

(1968) 10 KL CK 0026
In the High Court Of Kerala
Case No : OP 754/68 (CRP 164 of 1968)

Mariyakutty Umma

APPELLANT

Vs

Paloontakath Moosakutty Haji and another

RESPONDENT

Date of Decision : 10-10-1968

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 13

Citation : (1969) KLJ 424

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Advocate : V. Bhaskaran Nambiyar, C.R. Natarajan and M.K. Ananthakrishnan, for the Appellant; C.K. Sivasankara Panicker, D.N. Potti and P.G.P. Panicker for Respondent 1 and Government Pleader for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gopalan Nambiyar, J.—The petitioner is a land lord who let his building to the 1st Respondent. It is common ground that the building in question was used by the 1st Respondent for running a hotel. There is a well in the building, where the customers of the hotel used to wash themselves after food, and in and around which, garbage used to be deposited. It appears that the collection of garbage in, and around the well was found to be either objectionable and insanitary, or to amount to a nuisance. The Panchayat Health Inspector, the writ petitioner's husband, and the 1st Respondent conferred about the matter and it was agreed that a drain should be constructed at the 1st Respondent's cost over the adjacent property belonging to the Writ petitioner, to drain away the refuse water and garbage. This was done and the drain has been in existence now for over 10 years. The 1st Respondent complained that the writ petitioner cut off a portion of the above drainage and thereby obstructed the free flow through the drain. On this allegation, the 1st Respondent applied u/s 13 of the Kerala Buildings (Lease and Rent) Control Act 1965 to the Rent Controller for an order directing the landlord to restore the "amenity" to the tenant. In view of the amendment

effected by Act 7 of 1966, the application was dealt by the Accommodation Controller. He found that the drain in question was an "amenity" within the meaning of section 13 of the Act, and that the writ petitioner was responsible for having cut off a portion of the drain as alleged by the tenant. In that view, he directed the writ petitioner to restore the amenity within one week from the date of the order. Ex. P1 is a copy of the order of the Accommodation Controller, which is sought to be quashed in this writ petition. Two grounds were urged by the petitioner's counsel. First that the drainage in question was not an "amenity" within the meaning of section 13 of the Act; and second that the order of the Accommodation Controller offends the principles of natural justice. The Act itself nowhere defines the term "amenity". In the absence of a statutory definition, we have essentially to be guided by the dictionary meaning of the term. In the Concise Oxford Dictionary, one of the meanings given for "amenity" is "pleasantness (of places, persons etc.)" This shade of the meaning of the term is seen elaborated in the legal dictionaries and other authorities which were cited, and to which I shall refer. For instance, in the 3 Corpus Juris Secundum 1944 the word "amenity" has been explained as follows:-

Amenity: In real property law, such circumstances, in regard to situation, outlook, access to a water-course, or the like as enhance the pleasantness or desirability of an estate for purposes of residence, or contribute to the pleasure and enjoyment of the occupants rather than to their indispensable needs; restraining the owner from doing that with and on his own property which but for a grant or covenant, he might lawfully have done.

The above exposition emphasizes that the expression "amenity" in relation to immovable property signifies pleasant circumstances, or features or advantages.

2. In *Ullal Dinkar Rao v. M. Ratna Bai* (A.I.R. 1958 Mys 77) a bath-room and a cowshed were considered "amenities" in respect of a building, and the landlord whose wilful neglect led to their destruction was directed to restore the amenities. In *S. Subramaniam Vs. K.V. Rajaram and Others*, the facts were these. There were 21 rooms in a building occupied by 10 tenants, all of whom were members of the Brahmin community. The petitioner who applied to the Rent Controller was the tenant of room Nos. 8 and 9. Room No.1 was in the tenancy of one Subramoniam. Room No. 21 which was the subject-matter of the application was adjacent to room No.1 with an inter connecting door. This was also subsequently allotted to Subramoniam as additional accommodation. The tenant of Room Nos. 8 and 9 complained that the allotment of Room No. 21 of Subramoniam had deprived all the other tenants of the building, of an "amenity", and prayed for restoration of the same. It was found that room No. 21 had been used in common by all the tenants for a variety of purposes; Sometimes for segregation by the ladies during certain days in the month when they wished to be separate according to custom and social habits; sometimes as a "quarantine" room in times of epidemics; and at yet other times for purposes of confinement and delivery. It was also used for a short-time for keeping a dead body till

removal for funeral. On these facts, Anantanarayanan J. (as he then was) had no hesitation in holding that the room was an "amenity", within the scope of section 17(4) of the Madras Buildings (Lease and Rent) Control Act and in sustaining the order of the Rent Controller directing restoration of the "amenity". The decision of the Mysore High Court, and an earlier decision of the Madras High Court were referred to. In *Swaminatha Iyer v. Ramachandra Kurup* (1965 KLT 356) - (1965 K.L.J. 369) my learned brother Mathew J. found it difficult to accept the contention that a kitchen and well attached to a building are amenities, but the decision actually turned on the learned Judge's finding that the kitchen had been dismantled and the well had been filled up by the Municipality, and certainly not on account of the negligence or default of the landlord. On that finding it was held that the tenant was not entitled to relief u/s 13 of the Act for restoration of the amenity.

3. On the facts here, it seems to me that having regard to the purpose of the letting, namely to run the building as a hotel, to the purpose for which the drain was constructed and enjoyed for over 10 years, and the circumstances leading to its construction, that the drain in question must be regarded as an "amenity" within section 13 of the Act.

4. Whether in the absence of a statutory definition, the term should be understood widely, as suggested by Ananthanarayanan J. in the Madras case, or whether it should receive a restricted connotation so as not to unduly abridge fundamental rights, as the petitioner's counsel sought to contend in the light of *Kanaiyalal Chandulal Monim Vs. Indumati T. Potdar and Another*, , on the facts, I feel that the drain in question was an "amenity".

5. The Accommodation Controller found on the evidence of the petitioner and on the report of the Commissioner appointed by the Rent Controller while the matter was pending before him, that the drain had been interfered with by the Writ petitioner or by persons with her permission. The said finding is one of fact not open to interference in these proceedings. But counsel for the petitioner complained that the Accommodation Controller's finding offended the principles of natural justice as he made an inspection of the property without notice to the petitioner, and recorded the impressions of his visit without furnishing a copy or even the substance thereof to the petitioner. In Ex. P1 order, the Accommodation Controller has stated that he inspected the hotel building and its premises and found that the reason for accumulation of dirty water at the premises of the hotel was only due to the fact that the drainage was closed at one portion in the paramba belonging to the present petitioner. In the counter - affidavit filed by him in this writ petition, he admitted that the inspection was without notice to the petitioner and only to have a general view of the building and the premises in question. While I have no doubt that it was not only desirable but perhaps necessary that the Accommodation Controller should have given notice to the petitioner of his inspection and visit to the property, I am unable to hold on the facts that the failure to do so has resulted in any mis-carriage of justice which

calls for interference. The Accommodation Controller referred to the report of the Commissioner, and to the 1st Respondent's evidence that damage was caused to the drainage by the Writ petitioner's people. He referred also to the fact that although the writ petitioner denied having done anything, she had not adduced any evidence in support of her claim. It was in the light of these circumstances, that he recorded his conclusion on point (2) formulated by him, that the drain had been damaged or cut off by the landlord. I am not prepared to hold that the said finding is vitiated by the irregularity of a personal inspection and visit without notice to the petitioner. I find no ground for interference. I dismiss this writ petition without an order as to costs.