
(1993) 12 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 9412 of 1989

Smt. Mariamma Sunny

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 02-12-1993

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11, 11(3), 12(1)(g), 20, 3(g)

Citation : (1994) 1 KLJ 18

Hon'ble Judges : K.J. Joseph, J

Bench : Single Bench

Advocate : M.C. Sen, for the Appellant;

Final Decision : Allowed

Judgement

K.J. Joseph, J.—Petitioner is the respondent in R.G.P. No. 43/1981 on the file of the Rent Control Court, Kozhikode. He was the tenant of a building belonging to the 4th respondent. The 4th respondent/landlady filed an application for eviction of the petitioner/tenant on the ground of bona fide need for the occupation of her husband's sister and her children u/s 11 (3) of the Kerala Buildings (Lease & Rent Control) Act. 1965. According to the landlady, the husband of the sister-in-law died on 15-8-1979 and the sister - in - law and her children are thereafter depending on the husband of the landlady. The landlady also alleged that there is no other building in her possession for the use and occupation of her sister - in law and her children. The claim for bona fide occupation of the landlady was disputed by the petitioner/tenant. According to him, the sister in law of the landlady and her children are residing at her husband's house at Koothupramba and she is not a member of the family of the landlady. He has also disputed the statement that the sister - in - law is depending on the landlady and therefore, according to the tenant, the application u/s 11 (3) of the Act is not maintainable. He has further stated that till the date of death of the husband of the sister - in-law, she was staying in the husband's house without any difficulties and

therefore, the petition filed by the landlady for eviction is a ruse to evict him from the tenanted premises. The tenant also claimed kudikidappu right in respect of the tenanted premises. He also alleged that he is conducting a job typing in the petition schedule house and himself and his family are depending on the income from the job typing work which is being conducted in the petition schedule building and there is no other building available in the locality for conducting the typewriting job. The question of kudikidappu right was referred to the band Tribunal by the Rent Control Court u/s 125 (3) of the Kerala Land Reforms Act. The Land Tribunal after an enquiry passed an order holding that the tenant is not entitled to get the kudikidappu right over the petition schedule building. This finding was accepted by the Rent Control Court. The landlady's sister - in - law was examined in the case as PW2 and the landlady was "- examined as PW1. The tenant was examined as RW1 and on his behalf, 2 other witnesses were also examined as RWs 2 and 3. After trial, the Rent Control Court found that the need expressed by the landlady is bona fide and hence ordered eviction of the tenant on the ground u/s 11(3) of the Act.

2. The tenant filed an appeal before the Rent Control Appellate Authority, the 2nd respondent. The 2nd respondent considered the matter in detail, On an appreciation of the evidence adduced before the Rent Control Court, the Appellate Authority found that the sister-in-law of the 4th respondent, landlady for whose occupation the building is sought to be evicted cannot be treated as a member of the family of the landlady. The Appellate Authority also found that it was only a desire of PW2, the sister - in - law to shift her residence from Koothupramba to Kozhikode and the same cannot be considered as bona fide requirement of the- landlady The appellate Authority further found that there is another house at Puthiyara belonging to the unmarried sister of PW2, the sister-in-law of the landlady and there is no reason why she could not shift her residence from Koothupramba to her sister's house at Puthiyara The Appellate Authority further found that the documents produced by the landlady to prove that her sister-in-law is depending on her husband had been created for the purpose of creating evidence for filing the eviction petition. The Appellate Authority, therefore, found that the sister-in-law was not a dependant on the landlady and by no stretch of imagination, she could be said to be member of the landlady's family. Therefore, the Appellate Authority set aside the order of eviction passed by the Rent Control Court as per Ext. P2 order dated 17-7-1986 in Ext. P2 order, the Appellate Authority also found that the tenant is not entitled to get the right of kudikidappukaran under the Kerala Land Reforms Act and therefore, confirmed the finding of the Rent Control Court in that regard.

