

(2015) 07 KL CK 0196
In the High Court Of Kerala
Case No : RC Rev. No. 235 of 2014

Nalakath Saidali Haji

APPELLANT

Vs

Kalluparamban Musthafa and Others

RESPONDENT

Date of Decision : 23-07-2015

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(2)(b), 11(3), 11(4)(i), 11(4)(ii), 18

Citation : (2015) 4 KHC 815 : (2015) 4 KLJ 1 : (2015) 4 KLT 302 : (2015) 2 RCR(Rent) 563

Hon'ble Judges : K. Surendra Mohan, J; Mary Joseph, J

Bench : Division Bench

Advocate : T. Krishnan Unni, Senior Advocate, Vinod Ravindranath, Saju S.A. and K.C. Kiran, for the Appellant; T. Sethumadhavan, Sr. Adv., Pushparajan Kodoth, K. Jayesh Mohankumar, Vandana Menon and N. Deepa, Advocates for the Respondent

Judgement

K. Surendra Mohan, J—This is a landlord's revision challenging concurrent orders of the authorities below dismissing a Rent Control Petition for eviction. The landlord had approached the Rent Control Court, Parappanangadi seeking an order of eviction against the respondents/tenants under Sections 11(2)(b), 11(3), 11(4)(i) and 11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (the "Act" for short). The Rent Control Petition RCP 1/2011 was contested by the respondents. After trial, the Rent Control Court dismissed the petition. Though the landlord had challenged the order of dismissal before the Rent Control Appellate Authority, Tirur in RCA 37/2012, the order of the Rent Control Court has been confirmed. The aggrieved landlord is the revision petitioner.

2. The landlord is the owner of a three storied building in Kottakkal Municipality. The tenanted premises are on the ground floor of the building and comprises of six rooms. The respondents have taken the shop rooms on rent on 27.3.2009. They have divided the shop rooms into cubicles that are sublet to different

persons who are conducting businesses in duty paid goods. The respondents are also conducting a cool bar. The monthly rent in respect of the premises is Rs. 25,000/-. According to the tenants an amount of Rs. 10 lakhs has been paid as advance.

3. The landlord sought eviction of the tenants alleging that he needed the premises for the purpose of starting a supermarket, along with his son and son-in-law. It was also alleged that there were arrears of rent, that the tenant had sublet the premises to third parties in violation of the terms of the lease deed and that the tenant had materially altered the tenanted premises causing a diminution in the value thereof. The tenants disputed the need of the landlord contending that, he was still employed abroad and was holding an employment visa. His son is otherwise occupied, owns other buildings and is not dependant on the landlord. According to the tenants, landlord was a very affluent person who owned other buildings and premises at Valancherry, Edayoor and Kozhikode. Therefore he had absolutely no need to start a supermarket, as alleged. The need that has been put forward is only a ruse for eviction.

4. The evidence in the case consists of Exts. A1 and A2 documents as well as the oral evidence of P.Ws1 and 2 on the side of the landlord. On the side of the tenants, Exts. B1 to B5 documents were marked and R.Ws1 and 2 were examined as witnesses. Exts. C1 and C2 commission report and sketch are marked as court exhibits. The Rent Control Court on an appreciation of the evidence on record found that the landlord had not succeeded in establishing any of the grounds alleged by him. Therefore the Rent Control Petition was dismissed. The Appellate Authority has, on a reappraisal of the evidence on record, confirmed the order of the Rent Control Court.

5. According to the Senior Counsel Shri. T. Krishnanunni though it is true that the landlord in the present case is an affluent person, the said fact cannot be a ground to find that the need put forward by him was not bonafide. The question as to whether the need put forward by the landlord was bonafide or not has not been considered by the Rent Control Court at all. The only question considered by the Rent Controller was regarding the applicability of the first proviso to Section 11(3). The Appellate Authority also has misdirected itself to reach conclusions that are unsustainable, it is contended. Particular reference is made to the observations of the Appellate Authority in paragraph 9 of its judgment wherein it is stated that, the only task of the Appellate Authority was to ascertain whether the order of the Rent Controller suffers from any infirmity warranting interference or not. The above statement according to the learned Senior Counsel is based on a misconceived notion of the nature of the appellate power that has been conferred on the authority under Section 18 of the Act. Therefore, the said authority has approached the entire issue in an erroneous manner, it is pointed out. Though it is true that the Appellate Authority has proceeded to consider the bonafides of the need put forward under Section 11(3) of the Act, the need has been negated by merely relying on certain stray statements made

by the landlord in his deposition as P.W.1. The learned Senior Counsel took considerable strain to point out that, the case pleaded by the tenants in their reply notice as well as in their counter statement was that the landlord had other buildings at Valancherry, Kozhikode and Edayoor, places far away from the location of the tenanted premises. They had no case that any vacant room was available in the building of which the tenanted premises is a part.

