

(2015) 11 KL CK 0094
In the High Court Of Kerala
Case No : R.C. Rev. No. 246 of 2015

P.V. Kannan and Others

APPELLANT

Vs

Kurunthiriyakath Parakkat Ayishabi and Others

RESPONDENT

Date of Decision : 11-11-2015

Acts Referred:

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

Citation : (2015) 11 KL CK 0094

Hon'ble Judges : K. Surendra Mohan and S.P. Chaly, JJ.

Bench : Division Bench

Advocate : V.R. Kesava Kaimal, Advocate, for the Appellant; K. Mohanakannan, Advocate, for the Respondent

Judgement

K. Surendra Mohan, J.—This is a tenant's revision against concurrent orders of eviction granted by the Rent Control Court and Appellate Authority under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965. (the "Act" for short).

2. The brief facts necessary for the purpose of this case are the following. The respondents/landlords had filed RCP 243/2006 before the Rent Control Court, Kannur seeking an order of eviction against the petitioners herein on the ground of bonafide need. They wanted to start a restaurant-cum-lodging house. The petitioners are conducting an infertility clinic from the tenanted premises. They contested the need of the landlord. The Rent Control Court after considering the rival contentions in the light of the evidence adduced found that the landlords have succeeded in making out the ground under Section 11(3) of the Act. Accordingly an order of eviction was granted. The said order of eviction was the subject matter of challenge before the Rent Control Appellate Authority, Thalassery in RCA 83/2008. In appeal, the petitioners produced certain documents, copies of building tax assessment extracts, in support of their contention that the landlords were having other vacant rooms in their possession. The said petition was allowed and the matter was remanded to the

Rent Control Court for considering the question of applicability of the proviso to Section 11(3) of the Act alone. The bonafide need under Section 11(3) of the Act was found in favour of the landlords.

3. After remand, the respondents examined an additional witness as P.W.3 and marked Exts. A5 to A7 documents. The first petitioner was examined as RW1. Exts. C1 and C2 commission reports were marked as court exhibits.

4. On a consideration of the evidence, the Rent Control Court found that the landlord was entitled to succeed. Accordingly, an order of eviction was granted. The revision petitioners challenged the said order before the Rent Control Appellate Authority, Thalassery in RCA 116/2013. The Appellate Authority has confirmed the order of eviction granted by the Rent Control Court. The aggrieved tenants are in revision before us.

5. According to Adv. V.R.K. Kaimal who appears for the revision petitioners, though additional documents had been produced before the Appellate Authority in RCA 83/2008 neither the Rent Control Court nor the Appellate Authority have referred to the said documents. It is contended that the said documents clearly establish the contention of the tenants that the landlords were in possession of other vacant rooms. Therefore, according to the learned counsel this is a case in which the first proviso to Section 11(3) of the Act, squarely applies. In view of the above, the learned counsel seeks interference with the proceedings of the authorities below, in exercise of our power of revision.

6. Adv. K. Mohanakannan who has filed a caveat on behalf of the landlords contested the case put forward on behalf of the tenants. According to the learned counsel, though the petition for production of additional documents filed by the revision petitioners had been allowed by the Appellate Authority in RCA 83/2008, the said documents were neither produced before the Rent Control Court nor marked in a Rent Control Petition. When the tenant was examined as R.W.1, it was found upon cross examination that he was not even aware of the location of the rooms that are alleged to be vacant. Nor was he able to provide any details regarding the rooms that were so alleged to be vacant. All the above aspects have been considered by the Rent Control Court as well as the Appellate Authority while confirming the order of eviction. Therefore, according to the learned counsel there are absolutely no grounds for interference with the proceedings of the authorities below in this case.

7. Heard. As already noticed above, both the authorities below have found that the need put forth by the landlords is bonafide. In fact the bonafides of the need put forth had been found by the Rent Control Court even in the first instance. The said finding was confirmed by the Rent Control Court in RCA 83/2008. The remand was confined only to the extent of considering the applicability of the first proviso to Section 11(3) of the Act. Therefore, the question as to whether the need alleged is bonafide or not, does not survive any longer. With respect to the applicability of the first proviso to Section 11(3) of the Act, though the

petitioners had produced certain documents in RCA 83/2008 the same had not been taken back and produced before the Rent Control Court. No such documents have been marked in the Rent Control Petition also though the parties had adduced additional evidence. In view of the above, the documents that were allegedly produced in RCA 83/2008 cannot be of any assistance to the tenants in proving their case before us. At the same time we notice that when the tenant was examined as R.W.1 he was not in a position to give any details regarding the rooms that were alleged to be kept vacant by the landlords. He was also not able to provide any details regarding the location of the said shop rooms. The result therefore is that, there is absolutely no evidence on record to support the contention of the tenants that the landlords have other vacant rooms in their possession. Consequently, there is no evidence to enter a finding in favour of the tenants under the first proviso to Section 11(3) of the Act.

8. We find that the Rent Control Court as well the Appellate Authority have considered the evidence on record and supported their findings with proper reasons. We do not find any illegality, irregularity or impropriety in the said proceedings warranting interference therewith in exercise of our power of revision. Therefore, this revision is dismissed.

9. As a last submission, the counsel for the petitioners sought for the grant of some time to surrender vacant possession of the premises to the landlords. According to the learned counsel, the petitioners are conducting an infertility clinic. There are a number of patients who are being treated by them, whose treatment would, on an average continue for about an year. Therefore, they seek for the grant of a sufficiently long period of time to vacate the premises. The counsel for the landlords opposes the contentions of the counsel for the revision petitioners pointing out that there are other vacant rooms available in the locality for the petitioners to shift and that, the landlords are in urgent need of the premises for satisfying their need. The Rent Control Petition itself was filed in the year 2006 and the proceedings have been pending for about a decade.

10. Having considered the rival contentions, we are satisfied that it is necessary to grant some time to the tenants to surrender vacant possession of the premises but, subject to appropriate conditions.

In the result this Rent Control Revision is ordered as follows:

"i) The Rent Control Revision fails and is accordingly dismissed.

ii) The tenant is granted ten months" time from today to surrender vacant possession of the tenanted premises to the landlords on condition that one of the petitioners files an affidavit within two weeks before the Rent Control Court, Kannur or the Execution Court in RCP 243/2006, within a period of two weeks of the date of receipt of a copy of this order, unconditionally undertaking to surrender vacant possession of the premises to the landlords before the expiry of the period stipulated above. It shall be a further condition for the grant of such time that the tenant pays to the landlords the arrears of rent if any remaining

unpaid, up to date and continues to regularly pay the rent in respect of the premises without any delay or default before the fifth day of each succeeding month, until vacant possession is surrendered to the landlords. All proceedings for execution of the order of eviction granted by the authorities below shall be kept in abeyance, in terms of the directions hereinabove."