

(2010) 02 SC CK 0031

In the Supreme Court Of India

Case No : Civil Appeal No. 565 of 2005

Seshambal (dead) through L.Rs.

APPELLANT

Vs

Chelur Corporation Chelur Building and Others

RESPONDENT

Date of Decision : 17-02-2010

Acts Referred:

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

Citation : AIR 2010 SC 1521 : (2010) AIRSCW 6914 : (2010) AIRSCW 4898 : (2010) 2 JT 260 : (2010) 1 KLT 834 : (2010) 3 MLJ 174 : (2010) 1 RLW 848 : (2010) 2 SCALE 414 : (2010) 3 SCC 470 : (2010) 3 SCR 960 : (2010) 6 Supreme 353 : (2010) 7 Supreme 106 : (2010) 2 UJ 10

Hon'ble Judges : T. S. Thakur, J;Markandey Katju, J

Bench : Division Bench

Advocate : K.V. Vishwanathan, Neha S. Verma, P.B. Subramanyan, Abhishek Kaushik and V. Mohan, for the Appellant; L. Nageswara Rao Roy Abraham, Seema Jain and Himinder Lal, for the Respondent

Final Decision : Disposed Of

Judgement

T.S. Thakur, J.—This appeal by Special Leave arises out of an order passed by the High Court of Kerala at Ernakulam whereby C.R.P. No. 558 of 1994 has been dismissed and the orders passed by the Rent Controller and the Rent Control Appellate Authority dismissing the eviction petition filed against the tenant wife affirmed. In a nutshell, the facts giving rise to the controversy are as under:

2. Late Shri K. Sachindanda Iyer and his wife late Smt. A. Sheshambal Sachindanda Iyer owners of the premises in dispute let out the same to respondent No. 1 for a period of three years in terms of a lease dated 12th April, 1983. On the expiry of the lease period the owners filed RCP No. 116 of 1986 before the Rent Controller at Ernakulam seeking eviction of the tenant-occupant on the ground that they required the same for their bona fide personal occupation within the meaning of Section 11(3) of the Kerala Buildings (Lease and Rent Control Act), 1965. The prayer for eviction was opposed by the tenant,

inter alia, on the ground that the owners did not require the demised premises and that the tenant would find it difficult to shift its business to any other premises on account of non-availability of a suitable accommodation for being so. The Rent Controller eventually came to the conclusion that the owners had failed to establish their bona fide requirement of premises. The Rent Controller held that the owners had shifted their residence from Cochin and were living with their daughter and son-in-law who were running a nursing home in that city.

3. Aggrieved by the order passed by the Rent Controller, the owners appealed to the Appellate Authority who affirmed the decision taken by the Rent Controller holding that the owners were residing with their daughter and son-in-law at Ernakulam in a building owned by the owners. The Appellate Authority also found that the owners had a cottage at Kodaikanal and that being fairly old had no reason to shift back to Ernakulam in search of better medical facilities especially when their own son-in-law was running a nursing home at Coimbatore where such facilities were available to them. Absence of any medical evidence to show that the owners suffered from any illness was also cited as a ground for dismissal of the prayer for eviction.

4. Aggrieved by the orders passed by the Rent Controller and the Appellate Authority the owners brought up the matter before the High Court of Kerala in a revision with a view to have the concurrent findings recorded by the Courts below set aside. The High Court, as noted earlier, has refused to intervene in the matter and dismissed the revision petition. The High Court held that it was not expected to reappraise the evidence produced by the parties in the exercise of its revisional jurisdiction and that the limited question that fell for its consideration was whether the procedure followed by the Rent Controller and the Appellate Authority was illegal, irregular or improper. The High Court noted that the rent of the premises paid by the tenant had not been revised since the year 1973. The same was, therefore, enhanced to Rs. 10,000/- p.m. w.e.f. 1.11.2003 onwards with liberty to the parties to approach the competent Court for fixation of fair rent for the demised premises. The present appeal, as seen earlier, calls in question the correctness of the above orders.

5. It is not in dispute that during the pendency of the revision petition before the High Court the landlord Shri K. Sachindanda Iyer passed away on 24th April, 1996 leaving behind his wife Smt. A. Sheshambal Sachindanda Iyer as the sole revision petitioner seeking eviction of the respondent- tenant. Consequent upon the dismissal of the revision petition the present appeal was filed by Smt. A. Sheshambal Sachindanda Iyer alone who too passed away before this appeal could be heard for final disposal. IA No. 7/2008 filed on 14th November, 2008 sought substitution of the legal representatives of the appellant on the basis of a Will left behind by the deceased according to which the property in question has to devolve upon the three daughters left behind by the deceased. It is common ground that two of the daughters are living in India one each at Coimbatore and Bihar the third daughter is settled in America.

