

(2014) 07 KL CK 0245

In the High Court Of Kerala

Case No : R.C.R. Nos. 19, 135, 138 and 149 of 2014

Thangalakath Meekkaraveettil Vahida

APPELLANT

Vs

Mundoli Nabeesu

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

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

Citation : (2014) 07 KL CK 0245

Hon'ble Judges : K.T. Sankaran, J;A. Muhamed Mustaque, J

Bench : Division Bench

Advocate : K. Praveen Kumar and Cibi Thomas, Advocate for the Appellant

Judgement

K.T. Sankaran, J.—These Rent Control Revisions are filed by the tenants in four Rent Control cases challenging the concurrent findings of the Rent Control Court and the Appellate Authority under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as the "Act"). The Rent Control Petitions were jointly tried and were disposed of by a common order. The Rent Control Appeals filed by the tenants were also disposed of by a common judgment. Hence, we are disposing of these revisions by this common order.

2. The respondent filed Rent Control Petition Nos.4 of 2011, 5 of 2011, 6 of 2011 and 7 of 2011 on the file of the Rent Control Court, Kozhikode against the respective tenant under Section 11(3) of the Act. The landlady contended that the building consisting of four rooms belonged to her husband Abdulkhader Haji. On the death of Abdulkhader Haji, his properties including the petition schedule building were partitioned among the legal heirs. In the partition, the petition schedule building was set apart to the landlady. The tenants were inducted in the building by her late husband. The tenants attorned to the landlady. The landlady also stated that her sister's son Abdul Salam is living with her. The landlady has no children. She considers Abdul Salam as her own son. Abdul Salam has no job or avocation and he depends on the landlady for his livelihood. The landlady and Abdul Salam have decided to commence a textile business in the petition

schedule building after making necessary alterations and converting the four rooms into a hall. The building is situated on the side of the Court Road, Kozhikode, which is having great business potential. Abdul Salam was working in Saudi Arabia in a textile shop and he has necessary experience in conducting textile business. The landlady contended that she can provide the necessary funds for starting the new business. The landlady also contended that there are other buildings available in the locality to accommodate the business run by the tenants.

3. The tenants disputed the bona fide need put forward by the landlady. They also contended that Abdul Salam is not a dependent on the landlady for the purpose of the building. The tenants claimed the benefit of second proviso to Section 11(3) and contended that they are depending for their livelihood mainly on the income derived from the business conducted in the petition schedule buildings and that there are no other suitable buildings available in the locality to accommodate their business. The tenants also contended that the landlady has other buildings and therefore, the Rent Control Petitions are hit by the first proviso to Section 11(3) of the Act.

4. The Rent Control Petition No.4 of 2011 was taken as the main case while trying the four cases jointly. Oral evidence was adduced by both the parties. The landlady was examined as PW1 and Abdul Salam was examined as PW2. On behalf of the tenants, RWs 1 to 4 were examined. A Commissioner was appointed to inspect the petition schedule building and she submitted Ext.C1 report. The Commissioner was examined as CW1 before the Rent Control Court.

5. The Rent Control Court considered the oral and documentary evidence in the case in great detail and held that the bona fide need put forward by the landlady is genuine. It was also held that Abdul Salam (PW2) is a dependent on the landlady. Abdul Salam is residing with the landlady and it is evident from the Ration Card produced by the landlady. It was held that the landlady is looking after Abdul Salam as her own son and that Abdul Salam is a dependent on the landlady for the purpose of the building.

6. The Rent Control Court relied on the decision in *Narayana Pillai v. Ponnappan Achari* (1980 KLT 871), wherein it was held thus:

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 and 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 dependent who seeks the provision of such building and other similar matters of relevance.

7. The oral evidence of PWs 1 and 2 were believed by the Rent Control Court. A contention was put forward by the tenants that Abdul Salam and his father are engaged in real estate business. It has come out in the evidence of PW2, Abdul Salam, that his father died 18 years back. The case put forward by the tenants that Abdul Salam is engaged in real estate business was disbelieved by the Rent Control Court.

