
(1999) 08 KL CK 0003

In the High Court Of Kerala

Case No : O.P. No. 3003 and W.A. 1214 of 1999

Marimuthu and Others

APPELLANT

Vs

D.G.P. and Others

RESPONDENT

Date of Decision : 02-08-1999

Acts Referred:

Kerala Municipalities Act, 1960 — Section 492(3)

Citation : (1999) 2 KLJ 288

Hon'ble Judges : S. Sankarasubban, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : M. Rajasekharan Nayar, for the Appellant; N. Nandakumara Menon, G.S. Reghunath, Hari Rao and P.K. Ravikrishnan (Govt. Pleader), for the Respondent

Final Decision : Allowed

Judgement

AR. Lakshmanan, Ag. C.J.

1. Heard Mr. M. Rajasekharan Nayar for the petitioner, Mr.N. Nandakumara Menon for the 2nd respondent, Mr.Basant Balaji for the 4th respondent and the Government Pleader for Respondents 1, 5 and 6. The Original Petition was filed by the petitioners who are in possession of building No.T.C.No. 37/28 on a monthly rent of Rs.1,000/- per month. The 4th respondent Sivasankaran Nair is the owner of the premises. The property was leased out to the first petitioner for the purpose of conducting textile business and it is so stated in the rent deed dated 1-7-1993 executed by the 4th respondent. According to the petitioners, the 4th respondent is trying to take forcible possession of the building without recourse to the law and many attempts have been made by the 4th respondent and his children to take possession of the room in which the business is being conducted, which resulted in the filing of a suit, O.S.No.282 of 1996, in which the court at first granted interim order restraining the 4th respondent and others from dispossessing the petitioners from the shop room. The suit was later decreed on 31-3-1998. It is alleged by the petitioners that inspite of the decree

and judgment, the 4th respondent, Under the influence of his daughter, who is employed in the police department, attempted to dispossess the petitioners with the help of the police from the shop room in question. As the threat of eviction by forcible means by the police became severe, petitioners filed O.P. 12584 of 1998, which was allowed by judgment dated 19-11-1998, which is marked as Ext.P1 in this Original Petition. It is stated that during the pendency of the above Original Petition there was no interim order for a few days and during those days the respondents cut off the electric connection to the petitioners' shop room. To restore the connection petitioners applied to the 5th respondent Tahsildar under Sec.13 of the Rent Control Act. They have also filed application before the Asst. Executive Engineer for reconnection of the electric supply. Since the harassment was on the increase, the petitioners petitioned to the Assistant Commissioner of Police, Fort, Thiruvananthapuram, but the police, it is alleged, instead of granting protection, is willfully disobeying Ext.P1 order. In such circumstances, the petitioners filed the present Original Petition to call for the records relating to Ext.P5 letter of the Director General of Police, Thiruvananthapuram to the first petitioner and quash the same, and for a mandamus to the authorities of the Corporation of Thiruvananthapuram to issue the licence for the conduct of the business in textiles in continuation of the previous licence. Other incidental reliefs are also sought for.

2. It is alleged that the authorities of the Corporation of Trivandrum are colluding with the owner of the building by denying licence to the petitioners for the purpose of conducting their business by insisting that they should be provided with the written consent of the landlord for issuance of licence. It is also submitted that the business in textiles is not one for which licence is necessary, but the petitioners applied for the licence by way of abundant caution.

3. This court, in C.M.P.No. 15828 of 1999, granted stay of Ext.P8 order passed by the Corporation of Thiruvananthapuram dated 17-3-1999 rejecting application for licence made by the petitioners. The petitioners have also filed C.M.P.No.22510 of 1999 for amendment to the Original Petition to challenge Ext.P8 order passed by the Corporation of Thiruvananthapuram, which has also been allowed by us. The Corporation of Thiruvananthapuram has filed a statement on 12th February, 1999 stating that the petitioners are conducting the business without the requisite licence under Sec.447 of the Kerala Municipality Act and that under the VI Schedule to the said Act, for selling, storing or manufacturing of readymade clothes, a licence provided under Sec.447 of the Act has to be taken. It is stated further that since the petitioners have not taken the licence the Corporation has closed down the said shop and no malafides can be attributed to the said action of the Corporation. It is also submitted that the petitioners can apply for licence and in case any application is received by the Corporation, the same will be considered in accordance With law. The Corporation has filed a further statement in C.M.P.No.6887 of 1999 in April, 1999 stating that the order passed by the Secretary to the Corporation refusing to grant licence is appealable to the Council of the Corporation and that the application for licence, Ext.P7, had been

disposed of by the Corporation strictly in accordance with law.