3. The tenant filed a revision before the District Judge, who has the revisional authority at that time against (he finding of the Rent Control Court and of the Appellate Authority regarding the nature of the kudikidappu right of the tenant and the landlord against the finding under S. 11 (3) of the Act. Both these revisions were considered by the revisional authority and the revisional authority passed Ext. P3 order on 31-7-1989 wherein he has re- appraised and

appreciated the evidence adduced in the case and found that PW 2 and her family were depended on the husband of the landlady. But the revisional authority did not consider the need for PW 2, who wanted to transfer her residence from Koothuparamba to Kozhikode. Revisional authority found that the sister-in-law could be a member of the family of the landlady and therefore, the petition u/s 11 (3) of the Act is maintainable. The revisional authority farther found that the claim for kudikidappu right was negatived on the ground that the cost of the building at the time of its construction was Rs. 906/- and probable rent it could have fetch at the time was at Rs. 7/- and this is based on the report filed by the Revenue Inspector, marked as Ext. C1 in the case. The revisional authority found that the commission report relied on by the Land Tribunal does not disclose as to how the Revenue Inspector took the house having been constructed in the year 1942 and the Land Tribunal has summarily disposed of the petition without giving sufficient opportunity to the tenant for proving that he is entitled to get the benefit of kudikidappukaran. Therefore, for determination of the question of kudikidappu right., the matter was remanded to the Rent Control Court for a fresh finding by the Land Tribunal, by the revisional court.

4. The tenant has now come up in this writ petition under Article 22? of the Constitution questioning the validity of Ext. P3 order passed by the Rent Control Revisional Court u/s 20 of the Kerala Buildings (Lease & Rent Control) Act, 1965 and prayed for issuance of a writ of certiorari or other appropriate writ or direction to quash the same. He has also prayed for restoration of the order, Ext. P2 passed by the 2nd respondent, the Appellate Authority.

5. I heard the Learned Counsel appearing on behalf of the petitioner/tenant in the case in detail. Even though, notice was served on the respondents including the landlady, they did not appear or contested the case. They also did not file any counter affidavit in the case. According to the Learned Counsel appearing on behalf of the tenant, the Rent Control Petition itself is not maintainable on the ground u/s 11 (3) of the Act. According to the Learned Counsel, a petition u/s 11 (3) is maintainable Only if the landlord bona fide needs the building for his own occupation or for the occupation of any member of his family depending on him. According to the Learned Counsel, the sister - in - law of the landlady is not a member of the family of the landlady. He has also contended that the said sister is not depending on the landlady and therefore, the finding arrived at both by the Rent Control Court and the revisional court regarding the maintainability of the petition u/s 11 (3) of the Act is absolutely illegal and Ext. P1 and P3 orders are, therefore, without authority of law. The Learned Counsel has further argued that there is absolutely no justification or authority for the revisional court to reappraise the evidence adduced in the case and the Appellate Authority is the ultimate fact finding authority and there is no justification to re-appreciate the entire evidence adduced in the case and setting aside the finding of fact arrived at by the ultimate fact finding authority in the matter regarding bona fide need viz. the the appellate Authority who passed Ext. P2 order. Therefore, the order. Ext. P3 passed by the revisional authority in exercise of its powers u/s 20 of the

Act is totally illegal and improper. The Learned Counsel also urged that the revisional authority did not even consider the question whether the sister-in-law is depending on the landlady and even if the landlady's husband has given some financial assistance to his own sister, that cannot be considered to be a fact to arrive at a conclusion that the sister-in-law is depending on the landlady. It is only on proof that the bona fide need is for occupation of any member of her family depending on her, an order of eviction can be passed. This fact has not been even found by the revisional court while passing Ext. P3 order. The landlady is governed by Hindu Mitakshara Law and therefore, on marriage, she becomes a member of her husband's family and therefore she cannot claim any right in her own family. What she can claim is only the right of her husband in the husband's property. These aspects of the matter even though relevant, have not considered by the revisional authority. Therefore, the learned counsel submits that the order of eviction passed by the Rent Control Court as well as the revisional court is absolutely illegal and without justification.

