

(1991) 07 KL CK 0045
In the High Court Of Kerala
Case No : O.P. No. 4462 of 1987

R. Kothandarama Naidu

APPELLANT

Vs

Carona Sahu Co. Ltd., Bombay and Others

RESPONDENT

Date of Decision : 12-07-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 227

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

Citation : AIR 1992 Ker 95

Hon'ble Judges : K.A. Nayar, J

Bench : Single Bench

Advocate : C.P. Damodaran Nair, for the Appellant; C. Janardhana Kurup and Govt. Pleader, for the Respondent

Judgement

K.A. Nayar, J.—In this Original Petition, an agriculturist having two children, both married and living in the same house along with their father, is the petitioner/ landlord. He filed a petition u/s 11(3) of the Kerala Buildings (Lease and Rent Control) Act (for short "the Act") to evict the first respondent tenant which is a company having business all over India. The petition was filed on the ground that the building is bona fide required for his own occupation or for the occupation of his dependent children. The Rent Control Court held that the sons are dependent on the petitioner, that they have necessary means to start the business, that the business which the petitioner wanted to start in the building was stationery business and that the schedule building is the only shop building owned by the petitioner in Palghat Municipality. But, as the petitioner is an agriculturist and as the particulars of the amount proposed to be invested was not mentioned in the application, the Rent Control Court came to the conclusion that the bona fide was not established. In that view of the matter, the petition for eviction was dismissed. The landlord filed an appeal against the order of the Rent Control Court and the Appellate Authority came to the conclusion that the landlord established his case that the building is bona fide required for own occupation and that the order of the Rent Control Court to the effect that the landlord is an

agriculturist and, therefore, the building is not bona fide required for own use is erroneous. Hence, the appellate authority allowed the appeal and set aside the order of the Rent Control Court. A revision was filed by the tenant against the appellate order and the Revisional Court, after appreciating the evidence, came to the conclusion that the finding of the Rent Control Court is preferable to that of the appellate authority. He, therefore, allowed the revision and confirmed the order of the Rent Control Court. In this writ petition, the landlord challenges the orders of the Rent Control Court and the Revisional Authority, viz. Exts. P3 and P5.

2. Counsel on behalf of the petitioner submitted that the revisional authority exceeded his jurisdiction in interfering with the order of the final fact finding authority, viz. the appellate authority. He pointed out that u/s 20 of the Act, the revisional authority can interfere with the order of the appellate authority only if it is illegal or irregular or improper. In short, it is the legality, regularity and the propriety of the order of the appellate authority that are to be considered by the revisional authority, and not even the correctness of the decision as is under certain other jurisdictions and in other States like Tamil Nadu. He also submitted that there was no finding that the order of the appellate authority is illegal or irregular or improper. After appreciating the facts, the revisional authority only stated that the order of the Rent Control Court is more acceptable in this case than that of the appellate authority. Counsel submitted that the revisional authority has exceeded its jurisdiction and failed to exercise the jurisdiction vested in him properly. He also submitted that on the basis of the findings of fact made by the appellate authority, there is no justification at all for interfering with the order of the appellate authority.

3. Counsel for the 1st respondent submitted that when there are conflicting decisions, the revisional Court has to look into the evidence and come to its own conclusion. It is submitted that the petitioner in this case is an agriculturist and the particulars of his income or the agricultural property have not been disclosed in the petition. The amount proposed to be invested in the stationery business was also not disclosed. The contention is that the petitioner wanted eviction only to dispose of the building after eviction. Therefore, it is submitted that the revisional authority has a duty to appreciate the evidence and to come to a conclusion as to which of the views, of the Rent Control Court or of the appellate authority, that is correct. That is all, according to counsel for the 1st respondent, the revisional authority has done in this case. Even if the a revisional authority made a mistake, it is submitted, so long as it is a possible view, this Court will not interfere with the order of the revisional authority under Article 227 of the Constitution of India. It is submitted that the jurisdiction of the High Court is not appellate jurisdiction and that it is a very limited jurisdiction to see whether there is no evidence to support the reasoning of the revisional authority. If two views are possible and the revisional authority has taken one of the two views, the High Court should not interfere with the order of the revisional authority, is the contention of the first respondent.

4. u/s 11(3) of the Act, the landlord can apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building if he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him. There are certain clauses in this sub-section, laying down that the Rent Control Court shall not give any such direction if the landlord has any other building his own in his possession in the city, town or village. The Rent Control Court also will not give any direction to a tenant to put the landlord in possession, if such tenant is depending for his livelihood mainly on the income derived from the 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 the trade or business. There is a further embargo on the right of the landlord to the effect that after obtaining an order to be put in possession if the landlord transfers his right in respect of the building to another person, the transferee shall, not be entitled to be put in possession unless he proves that he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him.

