
(2010) 10 KL CK 0059
In the High Court Of Kerala
Case No : R.C.R No. 100 of 2005

Ramankutty Nair, K. and Others

APPELLANT

Vs

Radhika G. Nair

RESPONDENT

Date of Decision : 22-10-2010

Acts Referred:

Evidence Act, 1872 — Section 114

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(2), 11(4), 20

Kerala Land Reforms Act, 1963 — Section 105, 125(3), 2(25)

Citation : (2011) 1 ILR (Ker) 105 : (2011) 1 KLJ 154

Hon'ble Judges : Pius C. Kuriakose, J; P.S. Gopinathan, J

Bench : Division Bench

Advocate : G.S. Reghunath, for the Appellant; R.S. Kalkura, M.S. Kalesh, Harish Gopinath, V. Vinay Menon and M. Ajay, for the Respondent

Final Decision : Allowed

Judgement

P.S. Gopinathan, J.—The tenants-Respondents in R.C.P. 105/86 on the file of the Rent Control Court, Thiruvananthapuram are before us with a revision u/s 20 of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as the "Act"). The Respondent herein instituted the above petition before the Rent Control Court seeking eviction u/s 11(2)(b) and 11(4) (iv) of the Act with an allegation that the petition schedule building was let out by the mother of the Respondent to late G. Krishna Pilla, the predecessor of the revision Petitioners on the strength of Ext. B-1 Rent Deed dt.25-5-74 for a monthly rent of Rs. 12 and that the rent of the petition schedule building was in arrears since 1983 and that despite the demand to clear off the arrears of rent, the revision Petitioners did not heed and that the petition schedule building is in such a condition that it needs re-construction and that the Respondent had got necessary plan and licence for re-construction and after re-construction, the Respondent bona fide needed for their residence.

2. The revision Petitioners objected the petition with a contention that long

before 1-4-1940 the predecessor of the revision Petitioners were in occupation of a small room and varanda, which were constructed by spending Rs. 300 and that on death of the original tenant the leasehold devolved upon the revision Petitioners and they had made additions to the leasehold and that they have no other land or homestead of thereon and they are entitled to "kudikidappu" right over the petition schedule building and that the revision Petitioners are not liable to be evicted under the Act and that the petition schedule building requires no reconstruction and there is no bona fides in contending that the petition schedule building requires re-construction. The execution of Ext. B-1 was denied and contended that it is a concocted document.

3. The Rent Controller, in pursuance of the claim of "kudikidappu", referred the matter to the Land Tribunal, Thiruvananthapuram as mandated by Section 125(3) of the Kerala Land Reforms Act. The Land Tribunal took up the matter as R.C.24/90. After due enquiry, the Land Tribunal, relying upon a report filed by the Revenue Inspector deputed u/s 105 of the Kerala Land Reforms Act that the rent and cost of the petition schedule building at the time of its construction are below five rupees and seven hundred and fifty rupees respectively, arrived at a finding that the revision Petitioners are entitled to "kudikidappu" right over the petition schedule building as they would come within the definition of "kudikidappukaran" defined u/s 2(25) of the Kerala Land Reforms Act. The Rent Controller accepted the finding of the Land Tribunal and dismissed the petition for eviction by order dated 2-12-1994. Aggrieved by the above order, after a long delay of 895 days the Respondent took up the matter in appeal as R.C.A.20/97. The Appellate Authority condoned the delay in filing appeal and on a reappraisal of the evidence arrived at a finding that Ext. B-1 rent deed was executed by the predecessor of the revision Petitioners whereby the agreed rate of rent was Rs. 12. In the light of Ext. B-1, the appellate authority concluded that, that rent of the building on the date of construction would be Rs. 6 and on a further finding that the revision Petitioners failed to establish that the cost of construction of the building was below Rs. 750, the appellate authority turned down the "kudikidappu" claim advanced by the revision Petitioners. Consequently, the case was remanded back to the Rent Controller to decide as to whether the Respondents are entitled to an order of eviction u/s 11(2)(b) and 11 (4)(iv) of the Act. Assailing the legality, correctness, regularity and propriety of the above judgment this revision petition was preferred.

4. The question now before us is whether the revision Petitioners would come within the definition of "kudikidappukaran" defined under Sub-Section 25 of Section 2 of the Kerala Land Reforms Act or not ?

