of the building and would conclude that eviction ground u/s 11 (4)(ii) is made out.

3. The Rent Control Court relied mostly on Exts.B8 and B9 and concluded, on the basis of those documents, that the tenant had come into possession of as many as three buildings and a total extent of 25 cents of land being the site of those buildings. According to the Rent Control Court, the premises covered by Exts.B8 & B9 are reasonably sufficient for the tenant's requirements in the petition schedule premises. Accordingly, order of eviction was passed on all the three grounds invoked by the landlords.

4. Before the Rent Control Appellate Authority, the revision petitioner would produce Exts.B16, B17 and Ext.B18. Ext.B18 was an agreement of exchange under which the respondents/landlords had agreed to exchange the petition schedule premises to the other party in Ext.B18 for another item of immovable property belonging to them. Ext.B 16 was copy of the plaint relating to a suit, which was instituted by the other party in Ext.B 18 for recovery of compensation on the allegation that Ext.B 18 contract was repudiated without good cause by the landlords. Ext. B17 was a copy of the written statement filed by the landlords in Ext.B 16 suit contending that the landlords are even then ready and willing to exchange the petition schedule building in implementation of Ext.B18 contract virtually seeking specific performance of Ext.B18 contract. The Rent Control Appellate Authority would make a reappraisal of the evidence including Ext.B16, B17 and B18 which were produced in the context of ground under Sub-section

(3) of Section 11. That Authority would place reliance on the judgment of the Supreme Court in *Gaya Prasad Vs. Sh. Pradeep Srivastava*, and take the view that the subsequent event of the landlords entering into Ext.B18 contract did not have the impact of completely eclipsing the need projected by the landlords. The learned Appellate Authority would also observe that in the existing situation in our litigative process, the landlords are not expected to sit idle waiting for positive orders from the Court. After taking the view that Exts.B 18 and B17 were not of much consequence on the bona fides of the need projected by the landlords under Sub-section (3) of Section 11, the Appellate Authority concluded on the basis of reappraisal of evidence that the need projected by the landlords was bona fide. In the same way, the Appellate Authority would endorse all the conclusions of the Rent Control Court in the context of Section 11(4)(ii). That Authority would similarly endorse all the conclusions of the Rent Control Court in the context of ground u/s 11 (4)(iii). Accordingly, the Rent Control Appeal was dismissed and the eviction order passed on the three grounds were confirmed.

5. In this revision u/s 20, the tenants have raised various grounds assailing the judgment of the Appellate Authority. We have heard Sri. B. Krishnan, learned Counsel for the revision petitioner who addressed arguments based on all the grounds. We have also heard the submissions of Sri. K.V.Sohan, who had lodged a caveat on behalf of the respondents in anticipation of this revision.

6. Sri. B. Krishnan would draw our attention to Exts. B 18, B16 & B17. The learned Counsel would submit that those documents were brought on record by the revision petitioner not as evidence of subsequent events eclipsing the need which was projected by the landlords. On the contrary, those documents were brought on record as evidence in support of the contention that the need projected by the landlords was devoid of bona fides. According to him, if as a matter of fact, there was at least an element of necessity in the need projected by the landlords under Sub-section (3) of Section 11, they would not have entered into Ext.B 18 agreement at the time when the present eviction proceedings are pending before the authorities. Highlighting Ext.B 17 written statement, Mr. Krishnan argued that even at the time of filing of Ext.B 17, the definite stand of the landlords was that they are ready and willing to convey ownership and possession of the petition schedule premises to the other party to Ext.B 18. Strong reliance was placed by Mr. Krishnan on the judgment of the Supreme Court in *ADIL Jamshed Frenchman (D) by LR's. Vs. Sardar Dastur Schools Trust and Others*, . Mr. Krishnan was even more emphatic in his challenge of order of eviction passed u/s 11 (4)(ii) by the statutory authorities. Relying on the judgment of the Supreme Court in *G. Reghunathan Vs. K.V. Varghese*, Mr. Krishnan submitted that there were only halfhearted pleadings in the RCP and that Ext.C1 was perhaps only the item of cogent evidence in support of the landlords' case. Ext.C1 at best showed that the building in question was in need of repairs, perhaps extensive repairs. Even when a building needs extensive repairs, it cannot be stated that the value and utility of the building has been materially and permanently reduced. All the defects reported in Ext.C1 are