6. The short question that was, in the above backdrop, argued by learned Counsel for the parties at considerable length was whether the proceedings instituted by the deceased-owners of the demised property could be continued by the legal heirs left behind by them. Mr. K.V. Vishwanathan, learned senior counsel, appearing for the legal heirs of the deceased-appellant contended that it was permissible for the legal heirs to continue the present proceedings and seek eviction of the tenant on the basis of the requirement pleaded by the erstwhile owners in the eviction petition filed by them. The rights and obligations of the parties, argued Mr. Vishwanathan, get crystallized as on the date of the filing of the petition. Any subsequent development, according to the learned Counsel, would be irrelevant to the maintainability or the continuance of the proceedings after the death of the original petitioners. Reliance in support of that submission was placed by the learned Counsel upon the decisions of this Court in *Shamshad Ahmad and Others Vs. Tilak Raj Bajaj (Deceased) through LR's. and Others*, ; *Maganlal Godha Vs. Nanasaheb Gadewar*, ; *Pratap Rai Tanwani and Another Vs. Uttam Chand and Another*, ; *Gaya Prasad v. Pradeep Srivastava* 2001 (2) SCC 604; *Kamleshwar Prasad Vs. Pradumanju Agarwal (dead) by LR's.*, ; *Shakuntala Bai and Others Vs. Narayan Das and Others*, ; *G.C. Kapoor Vs. Nand Kumar Bhasin and Others*, and *Shantilal Thakordas and Others Vs. Chimanlal Maganlal Telwala*, .

7. On behalf of the respondent-tenants Mr. L. Nageswara Rao, learned senior counsel, placed heavy reliance on the decisions of this Court in *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, ; *Om Prakash Gupta Vs. Ranbir B. Goyal*, ; *Hasmat Rai and Another Vs. Raghunath Prasad*, and *Baba Kashinath Bhinge case*, 1994 Supp. 3 SCC 698 . It was argued by Mr. Rao that the legal position as to whether the Court could take note of the subsequent developments stood settled by the above decisions which left no manner of doubt that all such developments as have an impact on the rights and obligations of the parties must be taken into consideration by the Court and the relief suitably moulded.

8. The eviction petition, as noted earlier, was filed in terms of Section 11(3) of the Kerala Buildings (Lease and Rent Control Act), 1965, which reads:

Section 11(3): A landlord may 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.

Provided that the Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons, in any particular case it will be just and proper to do so;

Provided further that the Rent Control Court shall 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 any 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 such trade or business:

Provided further that no landlord whose right to recover possession arises under an instrument of transfer inter vivos shall be entitled to apply to be put in possession until the expiry of one year from the date of the instrument:

Provided further that if a landlord after obtaining an order to be put in possession transfer his rights 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.

9. It is not in dispute that in the eviction petition the owners had pleaded their own requirement for the premises to be occupied by them for residential as well as commercial purposes. The eviction petition was totally silent about the requirements of any member of the family of the owners- petitioners leave alone any member of their family who was dependant upon them. That being so the parties went to trial before the Rent Controller on the basis of the case pleaded in the petition and limited to the requirement of the owners for their personal occupation. Neither before the Rent Controller nor before the Appellate Authority was it argued that the requirement in question was not only the requirement of the petitioner-owners of the premises but also the requirement of any other member of their family whether dependant upon them or otherwise. Not only that, even in the petition filed before this Court the requirement pleaded was that for the deceased-widowed owner of the demised premises and not of any member of her family. Super added to all this is the fact that the legal representatives who now claim to be the family members of the deceased are all married daughters of the deceased couple each one settled in their respective matrimonial homes in different cities and at different places. That none of them was dependant upon the deceased- petitioner is also a fact undisputed before us. Even otherwise in the social milieu to which we are accustomed, daughters happily married have their own families and commitments financial and otherwise. Such being the position we find it difficult to see how the legal representatives of the deceased- appellant can be allowed to set up a case which was never set up before the Courts below so as to bring forth a requirement that was never pleaded at any stage of the proceedings. Allowing the legal heirs to do so would amount to permitting them to introduce a case which is totally different from the one set up before the Rent Controller the Appellate Authority or even the High Court. The position may indeed have been differentiated if in the original petition the petitioner-owners had pleaded their own requirement and the requirement of any member of their family dependant upon them. In such a case the demise of the original petitioners or any one of them may have made little difference for the person for whose benefit and bona fide requirement the eviction was sought could pursue the case to prove and satisfy any such

requirement.