6. After the evidence of the landlord was recorded on 18.6.2012, I.A. 1169/2012 for the appointment of a commission was filed on 21.6.2012. The same was dismissed. The order dismissing the said application was the subject matter of challenge before this Court in OP(RC) 2064/2012. In the judgment dated 5.7.2012, this Court has held that the dismissal of the commission application was justified in view of the fact that, an earlier application to remit the commission report had been dismissed and had become final. However, the tenants were permitted to produce other documentary evidence in support of their contention. Accordingly, Exts. B1 to B5 documents were produced. Ext. B2 information obtained by the tenants under the Right to Information Act, 2005 shows that out of the 22 rooms available in the building of which the tenanted premises forms a part, 12 rooms have been given on rent. Therefore, it was found that 10 vacant rooms were available in the possession of the landlord, a fact that was not disclosed in the Rent Control Petition. According to the learned Senior Counsel, the reliance placed by the Appellate Authority on Ext. B2 was without any justification. The said document having been produced after the landlord had been examined, he had not got an opportunity to explain the actual position. It is the contention of the learned Senior Counsel that, the reference is to the rooms that are on the upper floor of the building. Those are usually given on rent as halls or rooms for the conduct of small functions like seminars, meetings etc. The tenant had no case in the counter statement that any room in the said building was vacant. It was for the said reason that no evidence in the said regard was adduced by the landlord. The counsel has also placed reliance on various decisions to support his contention that, the need put forward by a landlord has to be examined on the premise that, the need is prima facie bonafide. Viewed in the said perspective, it cannot be said that the need of the present landlord was not bonafide. For the above reasons, according to the learned Senior Counsel the authorities below have gone wrong in declining relief to the revision petitioner.

7. The contentions of the counsel for the revision petitioner are seriously opposed by the learned Senior Counsel Shri. T. Sethumadhavan who appears for the respondents. Our attention has been drawn to Ext. A1 notice initially issued on behalf of the landlord to point out that his case set out therein was that he had left his employment abroad, that he wanted to start a super market along with his son and son-in-law and that he had no other room suitable for the purpose in his possession. In Ext. A2 reply notice, the said statements were refuted by the tenant contending that the need was only a ruse for eviction and that he had other buildings in his possession. In the Rent Control Petition also

the landlord has reiterated the said position. However, when he was cross examined as P.W.1 he has deposed that he holds an employment visa. He has also admitted that his son-in-law was studying in Madras and that he was not concerned about him. It is his further case that he wants his sons to go abroad and work there. The above crucial admissions have been taken note of by the Appellate Authority to find that the need put forward was not bonafide. It is contended that, though the Rent Control Court had not considered the bonafide need that was put forward, at length, the Appellate Authority has considered the need and has found that the need was not bonafide. Though the need was put forward on behalf of the landlord's son and son-in-law also, they were not examined. Therefore, there is no evidence regarding their dependency also in the present case. The learned counsel has also placed reliance on various decisions on the point to support his contention that the need put forward was not genuine. In the present case, an assessment of the bonafides of the need having been undertaken by the Appellate Authority, in the proper perspective absolutely no grounds have been made out for interference with the judgment of the Appellate Authority. Therefore, it is contended that the revision is only to be dismissed.

8. Heard. A perusal of the order of the Rent Control Court shows that though the first point raised is whether the respondents are liable to be evicted under Section 11(3) of the Act, the Rent Controller has not undertaken any discussion on the question as to the bonafides of the need put forward by the landlord. There is also no discussion of the evidence that has been let in by the parties in support of their respective contentions. The first question that arises for consideration in a case where a landlord seeks eviction of a tenant on the ground of bonafide under Section 11(3) of the Act is whether the need that has been put forward is bonafide or not. It is only if the Rent Controller finds that the need is bonafide would the question as to whether the first proviso inhibits the power of the Rent Controller to grant an order of eviction, would arise. In the present case, the Rent Controller has proceeded to consider whether there were other buildings in the possession of the landlord and, entering a finding that the landlord has other buildings at Edayoor as well as in the same building as evident from Ext. B2 has proceeded to negative claim of the landlord. In the result, the Rent Controller has not entered any finding on the question as to the bonafides of the need put forward by the landlord.

9. The judgment of the Appellate Authority has commenced its discussion with the observation that:

"The only task before me is to ascertain whether the order of the Rent Controller suffers any infirmity warranting interference or not."