5. We heard the learned Counsel appearing on either side and perused the judgment impugned as well as the evidence on record and the order of the Land Tribunal. The Land Tribunal deputed Revenue Inspector u/s 105 of the Land Reforms Act to report the cost of construction of the building and the probable rent that the building might fetch at the time of construction. In Ext. C-1 Report

the Revenue Inspector had reported that the cost of construction was less than Rs. 600 and that the probable rent that the building might fetch at the time of construction was Rs. 3. If Ext. C-1 Report is acceptable, the petition schedule building would be a hut under Explanation II to Section 2(25) and revision Petitioners would come within the definition of "kudikidappukaran" as defined u/s 2(25) of the Kerala Land Reforms Act and is not liable to be evicted under the Act. The Appellate Authority rejected this report for the reason that there is no proof to come to a conclusion that the Revenue Inspector Inspected the properties with notice to the Respondents. We notice from the records that the Revenue Inspector was deputed by the Land Tribunal with due notice to either side. Of course, there is no material on record to come to a conclusion that before the inspection, the Revenue Inspector had served notice to the Respondents. It is pertinent to note that assailing the report of the Revenue Inspector the Respondents had filed objections but they failed to substantiate the objections. In a case where the inspection of the disputed building was made by the Revenue Inspector who is an authorised officer, in pursuance of the order of the Tribunal with due notice to either party the report of the Revenue Inspector cannot be so thrown away unless the Respondent who assails the report succeeds to establish the objections raised by him. It is also pertinent to note that the Respondent had not only failed to establish the objection raised but also not adduced any evidence to show that any of the relevant facts reported by the Revenue Inspector is wrong or that due to the failure of the Revenue Inspector to serve notice the Respondent was anyway prejudiced.

6. The Appellate Authority ought have noticed that Kerala Land Reforms Act is a beneficial legislation and it is almost a self contained enactment wherein authorities to determine the disputes and procedures are well prescribed to find out the beneficiaries and to issue necessary orders. A reading of Section 105 of the Kerala Land Reforms Act would show that Revenue Inspector is an authorised officer to furnish information regarding the claim under the Land Reforms Act. It is taking note of that aspect the Land Tribunal deputed the Revenue Inspector to inspect the petition schedule building and to file a report regarding the entitlement of the "kudikidappu" claim and it is in exercise of the powers vested on the Revenue Inspector u/s 105 of the Land Reforms Act, Ext. C-1 Report was filed. In the normal course, unless the contrary is proved it is to be presumed that officia acts have been regularly performed in view of Section 114(e) of the Indian Evidence Act. If Section 114(e) of the Evidence Act is applied, it is to be presumed that the Revenue Inspector inspected the petition schedule building with due notice to the parties. In the event, the Respondents had got a case that the Revenue Inspector had not given notice before inspection, it is for the Respondents to prove the same. In the event the Respondents could not prove the same, it has to be presumed in view of Section 114(e) of the Indian Evidence Act that inspection was done with due notice. In this view of the matter, the Appellate Authority went wrong in rejecting the report of the authorised officer. Even if it is assumed that the Revenue Inspector did not give any notice before

inspection, that is not at all a reason to reject the report filed by the Revenue Inspector. The core issue is as to whether the report is correct or whether it is acceptable or not. So, before rejecting Ext. C-1 Report given by the Revenue Inspector the Appellate Authority should have looked into as to whether the report is otherwise erroneous or not. The judgment of the Appellate Authority would show that the Appellate Authority had not considered that aspect, but the report was found not acceptable solely for the reason that there is no evidence on record to conclude that the Revenue Inspector had issued notice before inspection. The approach of the Appellate Authority is purely mechanical and absolutely wrong. Therefore, the reasons stated by the Appellate Authority in rejecting Ext. C-1 Report of the Revenue Inspector is not legally sustainable.