6. The relevant portion of Section 11 (3) of the Act is extracted below:

S. 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 the bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him.

Therefore, an application u/s 11(3) of the Act can be filed by a landlord, if (a) the bona fide needs the building for his own occupation or (b) the bona fide needs the building for the occupation by any member of his family, dependent on him.

7. Therefore, the main question to be decided in this case is whether the petition filed by the landlady in this case for eviction of the tenant on the grounds u/s 11 (3) of the Act is maintainable or not, when the eviction sought is for the use and occupation of the landlady's sister - in - law (husband's sister) and for her children who are depending on her husband.

8. The expression family has not been defined in the Act. However, the expression "family" has been the subject matter of decision in Civil Court, both Indian and English in Price. V. Gould (1930) 46 TLR 411-which has been followed in several subsequent decisions, Wright. J. held-

It has been said in a number of equity cases, relating principally to wills or to settlements under powers of appointment, that the word "family", was a popular, loose and flexible expression, and not a technical term. It had been laid down that the primary meaning of the word "family" was children but that primary meaning was clearly susceptible of wider Interpretation, because the cases decided that the exact soope of the word must depend on the context and the other provisions of the will or deed in view of the surrounding circumstances.

9. While considering the meaning of the expression "family" in Section 12 (1) (g) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, it is said

that the word "family" includes brothers and sisters of the deceased living with her (tenant) at the time of her death, and that the meaning is required by the ordinary acceptance of the word in this connection and that the legislature has used the word "family" to introduce a flexible and wide term.

10. In the decision reported in *Brook v. Wollams* ((1949) 2 KB 388), the Court of Appeal held that.

the defendant Mrs. Wollams who had been adopted in fact but not in legal form at the age of five or six by the tenant and had lived with him till his death, except for an interval of about three years when she resided with her husband, was a member of the tenant's family within the Rent and Mortgage Interest Restrictions (Amendment) Act 1933.

11. In *Standinford v. Probert* ((1950) 1 KB 377), the Court of Appeal held that the tenant's married sons and their wives were members of his family within the expression "needs of the tenant and his family" under the same Act. Both these decisions followed *Price v. Gould* (1930-46 TLR 411) and in *Salter v. Lask* (1925) 1 KB 584) considered in *Brock v Wollams* ((1949) 2 KB 388 and 393) where the question was whether husband of a tenant was a member of the tenant's family and *Salter, J.* held that he was.

12. In *Jones v. Whitehill* ((1950) 1 All ER 71) it was held that a niece of the tenant's wife was regarded as falling within the meaning of "members of tenant's family".

13. In *Govind Dass and Others Vs. Kuldip Singh*, referring to Section 14(1) proviso (e) of the Delhi Rent Control Act, 59 of 1958) a Division Bench held that the word "family" must be construed with reference to the habits and Ideas of the persons constituted in a particular society and the religious and socio-religious customs of the community to which such persons belong and therefore found that the family of a Hindu may consist of his brothers, their wives and their children. It was further held that -

the concept of what constitutes a family when a number of persons are related or are living together is not something static or capable of concise definition. What constitutes a family in a given set of circumstances or in a particular society depends upon the habits and ideas of persons constituting that society and the religious and socio-religious customs of the community to which such persons may belong,

The learned Judges followed two decisions of the Punjab High Court in coming to the above conclusions.

14. In the decision reported in *Muhammad and others v. Sinnamalu Amma* (AIR 1978 Kerala 21), a learned Single Judge of this Court held that-

it is obvious that the expression family which is undefined by the Act is elastic and that its ambit has to be determined in all the circumstances of the case,

having regard to the habits, ideas and socioeconomic milieu of the parties, in the present case the concerned relations are the husband and son of the landlord. Going even by its primary meaning the word "family, includes the son. The husband although the head is certainly part of the family, even if he is not and cannot be a member of the tarwad of his marumakkathayee wife.