The above observation betrays an erroneous understanding of the jurisdiction that is conferred on the Appellate Authority by Section 18 of the Act, as enunciated by various decisions on the point. The Appellate Authority is expected to reappraise the evidence on record and is to function as the authority to

examine all the questions that arise in a case, both on fact as well as law and to decide whether the findings of the Rent Controller were sustainable or not. Sub-section (4) of Section 18 confers on the Appellate Authority all the powers of the Rent Control Court including the power to fix arrears of rent. As per Sub-section (5) of Section 18, the decision of the Appellate Authority is final and is subject only to the revisional jurisdiction of this Court under Section 20 of the Act.

10. It is true that, the Appellate Authority has gone on to consider the question of bonafides of the need put forward by the landlord in spite of its initial observation. However, the Appellate Authority has misconstrued the case of the landlord. The case put forward by the landlord is that, he wants to start a super market along with his son and son-in-law. He has no case in the Rent Control Petition that they are his dependants or that he was seeking an order of eviction for their purpose. However, the Appellate Authority has proceeded to find that in view of the statements made by the landlord as P.W.1, it has to be held that his son and son-in-law were dependant on him. The need put forward by the landlord has been negated for the reason that he has admitted in the box that he still holds an employment visa. We are not satisfied that, the consideration of the bonafide need by the Appellate Authority is either proper or legal.

11. It is true that, the landlord has admitted in the box that he holds an employment visa. However, the fact that a person is holding an employment visa does not justify a conclusion that he is actually working abroad. In order to justify such a conclusion, further evidence is necessary, which is not available in the present case. As already noticed above, the case of the landlord is that, he needs the premises to satisfy his need of starting a supermarket along with his son and son-in-law. Therefore, the need put forward is that of his own and not those of his son or son-in-law as found by the Appellate Authority. It is clear from the judgment of the Appellate Authority that the said authority had not properly understood or appreciated the case of the landlord.

12. The nature of the enquiry that is contemplated while considering the bonafides of a need under Section 11(3) of the Act was considered by the Hon'ble Supreme Court in Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, AIR 1999 SC 2507 : (1999) 5 JT 201 : (1999) 4 SCALE 334 : (1999) 6 SCC 222 : (1999) 3 SCR 1260 : (1999) 2 UJ 1261 : (1999) AIRSCW 2666 : (1999) 6 Supreme 330 . It has been held by the Apex Court that the expression "bonafide" means "good faith" or genuine. The word genuine means that the need should be natural and not spurious but, should be real and sincere. It is settled proposition of law that, a mere desire cannot satisfy the requirements of Section 11(3). Therefore, the need that is contemplated should be more than a mere desire. The need, it has been held, should be the outcome of an honest desire. The question as to whether a particular need is bonafide or not has to be judged by the court, placing itself in the position of the landlord. It should not be a pretext or a ruse for evicting the tenant. The court has in the above decision summed up the approach in the following words in paragraph 13 thereof:--

"Looked at from this angle, any setting of the facts and circumstances protruding the need of the landlord and its bonafides would be capable of successfully withstanding the test of objective determination by the Court. The Judge on facts should place himself in the arm chair of the landlord and then ask the question to himself whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide."

Therefore, it was necessary for the Judge on facts to have placed himself in the arm chair of the landlord and considered the question of bonafides of the need. The above view has been reiterated by the Apex Court in ADIL Jamshed Frenchman (D) by LRs. Vs. Sardar Dastur Schools Trust and Others, AIR 2005 SC 996 : (2005) 1 CTC 718 : (2005) 2 JT 332 : (2005) 141 PLR 227 : (2005) 2 SCC 476 : (2005) 2 UJ 781 where a Bench of three Judges has while considering a similar question, reiterated the position in the following words:--

"The question to be asked by a Judge of facts by placing himself in the place of the landlord is whether in the given facts proved by the material on record the need to occupy the premises can be said to be natural, real, sincere and honest. The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life."

It has been further laid down in the decision in Kizhakkayil Suhara and Others Vs. Manhantavida Aboobacker (D) by Lrs. and Another, (2001) 8 AD 432 : (2001) 8 JT 244 : (2001) 6 SCALE 610 : (2001) 8 SCC 19 that, not merely the need of the landlord but also the need of the dependants for whom eviction is sought, should be established to be bonafide. Since we have already found that the need in the present case was that of the landlord and not of his dependants, the said question does not arise in the present case.