defects which can be rectified by carrying out necessary repairs. Mr. Krishnan submitted that statutory authorities particularly the learned Appellate Authority has not appreciated Ext.C1 correctly. Referring to certain observations of the learned Appellate Authority, Mr. Krishnan argued that the learned Appellate Authority has actually overstated what is reported in Ext.C1. The learned Counsel would assail the order of eviction passed u/s 11 (4)(iii) also. According to him, since acquisition of Exts.B8 and B9 buildings are admittedly much after the entrustment of the petition schedule premises, the sufficiency of the tenant's requirement for the purpose of Section 11(4)(iii) is to be determined with respect to the time of institution of the eviction petition and not the time of entrustment of the petition schedule premises. Reading over to us certain passages in PW's evidence, Mr. Krishnan argued that it is practically admitted by PW1 that there is no operation theater in the petition schedule premises and there are operation theaters only in the newly acquired premises. He would also highlight that the Doctors are residing close to the newly acquired premises. Therefore, according to the learned Counsel, the question to be considered is whether those wings of the hospital which are presently functioning in the petition schedule building can also be accommodated in the newly acquired premises. That question, according to him, can be answered only in the negative. Strong reliance was placed by Mr. Krishnan in support of the above argument on the judgment of the Supreme Court in Dr. Gopal Dass Verma Vs. Dr. S.K. Bhardwaj and Another, a case in which the Supreme Court has considered Section 13(1)(h) of the Delhi and Ajmer Rent Control Act 1952. According to Mr. Krishnan, the principles laid down by the Supreme Court in the above judgment are to be applied and the order of eviction passed u/s 11(4)(iii) are to be vacated.

7. All the submissions of Sri. Krishnan were forcefully resisted by Sri. K.V. Sohan, the learned Counsel for the landlord. Sri. Sohan reminded us of the attenuated nature of our present jurisdiction. He submitted that in the revisional jurisdiction u/s 20, this Court is not expected to re-appraise the evidence and arrive at fresh factual conclusions in substitution of the conclusions arrived at by the statutory authorities, the Rent Control Court and the Appellate Authority. He submitted that there is no illegality, irregularity or impropriety in the judgment of the Appellate Authority which is the final fact finding authority under the statutory scheme. It is a money decree that has been passed in O.S.32/05 and not a decree for specific performance of contract for sale of the petition schedule building. The judgment of the Supreme Court in Gaya Prasad Vs. Sh. Pradeep Srivastava, has been correctly applied by the learned Appellate Authority. The subsequent event is not of such a magnitude as completely eclipse the need which was projected in the Rent Control Petition.

8. Mr. Sohan supported the order passed u/s 11(4)(ii) by submitting that value and utility in the context of the ground u/s 11(4)(ii) is to be appreciated through perspective of the landlord and not that of the tenant. As regards S. 11(4)(iii) the learned Counsel submitted that the legislative objective underlying the above provision is that no tenant shall be allowed to have more buildings than what is

necessary for his requirement.

9. We have very anxiously considered the rival submissions addressed at the Bar in the light of relevant judicial precedents and the pleadings raised by the parties. We have made an overall survey of the evidence to the extent necessary for appreciating the arguments addressed before us. We find it extremely difficult to sustain the order of eviction passed by the Appellate Authority on the ground under Sub-section (3) of Section 11. True, all cases are to be decided ordinarily on the basis of the state of affairs existing at the time of commencement of the Us. It is also true that under the existing system of justice administration which takes several years for a litigation to come to a close, if each and every subsequent event which happens during the pendency of the proceedings is taken into account the same would amount to denial of justice and relief to a party who deserves it on the basis of the facts brought on record in the case. It is trite by various decisions of the Supreme Court and this Court that only those subsequent events completely eclipse the need projected by the landlord or have a fundamental impact either on the right of the landlord to get eviction or on the liability of the tenant to suffer eviction need be noticed by the various authorities under the statute. Exts.B16, B17 and B18, according to us, are very relevant for deciding the dispute involved in this case and should not have been ignored by the Rent Control Appellate Authority relying on the judgment of the Supreme Court in Gaya Prasad Vs. Sh. Pradeep Srivastava, . As already stated Ext. B16 was plaint in respect of a suit for recovery of damages for the alleged violation of Ext.B 18 contract filed against the landlord. Ext.B 18 was admitted by the landlord to be a contract entered into by him for exchange of the petition schedule building. Ext.B17 is the written statement which was filed by the landlord in Ext.B16 suit. Importantly, the contention taken by the landlord was that he has not repudiated the contract as alleged and that he was even then ready and willing to exchange the petition schedule building in implementation of Ext.B 18 contract. As rightly argued by Mr. Krishnan leaving aside the question as to whether the subsequent event of the landlord entering into Ext.B 18 contract eclipses the bona fide need projected by the landlord, Exts. B17 and B18 are documents which prove that the need projected by the landlord for own occupation of the petition schedule building is bereft of bona fides. We therefore set aside the order of eviction passed u/s 11(3) and hold that the landlord is not entitled for order of eviction u/s 11(3).

10. Similarly, we find it difficult to sustain the order of eviction passed by the Appellate Authority on the ground of Section 11(4)(ii) also. Ofcourse, it is trite by various decisions of this Court that value and utility of a tenanted building for the purpose of Section 11(4)(ii) are aspects to be considered through the perspective of the landlord. A material alteration made by the tenant unauthorisedly may be advantageous to the tenant or to several others who may occupy the building for various purposes. But if the landlord wanted to utilise or retain the building in its original form, his complaint regarding alteration of the building may in a given case be valid enough for establishing ground u/s 11 (4)(ii). A perusal of the

pleadings raised by the landlord in the context of the ground u/s 11 (4)(ii) will show that the complaint of the landlord is that the tenant used the building in a negligent and reckless manner as a result of which the condition of the building has become unsatisfactory. Ext.C-1 is the one cogent item of evidence adduced by the landlord to prove the allegations u/s 11(4)(ii). At best, Ext.C-1 shows that the building needs extensive repairs. We do not find evidence in the case to show that the present state of disrepair of the building is attributable directly to the use of the building by the tenant in a negligent or reckless manner as alleged by the landlord. Without any hesitation we vacate the order of eviction passed u/s 11(4)(ii) of Act 2 of 1965.