15. In the decision reported in Balabhadra v. Premchand (AIR 1953 Nag 144) a Division Bench of Nagpur High Court held that-

the need of a widowed daughter and her children must be deemed to be those of her landlord-father entitling him to claim possession of a building for their residence as they were depending on him, even though by marriage she had passed out of his family and gone into that of her husband,

16. Again a Division Bench of this Court in Rajamma v. Leela (1991 (2) KLT 862) has held that it cannot be said that Section 11 (3) of the Act makes an absolute distinction between the need of the landlord himself and any member of his family dependant on him. The need of the dependant who is a member of the family can also be that of the landlord, the need is related to the dependants.

17. Placing reliance on the decision of the Allahabad High Court reported in Mahendra Sen Jain and another v. Ratanlal and another (1978 All. L.J. 778) the Learned Counsel appearing on behalf of the petitioner/tenant has, submitted that a brother of the tenant is found to be not a member of the family of the tenant within the meaning of Uttar Pradesh Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 and therefore, the finding of the re visional authority in Ext. P3 order that PW2 is a member of the family of the landlady is erroneous. But in the said Act, the word "family" has been defined u/s 3(g) of the Act and enumerate the category of persons coming under the said definition

(i) spouse;

(ii) male lenlal descendants :

(iii) such parents, grand-parents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant as may have been normally residing with him or her, and includes, in relation to a landlord, any female having a legal right of residence in that building."

18. As stated by the learned Judge, obviously a brother does not come in the definition of family and hence the above decision will not be of any help to the petitioner/tenant in this case. Even though under the Hindu Mitakshara Law, the married woman ceased to be a member of her family and becomes a member of her husband's family, for the intention and purpose of Section 11 (3) of the Kerala Buildings (Lease & Rent Control) Act, 1965, in the light of the various decisions of this Court, other High Courts in India and of the English Courts referred to earlier, I hold that the husband of the landlady and his sister, PW2 will come within the wider expanded meaning of the expression "any member of the family of the landlord used u/s 11(3) of the Act.

19. Therefore, the further question to be considered in this case is even if, PW2 is found to be a member of the family of the landlady whether that member is dependant on the landlady so as to get the benefit u/s 11(3) of the Act. " All members of the family of the land lord are not entitled to the benefit u/s 11(3) or the Act and the landlord is not entitled to maintain a petition u/s 11(3) of the Act for a member of his family not in any way dependant on him. True, the dependency stated in the above Section is not confined to financial dependency alone. Still there should be dependency in one form or other with the landlord in the absence of any such dependency pleaded and proved in the case, there cannot be an order of eviction of the tenant u/s 11 (3) of the Act.

20. In the decision reported in Anthony Kochuvariathu v. Chatkkalinga Nadar (971 KLT 119 this Court held that the landlord who sought eviction of the tenant for his two married sons and have their own source of income, but badly in need of separate accommodation for their residence is entitled to seek for eviction of the tenant u/s 11(3) of the Act, holding that the dependency contemplated u/s 11(3) of the Act fetched from a broader humane angle. Again, the same view was taken by the Delhi High Court in the decision reported in Govind Dass and Others Vs. Kuldip Singh, wherein the learned Judges have held that the meaning of the word "dependant" is not restricted to persons financially dependant but is comprehensive enough to include persons who are depending on the landlord for residential accommodation. Again, this Court following the decision reported in Anthony Kochuvariathu v Chakkalinga Nadar (1971 KLT 119 referred to earlier, has held in the decision reported in Muhammad and others v. Sinnamalu Amma (AIR 1978 Kerala 21) and held that

that it would be an undue restriction of the word "dependent" to limit to one who is only financially dependent upon the landlord. The Legislature has not undertaken to define the word and one has to determine its meaning keeping in view the context and the circumstances of each case. Section 11 deals with eviction of tenants and sub-sec (3) must therefore be related to cases where the member of the family is dependent upon the landlord for the building whether residential or non-residential, as when although financially independent of the landlord, he might have no building or a building that will answer his needs and the landlord bona fide needs to provide that member with a building. It is not possible nor would it be prudent to formulate tests that would govern all situations which arise under sub sec. (3); the answer must depend upon the facts and circumstances of each case.