7. On the other hand, we notice that while the matter was pending before the Rent Control Court, two commissions were deputed with notice to either party. Ext.-P-1 is the First Report and Ext. C-2 is the Second Report. A reading of Ext. P-1 would show that the petition schedule building bearing T.C. No. 25/837 is having five small rooms. The walls were constructed with mud and having a height of only six feet. The roof was with rafters made of coconut trees and bamboos; and thatched with palm leaves. At many portions, the foundation as well as walls were damaged. The rafters were badly decayed and the building was aged about 50 years. The door frames of the rooms were having a dimension of 1.5 x 4 ft. Only 2 of the doors have shutters. These descriptions would show that it is nothing but a hut. In Ext. C-2, the Commissioner had reported that the height of wall is 8 feet. Ext. C-2 would mention about nine rooms and referring to the dimensions of separate rooms, the Commissioner had determined the cost of construction at Rs. 1, 080. The probable rent that it might fetch at that time was not reported. If the description of the building given in Exts. C-1 and P-1 are looked into Ext. C-2 is contradictory. It is pertinent to note that the second Commissioner was deputed without setting aside Ext. P-1 Report. The procedure adopted by the Rent Controller in deputing a second Commissioner without setting aside the report of the First Commissioner is wrong. As a result, there are two commission reports. If Exts. P-1 and C-1 are given reliance the Second Commissioner might have valued yet another building. However, by the evidence of the Commissioner as P.W. 2, we notice that P.W. 2 could not give a satisfactory reply as to on the basis of what material the Commissioner had calculated the cost of construction including labour charges as well as the value of the materials. If Ext. P-1 is given reliance no bricks were used for the construction of the petition schedule building. But the Second Commissioner had calculated value of the bricks. It appears that the Commissioner had reported that the bricks were used for the construction of the building without verifying whether the walls, which were whitewashed, in fact contain any bricks. Going by the cost of the materials reported in Ext. C-2 Commission Report, prima facie, we notice that the value of the bricks, sand, cement, coconut rafters etc. calculated is at very high rate. In Ext. C-2 also it is reported that the building was aged more than 50 years. For one labour, the

Commissioner had calculated wages at Rs. 30. For a carpenter, the wage was calculated at Rs. 20. These figures are highly exaggerated. Seventy years back, the wage rate was only in single digit. The Commission when examined had deposed that to ascertain the wages of Carpenters and Masons she had discussed with aged Carpenters and Masons. But, she could not disclose as to whom did she discuss with. So, the wage rates noted in Ext. C-2 to determine the value of the building is not acceptable. If the Commissioner had cared to go through PWD Manual there would have been sufficient data to find out the rate of wages and the rate of materials therein. For best reasons known to the Commissioner, it was not resorted to. In case, no such datas are available, the proper procedure that the Commission should have adopted is to assess the value of the building as on the date of inspection and then to deduct the depreciation. The Commissioner had not chosen to adopt that procedure also for the best reason known to her. Either way, we find that the valuation adopted by the Commissioner in Ext. C-2 is not legally acceptable.

8. If it is assumed that the valuation made by the Commissioner is correct, even then we find that the Respondent cannot succeed because in Exts. P-1 and C-1 it is reported that there were only 5 rooms for the petition schedule building. Commissioner in Ext. C-2 had noted 9 rooms and the construction cost determined at Rs. 1,080 is the cost of the building containing 9 rooms. In Ext. C-2 Report it is stated that the revision Petitioners had stated to the Commissioner that 4 rooms were constructed by them. Though the Commissioner had separately mentioned about those rooms, the value of those 4 rooms were not separately calculated. The Respondent has no case that those four rooms were constructed by them subsequent to the lease transaction. So, it is to be presumed that the four rooms are additions made by the revision Petitioners. Such additions are not liable to be counted to determine the cost of the building at the time of construction. On going through the report of the Commissioner, we find that in case the construction cost of the 4 rooms is deducted out of the cost of the entire building assessed by the Commissioner, the construction cost of the rented house as on the date of construction would be much lesser than Rs. 750. On carefully going through the definition of the "kudikidappukaran" u/s 2(25) of the Land Reforms Act, we find that to calculate the value of the building in respect of which there is a "kudikidappu" claim, the value of the additional construction made by the "kudikidappukaran" is to be excluded. A reading of Section 2(25) of the Kerala Land Reforms Act is appropriate for better appraisal of the facts.