4. A counter affidavit was filed by the owner of the building, the 4th respondent in the Original Petition. It is submitted that he has already filed R.C.P.No.2 of 1999 on the ground of requirement of additional accommodation and that the petitioners have fabricated Ext.P6 and filed this Original Petition. It is further stated that the previous Original Petition and the suit were filed with mischievous intention and that they were forced to rent out the front room of their house as they were literally starving. Ext.R4(a) is the copy of the petition for eviction filed before the Rent Control Court, Thiruvananthapuram.

5. This court, in C.M.P.No.5132 of 1999 directed the Corporation to consider the application filed by the petitioner for licence evidenced by Ext.P7 and to grant the same. Till orders are passed, the petitioners have been permitted to conduct the business as they were doing before. The Corporation of Thiruvananthapuram was directed to open the shop room, if it had been locked up by them and to give possession to the petitioners. The landlord was also directed not to obstruct the above process.

6. Against the order in C.M.P.No.15828 of 1999 granting stay of Ext.P8, the Corporation of Thiruvananthapuram filed the above Writ Appeal stating that in compliance with the directions of this court in the judgment in W.A.No.576 of 1999 the Corporation disposed of Ext.P7 application for licence by Ext.P8 order, rejecting the application in view of the statutory provisions of law contained in Sec.492(3) of the Kerala Municipality Act, Mr. Nandakumara Menon, learned counsel for the Corporation submitted that Ext.P8 order has been passed by the Corporation strictly in accordance with Sec.492(3) of the Act. He would further submit that Ext.P8 is a statutory order passed by the Corporation, which is a speaking order and no valid grounds have been raised in the affidavit by the petitioners for obtaining stay of Ext.P8 order. Therefore, the Corporation prayed for setting aside the order in C.M.P.No.15828 of 1999 in O.P.No.3003 of 1999.

7. A counter affidavit was filed to C.M.P.No.2883 of 1999 by the petitioners in the Original Petition. It was stated in the said affidavit that copy of the order rejecting Ext.P7 application for licence was not served on them and that when that fact was brought to the notice this court, as per the direction of this court, counsel for the corporation handed over a copy of the order to counsel for the contesting respondents, viz. petitioners in the Original Petition and with that copy they challenged the said order. An Additional affidavit was filed by the petitioners in the Original Petition along with C.M.P.No.3107 of 1999 in W.A.No.1214 of 1999. Exts.R2(b) & R2(c) were also filed along with the said petition. Ext.R2(b) is the judgment of the 1st Addl. Munsiff, Thiruvananthapuram in O.S.No.282 of 1996 which was filed by the petitioners in the Original Petition for injunction. Ext.R2(c) is the petition filed by the landlord under Sec. 11(8) of the Rent Control Act for eviction. The amended prayer in the Original Petition is to quash Ext.P8 order passed by the Corporation of Thiruvananthapuram rejecting Ext.P7 application for licence. A reading of Ext.P8 would show that the Corporation

rejected the application for licence on the ground that the document executed by the owner of the property in favour of the first petitioner in the Original Petition for the conduct of textile business was only for five years from 1st July, 1993, which expired on 30th June 1998 and that during the said period she had not applied for a licence inspite of the fact that she had been conducting the business unauthorisedly. It is further stated that the application for licence can be treated only as a new application and the licence can be issued only if the owner of the property has no objection. Since the petitioner had not applied for licence during the currency of the agreement executed by the landlord in her favour and since the landlord has now object to the grant of the licence, the Corporation rejected the application for licence. According to Mr. Rajasekharan Nair, Ext.P8 order has not considered any of the points raised by the petitioner and that the same is based on extraneous and irrelevant considerations. In support of the above contention it is stated in the affidavit filed along with C.M.P.No.22510 of 1999 in O.P.No.3003 of 1999 as follows:

- (a) At the time of hearing, the 4th respondent's daughter was present and abused me and my counsel.
- (b) She was not called for hearing and was abusing me and my counsel in the presence of the Secretary of the 2nd respondent.
- (c) Inspite of my counsel pointing out this fact, the Secretary has not cared to restrain her.
- (d) The agreement Ext.P6 is for conduct of a textile shop and no further written permission is requested from the landlord under Sec.509. In fact 509 refers only to cases when there is no specific provisions in the Rent Deed or the permission to occupy is oral.
- (e) The contention that I have not applied for the licence during the currency of the tenancy is also wrong. I have applied several times but the 2nd respondent has returned it. Further till we are evicted from the shop we continued to be tenants.
- (f) After the hearing of the Case I was called for by the Secretary to remit the licence fees but when I reached the office the file at the instance of ruling parties MLA one of whom is presumed to Sri Kadakampilly Surendran and Ext.P8 order was passed with a ante-date.

