

(1972) 09 KL CK 0009
In the High Court Of Kerala
Case No : O.P. No. 675 of 1971

Ponnamparambath Thannipurath Cheru Choyi

APPELLANT

Vs

Sankaran and Others

RESPONDENT

Date of Decision : 01-09-1972

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11
Kerala Prevention of Eviction Act, 1966 — Section 8

Citation : AIR 1973 Ker 184

Hon'ble Judges : M.U. Issac, J

Bench : Single Bench

Advocate : T.L. Viswanatha Iyer and E.R. Venkiteswaran, for the Appellant;
Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.U. Isaac, J.—The petitioner is a landlord of a building which he leased on a monthly rent of Rs. 8.50 to the first respondent. The petitioner filed R. C. O. P. 2 of 1969 before the Rent Controller (Munsiff) Parappanangadi for eviction from the building under the Kerala Buildings (Lease and Rent Control) Act, 1965 on the ground that the first respondent defaulted payment of rent. Before the Rent Controller, the first respondent raised a contention that he was a kudikidappukaran as defined in the Kerala Land Reforms Act, 1963 in view of the fact that the cost of the building would be less than Rs. 750/-, though its rent exceeded Rs. 5/-. The Rent Controller issued a Commission to value the building, who submitted a report that its cost of construction would come to Rs. 624.98. The petitioner objected to the correctness of the report on several grounds. But the Rent Controller held that the report was prima facie evidence of the value of the building, which showed that the first respondent was a kudikidappukaran. Accordingly he passed an order Ext. P-1 dated 14-1-1971 u/s 8 of the Kerala Prevention of Eviction Act, 1966 directing the local Tahsildar to prepare the register of kudikidappukars in respect of the area in which the building is situate and file the same in his court within a time fixed in the order. This writ petition

has been filed to Quash the above order.

2. Counsel for the petitioner raised, two grounds. One is that the Rent Controller acted without jurisdiction in not considering the petitioner's objection that the value of the building was far in excess of Rs. 750/-, and that the first respondent was not, therefore, a kudikidappukaran. It is fairly clear from Section 8 of the Kerala Prevention of Eviction Act, 1966 as well as the relevant provisions in the Kerala Land Reforms Act, 1963 that the question whether a person is a kudikidappukaran or not is one to be decided by the authority created under the Land Reforms Act. Formerly, it was a local Tahsildar, but u/s 80 of the Land Reforms Act, that jurisdiction has been vested in the local authority concerned. All what the Court or Land Tribunal is empowered to decide u/s 8 of the Kerala Prevention of Eviction Act is whether the contention of the defendant or respondent, as the case may be that he is a kudikidappukaran has been prima facie established. This position is well settled by the Division Bench decision of this Court, in A. A. Job alias Kochukutty v. Kunjavira 1968 KLR 93 I am unable to accept the contention of the petitioner's counsel that a prima facie finding on the above issue can be arrived at only after taking evidence and considering the petitioner's objection to the Commissioner's report. A report filed by a Commissioner and in this case he happens to be an advocate--appointed by the Rent Controller is certainly evidence regarding the value of the building, and that evidence prima facie establishes that the first respondent is a kudikidappukaran. It is hardly necessary to say that this is only a provisional finding; and as already stated, the question whether the first respondent is a kudikidappukaran as claimed by him is a matter which the authority u/s 80 of the Land Reforms Act has to decide.

3. Counsel also advanced a subsidiary argument in this context that the Rent Controller is not a court, and therefore, he has no jurisdiction to act u/s 8 of the Kerala Prevention of Eviction Act, since that section deals only with a suit or proceeding before a court or Land Tribunal, and not with any action before any other tribunal. I am unable to accept the above argument. A Rent Controller is lightly or wrongly referred to in the Kerala Buildings (Lease and Rent Control) Act as a court. There is no reason to think that the word Court in the above section is not used by the Legislature in the same sense. I am clear in my mind that in order to carry out the obvious intention of the Legislature in enacting the above provision, the word court should be construed to include a Rent Controller's Court, as that authority is referred to in the Buildings (Lease and Rent Control) Act, even though a Rent Controller's Court may not be a civil Court according to the accepted meaning of that term.

4. The second contention raised by counsel for the petitioner is that under the second proviso to Section 11 of the Buildings (Lease and Rent Control) Act, the Rent Controller was bound to record a finding whether the first respondent's claim for a permanent tenancy is bona fide or not: that if he records a finding that it is bona fide, he is not entitled to proceed further with the application

before him, and the petitioner would then be entitled to file a suit against the first respondent to evict him from the building, and that the Rent Controller acted illegally in not recording a finding on the said question. The impugned order. Ext. P-1, if such a finding was necessary, satisfies the requirement of the above proviso, in so far as the Rent Controller has found prima facie that the first respondent is a kudikidappukaran. He has not proceeded further with the application, but he has stayed it and has referred the matter to the Tahsildar as required by Section 8 of the Prevention of Eviction Act. The petitioner could have, if so advised instituted a suit for eviction. I am not called upon to decide whether, in the light of Section 127 of the Kerala Land Reforms Act, such a suit would be maintainable.

5. For the reasons stated above, the petitioner's attack against the impugned order Ext. P-1 cannot be sustained. The petitioner is not entitled to any of the other reliefs sought for in this writ petition in view of the fact that the Kerala Land Reforms Act is included in the 9th Schedule of the Constitution. In the circumstances of the case there will be no order as to costs.