11. Now we shall examine the ground u/s 11 (4)(iii) which is upheld by the Rent Control Appellate Authority. Section 11(4)(iii) reads as follows:

If the tenant already has in his possession a building or subsequently acquires possession of or puts up a building reasonably sufficient for his requirements in the same city, town or village.

The point of time with reference to which the sufficiency of the additional building for the tenant's requirements in the same city, town or village has been subject matter of judicial pronouncements. M.P. Menon, J. in Puthoor Rawathar v. Chacko 1980 KLT 555 indicated that when landlord is in possession of a building, the relevant point of time is the time of letting and not at the time of filing of the application. Division Bench of this Court in Kanhangad Co- op. M.S. Society Ltd. v. Ganapathy Kamath 1995 (1) KLT 681 indicated that if the acquisition of the additional building is at a later point of time then the period with reference to which the sufficiency of the building for the tenant's requirements will be the point of time when the Rent Control Petition is instituted. The argument of Mr. Krishnan was that as there is no operation theatre in the petition schedule premises and there is operation theatre only in the newly acquired premises and as the doctors of the hospital are residing closer to the newly acquired premises, the only question to be considered is whether those departments of the hospital presently functioning in the petition schedule building can be accommodated in the newly acquired premises. The judgment of the Supreme Court in Dr. Gopal Dass Verma Vs. Dr. S.K. Bhardwaj and Another, was pressed into service.

12. The judgment of the Supreme Court in Dr. Gopal Dass Varma's case is rendered in the context of a proceeding for eviction u/s 13(1)(h) of the Delhi and Ajmer Rent Control Act, 1952. The above provision, it should be noticed immediately is not perfectly in pari materia with Section 11(4)(iii) of the Kerala statute. Section 13(1)(h) provides for ejectment in a case where the court is satisfied that "the tenant has whether before or after the commencement of the Act, built, acquired vacant possession of or has been allotted a suitable residence". As is clear from the above Section 13(1)(h) of the Delhi and Ajmer statute, residential buildings alone are covered by Section 13. It is the constructive acquisition or allotment of suitable residence by the tenant which is made ground for eviction unlike the Kerala statute where the provision is more

comprehensive and takes in all types of buildings and visualise situations where even at the time of entrustment the tenant is in possession of another building. The Supreme Court in Dr. Gopal Dass Varma's case noticed that the building which was subject matter of that case was let out for residence and for carrying on profession and that the new building acquired by the tenant was suitable only for residence. According to us, even if Section 13(1)(h) of the Delhi and Ajmer Rent Control Act was the applicable law in the present case, then also the tenant cannot escape liability from eviction. Ext.C-1 Commission Report proves to the very hilt, that the building newly acquired by the tenant is situated just 250 metres away from the petition schedule building and in that building a hospital is being conducted by the tenant. The learned Appellate Authority on appreciating Exts. B8 and B9 lease agreements executed in respect of the new building found that the total area covered by those documents is 25 cents and that there exists several buildings larger in size than the petition schedule premises. It may be true that those departments of the hospital which are presently functioning from the petition schedule building are not presently functioning in the newly acquired building. But the statutory authorities were convinced from evidence on record that if it becomes necessary it will be easy for the tenant to shift those departments also over to the newly acquired premises. Statutory requirement u/s 11(4)(iii) is only that the newly acquired or put up building is reasonably sufficient and not that it should be perfectly and completely sufficient. We are also convinced as the statutory authorities were, that the premises newly acquired by the tenant are more than sufficient for the tenant's requirements. We do not find any warrant for interfering with the judgment of the Appellate Authority to the extent it pertains to the ground u/s 11(4)(iii).

13. The result of the above discussion is as follows:

The R.C.R. stands allowed in part The order of eviction passed against the revision petitioner on the grounds under Sub-section (3) of Section 11 and Clauses (ii) of Sub-section (4) of Section 11 are set aside and vacated. The order of eviction passed u/s 11 (4)(iii) however is confirmed. The revision petitioner is granted time till 15.7.2011 to vacate the premises subject to the following conditions:

Affidavit shall be sworn to by a competent person on behalf of the revision petitioner society undertaking to give peaceful surrender of the building to the respondent on or before 15.7.2011. The affidavit shall also state that arrears of rent if any will be discharged within one month and that occupational charges at the current rent rate will be paid as and when the same falls due. We make it clear that the revision petitioner will be entitled to the benefit of time granted under this order only if it files the affidavit as ordered above within three weeks from today.