

(2005) 12 KL CK 0063
In the High Court Of Kerala
Case No : C.R.P. No. 764 of 2005

Jayalakshmi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 16-12-2005

Acts Referred:

Constitution of India, 1950 — Article 254(1), 254(2)
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 2, 2(6)
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2, 4

Citation : (2006) 1 ILR (Ker) 316 : (2006) 1 KLT 523

Hon'ble Judges : V. Ramkumar, J

Bench : Single Bench

Advocate : B. Krishnamani and Rahul Venugopal, for the Appellant; A.V. Thomas, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramkumar, J.—The revision petitioner challenges the appellate order passed by the II Addl. District Judge, Thiruvananthapuram in C.M.A 16/2000 preferred by her against the order of the Estate Officer, Union Bank of India, Thiruvananthapuram dated 21-1-2000 calling upon the revision petitioner to vacate the premises in question on or before 10-3-2000 under the provisions of the Public Premises Eviction of Unauthorised Occupants Act, 1971 - Central Act 40/1971 (hereinafter referred to as the "Public Premises Act" for short.)

2. The admitted facts leading to the order passed by the Estate Officer can be summarised as follows:

One Sri. Vasudeva Kurup who was the father of the revision petitioner was the tenant in respect of a shop room bearing building No. T.C. No. 26/112 in the heart of Thiruvananthapuram City. O.P. B.R.C. No. 254/1970 was filed by the then landlord of the building against the said Vasudeva Kurup for eviction of the premises on the ground of sub lease falling u/s II(iv)(i) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as the "Rent Control

Act"). On 27-1-1975 the Rent Control Court ordered eviction on the ground of sub-lease and granted two months' time to Vasudeva Kurup to vacate the shop. Vasudeva Kurup filed an appeal as B.R.C.A. 26/1975 before the Rent Control Authority, Thiruvananthapuram. During the pendency of the said appeal, the premises in question was purchased by the first respondent, Union Bank of India which got itself impleaded in the appeal as the 8th respondent therein. Pending the appeal the matter was compromised and on 24-6-1975 a compromise petition was filed whereunder the Bank agreed to give a shop room admeasuring 500 square feet in the re-constructed building to Vasudeva Kurup. Some time in the year 1979 Vasudeva Kurup was put in possession of a room admeasuring 500 sq. feet in the re-constructed building. Subsequently, Vasudeva Kurup died and the revision petitioner who is the daughter of Vasudeva Kurup inherited him as his legal heir. On 25-8-1998 a notification was issued by the Government of India under the Public Premises Act appointing the Regional Manager of the Union Bank of India, M.G. Road, Thiruvananthapuram as the Estate Officer. On 1-6-1998 a lawyer notice was issued by the Bank to the Revision Petitioner calling upon the petitioner to surrender vacant possession of the premises on or before 15-7-1998. On 16-6-1998 the Revision Petitioner sent a reply notice opposing the demand. Subsequently on 10-7-1999 the Estate Officer issued a statutory notice to the Revision Petitioner u/s 4 of the Public Premises Act terminating the tenancy and asking her to show cause on or before 16-9-1999 as to why an order of eviction should not be passed against her. On 19-7-1999 the revision petitioner sent a reply to the Estate Officer contending inter alia that she was not liable to be evicted under the Public Premises Act. On 21-11-1999, she filed a further objection before the Estate Officer raising inter alia a contention that the Estate Officer has no jurisdiction to initiate proceedings to vacate the revision petitioner from the premises as she was not an "unauthorised occupant" within the meaning of the Public Premises Act. She also filed a Writ Petition before this Court as O.P.No. 30713/1999 raising the above contention. As per the judgment dated 7-12-1999 in O.P.30713/99 this Court declined to interfere in the matter holding that it was open to the revision petitioner to raise her objections before the Estate Officer who was directed to pass a speaking order. Thereafter on 21-1-2000, the Estate Officer passed a speaking order holding inter alia that the revision petitioner was an unauthorised occupant and liable to be evicted under the provisions of the Public Premises Act and that she does not enjoy the status of a tenant liable to be evicted only in accordance with the Rent Control Act. Aggrieved by the order of the Estate Officer, the Revision Petitioner filed CM.A. 16/2000 before the District Court (Appellate Authority), Thiruvananthapuram. As per the impugned Judgment dated 23-6-2005 the District Court dismissed the statutory appeal filed by the revision petitioner. The order of the Estate Officer and the judgment of the Appellate Authority are assailed in this Writ Petition. It is significant to note that the revision petitioner did not urge a contention before the District Judge that she was a tenant who was liable to be evicted only under the provisions of the Rent Control Act and that she could not be evicted under the Public Premises Act. The petitioner claims

