

(1969) 01 KL CK 0001
In the High Court Of Kerala
Case No : O.P. No. 5225 of 1968

Narayanankutty Menon

APPELLANT

Vs

Korukutty and others

RESPONDENT

Date of Decision : 28-01-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 18, 18(2), 20, 23

Citation : (1969) KLJ 383

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

Bench : Single Bench

Advocate : M.C. Sen, for the Appellant; T.L. Viswanatha Iyer for Respondent 1 and Government Pleader for Respondents 2 and 4, for the Respondent

Judgement

V.P. Gopalan Nambiyar, J.—The 1st Respondent obtained an order for eviction of the petitioner from the Rent Control Court, Kozhikode. The petitioner filed C.M.A. No. 308 of 1968 against the said order to the Appellate Authority, (the Sub Judge, Kozhikode) and sought an order for stay of eviction pending disposal of the appeal. The Appellate Authority by Ex. P-2 order, noticed the representation made on behalf of the 1st Respondent that large amounts were due by way of arrears of rem, and, in the circumstances directed the petitioner to furnish property security for the disputed amount of Rs. 13,500/- C.R.P. No. 17 of 1968 preferred by the petitioner against the said order was dismissed by the District Judge. The learned Judge was inclined to accept the preliminary objection raised by the Respondent to the maintainability of the revision petition. On the merits he was also satisfied that the order impugned was "within the judicial discretion" of the appellate authority, and that in passing the same, the said authority was not guilty of any "illegality or perversity." Ext. P-4 is a copy of the District Judge's order and Ext. P-2 that of the appellate authority. These orders are impugned in this writ petition. The view of the District Judge that the revision petition preferred by the petitioner was not maintainable is not correct. Section 20 of the Kerala Buildings (Lease and Rent Control) Act 1965, confers on the

District Judge a power to call for and examine the records relating to "any order passed or proceedings taken" under the Act by the appellate authority, where the said authority is Subordinate Judge. This provision is wide enough to sustain the revision preferred by the petitioner and the view of the District Judge to the contrary is wrong. He relied on the decision in *The Central Bank of India Ltd v. Gokal Chand* (A.I.R. 1967 S.C. 779). That was concerned with a right of appeal against an interlocutory order passed by the Rent Control Court, and not with the power of revision.

2. On the merits then, is the order of the appellate authority without jurisdiction, or otherwise liable to interference by this Court in these proceedings? Section 18 of the Buildings (lease and Rent Control) Act provides:

18 Appeal--(i) (a) The Government may by general or special order notified in the Gazette, confer on such officers and authorities not below the rank of a Judge the powers of appellate authorities for the purpose of this Act in such areas or in such classes of casts as may be specified in the order.

(b) Any person aggrieved by an order passed by the Rent Control Court may, within thirty days from the date of such order, prefer an appeal in writing to the appellate authority having jurisdiction. In computing the thirty days aforesaid, the time taken to obtain a certified copy of the order appealed against shall be excluded.

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

(3) The Appellate authority shall send for the records of the case from the Rent Control Court and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as it thinks fit either directly or through the Rent Control Court. "shall decide the appeal.

Explanation--The appellate authority may, while confirming the order of eviction passed by the Rent Control Court, grant an extension of time to the tenant for putting the landlord in possession of the buildings.

(4) The appellate authority shall have the powers of the Rent Control Court including the fixing of arrears of rent.

(5) The decision of the appellate authority, and subject to such decision, an order of the Rent Control Court shall be final and shall not be liable to called in question in any Court of law, except as provided in S. 20.

That the appellate authority constituted by the above section was not a court, was admitted. Its power to grant stay is contained in clause 2 of section 18. That has no power to decree arrears of rent due to the landlord especially in cases where the same was disputed was again admitted (notwithstanding the somewhat misleading words of clause (4) which speaks of fixing of arrears of rent, whereas the only power of the Rent Control Court is to fix fair rent (see

section 5). To countenance an order of the type impugned in these proceedings, would be to allow the appellate authority to do indirectly what it cannot do directly, namely to secure to the landlord the disputed arrears of rent, in respect of which it had no jurisdiction or right to pass any order. This is further re-enforced by the provisions of section 23 of the Buildings (Lease and Rent Control) Act, by which the appellate authority is to have the powers vested in a Court under the Code of Civil Procedure, only in respect of matters specified in sub-clauses (a) to (k) of clause 1. The directing of security to be furnished before a stay is granted, as provided under Order 41, Rule 5 of the Civil Procedure Code, is not one of the powers expressly conferred upon the appellate authority. Even under the CPC the appellate court is not to grant a stay of execution, unless it is satisfied inter alia that security has been given by the applicant "for the due performance of such decree or order." The security ordered cannot comprehend anything outside the scope of the decree or order appealed against. Were the provisions of the CPC applicable to the Rent Control Court, this limitation would have been there on the power of an appellate authority to grant a stay on furnishing security. A fortiori should the position be so, when, as in this case, the relevant provisions of the CPC are not applicable at all. It seems to me therefore that the order of the Appellate Authority directing the petitioner to furnish security in respect of the disputed arrears of rent was beyond jurisdiction.

3. Counsel for the 1st respondent called in aid the recent decision of the Supreme Court in *income tax Officer v. Mohammed Kunhi* (1968 KLT 794). The same was concerned with the question whether the income tax appellate Tribunal had power under the income tax Act 1961, to stay recovery of the realisation of penalty during the pendency of an appeal before it. There was no express provision granting such power. But the Supreme Court observed. It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective (*Sutherland Statutory Construction*, Third Edition, Arts. 5401 and 5402). The powers which have been conferred by S. 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective.

It was further observed:

It could well be said that when S. 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceedings as will prevent the appeal if successful from being rendered nugatory.

Giving the matter my careful attention, it seems to me that the principle of the above decision is not helpful in the instant case. The Supreme Court spelt out a power of granting stay within the confines of the jurisdiction conferred on the Appellate Tribunal. Here, the confines of the jurisdiction of the Rent Control Court

and of the appellate authority are limited. They have no power to order arrears of rent against the tenant proceeded against, especially when the same is disputed. It appears to me therefore that whatever may be the incidental and ancillary powers possessed by the appellate authority to pass an effective order of stay u/s 18(2) of the Act, the same cannot trench upon matters beyond the purview of its jurisdiction. For this reason, I allow this Writ petition and quash Exts. P2 and P4 orders and direct the appellate authority to deal with the petitioner's application for stay, in accordance with law and pass appropriate orders. There will be no order as to costs.