

(1997) 01 KL CK 0012
In the High Court Of Kerala
Case No : C.R.P. 1106/96 I

Malabar Regional Co-operative Milk Producers Union Ltd.	APPELLANT
Vs	
K.P. Abdullakoya Haji and Others	RESPONDENT

Date of Decision : 16-01-1997

Acts Referred:

Companies Act, 1956 — Section 391, 394
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(2), 11(4)

Citation : (1997) 01 KL CK 0012

Hon'ble Judges : S. Krishnan Unni, J; K.G. Balakrishnan, J

Bench : Division Bench

Advocate : P.R. Raman, for the Appellant; M.C. Sen, for Respondents 1 to 7, for the Respondent

Final Decision : Dismissed

Judgement

K.G. Balakrishnan, J.—A rent control petition was filed seeking eviction of the tenants under Sections 11(2)(b) and 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short "the Act") on the ground of arrears of rent and sub-lease. The rent control Court held that there was arrears of rent payable by the tenants, but there was no sub-lease as alleged by the Petitioners. The Petitioners in the rent control petition filed an appeal before the appellate authority and in R.C.A. No. 117/93 the Appellate Authority held that there was sub-lease and eviction is to be ordered u/s 11(4)(i) of the Act and the petition for eviction was thus allowed by the Appellate Authority. This finding of the Appellate Authority is challenged in this Civil Revision Petition.

2. The petition schedule building was originally let out to the first Respondent-Calicut Co-operative Milk Supply Union Ltd., on a monthly rent of Rs. 116. The Petitioners alleged that the first Respondent in the rent control petition, namely, Calicut Co-operative Milk Supply Union Ltd., sub-leased the premises to the second Respondent-Malabar Regional Co-operative Milk Producers Union Ltd. and, therefore, the building should be surrendered. The first Respondent denied

the sub-lease. The second Respondent, namely, the Appellant herein also contended that there was no sub-lease. However, it is admitted that the second respondent was in possession of the building. The first Respondent-Calicut Co-operative Milk Supply Union Ltd., was taken over by the Government as per G.O. (Ms) No. 171/90/Agri. (Dairy) Department, dated 14th June 1990 and the entire assets and liabilities of the Calicut Co-operative Milk Supply Union Ltd., was taken over and merged with the second Respondent-Malabar Regional Co-operative Milk Producers Union Ltd. and after this merger the supply of milk is being carried on by the second Respondent and the petition schedule building is used for that purpose. The counsel for the Petitioner contends that there was no sub-lease. But we are unable to agree with this contention. Even according to the Petitioner, the first Respondent merged with the second Respondent-society and all assets and liabilities of the first Respondent having transferred to the second Respondent. Admittedly, the first Respondent was an independent society and it was a legal entity by itself and the first Respondent is no longer in existence. The second Respondent is a separate legal entity as it is a distinct society. Merely because the assets and liabilities of the first Respondent merged with the second Respondent it cannot be said that the second Respondent stepped into the shoes of the first Respondent.

3. The Government Order dated 14th June 1990 was passed on the basis of a resolution passed by the first Respondent-Society. It was resolved by the society to transfer all the assets and liabilities to the second Respondent-society and after this resolution the first Respondent-society ceased to exist and one Dairy Plant at Kozhikode and Chilling Plants at Nilambur, Meenangady and Manantody under the first Respondent-society were also ordered to be transferred to the second Respondent-society and as regards the petition schedule building it was the first Respondent as tenant and any agreement between the first Respondent and second Respondent is not binding on the landlords. The transfer and possession of the building to the second Respondent were without any knowledge of the landlords. This is a clear case where the first Respondent has transferred the possession of the building to the second Respondent without the consent of the landlords and, therefore, it comes squarely within the ambit of sub-lease.

4. Reference was made to the decision of the Supreme Court in General Radio and Appliances Co. Ltd. and Others Vs. M.A. Khader (Dead) by Lrs., . There is a case where the landlord sought eviction on the ground of unauthorised sub-letting and willful default in payment of rent. The building was let out to M/s General Radio and Appliances Co. (P) Ltd. Under a scheme of amalgamation ordered by the High Court of Bombay under the provisions of the Companies Act, 1956 M/s General Radio and Appliances Co. Ltd., was amalgamated with M/s National Ekco Radio and Engineering Co. Ltd., and as per the scheme all the property rights and powers of every description including all leases and tenancy rights etc., of M/s General Radio and Appliances Co. Ltd., were transferred to and vested with M/s National Ekco Radio and Engineering Co. Ltd., and the tenant contended that the judgment of High Court of Bombay was a Judgment "in Rem"

and it was binding on the landlord even though he was not a party to the proceedings. It was also contended that the tenancy right held by the transferor company blended with the second transferee company and therefore, there was no sublease. This plea was rejected by the High Court and it was approved by the Supreme Court and held that:

The transferee company which has been put in possession of the tenanted premises by the transferor company which was tenant of the premises cannot be deemed to be tenant under the Act on the mere plea that the tenancy right including the leasehold interest in the tenanted premises have come to be transferred and vested in the transferee company on the basis of the order of the High Court on sanctioning the scheme of amalgamation of Company made under Sections 391 and 394 of the Companies Act. Moreover when clause of the rent agreement executed by the transferor company expressly prohibited subletting of the tenanted premises without the express consent of the landlord, the transfer of the interest of the transferor company including possession in respect of the tenanted premises under the order of the High Court without obtaining the written permission or consent of the landlord could be said to have been transferred to the transferee company in contravention of the provisions of the Act as well as in contravention of the terms and conditions of the said rent agreement thereby making the transferee company liable to be evicted from the tenanted premises.

The facts and ratio decided in the said case would apply in equal force to the present case. Here the tenancy was in favour of the Calicut Co-operative Milk Supply Union Ltd. This Co-operative institution is no longer in existence and all the assets including the leasehold right vested with Malabar Regional Co-operative Milk Producers Union Ltd., and thus the latter became the tenant without the permission of the landlord. So this is a clear case of sub-lease and we find no reason to interfere with the order of eviction passed by the Appellate Authority. This C.R.P. is, accordingly, dismissed.