In the above circumstances, Mr. Rajasekharan Nair submitted that the petitioners have no other option, but to challenge Ext.P8 order by making substantial amendment to the Original Petition.

8. The learned single Judge in C.M.P.No.5132 of 1999 in the above Original Petition, directed the Corporation of Thiruvananthapuram consider Ext.P7 application for licence and to grant the same. Aggrieved by the said order to the extent that the learned single Judge directed the Corporation to grant licence the Corporation preferred an appeal, viz. W.A.No.576 of 1999, which was disposed of

by judgment dated 4-3-1999 setting aside the direction to grant licence and directing the corporation to dispose of the application for licence, Ext.P7, within two weeks. It is stated by the Corporation that in compliance with the said direction the Corporation disposed of Ext.P7 application by Ext.P8 order, which, according to the Corporation, is strictly in accordance with Sec.492(3) of the Kerala Municipality Act. Shri. Nandakumara Menon, learned counsel appearing for the Corporation brought to our attention Sec.492 of the Kerala Municipality Act, which lays down general provisions regarding licences and permissions. It ? says that every licences and permission granted under the Act or any rule or bye-law made thereunder shall specify the period, if any, for which and the restrictions, limitations and conditions, subject to which the same is granted and shall be signed by the Secretary. Clause (2) of the said section says that such licence shall specify the person to whom, the premises in respect of which, and the trade or business or undertaking for which the licence is granted and for any change in the person, the premises or the business, trade, or undertaking, a fresh licence or permission shall be taken with or without payment of further fee as the Municipality may fix. Clause (3) of Sec.492 reads thus:

(3) Where any person intending to obtain a licence or permission for the first time and where the applicant is a person other than the owner of the premises in question, he shall, along with the application produce the written consent of the owner of the premises and the period of the licence shall not exceed the period, if any, specified in the consent.

Sri. Nandakumara Menon submitted that since the consent of the landlord was not produced as required in the above provision, the licence as applied for in Ext. P7 could not be granted, and that the agreement produced by the petitioners had expired on 30-6-1998 and there was nothing to show that the said agreement was renewed for a further period. The further submitted that the learned single Judge erred in law in permitting the writ petitioners to carry on business without the requisite licence under the statutes, when the petitioners have absolutely no right to carry on business without the requisite licence under the Municipality Act.

9. It is the case of the landlord that no rent deed was executed by him and that even assuming that a rent deed was executed by him, since he has filed a petition for eviction, the possession of the tenant after the expiry of the period mentioned in the Rent Deed is unlawful and the landlord cannot be compelled to give a letter of written consent. When the matter came up for hearing on an earlier occasion, we directed counsel for the landlord to ascertain from his client as to whether he is willing to give consent. When the case was taken up again on 28-7-1999, counsel submitted that the landlord is not willing to give his consent for the issuance of the licence, since the landlord has already filed a petition for eviction before the Rent Controller.

10. The question which now arises for consideration is whether the possession of the tenant, the petitioner in the Original Petition, is legal and whether consent of the landlord as required u/s 492(3) is necessary under the facts and

circumstances of the case on hand. The further question is whether the Corporation can be directed to consider the application filed by the petitioner without the consent of the landlord under the given circumstances.

11. It is not in dispute that the petitioners are in occupation of the premises in question. Ext. P6 rent deed has been filed in this case, which is written in a stamp paper, and was executed by Mr. Sivasankaran Nair in favour of Smt. Marimuthu. The landlord has agreed to transfer his possession over the shop room in question for a period of five years on a monthly rent of Rs. 1,000/- for the purpose of conducting textile business and as a token of his consent the petitioner in the Original petition paid a sum of Rs. 1,50,000/- and a cheque for Rs.50,000/- drawn on State Bank of Travancore, Kaithamukku Branch dated 10-1-1994. Thus, a sum of Rs.2 lakhs was paid as advance under the said agreement, which is now disputed by the landlord. The amount is to be repaid on termination of the tenancy, which shall not carry any interest. Under the said agreement the tenant Smt. Marimuthu was given the right to conduct textile business in the shop room in question. The agreement was executed in duplicate.

