

(1984) 08 KL CK 0043
In the High Court Of Kerala
Case No : O.P. No. 6848 of 1982

Paraprath Puthiyapurayil Abdulla

APPELLANT

Vs

The Rent Controller, Taliparamba and Another

RESPONDENT

Date of Decision : 20-08-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 155, 226, 340
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(2)(b), 11(3), 23, 23(1), 23(1)(j)
Motor Vehicles Act, 1988 — Section 57

Citation : (1984) KLJ 665

Hon'ble Judges : U.L. Bhat, J

Bench : Single Bench

Advocate : P.A. Mohammed T, for the Appellant; T. Karunakaran Nambiar and Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, J.—Second respondent herein (landlord) on 27-5-1982 filed R.C.P. 10/1982 before the Rent Controller, Taliparamba for eviction of the petitioner herein (tenant) u/s 11(2) (b) and (3) of Kerala Buildings (Lease and Rent Control) Act, 1965 (for short "the Act") alleging that the tenant has kept rent in arrears and the landlord bona fide needs the building for the occupation of his dependant son who needs the same for starting a business. The tenant filed a counter-statement opposing the claim. On 28-6-1982, second respondent filed I.A. 539/1982 seeking to amend the R. C. petition by incorporating the fact that the business to be started by his son is business in foot-wear, umbrellas, suitcase, bag etc. The application was opposed but was allowed by the Rent Controller under Ext. P3 order. The legality of this order is now challenged, by the tenant under Article 226 of the Constitution of India. It is the contention of the petitioner that the Rent Controller has no jurisdiction or power to allow an amendment of the petition for eviction filed by the landlord. In this connection,

reliance is placed on Section 23 of the Act. Sub-section (1) of Section 23 states that subject to such conditions and limitations as may be prescribed, the Accommodation Controller, the Rent Control Court and the Appellate Authority shall have the powers which are vested in the Court under the CPC when trying a suit in respect of matters enumerated therein. Clause (j) mentions "power to amend any defect or error in orders or proceedings". Section 31 of the Act confers on the State Government power to make rules to carry on the purposes of the Act. The matters in regard to which rules would be framed, without prejudice to the generality of the power mentioned above, are set out in subsection (2). In 1979, rules were framed. The rules do not specifically confer any power on the Rent Controller to allow amendment of pleadings.

2. According to petitioner, the need set up by the landlord is not bona fide; if it is bona fide, the particular nature of the business intended to be commenced by his son would have been specified in the eviction petition but that had not been done. It is to fill up this lacuna by mentioning the specific nature of the business that the amendment application has been filed. It is further contended that assuming that eviction petition is a proceeding within the meaning of Sec. 23(1) (j) of the Act, this lacuna is not a defect or error in the proceedings which could be corrected by the Rent Controller.

3. There are several decisions of this Court dealing with the power of Land Tribunal under the provisions of Kerala Land Reforms Act, 1964. In Ammad Haji v. Kelu (1966 KLT 819), Kuttappan and others v. Cheltamme alias Thressia and another (1973 KLT 521) and Mariamma Mathai v. Mathulla Pothen (1974 KLT 32), learned single Judges of this Court have held that Land Tribunal has no power to set aside an ex parte order; in N. Sadanando Pai and Company v. Cannanore Municipal Council (1967 KLT 99), a learned single Judge of this Court has held that Land Tribunal has no power to restore an application dismissed by it for default; these decisions proceed on the basis that the Kerala Land Reforms Act and the rules framed thereunder do not confer any such power on the Tribunal which is a creature of the Statute and possesses only limited powers specifically conferred on it. However, a Full Bench of this Court in Kalyani Amma Bharghavi Amma v. Ouseph Varkey (1967 KLT 317) took the view that such a power could be found in Rule 99 of the Tenancy Rules framed under the Land Reforms Act. The Court also observed that if the Land Tribunal is to be denied the power to restore an application dismissed for default on the ground that such a power had not been specifically conferred on it, it must follow that the Tribunal has no power to dismiss an application for default at all since the power to dismiss an application for default has also not been specifically conferred on the Tribunal. However, the underlying logic behind this observation was not developed further as evidently it was not necessary for the disposal of the case. In Joseph v. Thomman Joseph (1982 KLT 271), a learned Single Judge of this Court took the view that even in the absence of confirmation of specific power to stay a proceeding before it, Land Tribunal has inherent power to order stay in appropriate cases.

