
(1989) 12 KL CK 0053
In the High Court Of Kerala
Case No : O.P. NO. 1037 of 1987

Narayani and another

APPELLANT

Vs

District Judge and others

RESPONDENT

Date of Decision : 13-12-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 115

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11, 11(3), 11(4), 2(5), 20

Citation : (1991) 1 KLJ 311

Hon'ble Judges : V.S. Malimath, C.J;K.A Nayar, J

Bench : Division Bench

Advocate : K.P. Dandapani, for the Appellant; C.K. Aravindaksha Menon and T.B. Thankappan, for the Respondent

Final Decision : Allowed

Judgement

Malimath, C.J.—This writ petition under Article 226 of the Constitution is directed against the judgment of the District Judge, Ernakulam rendered in R.C.R.P. No. 69 of 1983 on the 31st of October, 1983. The relevant facts may briefly be stated as follows : The premises in question bears No. 13/41 of the Kothamangalam municipality. The first petitioner is the wife of the second petitioner and is the owner of the premises. An application for eviction was filed before the rent control court under sections 11(3) and 11(4) of the Kerala Buildings (Lease and Rent Control) Act, 1965. The description of the court as is seen from the judgment Ext. P1 reads: "In the Court of the Rent Controller, Muvattupuzha". The presiding officer of the rent control court describes himself at the end of the judgment as "Rent Controller", In our opinion this is not correct. The applications for eviction u/s 11 can be made to the Rent Control Court. The expression "rent control court" has been defined in section 2 (5) of the Act to mean the court constituted u/s 3 of the Act, Section 3 (1) which is relevant for the purpose reads:

The Government may, by notification in the gazette, appoint a person who is or

is qualified to be appointed, a Munsiff to be the Rent Control Court for such local areas as may be specified therein.

It is therefore clear that the court which has jurisdiction to entertain the applications u/s 11 is the rent control court constituted u/s 3 of the Act. The presiding officer of the rent control court cannot be described as a "Rent Controller". Though our attention was drawn to the use of the expression "Rent Controller" in rule 7 (4) of the Kerala Buildings (Lease and Rent Control) Rules 1979 prescribing a fee of Rs. 2/-for applications to the Rent Controller, it has to be pointed out that it is an obvious mistake committed by the rule making authority in describing the rent control court as "Rent Controller", quite contrary to the statutory provisions contained in sections 2 (5), 3 and the notification issued thereunder and section 11 of the Act. Though the petitioners sought eviction u/s 11(3) as also u/s 11(4) of the Act, they have confined their case before us to their claim for eviction falling u/s 11 (3) of the Act. Hence we shall advert to the facts necessary for dealing with the petition u/s 11 (3) of the Act.

2. The case of the petitioners is that they have three sons, Vijayan Mahasayan and Das. The first two are unemployed and the third is studying in the I.T.I. The case of the petitioners is that the premises in question is required for providing separate residence for their sons after their marriage and for conducting some trade. They have pleaded that the premises in question is also not adequate for their requirements and that therefore they propose to evict their other tenants also for the same purpose and put up some additional structures to make it a viable unit for the entire family. The 4th respondent - tenant resisted the application, inter alia, contending that the requirement of the petitioners is not bona fide, that he is carrying on a tea shop in the premises which is the main source of his livelihood and that he would be greatly prejudiced if an order of eviction is passed against him. The rent control court by its order Ext. P1 dated 28-6-79 granted eviction under sections 11 (3) and 11 (4) of the Act. The tenant having challenged the said decision before the appellate authority, the appeal was allowed by judgment Ext. P2 dated 13-3-1981 and the case was remanded to the rent control court with a direction to give an opportunity to both the parties of adducing evidence in support of their respective cases. After remand the rent control court by its judgment dated 30-9-1981, Ext. P3, allowed eviction on both the grounds. The tenant's appeal against the said decision was dismissed by the appellate authority by its judgment Ext. P4 dated 39-3-1983. The said decision having been challenged by tenant in revision, the District Court by its judgment Ext. P5 dated 31-10-1983 set aside the judgments of the two courts below and dismissed the eviction petition. The judgment of the District Court indicates that the petitioners confined their case before him for eviction only on the ground failing u/s 11(3) of the Act.