5. In this case, petitioner landlord originally granted the lease to the tenant on 26-4-1971 on monthly rent of Rs. 230/-. The lease was for five years. Before the expiry of the term, the landlord issued a notice dated 5-11-1975 for eviction of the tenant. But, it was found that there was a renewal clause in the lease deed entitling the tenant to exercise option for a further period of five years, which the tenant exercised. Therefore, the lease was renewed for another five years on a rent of Rs. 300/- per month. That lease period expired on 26-4-1981. Thereafter, on 14-6-1982, the landlord issued a notice for eviction. In Ext. P3, the Rent Control Court found that neither the petitioner nor his sons are owning or was in possession of another building in Palghat District. The Court also found that the premises in question is the only building owned by the petitioner and that the building is suitable for carrying on the business of stationery and allied goods. It was also found that there is no difficulty for the petitioner to start the business in stationery if he got vacant possession of the premises. The financial ability of the petitioner to start the business is also found in favour of the petitioner. There is also no case that the tenant is depending for his livelihood mainly on the income derived from the trade or business conducted in the building in question. In the reply affidavit filed in this Court, it is also stated that about 50 feet away from the premises in question, there is a shopping complex by name "Anugraha Complex" where there are five rooms on the ground floor and six rooms on the upstairs remaining vacant. It is stated further that about 500 yards from the premises in question, there is another shopping complex by name "Balakrishna Complex" in which three rooms on the ground floor and six rooms on the upstairs are remaining (vacant). There is yet another shopping complex by name "Kandath Complex" about 600 yards away from the petition schedule building in which three rooms on the ground floor are stated to be remaining vacant. A consideration of these facts is not very material now for nobody has a case that the tenant is dependent upon the income derived from the trade or business

carried on in the schedule building for his livelihood. The question of availability of other buildings becomes relevant only if the tenant has a case that he is dependent for his livelihood mainly on the income derived from the trade or business carried on in the building in question, in which case, he has to prove that there is no suitable building available for such person to carry on his business or trade.

6. The Rent Control Court dismissed the petition only on the ground the claim of the petitioner u/s 11(3) is not bona fide, because, according to the Rent Control Court, the petitioner sent an earlier notice on 5-11-1975 for eviction, when there was a clause for exercising option for renewal of the lease, only with the motive of getting enhanced rent. Therefore, the notice dated 14-6-1982 after the expiry of the period of lease of five years, according to the Rent Control Court, is to be considered only as a device for getting eviction. The Rent Control Court also came to the conclusion that the two sons of the petitioner, who are living in the same house with the petitioner, are agriculturists by profession and that the petitioner has 30 paras of paddy field and his sons are possessed of 28 and 25 paras of paddy field respectively. Therefore, it is stated that they have independent means of livelihood and the building is not required for the trader to earn their livelihood. There was also a contention that the petitioner's sons are inexperienced in conducting trade and, therefore, the finding is that the petitioner's sons do not bona fide require the premises for starting a business and that the claim is a pretext for eviction.

7. It is an admitted case that the petitioner was a salesman in Spencer and Company and that one of his sons has no eye-sight. But, the Rent Control Court based his conclusion mainly on three grounds, viz. that the petitioner is an agriculturist and secondly, the particulars of the amount proposed to be invested has not been mentioned in the petition. There is also a case that the petitioner wanted eviction as early as on 5-11-1975 which was renewed on 14-6-1982. The fact that a notice for eviction was sent earlier, according to the Rent Control Court, will indicate that the landlord is a person who wants eviction badly.

8. The appellate authority considered the circumstances which led the Rent Control Court to come to the conclusion that the landlord does not require the building bona fide. The fact that an earlier notice had been sent in 1975 and the further fact that the petitioner is an agriculturist will not stand in the way of coming to the conclusion as to whether the present claim of the petitioner is bona fide or not. The circumstances of sending an earlier notice on 5-11-1975 at the time when there was a renewal clause enabling the tenant to continue in possession for another period of five years with effect from 26-4-1976 at an enhanced rent will not be ground to come to a conclusion that the notice issued on 14-6-1982 after the expiry of the period of the lease is with ulterior motives and that the building is not bona fide required by the petitioner. The appellate authority held that it may not be proper to characterise the petitioner as a