"Kudikidappukaran" means a person who has neither a homestead nor any land exceeding in extent three cents in any city or major municipality or five cents in any other municipality or ten cents in any panchayat area or township, in possession either as owner or as tenant, on which he could erect a homestead and-

(a) who has been permitted with or without an obligation to pay rent by a person

in lawful possession of any land to have the use and occupation of a portion of such land for the purpose of erecting a homestead; or

(b) who has been permitted by a person in lawful possession of any land to occupy, with or without an obligation to pay rent, a hut belonging to such person and situate in the said land; and "kudikidppu" means the land and the homestead or the hut so permitted to be erected or occupied together with the easements attached thereto.

Explanation I.--In calculating the total extent of the land of a kudikidappukaran for the purposes of this clause, three cents in a city or major municipality, shall be deemed to be equivalent to five cents in any other municipality, and three cents in a city or major municipality or five cents in any other municipality shall be deemed to be equivalent to ten cents in a panchayat area or township.

Explanation II.--For the purposes of this clause,-

(a) "hut" means any dwelling house constructed by a person other than the person permitted to occupy it-

(i) at a cost, at the time of construction, not exceeding seven hundred and fifty rupees; or

(ii) which could have at the time of construction, yielded a monthly rent not exceeding five rupees.

and includes any such dwelling house reconstructed by the kudikidappukaran in accordance with the provisions of Section 79; and

(b) "homestead" means, unless the context otherwise requires, any dwelling house erected by the person permitted to have the use and occupation of any land for the purpose of such erection, and includes any such dwelling house reconstructed by the kudikidappukaran in accordance with the provisions of Section 79.

9. On reading the above provision we find that to determine the cost of hut coming under Clause(1) to (a) of Explanation II to Section 2(25) of the Kerala Land Reforms Act, the cost of additions made by the person occupying the hut during the tenure of their occupation cannot be counted.

10. The Commissioner, in Ext. C-2 had determined the value after adding the value of the additional construction made by the tenant. In this view of the matter also, no reliance can be given to Ext. C-2 report to arrive at a conclusion that the cost of the building as on the date of its construction is above Rs. 750. Seventy years back, as we mentioned earlier the wage rates were only in single digit. The value of bamboos and coconut trees were very low. The bamboos and coconut trees were then used only for low cost temporary constructions and not for permanent constructions. Generally bamboo and coconut rafters would get decayed and periodically, though not annually changed. Palm leaves used for thatching would require annual changes. In the above circumstances, giving

reliance to the testimony of P. W.2 that she could not state as to on what basis the value of the materials and the labour charges were calculated we find that Ext. C-2 report as well as the evidence of P. W. 2 is not reliable to come to a conclusion regarding cost of construction of the petition schedule building or the rent that might be fetched at the time of construction.

11. We also notice that the Appellate Authority had arrived at a finding that the cost of construction is more than Rs. 750 without any basic material. The rent that the building might fetch was also determined by the Appellate Authority on the basis of guess work. As ordered by us, the Respondent had produced the extract of the Property Tax Assessment Register from 1965-66 to 1988-89. The Respondent could not produce the extract of the Assessment Register as on the date of the construction. So the extract of the Property Tax Assessment Registers produced by the Respondents is not reliable to come to a conclusion regarding the rent that would fetch at the time of construction. However, going by the extract of the register for the year 1965-66 we notice that the annual rent was estimated at Rs. 72 i.e. in 1965-66 the monthly rent was Rs. 6. If that be so, the rent that the petition schedule building might have fetched at the time of the construction in 1940 would definitely be much lesser than the amount shown in the assessment register. At any rate, it may not be higher than five rupees.

12. The execution of Ext. B-1 was denied by the revision Petitioners. Though there is an attester to Ext. B-1 the Respondent did not care to examine the attester. It is not known whether the attester is alive or not. On the other hand, the Respondent called for Ext. C-3 series containing the application for pension submitted by the predecessor of the revision Petitioners. The Land Tribunal found that the signature in Ext. B-1 is not similar to that in Ext. C-3 and rejected the plea of execution of Ext. B-1. After going through Ext. C-3 file and on finding that there is considerable difference in between the signature in Ext. B 1 and those contained in Ext. C-3 file, the Land Tribunal arrived at a finding that the Respondents had not succeeded to prove the execution of Ext. B-1. Appellate Authority after going through Exts. C-1 and B-1 arrived at a finding that there is similarity in between the signatures and hence, the Appellate Authority arrived at a finding that Ext. B-1 was executed by the predecessor of the revision Petitioners. In a case where the Appellate Authority differs from the finding of the Land Tribunal on comparing the signature, it was for the Appellate Authority to give cogent reasons for differing with the conclusions arrived at by the Land Tribunal. Though the Appellate Authority had stated that there are similarities in the signatures, what are the similarities noted by the Appellate Authority is not mentioned in the impugned judgment. While differing with the Land Tribunal and arriving at a divergent conclusion, the Appellate Authority should have given reasonings. Since there is no reasonings at all, we are unable to agree with the finding of the Appellate Authority. We had also gone through the signatures contained in Ext. B-1 as well as in Ext. C-3. We fail to find that there are similarities. It is also crucial to note that the Respondents have no case that at the time of original letting any rent deed was executed. If that be so, what