to have filed a review petition on 13-7-2005 before the District Judge raising the said contention. This Court is not concerned about the plea taken in the said review petition which is not before this Court. The order of the Estate Officer and the Judgment of the Appellate Authority are assailed in this Writ Petition.

3. I heard Advocate Sri. B. Krishna Mani for the petitioner and Advocate Sri. A.V. Thomas for the contesting respondents. Assailing the appellate order of the District Judge and the order of the Estate Officer, Advocate Sri. B. Krishna Mani, the learned Counsel for the revision petitioner made the following submissions before me-

Even if the revision petitioner's contention that she is a tenant entitled to be evicted only in accordance with the Rent Control Act is not seen urged before the District Court which the appellate authority under the Public Premises Act, it is a right available to a tenant which cannot be waived. Notwithstanding the omission to consider the said contention by the lower appellate authority, the petitioner is entitled to urge the said contention before this Court. This is a case in which the father of the revision petitioner was admittedly a tenant entitled to the protection under the Rent Control Act. In pursuance of the compromise entered into on 24-6-1975 the first respondent Bank had agreed to give a shop room admeasuring 500 sq.ft. in the building to be reconstructed by the Bank and pursuant to the said compromise the petitioner's father Vasudeva Kurup was put in possession of the shop room in the year 1979. So, Vasudeva Kurup continued to be a tenant entitled to the benefits and protection under the Rent Control Act and he was liable to be evicted only in accordance with the provisions of the Rent Control Act which is a special law which had received assent of the President of India and would prevail over any other law including the Public Premises Act. As was held in the decision of the Supreme Court reported in Smt. Nai Bahu Vs. Lala Ramnarayan and Others, even if there is a compromise decree passed for possession the landlord can have actual eviction only if any of the grounds under the Rent Control Act have been made out and no consent or compromise can give jurisdiction to the Rent Control Court to pass a decree otherwise than in accordance with the provisions of the Rent Control Act. In the aforesaid decision, the apex court has held that even the executing court can examine whether the statutory grounds for eviction had been made out. In a subsequent decision reported in Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, it has been held that there can be no eviction passed de hors the provisions of the Rent Control Act and the parties by entering into an agreement cannot contract out of the statute which is a social welfare legislation. Since both the Rent Control Act as well as the Public Premises Act deal with eviction they occupy the same field and in the event of any repugnancy the Rent Control Act will prevail over the Public Premises Act since the former legislation had received the assent of the President of India and it has therefore precedence over the latter Act by the force of Article 254(2) of the Constitution of India. Hence the Estate Officer had no jurisdiction to proceed against the Revision Petitioner under the Public Premises Act. The orders passed by the Estate Officer as well as the

appellate authority cannot be sustained in law.

4. I am afraid that I cannot agree with the above submissions. In the first place, this contention though raised in the memorandum of appeal before the lower appellate authority does not appear to have been urged before that authority. The legal position is that even if plea is raised in the pleadings, if the same is not urged before the court it will be deemed to have been abandoned. A plea or point not mentioned in the judgment will be deemed to have been not pressed vide AIR 1929 PC 50 Krishna Promada Dasi v. Dharendra Nath Ghosh and Ors.). There is no presumption that the Advocate for the party pressed and urged every one of the grounds raised in the memorandum of appeal. On the contrary, the presumption is that only those points which were dealt with in the judgment were urged before the court. (See Ramanujamma Vs. Nagamma and Another, . It is equally well settled that what transpired before court is to be gathered from the judgment and the statement in the judgment should be the last word on the question vide 1983 (1) SCR 80 State of Maharashtra v. Ramdas Shrinivas Nayak and Anr. 1955 KLT 276 Kunjan Velayudhan v. Ithakku Joseph 1957 KLT 732 State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, ; Daman Singh and Others Vs. State of Punjab and Others, Daman Singh and Ors. v. State of Punjab and Ors. 1986 KLT 55 Mohammed Shaft v. Mohammed Haji and 1994 (1) KLT 306 Vamakshi Renuka v. Bhargavi Meenakshi).

