

(1999) 11 KL CK 0033
In the High Court Of Kerala
Case No : S.A. No. 965 of 1996

Sreenivasan

APPELLANT

Vs

Corporation of Calicut

RESPONDENT

Date of Decision : 30-11-1999

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 15, 2(f)

Citation : (2000) 1 KLJ 328

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : A.P. Chandrasekharan and M. Krishna Kumar, for the Appellant;

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor

1. The plaintiff sought a declaration that Ext. A3 order issued by the defendant to evict him from the premises concerned is incompetent and unenforceable. He also sought for an injunction not to enforce it. His suit was dismissed concurrently. Therefore, this Second Appeal mainly raising a substantial question of law whether a person in possession of a public building on the basis of a licence issued by the concerned public authority could be said to be in unauthorised occupation merely because the period fixed in the licence is over? It is an admitted case that the premises is owned by the respondent local authority. It is also admitted by the respondent as averred in the written statement that "the plaintiff was only permitted to use the plaintiff schedule building under a bare licence granted by this defendant upon the plaintiff's executing a licence deed". Thus, the transaction between the parties is admitted by the defendant as a licence.

2. It is also an admitted case that Ext.A3 order is issued in terms of the Kerala Public Buildings (Eviction of Unauthorised Occupants) Act, 1968. It is that Act which is enforced against the plaintiff by issuing an order and threatening

eviction. It was at that time he filed the suit.

3. It is contended that when a licence had been issued in favour of the plaintiff, the said Act cannot be enforced against a licensee. So, Ext.A3 is incompetent.

4. It is contended by the respondent that being an occupant of a public building, the plaintiff can be issued with Ext.A3 order in terms of the said Act, so long as he continued to be an unauthorised occupant. There is nothing illegal in issuing Ext.A3 order in terms of the said Act, to evict the plaintiff from the public premises; because he is an unauthorised occupant. It is also contended that the Act provides for an alternative remedy of appeal in such circumstances. There is no reason at all to file a suit without resorting to that alternative remedy. It is also contended that in terms of Sec. 15 of the Act the suit shall not be entertained.

5. These contentions of the respondent are correct if the plaintiff is in "unauthorised occupation" of the premises. What is "unauthorised occupation"? It is defined in Sec. 2(f) of the Act as follows:-.

Unauthorised occupation" in relation to any public building, means the occupation by any person of the building without authority for such occupation and includes the continuance in occupation by any person of the public building after the authority, (whether by way of lease or any other mode of transfer) under which he was allowed to occupy the building has expired or has been determined for any reason whatsoever.

(emphasis supplied)

6. Thus, a person will be in unauthorised occupation when a public building had been transferred in his favour by way of lease or any other mode of transfer and the period of such transfer had expired. Here admittedly by the respondent-defendant, the plaintiff was only a licensee. Licensee does not have any interest in the property. There is no transfer of interest in favour of the licensee. A person will be in, unauthorised occupation when he continues in occupation of the premises transferred in his favour by lease or any other mode of transfer, exceeding the period of such lease or transfer. When the transaction is admittedly a licence, there arises no question of any transfer at all. The definition speaks about lease or any other mode of transfer. Such "other mode of transfer" shall necessarily be a transfer akin to or similar to lease and cannot be totally unrelated to such species. Licensee will not come within that. The plaintiff thus cannot be stated to be in "unauthorised occupation" as defined in the Act. When the plaintiff is not in "unauthorised occupation", as defined in the Act, a notice Ext.B1 or an order in Ext.A3 could not have been issued against him. Thus, Ext.A3 is incompetent as contended by the plaintiff.

7. It is contended by the respondent relying on the decision in Abdul Majeed Vs. Southern Railway and Others, that an ordinary civil court cannot entertain any challenge against such an order. The second decision is in relation to a similar

Central Act namely Public Premises (Eviction of Unauthorised Occupants) Act, 1971. But in the said decision the ambit of the definition of unauthorised occupation has not been considered. That was a case where admittedly the parties came within the purview of the Act whereas, in this case, admittedly by the defendant, the plaintiff is a licensee.

8. There is no transfer by lease or any similar mode in favour of a licensee. Licensee does not get any interest transferred in his favour. "Unauthorised occupation" in terms of the Act arises when a lessee or a transferee by any other modes of transfer continues in possession, beyond the period of such lease or transfer. The Act cannot be enforced, thus, in the case of licensee. In the case of licensee there may arise the situation of irrevocable licensee as well. When the Act cannot be enforced against the plaintiff, there arise no question of bar of suit in terms of Sec. 15 as contended by the respondent. So, the said decision has no application here. In this case, there is no transfer in favour of the plaintiff by any mode. He cannot be said to be in "unauthorised occupation", as defined in the Act, to set in motion the provision of the said Act. When thus the plaintiff cannot be said to be in "unauthorised occupation" as defined in the Act and when admittedly he is a licensee, the question of law has to be answered in favour of the appellant resulting in reversal of the decree.

Appeal is allowed accordingly. No costs.