12. The very same landlord has filed an eviction petition before the Rent Controller, Thiruvananthapuram u/s 11 (8) of the Rent Control Act, to evict the first petitioner Smt. Marimuthu on the ground of requirement of additional accommodation. Copy of the said petition has been produced and marked as Ext. R1(c) in the Writ Appeal and as R4(a) in the Original Petition. Paragraph No.3 of the eviction petition is to the effect that the shop room in question forms the South Western room of T.C.No.37/28. More details of the building is also given in the said petition. It is further stated in paragraph 8 that during 1993 the landlord was suffering from extreme financial difficulties as he could not pursue his work as a driver and had to undergo an eye operation, because of which he was forced to let out the shop room to the counter petitioner, viz. the first petitioner in the Original Petition on a monthly rent of Rs. 1,000/- on the specific understanding that the tenant will vacate the building immediately after the expiry of five years. In paragraph 12 of the petition it is again stated that due to pressing financial circumstances, the landlord was forced to let out the front portion of the building. Again in paragraph 13 the landlord has stated that he happened to rent out the front portion of the building in the aforesaid circumstances. With reference to the suit filed by the tenant viz. O.S.No. 282 of 1996 on the file of the Munsiff's Court, Thiruvananthapuram, to restrain the landlord from forcibly evicting the tenant, it is submitted in paragraph 15 of the eviction petition that the landlord had no intention, to evict the tenant forcibly and therefore he did not contest the case, pursuant to which an exparte decree was passed. In paragraph 17 it is clearly stated that the landlord has never obstructed the tenant from conducting the business, but had only requested to vacate the building as the landlord was in extreme need of additional accommodation.

13. The statement made in the eviction petition filed by the landlord would clearly show that the first petitioner Marimuthu is in actual possession of the

premises in question and that she was permitted to conduct a textiles shop there for a period of five years and further that the premises in question was rented out to the first petitioner under the circumstances mentioned above. The above facts are not in dispute in these proceedings. Even after the expiry of the period of five years on 30-6-1998, the tenant is continuing in possession. Though it is contended by the 4th respondent landlord that the continuance of the tenant in the premises in question after the expiry of the term is unlawful, such a contention cannot be countenanced. The tenant is now continuing in possession of the premises and is now contesting the eviction petition filed by the landlord. In view of the facts stated above, the possession of the tenant cannot be treated as unlawful. She is a tenant holding over.

14. The Rent Control Act is a beneficial legislation. The object of the Act is to regulate the leasing of building and to control the rent of such buildings in the State of Kerala and also to prevent unreasonable eviction of tenants. As the Act is a self contained enactment, the rights available to the landlord under the general law are substantially curtailed by the provisions of the Act. It is an ameliorative legislation, which confers additional benefits to tenants to protect them from unreasonable eviction.

15. This apart, in O.S.282 of 1996 filed by the petitioners in the Original Petition against the 4th respondent landlord and three others for injunction restraining them from forcibly evicting the tenant from the premises in question, the landlord remained *exparte*. The 3rd plaintiff in the suit, who is the 3rd petitioner in the present Original Petition, was examined as P.W. 1 and Exts. A1 to A3 were marked. Ext.A1 was the rental agreement and A2 was rent receipts. The suit was decreed by granting a permanent prohibitory injunction restraining the defendants from causing any hindrance, annoyance, harm and injury detrimental to the textile business conducted by the petitioners in the present Original Petition in the premises in question. The said judgment and decree has become final and conclusive since the landlord did not file any appeal against the said decree. The above facts also would clearly show that the tenant is in actual physical and lawful possession of the premises as a statutory tenant.

16. A statutory tenant under the Kerala Buildings (Lease and Rent Control) Act can be evicted only as per the provisions of the said Act, on the grounds enumerated therein. Since the possession of the tenant is lawful, the landlord is not entitled to withhold his consent for the conduct of the business for which the premises were given on rent. In the instant case, we are satisfied that the landlord is purposefully and with *malafide* intention withholding consent inspite of the directions from this court. Under such circumstances, the Corporation also cannot insist upon production of written consent from the landlord for the purpose of issuance of licence for the conduct of business in the premises in question. For carrying on business in readymade dresses a licence issued under Sec.492 of the Kerala Municipality Act is necessary. As on date, the petitioner is not having any licence to carry on such business. A person in occupation can be

allowed to carry on a trade or business which requires a licence, only after obtaining such licence. In view of the facts and circumstances of the case as above, we direct the Corporation of Thiruvananthapuram to consider Ext.P7 application for licence without insisting upon the production of a written consent of the owner of the premises and pass appropriate orders after giving an opportunity to the petitioners or their representative or their advocate, within two weeks from today. The petitioners are at liberty to file any further documents, if need be, before the Corporation authorities. The Corporation shall pass a reasoned order after hearing the necessary parties and communicate the same to the petitioners within two weeks from today. We make it clear that till such time the petitioners shall not conduct the textile business in the premises in question. Ext.P8 order of the Corporation of Thiruvananthapuram is set aside and Ext.P7 is restored to file for fresh consideration as directed above.

The original petition is allowed as above. In view of the disposal of the original petition, nothing survives further for consideration in the appeal. The Writ Appeal is also disposed of accordingly.