13. It is necessary to point out here that, neither the Rent Control Court nor Appellate Authority has considered the need put forward by the landlord in the present case, in accordance with the principles laid down in the above decisions and in the manner in which, the same ought to have been considered. As already noticed by us above, both the authorities were influenced by the fact that the landlord herein was holding an employment visa. We would immediately observe that, there is absolutely no evidence available on record regarding the nature of the employment visa that he is holding or the terms subject to which the said visa has been issued to him. The conclusions of both the authorities below are based on the admission made by the landlord while he was cross examined as P.W.1. The admission at best, can justify only a conclusion that nothing precludes the landlord from going abroad for employment. As already noticed above his case in the Rent Control Petition is that, he has left his employment abroad and has come back to his native place. The fact that he is still holding an employment visa, in our opinion, does not militate against the said case pleaded by the landlord.

14. According to the learned Senior Counsel Shri. T. Sethumadhavan, the circumstances that cast a cloud of suspicion on the need put forward by the landlord are four in number. Firstly, though he had permitted the tenant to sublet the building, he has filed a petition alleging that there was objectionable subletting. Secondly, he had filed a criminal complaint alleging that the tenant had forged his signature. Thirdly, after having permitted the tenant to put up cubicles in the tenanted premises, he has taken up a ground in his Rent Control Petition that the tenant had materially altered the building without his consent. Fourthly though he has buildings at Valancherry, Edayoor and other places, his statement in the Rent Control Petition is that he has no other buildings.

15. The learned Senior Counsel appearing for the landlord tries to explain the above position by submitting that, though he had been permitted to put up cubicles and to permit others to occupy such cubicles for conducting businesses, the tenant had sublet the cubicles to various persons for long terms. It was in the said circumstances that the ground under Section 11(4)(i) of the Act had to be taken. The criminal case was filed for the reason that, the tenant had submitted an application to the electricity authorities forging the signature of the landlord and had obtained conversion of the three phase electric connection that had been provided for the building, into a single phase connection. According to the counsel, the complaint was not pursued thereafter. The contention of the counsel for the landlord is that, what is stated in the Rent Control Petition is that the landlord does not have any other building in his possession suitable for the purpose for which he had sought eviction. It was not necessary for him to have disclosed that he owned buildings at other places, far away from the tenanted premises.

16. Though the above contentions have been raised before us, it is necessary to notice that, the above aspects have not been considered by the authorities below. The said aspects were certainly necessary to have been adverted to and considered by the Rent Control Court as well as the Appellate Authority while considering the bonafides of the need that was put forward. The effect of Ext. B2 is another aspect that ought to have been considered. It is not in dispute that Ext. B2 was produced after the evidence in the case was over. Therefore the fact remains that the landlord did not get an opportunity to give any explanation regarding the data that is contained in the said document. The tenant has a further contention that, three shop rooms on the ground floor that fell vacant subsequent to the filing of the Rent Control Petition had been let out on rent by the landlord to strangers, justifying a conclusion that the need that has been put forward is not bonafide. The above being the state of affairs, we are of the view that the entire matter requires a proper consideration by the Rent Control Court, if necessary after providing an opportunity to both the parties to adduce any further evidence that they may consider necessary to let in. Therefore, it is necessary that the matter is remanded to the Rent Control Court for the said purpose.

17. A contention is put forward before us that the entire issue be considered by this Court in revision, on the basis of the evidence available on record so as to correct the errors committed by the Rent Controller as well as the Appellate Authority and to render a proper decision in the matter, instead of relegating the said task to the Rent Controller. However, we are afraid that, in the nature of the revisional jurisdiction exercised by us as interpreted and explained by a Constitutional Bench of the Supreme Court in *Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh*, (2014) AIRSCW 5018 : (2014) 9 SCALE 657 : (2014) 9 SCC 78 a re-appreciation of the evidence on record and substitution of the findings of the authorities below is not permissible in revision. Paragraph 45 of the said judgment in which R.M. Lodha, C.J. has concluded the issue reads as follows:--

"We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/ First Appellate Authority because on reappreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a Court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

(Emphasis supplied)

18. In view of the dictum of the Constitutional Bench and the dicta in the decisions referred to above, we find that both the order of the Rent Control Court as well as the Appellate Authority are unsustainable and liable to be set aside. We do so.

In the result:

"i) This RCR is allowed.

ii) The order of the Rent Control Court in RCP 1/2011 dated 11.9.2012 and the judgment of the Rent Control Appellate Authority, Tirur in RCA No: 37/2012 dated 23.7.2014 are set aside.

iii) The Rent Control Court, Parappanangadi is directed to consider RCP 1/2011 afresh, after permitting the parties to amend their pleadings and to let in further evidence, in accordance with law.

iv) The Rent Control Court shall give preference to the Rent Control Petition considering that the matter has been pending since 2011 and shall endeavour to finally dispose of the same expeditiously.

v) Both sides agree that, the landlord as well as the tenant shall enter appearance before the Rent Control Court, Parappanangadi on 17.8.2015."