

(1992) 10 KL CK 0045
In the High Court Of Kerala
Case No : O.P. No. 11035 of 1992

Janaki Amma Sarasamma and Another	APPELLANT
Vs	
Sree Vidhyadhirafa Vidya Samajam and Another	RESPONDENT

Date of Decision : 26-10-1992

Acts Referred:

Constitution of India, 1950 — Article 227
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11, 11(1)

Citation : (1992) 2 KLJ 835

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : G. Sivarajan, for the Appellant;

Final Decision : Dismissed

Judgement

K.T. Thomas, J.—This Original Petition is under Article 227 of the Constitution challenging a certain order passed during the pendency of a Rent Control Court proceeding. First respondent in this Original Petition - Sree Vidyadhiraja Vidya Samajam filed an application before Rent Control Court for eviction of its tenant on some of the grounds envisaged in Sec. 11 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short "the Act"). Petitioners in this Original Petition are counter petitioners 2 and 3 before the Rent Control Court. (For the sake of convenience, first respondent herein will be referred to as landlord and second respondent as tenant) According to the landlord, the present petitioners are also residing in the tenanted building. That is the reason why they too were made parties in the rent control proceedings. Petitioners raised various contentions before the Rent Control Court, among which the two relevant contentions are these: Landlord has no title to the building. Originally, the building belonged to one T.P. Velayudhan Piliai and from him second petitioner got it. Alternatively, it is contended that petitioners have kudikidappu right in the building. Landlord filed an application before the Rent Control Court urging the court to refer the question of kudikidappu right claimed by the petitioners to the Land Tribunal for

its determination. Thereupon, the Rent Control Court referred the said question to the Land Tribunal under Sec. 125(3) of the Kerala Land Reforms Act (for short "KLR Act"). However, the landlord was directed to pay Rs. 250/- to the counsel for petitioners on account of the long delay in moving for making the reference. Both sides challenged the order in appeal before the Appellate Authority. but both appeals were dismissed. Then both sides went to the District Court, in revision, with two separate revision petitions. Learned District Judge by Ext. P15 order dismissed the revision filed by the petitioners and allowed the revision filed by the landlord setting aside the direction to landlord to pay Rs. 250/-. Ext. P15 is hence challenged by the petitioners in this Original Petition.

2. The stand of the petitioners is that a reference under Sec. 125(3) of the KLR Act need be made only If the Rent Control Court finds that denial of landlord's title is not bona fide. Learned counsel contended that under the second proviso to Sec. 11 (1) of the Act it is incumbent on the Rent Control Court to decide whether the tenant's denial of landlord's title is bona fide since such a decision is sine qua non for determining its own jurisdiction to proceed further. He invited my attention to the decision in Joseph v. Thomas (1987 (2) KLT 1029) and advanced a contention that a reference under Sec. 125(3) of the KLR Act without deciding its own jurisdiction to entertain the application would be illegal.

3. The aforesaid contention cannot be upheld for the following reasons: In order to attract the second proviso to Sec. 11 (1) of the Act the title of the landlord should have been denied by the tenant. Then alone the Rent Control Court would be obliged to decide whether such denial is bona fide. In the instant case initiated by the landlord, he described some body else as the tenant, whereas the present petitioners are treated as only occupants under the tenant. In the rent control proceedings persons other than a tenant are not permitted to deny the title of the landlord. Of course it is open to the petitioners to contend that the person shown as tenant is, in fact, no tenant of the building at all and that petitioners are the real tenants. If they succeed in establishing the aforesaid fact, the inevitable course open to the Rent Control Court is to dismiss the application.

4. Even otherwise, when a tenant adopts a twin strategy, one alternative to the other involving determination of the jurisdiction of the court, the tenant cannot dictate to the Rent Control Court to take up one contention before the other. In this case petitioners resorted to alternative contentions pertaining to the very jurisdiction of the Rent Control Court. If they are tenants their resistance would involve the question of jurisdiction on both the alternative questions raised. If they have kudikidappu right, the Rent Control Court has no jurisdiction to entertain the application for eviction. Similarly, if the denial of title of the landlord is found to be bona fide, then also the Rent Control Court has no jurisdiction to proceed further. Where the tenant claims kudikidappu right, the Rent Control Court has no jurisdiction even to proceed further as the question has to be referred to the Land Tribunal as envisaged in Sec. 125(3) of the KLR Act and the Rent Control Court has to stay the proceedings before the reference

is made. On the other hand, in the latter eventuality the Rent Control Court has power to determine its own jurisdiction by deciding whether denial of title is bona fide. It is in exercise of the said power that "the court, whose jurisdiction stands ousted on a finding that a certain plea or assertion made by the party is bona fide, must be in a position to hold that the plea is based on a very fair and reasonable supposition." In holding so, the court must have the satisfaction that there are strong or at least substantial grounds or sufficient materials in support of such denial of title. (Vide Joseph v. Thomas 1987 (2) KLT 1029). But tenant cannot compel the Rent Control Court that the plea relating to denial of title must be decided before making the reference under Sec. 125(3) of the KLR Act. It is for the court to adopt either of the two courses first. It is quite unnecessary to lay down any principle or to fix any specific rule regarding the order of priority in adopting the said two courses. Be that as it may, there is an obvious advantage, from practical angle, in making a reference to the Land Tribunal first. In a proceeding where the question regarding kudikidappu arises. Rent Control Court has no jurisdiction to decide any aspect of it since the entire question has to be decided by the Land Tribunal. If the Land Tribunal upholds the claim of kudikidappu, there is a complete stoppage of the proceedings. On the other hand, regarding the question of denial of title, the Rent Control Court has to proceed with the enquiry in order to decide whether such denial is bona fide. Such decision is amenable to appeal and revision. Even the reference to Land Tribunal and waiting for its decision is a time consuming exercise, as things remain at present. Hence it is advantageous to make the reference under Sec. 125(3) of the KLR Act first, so that a lot of time for the litigation can be saved. For this reason also, the course adopted by the lower courts seems to be proper.

For the aforesaid reasons, I hold that neither the Rent Control Court nor any of the other two superior authorities under the Act has committed any jurisdictional error in passing the impugned orders.

Original Petition is, accordingly, dismissed in limine.