4. There are several decisions of this Court under the provisions of the Act itself. In *Asher v. Paru* (1979 KLT 260) a learned single Judge of this Court took the view that the Rent Controller has no power to restore to his file an eviction petition dismissed for default since he is a Tribunal of limited jurisdiction and power and such a power has not been conferred on him under the Act or the Rules. A contrary view was taken by another learned single Judge of this Court in *Cheru Ouseph v. Kunjipathumma* (1981 KLT 495).

5 This Court had occasion to consider this matter arising under the same Act. In *Lalitha R. Prabhu v. Krishna alias Lakshmi* (1967) KLT 182), the question arose whether a ground for eviction which was not in existence on the date of filing of the eviction petition and which arose subsequently could be urged by way of amendment. Mathew, J. (as he then was) held that the eviction petition as framed was not defective, the ground which was sought to be added was a ground which arose subsequent to the filing of the petition, the grounds in the eviction petition, if made out, would have been sufficient for the landlord to recover possession of the building and therefore it cannot be said that the non-inclusion of a ground which was not available to the landlord at the time she filed the petition was a defect in the proceedings which could be corrected u/s 23 (1) (j)) of the Act. The learned Judge also observed that if the order of the Rent Controller allowing amendment of a Rent Control Petition is quashed, that will not result in any injustice to the landlord as it will be open to her to file a fresh petition incorporating the ground. This decision however did not reflect the concern of courts to avoid multiplicity of proceedings.

6. In *Ibrahim v. Joseph* (1975 KLT 167), certain grounds for eviction which could have been urged by the landlord at the time of filing of the eviction petition were omitted to be urged and the landlord sought to incorporate those grounds in the eviction petition by way of amendment. On behalf of the tenant, reliance was placed on the decision in *Lalitha R. Prabhu's* case. Viswanatha Iyer, J. distinguished the decision observing that that was a case where the grounds sought to be incorporated by way of amendment were not in existence on the date of the eviction petition and therefore it cannot be said that there was any defect or error in the eviction petition. Learned Judge took the view that the expression "proceeding" in Section 23(t) (j) of the Act includes a petition. According to the learned Judge, "The only other requirement to exercise the power of amendment is that there must be a defect or error in the petition. If there are other grounds in existence to claim eviction and by an omission they were not mentioned in the petition it can be said that an error was committed in not stating them in the petition for eviction. This is what happened to the landlord in this case. These grounds which he omitted to include in the petition were grounds that existed on the date of the application for eviction....."

Therefore, it cannot be said that the Rent Control Court has no power to amend the rent control petition if there is a defect or error in the proceeding. Here the grounds sought to be raised by amendment were grounds which existed before

the petition but omitted to be included in it. They were rightly allowed to be raised by way of amendment by the Rent Control Court.

7. The decision in *Giraja Vs. Anantha Bhaktha*, related to a case where the tenant sought to put forward a new ground by way of an additional counter. Actually, it amounted to an amendment of the counter filed originally. The Rent Controller refused to receive the additional counter and Sadasivan, J. held that there was no jurisdictional error. The learned Judge relied on the head note of the reported decision in *Lalitha R. Prabhu's* case which, as pointed out by Viswanatha Iyer, J. in the latter case, was not a correct head note. The learned Judge did not advert to the distinction sought to be drawn in *Lalitha R. Prabhu's* case between an amendment incorporating a ground available on the date of the eviction petition but omitted to be alleged and ground which arose after the eviction petition was filed. It is also significant to note that neither the Act nor the Rules specifically provide for the respondent in a petition before the Rent Controller filing a written statement or a counter. Order 8 C.P.C. has not been specifically made applicable by any of the provisions in Section 23(1) of the Act or of the Rules. Would this mean that the Rent Controller has no power to receive a written statement or counter at all? If no such inhibition can be inferred from the absence of mention of Order 8 C.P.C. in Section 23(1) of the Act one fails to see the logic behind inferring inhibition against allowing an additional counter or an amendment of a counter merely by reason of the absence of reference to any such power in Section 23(1) of the Act. This logic could certainly be developed from the observations of the Full Bench in *Kalyani Amma Bharghavi Amma v. Ouseph Varkey* (1967 KLT 317) referred to earlier in this judgment.