But it should be remembered that it was a case of providing nonresidential accommodation in the building belong to the landlady for he dependents viz. the husband and for her son.

21. Relying on the above two decisions of this Court, Subramonian Potti J. as he then was, held in the decision reported in Narayana Pillai v. Poanappaa Achari (1980 KLT 871) that

though in strict legal parlance dependence may mean looking up for support or maintenance, in the context in which that term Appears in S. 11 of the Kerala Buildings (Lease & Rent Control) Act it connotes a wider concept and covers a larger field. It takes in a person who is not financially dependent upon the landlord but who would in the normal course look up to the landlord to provide him with the facility of a building possessed by the landlord. Whether the landlord would do so or not to such a dependent would depend on various facts and circumstances including the financial situation in which the landlord is placed, the degree of closeness or intimacy with the dependant who seeks the provision of such building and other similar matters of relevance.

As in all the other cases, in this case also, dependency of the member of the family was to the landlord himself and not any other person. The same view was again taken by another learned single Judge of this Court in the decision reported in Kumaran v. Kunjunni Pillai (1991 (1) KLT 148). Thus to sustain an order of eviction on the ground u/s 11(3) of the Act, the landlord should prove that the bona fide needs the building for his Own occupation or for the occupation by any member of his family dependent on him (emphasis supplied). Admittedly, in this case, the eviction sought for is not for the occupation of the landlady, but for the occupation of PW2, the sister of her husband. As found earlier in the light of the various decisions referred to in this judgment, even if PW2 should be "considered as a member of the family of the landlady for the limited purpose of Section 11 (3) of the Kerala Buildings (Lease & Rent Control) Act, 1965, for maintaining a petition u/s 11 (3) of the Act, the landlady shall further prove that the said - member of the family of the landlady is in one way or other depending on her, Neither in Ext. P1 nor in Ext. P3 orders, there is any finding to the effect that PW2 is in any way depending on the landlady of the building for whose benefit the eviction is sought for. On the other hand, the positive evidence adduced by the landlady and accepted by the Rent Controller and the revisional authority is that PW2 is a dependant of the husband of the landlady for financial assistance as well as for her separate residence and not a dependant of the landlady of the building in any manner (emphasis supplied) even though she is now residing in her husband's house. The specific finding of the revisional court also is to that effect in paragraph 11, what the revisional Court has stated that-

there is absolutely no reason as to why PW2 cannot be considered for the purpose of the above provision as a member of the family. Therefore, the finding of the Appellate Authority that they cannot be considered as members of the family and claim for eviction is not bonafide has to be reversed.

The Revisional Authority also found that -

it is obvious that the case of the landlady that PW2 and her children are depending solely for their maintenance on the husband of the landlady is not in any way successfully impeached. There is also no case that there is any other person who is capable of looking after the widowed sister and her children.

The above finding will clearly establish that the dependency of PW2 is to the husband of the landlady alone and that too for financial help and not to the landlady in any manner. Such a dependency is not what is contemplated in Section 11 (3) of the Act. The person for whose benefit the eviction is sought for shall be the dependant of the landlady and not a dependant of the member of the family of the landlady. For the benefit of such a person, no petition for eviction on the ground u/s 11 (3) of the Act is maintainable. No order of eviction also can be legally passed on such petition. Ext. P3 order of eviction passed by the revisional Authority on the ground u/s 11 (3) is, therefore, clearly illegal and unsustainable in the light of the above finding, it is not necessary for me to consider the other contentions raised by the petitioner in this Original Petition. Ext. P3 order is, therefore, set aside and it is declared that the petition for eviction of the tenant filed by the 4th respondent/landlady on the ground u/s 11(3) of the Act is not maintainable and the Original Petition is allowed, But without any order as to costs.