person who has no bona fides at all for having sent a notice earlier. The further fact that the petitioner and his sons are agriculturists is also not a relevant ground to come to the conclusion that the requirement is not bona fide. Therefore, the reasoning of the Rent Control Court that the claim made by the petitioner is not bona fide because the petitioner and his sons are farmers was held to be a wrong approach. Thereafter, after appreciating the evidence, the appellate authority came to the conclusion that no technical knowledge is required for running a stationery business and as the petitioner has no other building and in the light of the finding that the petitioner has the financial ability to run the business, found that the demand for eviction made by the petitioner is bona fide. The case of non-mentioning of the exact amount proposed to be invested was also not found as a vitiating circumstance. Hence, on an analysis of the evidence, the appellate Court found that the Rent Control has not properly appreciated the evidence and that the proper finding that can be arrived at on appreciating the evidence in the right perspective is that the petitioner has succeeded in proving that he bona fide requires the building for the purpose of providing accommodation for his son to start a business in stationery and allied goods and that, therefore, he is entitled to get an order for eviction u/s 11(3) of the Act. It is this decision that was challenged before the revisional authority, the District Judge.

9. u/s 20 of the Rent Control Act, the District Court, on an application of the aggrieved party, can call for and examine the records relating to any order passed or proceedings taken under the Act for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings, can pass such order in reference thereto as it thinks fit. The appellate authority has, as stated above, come to the conclusion that the bona fide requirement of the petitioner is established. The revisional authority, after holding that the petitioner has no other building in his possession for starting the business, that the tenant is not dependent on the income derived from the business conducted in the building for his livelihood, the tenant being a company having branches all over India, and that the two married sons of the petitioner who are living with the petitioner in the same house has no other building in Palghat Municipality, came to the conclusion that the findings of the Rent Control Court is more acceptable. He also found on an appreciation of the evidence that the claim for eviction for starting a business is not genuine or bona fide. According to him, it is only a pretext.

10. It is an admitted case that the petitioner and his sons are residing together along with their wives and also that the petitioner has agricultural land. But the sons of the petitioner are without any job or profession. They have an intention to start a business. The revisional authority held that the petitioner and his children have no experience. But the appellate authority had come to the conclusion that for running a stationery business much expertise is not required and that the petitioner himself was a salesman in the "Spencers". On a reading of the revisional order, it will be seen that the revisional authority exceeded his

jurisdiction and interfered with the finding of the appellant authority on a wrong approach.

10(a). The function of the revisional authority is to examine the legality, regularity and propriety of the order. In the decision in H.V. Mathai Vs. The Subordinate Judge, Kottayam and Others, on the question of the power of the revisional authority the Supreme Court observed (at p. 340 of AIR):

".....On the words of this section we cannot hold that a revision is limited to a mere question of jurisdiction. In our view the District Judge was empowered to consider whether on the evidence the finding of the Subordinate Judge was proper".

In Mandal Gopalan v. Rohini, 1977 KLT 386 this Court held that a District Judge exercising revisional jurisdiction u/s 20 of the Act will not be justified in interfering with the finding of fact recorded by the appellate, authority, merely because he is of the view that a different conclusion is possible. The District Judge can only examine the legality, regularity and propriety of the order. This Court also held that an interference at the hands of the revisional authority u/s 20 is permissible only when the conclusions arrived at by the appellate authority could be characterised as "so wholly unreasonable or perverse that no Tribunal could arrive at such a conclusion on the evidence on record." In Kedeersha v. Venkitaswamy, 1978 KLT 260. His Lordship Kochu Thommen, J. (as he then was) observed:

"5. It is settled law that the jurisdiction of the Revising Authority u/s 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965, is not unlimited; he does not sit in appeal; his jurisdiction to interfere with finding of fact is limited to cases where the impugned order is perverse or arbitrary in the sense that, on the basis of the evidence on record, no reasonable Tribunal would have come to such a decision; or, the decision was rendered on the basis of irrelevant consideration; or, that it was unsupported by any evidence whatever: Doraswami Chettiar v. Handammaden Kunhiraman, 1969 KLJ 227. In my view, the learned District Judge exceeded his jurisdiction in reappreciating the evidence and in reversing the finding of facts by the authorities below him".