10. Confronted with the above position Mr. Vishwanathan made in generous submission. He contended that the rights and obligations of the parties get crystalized at the time of institution of the suit so that any subsequent development is not only inconsequential but wholly irrelevant for determination of the case before this Court. Learned Counsel sought to extend that principle to the case at hand in an attempt persuade us to shut out the subsequent event of the death of the original petitioners from consideration. We regret to say that we do not see any basis for the submission so vehemently urged before us by Mr. Vishwanathan. While it is true that the right to relief must be judged by reference to the date suit or the legal proceedings were instituted, it is equally true that if subsequent to the filing of the suit, certain developments take place that have a bearing on the right to relief claimed by a party, such subsequent events cannot be shut out from consideration. What the Court in such a situation is expected to do is to examine the impact of the said subsequent development on the right to relief claimed by a party and, if necessary, mould the relief suitably so that the same is tailored to the situation that obtains on the date the relief is actually granted. That proposition of law is, in our view, fairly settled by the decisions of this Court in Pasupuleti Venkateswarlu case (*supra*). Krishna Iyer J. (as His Lordship then was) has in his concurring judgment lucidly summed up legal position in the following words:

...If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice - subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed....

11. To the same effect is the decision of this Court in Om Prakash Gupta's case (*supra*) where the Court declared that although the ordinary rule of civil law is that the rights of the parties stand crystalised on the date of the institution of the suit yet the Court has power to mould the relief in case the following three conditions are satisfied:

...(i) that the relief, as claimed originally has, by reason of subsequent events,

become inappropriate or cannot be granted;

(ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and

(iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise....

12. In Hasmat Rai's case (supra), this Court observed that if the tenant is in a position to show that the need or requirement no more exists because of subsequent events, it would be open to him to point out such events and the court, including the appellate court, has to examine, evaluate and adjudicate upon the same.

13. To the same effect is the decision of this Court in Baba Kashinath Bhinge's case (supra) where relying upon the decision in Hasmat Rai's case (supra) this Court held that in a case of bona fide requirement it is necessary to establish that the landlord needs the premises and the need subsists till a decree is passed in his favour. In a case where such need is available at the time of the filing of the petition but becomes extinct by the time the matter attains finality in appeal for revision no decree will be justified. For that purpose the Court should take all the subsequent events into consideration and mould the relief accordingly. Following passage provides a complete answer to the question raised before us:

Equally it is settled by this Court in series of judgments and a reference in this behalf would be sufficient by citing Hasmat Rai v. Raghu Nath Prasad that in a case of bona fide requirement, it is always necessary, till the decree of eviction is passed that the landlord should satisfy that the need is bona fide and the need subsists. In a case where the need is available at the time of filing the petition, but at the time of granting decree it may not continue to subsist, in that event, the decree for eviction could not be made. Similarly pending appeal or revision or writ petition, the need may become more acute. The court should take into account all the subsequent events to mould the relief. The High Court may not be justified in omitting to consider this aspect of the matter but that does not render the judgment illegal for the subsequent discussion we are going to make.

(emphasis supplied)

14. Reference may also be made to Ramesh Kumar Vs. Kesho Ram, where Venkatachaliah, J. (as His Lordship then was) expressed a similar view in the following words:

The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the

relief.

15. Similarly, in Maganlal's case (supra) all that this Court held was that if the litigation keeps extending and number of developments sprouting up during the long interregnum, the Court should adopt a pragmatic approach in the matter and determine whether or not the development pending finalization of the litigation is such as would completely non-suit the party concerned. This decision is, in our view, no authority for this proposition that subsequent developments having material impact on the rights and obligations of the parties can be ignored by a Court simply because such rights and obligations have to be determined by reference to the date on which the litigation was instituted.