8. It is unnecessary for the purpose of this case to consider the distinction drawn between two types of amendments in *Lalitha R. Prabhu's* case. However, I would briefly advert to it since the matter has been referred to at the Bar-According to this decision, a ground not available to be mentioned in the eviction petition at the time of filing the same and which arises subsequently could not be incorporated by way of an amendment as it cannot be said that there is a defect or error in the proceeding. Such a ground could legitimately be urged by way of a new eviction petition. In other words, it amounts to saying that an event which transpired subsequent to the filing of the eviction petition is not something of which notice could be taken of. In this connection, it would be useful to refer to a decision of a Division Bench of this Court in *Mrs, P. I. George v. Additional Munsiff, Ernakulam and others* (1961 KLT 114). In that case tenant filed an eviction petition under the Travancore Cochin Buildings (Lease and Rent Control) Order, 1950. During the pendency of the eviction petition, this statute was replaced by the Kerala Buildings (Lease and Rent Control) Act, 1959. Section 11(3) of the latter Act had a proviso which stated that the Rent Control Court shall not pass an order of eviction if the landlord has another building in his possession in the same city or town or village, except where the Court is satisfied that for special reasons, in any particular case, it will be just and proper to do so. The landlord applied for the eviction petition being amended in order to take

advantage of this proviso and assigned two grounds for the tenant being directed to vacate. The amendment was allowed and ultimately eviction was ordered. Before this Court, the constitutional validity of the latter statute was challenged but upheld. It was argued before the Division Bench that the change in law and the new ground should not have been taken note of by the Rent Controller. Dealing with this contention, Ansari C. J., speaking for the Bench, observed as follows in paragraph 5;

It is not disputed that the appellate authorities must take note of the change in law in order to fairly, and finally decide, the rights of the parties before it and the tribunals trying original petitions cannot be treated as being exempt from such an obligation. Viewed from this angle, we feel the lower tribunal has not erred in permitting the pleadings to be amended, and deciding the dispute under the Act, whose benefits could be claimed by a fresh petition. The amendment has been ordered without causing prejudice to the tenant, and to avoid multiplicity to litigation. We are therefore satisfied that in these circumstances there has been no error of law or of jurisdiction..... (Emphasis supplied)

9. The Supreme Court in Dhani Devi Vs. Sant Bihari and Others, has advocated a more liberal approach. The question which arose for consideration in that case was whether on the death of an applicant for permit before the Regional Transport Authority, his successor can be allowed to prosecute the application. Section 57 of the Motor Vehicles Act does not deal with such a situation. The Supreme Court observed:

Section 57 does not deal with the situation, arising on the death, of an applicant nor has it prescribed any time for the making of an application for substitution of the successor or for the filing of objections against the grant of the permit to him. In the absence of any statute or statutory rule, the Regional Transport Authority may devise any reasonable procedure for, dealing with the situation. As stated in American Jurisprudence, 2nd, Vol. 2 (Administrative Law), Article 340 p. 155 where the state does not require any particular method of procedure to be followed by an administrative agency, the agency may adopt any reasonable method to carry out its functions".

10. It is true that courts have always taken the view that statutory tribunals which are creatures of statutes have only those powers conferred on them specifically by the statutes. But the role of such tribunals as decision-making bodies in the field of administration of justice is being recognised more and more. There is a line of thinking that in regard to such statutory tribunals, this approach to their power should be understood with caution and the application of these principles be limited to the exercise of substantive powers as distinguished from matters which are procedural. These tribunals which are playing a more and more important roles in the field of administration of justice are exercising judicial or quasi-judicial functions inherent in the State. Many a time, it is difficult to distinguish the powers exercised by tribunals from those exercised by courts. Functions of Tribunals are as vital in the life of the people as functions of courts.

It is therefore increasingly being recognized that such tribunals must be treated as possessing inherent power for the performance of thin duties and for the purpose of doing justice between the parties. In an elaborate, and if I may say so with respect an illuminating Order in *Cheru Quseph v. Kunjipathumma* (1981 KLT 495), M. P. Menon, J. referred to this development in law and observed as follows in paragraph 7 of the Order:

Two or three important things follow from what has been seen so far. First, the administration of justice, or at any rate, a substantial part of it is now patterned in a manner different from what it was some half a century ago. Second, the special tribunals which constitute the core of this new pattern are exercising judicial functions inherent in the sovereign state. Third, the powers exercised by them are in many cases indistinguishable in content from those exercised by courts of justice. Further, exercise of such powers by them is vital to the citizen despite the supervisory powers of superior courts over such exercise. If this be the true position, the reality which cannot be overlooked from the functional point of view, how are we to proceed in delimiting the powers of these bodies in matters of procedure, at least in areas not directly covered by statutes?