persuaded the predecessor of the revision Petitioners to execute the rent deed at a later stage is also not revealed out. The execution of Ext. B-1 is highly suspicious.

13. Even if Ext. B-1 is found admissible and executed by the predecessor of the revision Petitioners, the appellate authority went wrong in determining the rent of the petition schedule building on the date of construction because Ext. B-1 was executed in the year 1974 whereas the building was admittedly constructed in 1940s. Going by Explanation II(a)(ii) to Section 2(25) of the Kerala Land Reforms Act, what is relevant is the rent that the building might fetch at the time of construction. Ext. B-1 being in the year 1974, no reliance can be given to that document, even if it was executed by the predecessor of the revision Petitioners to determine the rent that the building might fetch in 1940 when it was constructed. Since the appellate authority relied upon Ext. B-1 to determine the rent that the petition schedule building would have fetched at the time of construction, the finding of the appellate authority is not legally sustainable. From the foregoing discussions, we find that Ext. C-2 report is not admissible to come to a conclusion that the cost of construction was more than Rs. 750 or that the rent that the building might fetch at the time of construction was more than Rs. 5. On the other hand, we find that there is no good reason to reject Ext. C-1 report, whereby the cost of construction at the time when it was constructed, is reported less than Rs. 600 and the rent that the building might fetch at that time was less than Rs. 3. Therefore, our conclusion is that the finding of the Appellate Authority that the revision Petitioners are not entitled to "kudikidappu" right is not sustainable.

14. The learned Counsel for the Respondent made an alternative submission to remand the matter to the Appellate Authority for a fresh disposal as to whether the revision Petitioners are entitled to "kudikidappu" right after having taken a second report by the Authorized Officer. In the light of the discussion above, we find that the Respondents would no way be benefited or that it would improve or advance the case of the Respondent. We find that Ext. C-1 report of the Revenue Inspector is convincing even in the light of Exts. B-1 and C-2. From the materials available on record, it can be safely concluded that the cost of construction of the petition schedule building is below Rs. 750 and that the rent that would have yielded on the date of construction is less than five rupees. We also notice that the matter has been pending for the last 24 years to decide a simple dispute as to whether the revision Petitioners are entitled to "kudikidappu" right or not. The Respondent had contributed much in delaying the matter. Appeal was preferred with a delay of 895 days. There shall be a finality. We find that to adjudicate the dispute, sufficient materials are on record and there is no necessity to remand the matter. On an anxious consideration of the evidence on record we find that on rent basis and cost basis, the petition schedule building would come within the definition of the "hut" coming under Explanation II u/s 2(25) of the Kerala Land Reforms Act and therefore, the revision Petitioners are entitled to "kudikidappu" right. The revision Petitioners are not liable to be evicted under

the Act. The finding of the appellate Authority is contrary to the evidence and law. The Appellate Authority interfered with the order of the Land Tribunal as well as that of the Rent Controller for no valid reason. The finding of the Appellate Authority that the revision Petitioners failed to prove that the cost of construction of the building is below Rs. 750 and that the rent that might have yielded at the time of construction is less than five rupees is totally erroneous, illegal and unsustainable. Therefore, the judgment impugned is liable to be set aside and the order of the Rent Control Court is to be restored.

15. In the result, we allow the revision. The judgment impugned is set aside and the order of the Rent Control Court is restored. No order as to costs.

16. The revision Petitioners are at liberty to apply before the Land Tribunal for demarcating three cents around the petition schedule building and to issue purchase certificate.