3. The order of the District Court made in revision came to be challenged by the petitioners in C.R.P. No. 300 of 1984, invoking section 115 of the Code of Civil Procedure. That case was referred to the Division Bench. It was ultimately

dismissed in view of the decision of the Supreme Court reported in *Aundal Ammal v. Sadasivan Pillai*, 1987 (1) KLT 53 wherein the Supreme Court has held that a revision petition u/s 115 C.P.C. is not maintainable. It is thereafter that the petitioners presented the present writ petition, O.P. No. 1037 of 1987, challenging the order dated 31-10-1983 made by the District Court in revision. The learned single Judge has referred this case to the Division Bench pointing out that the judgment of the learned single Judge of this Court reported in *L.R. Rangaier Sons (P) Ltd., v. Rukhiyabi*, 1982 K.L.T 658, is inconsistent with the view taken by the Division Bench of this Court in an earlier decision reported in 1976 K.L.T.I between *Kochappan Pillai v. Chettappan*.

4. The principal contention of Sri Dandapani, the learned counsel for the petitioners, is that the finding recorded by the learned District Judge that the petitioners have failed to establish that the premises in question is required bona fide for their personal use is vitiated by errors apparent on the face of the record. He submitted that the learned District Judge was not right in following the decision of a learned single Judge of this Court, ignoring the decision of the Division Bench in which a contrary view has been taken. He also submitted that the finding recorded by the learned District Judge in regard to bona fide requirement is perverse.

5. The learned District Judge has held that the petitioners were required to plead in their petition the precise nature of the use to which the premises would be put to after obtaining possession of the same on the ground that it is bona fide required for their personal use, invoking sub-section (3) of section 11 of the Act. The petitioners have pleaded in their objections that the premises is required for providing separate residence for their children after they are married and for conducting some trade by their two unemployed sons. The learned District Judge has found fault with the pleadings on the ground that the precise nature of the trade to be carried on has not been stated. In his view, it is not enough for the landlord to state that the premises is required for conducting some trade by his unemployed children and that he should have named the particular trade which they intend to carry on in the premises. Failure to give particulars about the trade to be carried on by their sons in the premises in question, it is held, to be a fatal defect. This view of the learned District Judge, no doubt, receives full support from the judgment of a learned single Judge of this Court in the decision reported in 1982 KLT 658. Our attention was drawn to an earlier Division Bench decision of this Court reported in 1976 KLT 1, wherein a contrary view has been expressed. In paragraph 3 of the said judgment it is held:

.....As to what is the business he proposes to conduct there and whether he is handicapped on account of physical deformity they are all matters for evidence and not for pleading.....

It is clear from this decision that the precise nature of the business proposed to be conducted is not required to be stated in the pleading and that is a matter for evidence. In 1982 KLT 658, a learned single Judge of this Court has held that a

failure to disclose the particulars relating to the business proposed to be set up is a fatal defect to a petition for eviction. Unfortunately, the binding decision of a Division Bench of this Court reported in 1976 KLT 1 was not placed before the learned single Judge who decided the case reported in 1982 KLT 658. There being a direct conflict between the two decisions, we have no hesitation in taking the view that what holds the field is the decision of the Division Bench reported in 1976 KLT 1, as a binding precedent. The decision of the learned single Judge reported in 1982 KLT 658 taking a contrary view cannot be regarded as good law. Even before the learned District Judge, the judgment of the Division Bench was not pressed into service. As the learned District Judge has recorded his findings ignoring the binding precedent of this Court reported in 1976 KLT 1, the finding recorded by the learned Judge, in regard to bona fide requirement stands vitiated.

6. The learned District Judge has given some more reasons in support of his findings that the petitioners have failed to establish their bona fide requirement. The learned District Judge says that as petitioners' two sons are not yet got married the requirement of the expanding family is too remote to be taken into consideration. This reasoning, in our opinion, is perverse. The case of the petitioners is that their two sons are of marriageable age about which there is no dispute and accommodation is required for accommodating the married couples. To house the newly married couples additional accommodation is required. The existing accommodation available for the family is highly inadequate is not disputed. The petitioners cannot be expected to get their sons married without there being proper accommodation and thereafter file petition for eviction before Courts and wait for years for securing possession of accommodation. We have therefore no hesitation in taking the view that the case of the petitioners in this behalf cannot be rejected on the ground of remoteness.