The learned Judge also referred to the observations of Chandrasekhara Menon, J. in *Dy. Conservator v. Sarojini* (1980 KLN 28) to the effect that inherent jurisdiction is there even in tribunals of limited jurisdiction. Learned Judge referred to certain other statutes and decisions of various courts in regard to power of those statutory tribunals and referred to the inherent powers saved by Section 151 of the Code of Civil Procedure. Learned Judge proceeded to observe that

A court is constituted for doing justice and must be deemed to possess all powers as may be necessary to do the right and undo wrongs in the course of administration of justice. Of course, the court must have jurisdiction over the proceedings before it can exercise the inherent power; but when that is granted, its power to advance the cause of justice by relying on unenumerated powers--on inherent or residuary power, as it is often called--cannot be denied to it. And therefore, where a tribunal exercises the same kind of power i.e., part of the judicial power of the state, as the Supreme Court has observed, why should it be denied similar inherent or residuary powers? If you do not like the name, call it by another; but so long as the tribunal is deciding legal disputes and determining the rights of citizens as any other court, you cannot, without endangering its efficiency, deny to it all powers which are necessary for the administration of justice.

At the end of the discussion, learned Judge held that the Rent Control Court has jurisdiction to restore to file an application dismissed for default and Section 23 is not designed to make the tribunal powerless in such matters, but only to supplement its powers with some of the well-known trappings of a court.

11. Whichever way one looks at it, there could be no doubt that the Rent

Controller has jurisdiction or power to allow amendment of pleadings in appropriate cases. The source of power could be traced to Section 23(1) (j) of the Act or the inherent or residuary powers of the Rent Controller as a court. If it be the former, where the existence of a defect or error is made out, the Rent Controller is competent to allow an amendment to cure the defect or error; if it is the latter, the Rent Controller has always the jurisdiction to allow an amendment as long as it is bona fide and necessary to do justice between the parties and as long as it does not lead to irreparable injury to the opposite party. Turning to the facts of the present case, in the eviction petition filed on 27-5-1982, the landlord stated that he needed the building for the occupation of his dependent son who intended to start a business. In about a month i.e., on 28-6-1982, he filed the application to amend the petition seeking to specify the nature of the business as business in foot-wear, umbrellas, suit-case, bag etc. According to learned counsel for the petitioner, this amendment was inspired by a decision of this Court in another case where this court made an adverse comment on the non-mention in the eviction petition of the nature and particulars of the business intended to be started by the landlord. It is argued, in this view, there is a lacuna in the eviction petition and the attempt is only to fill up the lacuna. The decision is evidently one in *Rangaier Sons (P) Ltd. v. Rukhiyabi* (1982 KLT 658). In that case, eviction was sought on the ground of bona fide requirement for starting a business without disclosing the particulars relating to the business proposed to be set up. This Court emphasised the importance of furnishing those particulars in the eviction petition itself in order to evaluate the bona fides of the landlord, and observed that pleadings in such a litigation which have grave consequence to either party should therefore be specified and clear. I am not able to agree that in this decision this Court intended to lay down a general or immutable proposition that the failure to specify the nature of the business in the petition is always a fatal flaw in the petition or that if it is a flaw it is an incurable one. A party who comes to court with a vague pleading naturally does so at the risk of his bona fides being challenged. It is therefore important that he must set out the full particulars in the eviction petition itself. If by inadvertence or otherwise he omits to mention a particular fact in the eviction petition, that cannot always be regarded as a fatal or incurable flaw. If it is a bona fide error or omission, certainly the Rent Controller has jurisdiction to permit him to amend the petition to supply the omission or cure the error. The Rent Controller has undoubted jurisdiction even u/s 23(1) (j) of the Act.

The Rent Controller has applied his mind to the controversies raised before him and permitted the amendment. He had undoubted jurisdiction and competency to do so. His decision is not based on irrelevant considerations; nor has he ignored any relevant considerations. I therefore do not find any ground to interfere. In the result, the original petition is dismissed, but in the circumstances without costs.