Perversity and arbitrariness refer to the legal pedigree and if an order is perverse or arbitrary, it will affect the legality or propriety of the order and, therefore, the revisional authority can interfere if the order is perverse or arbitrary, because then the order cannot be considered as legal or proper. But in this case the Revisional Authority interfered with the finding of the appellate authority not because the finding is arbitrary or perverse and not because the order is illegal or irregular but only because he would prefer the reasoning of the Rent Control Court. The Revisional Court can disturb the finding of the appellate authority only if it is one which no reasonable person will arrive at applying the Wednesbury test. In Sri. Raja Lakshmi Dyeing Works and Others Vs. Rangaswamy Chettiar, the Supreme Court was considering a section in the Tamil Nadu Buildings (Lease

and Rent Control) Act where the power given to the revisional authority was wider in the sense that the correctness of the order also can be looked into. The Supreme Court observed (Para 3):

".....The language of Section 25 is indeed very wide. But we, must attach some significance to the circumstances that both the expressions "appeal" and "revision" are employed in the statute. Quite obviously, the expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression "appeal". In fact it has to be noticed that u/s 25 the High Court calls for and examines the record of the appellate authority in order to satisfy itself. The dominant idea conveyed by the incorporation of the words to satisfy "itself" u/s 25 appears to be that power conferred on the High Court u/s 25 is essentially a power of superintendence. Therefore, despite the wide language employed in Section 25 the High Court obviously should not interfere with findings of fact merely because it does not agree with the finding of the subordinate authority".

The other decisions relied on by counsel for the petitioner are Varkey v. Raman Pillai, 1981 KLT 541; Vimal R. Thampi v. Hashim, 1986 KLT 11; K.A. Abdul Salam v. The District Judge, (1991) 1 KLJ 541 wherein the same view relating to the jurisdiction and power of the revisional authority has been taken. Judicial decisions should be guided in part by consideration of social welfare and, social needs also have their part in shaping the law. Paddy cultivation in the State is not a profitable activity is a fact which cannot be gainsaid and the Government prevents paddy cultivators from utilising the land for cultivation of any commercial crops. Therefore, if the landlord, who has paddy cultivation, desires his son to do business as provision merchant and wants the building for that purpose, it cannot be characterised as not bona fide.

11. Counsel for the respondents submitted that all the cases referred to by counsel on behalf of the petitioner consider a situation where the finding of the authorities below were concurrent. He also referred to the decision of this Court reported in Rajee B. Ambadi v. Gopala Pillai, 1985 KLT 894 where M.P. Menon, J., considering the power u/s 20 of the Act observed:

"4. Before me, the main contention urged on behalf of the petitioner is that in exercise of power u/s 20, the District Court could not have reappraised the evidence and differed from the finding of fact recorded by the appellate authority. This again seems to be an abstract or theoretical approach. Section 20 of Act 2/65 empowers the District Court to examine not only the legality, but also the propriety of the order passed by the appellate authority; and for considering whether the decision under challenge is proper or not, the District Court must, in appropriate cases, be able to survey the entire material on record. It is true that such survey cannot be in the nature of a de novo appraisal as in the case of an appeal; all the same, an examination of all the facts and circumstances of a case may sometimes become necessary. The case on hand itself furnishes an example as to how and under what circumstances such an approach may become

necessary. According to the District Court, the following circumstances were highly relevant in deciding the question of the petitioner's bona fides:--

(i) During the period from 1976 to 1979 the petitioner had been asking for higher rates of rent, and she was not satisfied with the enhancement of Rs. 50/- given from August, 1976.

(ii) The mother had been expressing her desire to return to Irinjalakuda had been asking for increase in rent, indicating thereby that the idea of own occupation has not sprung entirely from the mother's desire to go back;

(iii) Even in January, 1979 the petitioner's case (as evidenced by Ext. B5) was that the flat belonged to one of her children who might require it for his/her occupation, though as matters stood then, the petitioner would be satisfied with an enhancement of Rs. 100/- per month in the rent; and

(iv) The petitioner was maintaining a car throughout and if she was really moving over to Ernakulam, the ground floor flat occupied by Madhavan Nair would have been more suitable since it had a car-shed attached to it.

The appellate authority had failed to draw the necessary inferences from the above circumstances admitted or established before it, and merely gone by the general proposition that a demand for enhanced rent could not as a rule affect the landlord's bona fides in all cases, it seems to me that its conclusion required review even under the limited jurisdiction u/s 20, as attempted by the District Court."

Counsel for the respondent submitted that in order to consider the legality, regularity or propriety of the order, the revisional authority will have to survey the entire material on record and come to the right conclusion and, therefore, such an appreciation of evidence cannot be considered as an exercise in excess of the jurisdiction of the revisional authority. He also referred to the decision in Sigma Agencies (P) Ltd. Vs. P.V. Thomas and Others, .