16. The decision of this Court in Kedar Nath Agrawal (Dead) and Another Vs. Dhanraji Devi (Dead) by LRs. and Another, has reiterated the legal position after a detailed review of the case law on the subject. That was also a case where two applicants seeking eviction of the tenant had passed away during the pendency of the eviction petition and the question was whether the three married daughters left behind by the couple could continue with the same. This Court observed:

31. In view of the settled legal position as also the decisions in Pasupuleti Venkateswarlu and Hasmatai, in our opinion, the High Court was in error in not considering the subsequent event of death of both the applicants. In our view, it was power as well as the duty of the High Court to consider the fact of death of the applicants during the pendency of the writ petition. Since it was the case of the tenant that all the three daughters got married and were staying with their in-laws, obviously, the said fact was relevant and material....

17. The decisions of this Court in Pratap Rai Tanwani's case (supra), Gaya Prasad's case (supra), Kamleshwar Prasad's case (supra), Shakuntala Bai's case (supra), G.C. Kapoor's case (supra), and Shantilal Thakordas and Others Vs. Chimanlal Maganlal Telwala, ; Pukhraj Jain Vs. Mrs. Padma Kashyap and another, do not, in our opinion, lend any support to the proposition that subsequent developments cannot be noticed by the Court especially when such developments have an impact on the right of a party to the relief prayed for.

18. We may in particular refer to the decision of this Court in Shantilal Thakordas's case (supra) in which this Court had overruled the earlier decision rendered in Phul Rani and Others Vs. Sh. Naubat Rai Ahluwalia, and held that the law permitted the eviction of the tenant for the requirement of the landlord for occupation of the landlord as residence for himself and members of his family and that such a requirement was both of the landlord and the members of his family so that upon the death of this landlord the right to sue survived to the members of the family of the deceased. That is not the position in the instant case. As noticed earlier, the requirement pleaded in the eviction petition by the original petitioners was their own personal requirement and not the requirement of the members of their family whether dependant or otherwise. Indeed if the

deceased landlords had any dependant member of the family we may have even in the absence of a pleading assumed that the requirement pleaded extended also to the dependant member of their family. That unfortunately, for the appellants is neither the case set up nor the position on facts. The deceased couple did not have any dependant member of the family for whose benefit they could have sought eviction on the ground that she required the premises for personal occupation.

19. In the light of what we have stated above, we have no hesitation in holding that on the death of the petitioners in the original eviction petition their right to seek eviction on the ground of personal requirement for the demised premises became extinct and no order could on the basis of any such requirement be passed at this point of time.

20. There is one other aspect to which we must advert at this stage. The High Court had, while disposing of the revision petition filed before it, come to the conclusion that the demised premises is large and located in a popular commercial area of the city of Cochin. It has found that the rent for the premises was very low and had not been revised since the year 1973. The High Court accordingly revised the rent to Rs. 10,000/- per month payable w.e.f. 1.11.2003 onwards leaving it open to the parties to get the fair rent determined for the demised premises.

21. During the pendency of this appeal, the appellants had filed an application seeking a direction against the respondent for payment of rent @ Rs. 50,000/- per month. The application supported by an affidavit, inter-alia, alleges that the market rent of the premises in question was not less than Rs. 50,000/- per month as in September 2005 when the application was filed. A Valuation Certificate issued by Shri K. Radhakrishnan Nair, Chartered Engineer & Approved Valuer, is also enclosed with the application, according to which the market value of the plot in question was not less than Rs. 7,00,000/- per cent and the current market rent for the building not less than Rs. 8/- per square feet. As per the lease deed entered between the deceased owners and the respondents, the premises in question is constructed over an area measuring about 20 cents. The covered area is said to be 5000 sq. ft. or so. In the circumstances while the High Court was justified in tentatively revising the rent for the premises, the revision was not, in our opinion, adequate. Keeping in view the totality of the circumstances, we are of the view that instead of Rs. 10,000/- determined by the High Court, the respondents shall pay Rs. 15,000/- per month towards rent w.e.f. 1.11.2003. The same shall stand revised to Rs. 25,000/- per month w.e.f. 1.1.2009. The differential amount thus payable shall be deposited by the respondents before the Rent Controller within six months from today whereupon the Rent Controller shall take steps to disburse the same to the appellants, the current owners of the premises. Needless to say that the revision ordered by us is also tentative and shall not prevent the parties from seeking determination of the fair rent for the premises by instituting proceedings before the competent

Court/authority in accordance with law.

22. With the above modification, this appeal is disposed of leaving the parties to bear their own costs.

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