
(2003) 01 KL CK 0060
In the High Court Of Kerala
Case No : C.R.P. No. 2035 of 1994 (B)

Navu and Others

APPELLANT

Vs

Chinnayyan Chettiar and Others

RESPONDENT

Date of Decision : 20-01-2003

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(3)

Citation : (2003) 1 KLJ 642

Hon'ble Judges : S. Sankarasubban, J;A. Lekshmikutty, J

Bench : Division Bench

Advocate : V. Chitaambaresh, for the Appellant; S. Parameswaran, for the Respondent

Judgement

S. Sankarasubban, J.—This Civil Revision Petition is filed against the judgment in R.C.A. No. 8 of 1991 of the 1st Additional District Court, Palakkad. Tenants have come in revision. R.C.P. No. 60 of 1987 was filed by the landlord. According to the landlord, the petition schedule building was taken on rent by the original tenant for the purpose of his residence. The tenant was a dhobi. So, he was also doing business of laundry in the petition schedule building. The present petition for eviction was filed on the ground of bonafide need for some of the petitioners. According to the petitioner - landlord, his son has married and he wants the petition schedule building for occupation. The trial court dismissed the petition stating that the bonafide need is not proved. The Appellate Court held that there was bonafide need and also found that the petitioner is not entitled to the benefit of the proviso. There is another ground for eviction that the respondents - tenants were using the building in such a way to reduce its utility and value. The Rent Control Court, as already stated, found against the bonafide need. The second question was not considered by the Rent Control Court on the ground that the petition was not bonafide. It is against that the appeal was preferred before the Appellate Court. The Appellate Court also considered the question of bonafide need and it found that there was bonafide need. It further held that the tenants are not entitled to invoke the Second Proviso to Section 11(3) of the

Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the act"). It is against that the present revision is filed.

2. We heard learned counsel for the petitioners Sri. V. Chitambaresh and learned counsel for the respondents Sri. S. Parameswaran.

3. Learned counsel argued that before the filing of the eviction petition, the landlord had filed various petitions. But all these were dismissed. Hence, according to the counsel for the petitioners, the present petition is also bad. The need alleged is that the landlord's son has got married and he wants to live separately. The landlord also stated that the relationship between the in-laws was not cordial.

4. As already stated, the Rent Control Court found against the landlord. But the Appellate Court found in favour of the landlord. We perused the records. We are satisfied that the Appellate Authority was correct in holding that the need is bonafide. The mere fact that the previous petitions were rejected, does not mean that eviction can be denied. After going through the order of the Appellate Authority, we are satisfied that the Appellate Authority was correct in holding that the bonafide need urged by the landlord is correct. The question is whether the tenants are entitled to the benefit of the Proviso.

5. The Appellate Court relied on a decision of this Court reported in Parvathy Ammal v. Sankara Menon - 1982 KLT 62, wherein it was held that the tenant of a residential building will not be entitled to the protection of the Second Proviso to Section 11(3) of the Act even though living there he carries on a trade or business also. Learned counsel for the petitioner brought to our notice an unreported decision of this Court, wherein a Division Bench of this Court was of the view that this has to be reconsidered. But in that case, the question was not discussed. So far as the present case is concerned, it is admitted that the building was taken for the purpose of residence. But the tenants are doing laundry business also. According to us, the Second Proviso to Section 11(3) of the Act cannot be applied. If the argument of the tenants are to be accepted, the buildings will be taken for the purpose of residence and the tenant can be protected under the umbrella of the proviso to Section 11(3) of the Act. An Advocate may take building on a rent for his residence purpose and he may use one of the rooms in that building for the purpose of his profession. Can we say that the building was taken on rent for the purpose of business or profession. Likewise, a Doctor may use one of the rooms in the residential building for private practice. In such cases, we have to understand the purpose for which the building was taken. It may sometimes happen that the person may take building for commercial purposes. At the same time, he may reside there also. That stands on a different footing. So far as the present case is concerned, it is clear that the purpose for which the building was used was for residential purpose. Hence, we are of the view that the petitioners are not entitled to the benefit of the Second Proviso to Section 11(3) of the Act. In the above view of the matter, we uphold the order of the Rent Control Appellate Authority. We give three

months time to the tenants to vacate the premises on condition that the tenants file an undertaking in the form of an affidavit that they will hand over vacant possession of the building to the landlord on the expiry of the three months and also that they will pay the rent for the period for which they occupy the building. Such an undertaking shall be filed within three weeks from today. If such undertaking is not filed as stipulated above, then the landlord can take appropriate proceedings for the eviction of the tenants.

Civil Revision Petition is disposed of as above.