5. However, notwithstanding the fact that this contention does not appear to have been raised before the lower appellate authority, I proceed to deal with the said question since both parties had addressed their arguments on this question before me. It is true that Vasudeva Kurup was admittedly the tenant in respect of the shop room in question and the petitioner being his legal heir answers the definition of "tenant" u/s 2(6) of the Rent Control Act. But, then, after the notification dated 25-8-1992 whereunder the Regional Manager of Union Bank of India was appointed as the Estate Officer under the Public Premises Act, the question which may have to be considered is as to whether the Estate Officer is entitled to deal with the occupant of the premises under the provisions of the Public Premises Act notwithstanding the fact that he or she is a statutory tenant protected by the Rent Control Act. As held in Union of India (UOI) Vs. Manton Company Ltd., even if the tenant has been in occupation of the premises before the present owner became the owner, by transfer or otherwise, after the title over the premises have come to vest in the present owner, once a notice u/s 2(g) of the Public Premises Act has been issued to the tenant, then the status of such tenant will thereafter be that of an unauthorised occupant. In the case of a premises owned by a nationalised Bank which is a Corporation wholly owned and controlled by the Government of India, it has a distinct personality of its own and its property cannot be said to be the property of the Union of India so as to bring the Public Premises Act under Entry 32 of List I. The said Act so far as such premises are concerned will only fall under Entries 6, 7 and 13 of the Concurrent List (List III) of the seventh schedule to the Constitution of India. The Rent Control Act also falls entries 6,7 and 13 of List III of the 7th schedule. (See

Accountant and Secretarial Services Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, . If so, both statutes providing for eviction operate under the same field and the Public Premises Act being an Act passed by the Parliament has to prevail over the Rent Control Act in view of Article 254(1) of the Constitution of India. The assent of the President obtained for the Rent Control Act will not give it an overriding effect over the Public Premises Act since the non-obstante clause in the Rent Control Act can override only those enactments which were already in force on the date of commencement of the Rent Control Act and they do not include the Public Premises Act which was enacted subsequent to the Rent Control Act. These aspects of the matter were also pointedly considered in para 25 of Accountant and Secretarial Services Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, . The above position has been reiterated by a Constitution Bench of the Supreme Court in Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, . The above position was again re-stated in Kaiser-I-Hind Pvt. Ltd. and Others Vs. National Textile Corporation (Maharashtra North) Ltd. and Others, . In Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India and Another, also it was held that the Public Premises Act overrides the State Rent Acts and it being subsequent will prevail over the State Rent Act. Such being the position, even if the petitioner was a tenant prior to the premises became public premises within the meaning of Public Premises Act, after the notification dated 25-8-1992 the premises can only be treated as public premises amenable to the provisions of the Public Premises Act and after the statutory notice dated 10-7-1999 the petitioner become an unauthorised occupant liable to be evicted under the provisions of the Public Premises Act. Since in these proceedings we are not concerned with the validity of any agreement between the parties having the effect of contracting out of statute, but are concerned only with the legal effect of the Public Premises Act over the State Rent Control Act, the decisions cited by the learned Counsel for the petitioner have no application here. In this view of the matter, the order passed by the Estate Officer and which was confirmed by the appellate authority (District Court, Thiruvananthapuram) is only to be upheld and I do so.

6. The result of the foregoing discussion is that this Writ Petition is devoid of any merit and is accordingly dismissed. However, the parties shall bear their respective costs.

Soon after the pronouncement of this judgment, the learned Counsel for the petitioner made a request that 6 months" time may be granted to the petitioner to vacate the premises. The petitioner is granted time to vacate the premises on or before 12-06-2006 on condition that the petitioner files an affidavit before the Estate Officer undertaking to vacate the premises on or before 12-6-2006 and that he will not induct any strangers in the premises and shall continue to pay the rent payable for the premises until the last date. Such an affidavit shall be filed before the Estate Officer within one month from today.