7. The petitioners have stated that in addition to the premises in respect of which they have sought eviction in these proceedings they have premises in the possession of other tenants as well. They have further asserted that even this accommodation may not be enough for them and that they intend to put up some additional structures to meet the requirements of their family. The learned District Judge does not disbelieve the case of the petitioners that additional accommodation in occupation of the other tenants as also accommodation to be got by further construction is required for the growing family. But the learned District Judge rejects the case of the petitioners in this behalf on the ground that the petitioners have not yet made any positive efforts to put up additional structures and that they have also not secured possession of other premises from the tenants. The petitioners have placed evidence by examining one of the tenants, PW4, that he is willing to vacate the premises. They have also produced Ext. A4, a letter from one of the tenants to the lawyer in response to the notice sent by the petitioners to vacate the premises, that he is willing to vacate the premises. It is thus clear that the petitioners have taken necessary steps in the direction of securing additional accommodation by requiring other tenants to

vacate their premises. The petitioners cannot obviously be asked to wait until the other tenants are evicted. If such is the right stand to be taken, it follows that the other tenants also may take the same stand that they should not be asked to vacate the premises until the landlord takes possession of the premises of the other tenants. The question of taking immediate steps for construction of additional structures does not arise as that is a step that has to be taken in the ordinary sequence of events after securing possession of the premises of the other tenants, which in the ordinary course is likely to take quite some time. We have therefore no hesitation in taking the view that the learned District Judge has rejected the case of the petitioners by assigning thoroughly untenable reasons. In these circumstances, the learned District Judge was not at all justified in interfering in revision with a very satisfactory finding of fact, recorded by the appellate authority that the petitioners have established by satisfactory evidence that the requirement for their personal occupation is bona fide.

8. The contesting respondent however submitted that the tenant is entitled to invoke the protection of the first and second proviso to sub-section (3) of section 11 of the Act. The first proviso says:

Provided that the Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village.....

The tenant has neither pleaded nor proved by satisfactory evidence that the landlord has another building of his own in his possession in the same place. Hence it is obvious that the tenant cannot claim any benefit under the first proviso to sub-section (3) of section 11 of the Act.

9. The second proviso says that the Rent Control Court shall give a direction to the tenant to put the landlord in possession, if such tenant is depending for his livelihood mainly on the income derived from any trade or business carried on in such building and there is no other suitable building available in the locality for such person to carry on such trade or business. The case of the tenant in this case is that he depends for his livelihood mainly on the income derived from the tea shop business which he has been carrying on in the premises in question. The petitioners have taken the stand that the tenant is not carrying on the tea shop business in the premises in question. It is their positive stand that the tenant is carrying on the tea shop business in another premises bearing No. 13/61. The Rent Control Court had appointed, two Commissioners to visit the place and make a report as to whether the tenant is actually carrying on his tea shop business in the premises in question. The Commissioners have visited the premises as also the premises bearing No. 13/61. They have made a report to the effect that the tenant is not carrying on the tea shop business in the premises in question. They have reported that he is carrying on such a business in another premises bearing No. 13/61. There is therefore clinching material against the tenant in this behalf. The Appellate Authority having accepted the evidence in this behalf and recorded a finding of fact against the tenant, it is

obvious that he cannot claim the benefit of the second proviso to section 11 (3) of the Act. We have therefore no hesitation in holding that the Appellate Authority having held that the requirement of the petitioners is bona fide, they are entitled to an order of eviction in their favour the tenant having failed to establish that he is entitled to resist eviction based on the first or second proviso to subsection (3) of section 11 of the Act. The learned District Judge was not at all justified in interfering with the decision of the Appellate Authority in exercise of the powers of revision conferred on him by section 20 of the Act. Though in a case of eviction against the tenant normally we grant reasonable time for eviction of the premises, this case, in our opinion, stands altogether on a different footing. The finding of fact, which we have affirmed is to the effect that the tenant is not carrying on his business of tea shop in the premises in question, but that he has been carrying on the business of tea shop in the premises bearing No. 13/61. Hence no hardship or inconvenience would be caused to him if time for eviction is not granted.

For the reasons stated above this O.P. is allowed, the judgment of the learned District Judge is set aside, and that of the Appellate Authority is restored. The parties shall bear their respective costs.