12. The question to be examined in this case by the revisional authority was whether the bona fide need of the landlord for (his) own occupation was established. The question might be a mixed question of fact and law. In Madan Lal Puri Vs. Sain Das Berry, the Supreme Court had to consider whether an appeal will lie to the High Court u/s 39 of the Delhi Rent Control Act. Section 39(2) of that Act says that no appeal shall lie unless the appeal involves some substantial question of law. The question fell to be considered by the High Court in that case was whether the claim made by the landlord was bona fide. A finding on such issue, the Supreme Court held, is not one of fact alone, but is finding on mixed question of law and fact, and that it was open to the High Court, when exercising its jurisdiction u/s 39(2) of the Act, to consider the correctness or otherwise of such a finding. Therefore, the correctness of the finding, it is submitted, can be gone into by the revisional authority. Counsel also submitted that even if the revisional authority exceeded his jurisdiction, the same cannot be

interfered with by this Court under Article 227 of the Constitution of India. He referred to the decision in Sigma Agencies (P) Ltd. Vs. P.V. Thomas and Others, wherein this Court held (para 14 of AIR):

"The jurisdiction exercised by this Court under Article 227 in quality, is not in the nature of a second first appeal. A rehearing on facts is not contemplated under Article 227. The High Court must guard itself against using the jurisdiction of Superintendence, as an appellate power. A finding cannot be interfered with, unless it is perverse and perverse it is, if it is a finding which no person reasonably instructed in law or facts would have come to. However erroneous a finding may be, it is not liable to be interfered with under Article 227."

He also referred to the decision in Prabhakaran v. Beevathu (1990) 1 KLT (SN) 57. His contention is that if two views are possible, the view favourable to the tenant will have to be preferred. Lastly, counsel for the respondent refers to the decision of the Supreme Court reported in P. ORR and Sons (P) Ltd. Vs. Associated Publishers (Madras) Limited [OVERRULED], . Para 18 of that decision is extracted:

"18. The requisite circumstances warranting repairs under Clause (a) or demolition under Clause (b) of Section 14(1) are matters for determination by the competent authority on the basis of relevant evidence and the applicable provisions of the law. In proceedings for judicial review, the Court does not sit in judgment over appreciation of evidence and findings of facts by the authority empowered by the statute. He is the final judge of facts, and so long as he has taken into account all relevant facts and has eschewed from his mind all irrelevant circumstances and has correctly understood and applied the law, including the rules of natural justice, his judgment is generally regarded as final and not open to challenge. On the other hand, where he has acted in excess of his jurisdiction or asked himself the wrong questions or misunderstood or misapplied the law or failed to consider the relevant circumstances or allowed himself to be persuaded by irrelevant circumstances, his conclusions are liable to be reversed as perverse by a court exercising judicial review. Any repository of power must act in accordance with the law and on the basis of relevant evidence. He must be guided by reason and justice and not by private opinion."

After considering the various aspects, the Supreme Court has laid down that the High Court, sitting under Article 227 of the Constitution of India, will not function as an appellate court and that if two views are possible, the findings of the final fact finding authority cannot be disturbed.

13. The question in this case is whether the bona fide need of the landlord is established. The Rent Control Court held that it is not established. But, the appellate authority came to the conclusion that it has been established and that the decision of the Rent Control Court is based on three grounds which are not tenable. These findings of the appellate authority has been reversed by the revisional Court. The revisional Court can exercise jurisdiction only if the finding

of the appellate authority is the one which no Court, reasonably instructed in law or facts, would have come to. In order to exercise jurisdiction, the revisional Court has to see whether the finding of the appellate authority was perverse that no reasonable authority can arrive at. If it was so, that will be an order illegal, improper and irregular. Only on those three grounds the revisional Court can interfere. In this case, there is no finding that the finding of the appellate authority is perverse, or illegal or improper, and on fact and law, I am convinced that the revisional authority acted illegally and in excess of jurisdiction in setting aside the findings of the appellate authority. Just because the landlord is an agriculturist, it cannot be said that his need for running a provision store in the building is not bona fide. So also, because the landlord earlier sent a notice which was not followed up with a petition for eviction for valid reason will not make the subsequent notice after five years any the less the bona fide. Law and facts can be found in favour of the poor as far as possible. Similarly, if there is any dispute, the law should be decided in favour of the tenant is also a well known principle. But Court cannot ignore the reality of the situation. There may be cases where the tenant, as is the case here, is a multi national company and the owner of the building an agriculturist carrying the dead weight of an uneconomic agricultural operation. In such cases, justice requires a fair appreciation of the reality of the situation and circumstances.

14. In view of the above, Exts. P3 and P5 orders are quashed and Ext. P4 order of the appellate authority is restored.

15. The Original Petition is disposed of as above.