8. The Rent Control Court also relied on the Commissioner's report and her evidence to find that the four rooms can be converted into a single hall for the purpose of conducting the proposed business by the landlady and Abdul Salam. A contention was put forward by the tenants that the evidence of CW1, the Commissioner, would show that if the walls of the four shop rooms are removed, the building itself would collapse. The Rent Control Court held that CW1, the Commissioner is not an expert and that her opinion in evidence cannot be taken for granted. The report submitted by the Commissioner and her evidence that the rooms can be converted into a single hall was accepted by the Rent Control Court and it was held that the bona fide need projected by the landlady is established.

9. The Rent Control Court further held that it is not shown that the landlady has any other building in her possession which is suitable for the purpose for which eviction is sought. An attempt was made by the tenants, with reference to extract of building tax registers (B22 and B23) that certain buildings are in the ownership of the landlady. It has come out in evidence that those buildings are residential flats. The Rent Control Court also took note of the fact that even according to the tenants, those residential flats are in the occupation of tenants. Thus, the Rent Control Court found that the Rent Control Petitions are not hit by the first proviso to Section 11(3) of the Act.

10. The tenants raised a contention that they are entitled to the protection of the second proviso to Section 11(3) of the Act. To avail that benefit, the tenants have to prove that they are depending for their livelihood mainly on the income derived from the business conducted in the petition schedule rooms and that there are no other suitable buildings available in the locality. The Rent Control Court found that though the tenants stated that they could produce their accounts to prove their income, the tenants did not produce any record to show their income from the business conducted in the petition schedule premises. The Rent Control Court also relied on the report of the Commissioner that vacant rooms are available in M.E.A. Complex, Grand Bazar and Koyenco Bazar. From the evidence on record, the Rent Control Court concluded that the tenants failed to establish the ingredients of the second proviso to Section 11(3) of the Act. It is well settled that the burden to establish both the ingredients of the second proviso is on the tenants.

11. The findings of the Rent Control Court were confirmed by the Appellate Authority. The Appellate Authority also considered the oral and documentary evidence in the case and held that the findings of the Rent Control Court do not

warrant any interference.

12. The learned counsel for the tenants submitted that a reading of the Rent Control Petitions and the evidence of PWs 1 and 2 would show that the need is for conducting business by Abdul Salam and it is not established that he is a dependent on the landlady for the purpose of the building. It is contended that what is projected in the Rent Control Petition and in the evidence is financial dependency and not dependency for the purpose of the building. Copy of the Rent Control Petitions and the oral evidence were provided to us for perusal by the learned counsel. On a close scrutiny of the Rent Control Petitions and the oral evidence of PWs 1 and 2, we find that the need projected by the landlady is for conducting business for herself and for her dependent Abdul Salam. In the Rent Control Petition, it is pleaded that Abdul Salam is fully dependent on the landlady, which includes financial dependency and dependency for the purpose of the building in the context. It is not shown by the tenants that Abdul Salam is having any other building of his own or as a tenant. A contention was put forward by the tenants that Abdul Salam is conducting textile business in Bangalore and Ernakulam. On the basis of the evidence on record, the Rent Control Court held that it is not established that Abdul Salam conducts any textile business in Bangalore or in Ernakulam.

13. The findings rendered by the authorities below are findings of fact. The revisional court exercising jurisdiction under Section 20 of the Act, would not be justified in interfering with the findings of fact arrived at by the authorities below unless it is established that the order and the judgment of the authorities below are vitiated by any illegality, irregularity or impropriety. There is no such illegality, irregularity or impropriety justifying interference under Section 20 of the Act. For the aforesaid reasons, the Rent Control Revisions are dismissed.

Lastly, the learned counsel appearing for the tenants submitted that a reasonable time may be granted to them to vacate the petition schedule premises. Taking into account the facts and circumstances of the cases, we grant time up to 31.12.2014 to the tenants to vacate the petition schedule buildings, on condition that each of the tenants shall file an affidavit before the Rent Control Court within a period of one month from today, unconditionally undertaking to vacate the respective petition schedule building in their possession on or before 31.12.2014 and also on condition that the tenants shall deposit the entire arrears of rent before the Rent Control Court within one month from today and also shall continue to deposit the monthly rent on or before the 10th of the succeeding months. If the tenants comply with the conditions mentioned above, the execution proceedings shall not be taken against them till 31.12.2014. If the tenants fail to comply with any of the conditions mentioned above, the landlady would be free to proceed with the execution of the order of eviction.