

(2016) 06 KL CK 0057

In the High Court Of Kerala

Case No : WP (C) . No. 16381 of 2016 (W)

Swami Thapasyananda

APPELLANT

Vs

Revenue Divisional Officer

RESPONDENT

Date of Decision : 16-06-2016

Acts Referred:

Citation : (2016) 3 ILRKerala 672 : (2016) 3 KerLJ 427 : (2016) 3 KHC 780 : (2016) 3 KLT 522

Hon'ble Judges : P.B. Suresh Kumar, J.

Bench : Single Bench

Advocate : Sri. P. Thomas Geeverghese, Sri. R.S. Parameswaran, Smt. R.V. Sarika, Advocates, for the Appellant; Sri. Joseph George, Govt. Pleader, Sri. Nagaraj Narayanan, Advocate, Sri. Saijo Hassan, Sri. Benoj C. Augustin, Sri. Vishnu Bhuvanendran, Advocates, for th

Final Decision : Allowed

Judgement

P.B. Suresh Kumar, J.—The issue arising for consideration in this writ petition is whether the Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, ("the Act" for short) is empowered to order eviction of a tenant in a building for the benefit of a parent or senior citizen.

2. The short facts of the case are the following :

The fourth respondent was holding an item of property with a building therein. Though she had executed a settlement deed in respect of the said property in favour of her daughter and grandson, she continued to possess and enjoy the property. While so, on 16.3.2015, the fourth respondent let out the building in the property to the petitioner for a period of eleven months. According to the petitioner, though the period of lease is over, he is continuing to occupy the building as a tenant by holding over. While so, the jurisdictional Tahsildar issued Ext.P4 notice to the petitioner directing him to vacate the building. It is stated by the petitioner that Ext.P4 notice has been issued by the Tahsildar as directed by

the first respondent, who is exercising the powers of the Tribunal under Section 7 of the Act, in execution of an order passed earlier on an application for maintenance preferred by the fourth respondent. It is contended by the petitioner that the Tribunal constituted under the Act has no authority to order eviction of the petitioner from the building of the fourth respondent. It is also contended by the petitioner that in so far as the order attempted to be executed is an order passed without notice to him, the same cannot, at any rate, be enforced against him. The petitioner, therefore, challenges Ext.P4 notice in this proceedings.

3. The fourth respondent has filed a counter affidavit. The contention raised by the fourth respondent in the counter affidavit is that in an application for maintenance preferred by her under the Act against her daughter, it was found by the Tribunal that she is entitled to possess and enjoy the building occupied by the petitioner and it is on account of the said reason the Tribunal has ordered the petitioner to vacate the building. It is, however, conceded by the fourth respondent in the counter affidavit that Ext.P4 notice has been issued by the second respondent as required by the Tribunal in enforcement of the order passed in the proceedings.

4. Heard the learned counsel for the petitioner as also the learned counsel for the fourth respondent.

5. Ext.R4(b) is the order passed by the Tribunal in the application preferred by the petitioner for maintenance against her daughter. As per the said order, the Tribunal has permitted the fourth respondent to realise a sum of Rs. 7,500/- per month from her daughter towards maintenance. It is seen that in the course of the proceedings, the Tribunal found that the fourth respondent shall be permitted to occupy and enjoy the building occupied by the petitioner. A finding to that effect is also seen rendered in the said order. Thereupon, the Tribunal directed that the petitioner shall vacate the building on the expiry of the lease period. It is also seen that after Ext.R4(b) order, the fourth respondent has preferred a complaint before the Tribunal stating that the petitioner has not vacated the building and requested the Tribunal to take appropriate action to enforce Ext.R4(b) order. On the said application, the Tribunal directed the second respondent to evict the petitioner from the building. Ext.R4(c) is the communication issued by the Tribunal to the second respondent in this connection. Ext.P4 notice was issued by the second respondent in obedience to Ext.R4(c) direction issued by the Tribunal.

6. The learned counsel for the petitioner contended that the building sought to be evicted is a building situated in an area notified under the Kerala Buildings(Lease and Rent Control) Act and therefore, the petitioner is entitled to the protection of the said Act. In other words, the contention raised by the learned counsel for the petitioner is that the petitioner cannot be evicted from the building otherwise than in accordance with the provisions of the said Act. According to the learned counsel, the provisions of the Act will not override the

provisions of the Kerala Buildings(Lease and Rent Control) Act and Ext.R4(b) order to the extent it directs his eviction is without jurisdiction.

7. The Act was intended to introduce effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution. It created an obligation on the persons who inherit the properties of their aged parents and relatives to maintain them and a corresponding right to the parents and senior citizens to claim maintenance against the persons who would inherit the properties. Though section 23 of the Act deals with the properties held by the parents and senior citizens also, it does not deal with their rights vis-a-vis the tenants in the buildings owned by them. Section 23, on the other hand, only provides that where any property has been transferred by any senior citizen by way of gift or otherwise subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or undue influence and shall at the option of the transferor be declared void by the Tribunal. Section 23 of the Act also provides that where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous. Section 3 of the Act provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act. As indicated above, in so far as the Act does not deal with the rights of parents and senior citizens vis-a-vis the tenants of the buildings owned by them, I have no doubt that the Tribunal has no jurisdiction to take away the rights conferred on a tenant of a building under the concerned rent control legislation. The order passed by the Tribunal directing the petitioner to vacate the building owned by the fourth respondent, in the circumstances, is without jurisdiction.

8. In the result, it is declared that the direction in Ext. R4(b) order that the petitioner shall vacate the building referred to therein is without jurisdiction. Consequently, Ext.P4 notice issued by the Tribunal is quashed. It is made clear that this judgment will not preclude the fourth respondent from evicting the petitioner from the premises in question in accordance with the Kerala Buildings(Lease and Rent Control) Act.

9. The writ petition is allowed as above.