

(1969) 04 KL CK 0002

In the High Court Of Kerala

Case No : C.R.P. No. 538 of 1969 (O.P. No. 2318 of 1967)

The Young Women's Christian Association, Trivandrum

APPELLANT

Vs

S. Jacob and others

RESPONDENT

Date of Decision : 02-04-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226

Citation : (1969) KLJ 788

Hon'ble Judges : M.U. Isaac, J

Bench : Single Bench

Advocate : C.M. Kuruvilla, C. George, Jacob Oommen, S. Easwara Iyer, M. Sankara Iyer and L.G. Potti, for the Appellant; C.S. Rajan, for the Respondent

Final Decision : Allowed

Judgement

M.U. Isaac, J.—This is a petition u/s 115 of the CPC to revise an order of the District Judge, Trivandrum passed by him u/s 20 of the Kerala Buildings lease and Rent Control) Act, 1959 (hereinafter referred to as the Act). This case was filed as an Original Petition under Article 226 of the Constitution; but in the light of the Full Bench decision of this Court in Ouseph Vareed v. Mary (1968 K. L. T. 583) that the District Court exercising jurisdiction u/s 20 of the Act is a civil court and its decision is amenable to the revisional jurisdiction of the High Court, the petitioner moved by C. M. P. No 4752 for the Original Petition being converted as a Civil Revision Petition; and it has been allowed. The petitioner is the Young Women's Christian Association; Trivandrum; and respondents 1 and 2 are the tenants of a building, which belongs to the petitioner. The tenancy came into existence long before 1st April 1940. The petitioner filed an application u/s 11 (7) of the Act before the third respondent, the Principal Munsiff, Trivandrum, who is the Rent Controller under the Act, for eviction of the tenants on the ground that the landlord required the building for the purpose of expanding its activities by providing accommodation for tourists after reconstructing and re-modelling the building. The application was resisted by the tenants on several grounds. It

appears from Ex. P-1, the order of the third respondent that only three grounds were pressed before him--

(i) The petitioner is not a religious, charitable, educational or other public institution falling u/s 11 (7) of the Act:

(ii) The need stated for eviction is not one for the purposes of the institution; and

(iii) The need alleged is a pretext for eviction and not bona fide.

The third respondent decided all these points in favour of the petitioner and ordered eviction. Dealing with the third ground, the Rent Controller stated as follows:

The petitioner has stated in the petition itself that the building is needed for the purpose of the Y.W.C.A., and for accommodating the tourists they want to remodel and to reconstruct the building. It has come out in evidence from the testimony of C.P.Ws. 1 and 2 that the petitioner Y. W. C. A. was asking the tenants to vacate the building from July 1960 onwards and that the tenants i.e. counter-petitioners in the two E. R. C. cases were asking for time to vacate for finding out a suitable accommodation. It was also come out that the southern-most room in the plaint building which was occupied by the Olivet Textiles was vacated by its tenant, that the said room is remaining closed and the petitioner as P. W. 1 has stated that it is kept closed so that the building may be reconstructed after the counter-petitioners vacated the building. The petitioner has obtained the plan and license for reconstruction of the building and has stated that the Y. W. C. A. has 40,000 rupees held in deposit in bank for the reconstruction of the building. There is nothing to discredit the testimony of P.W.1. There is also nothing brought out to show that the case of the petitioner that the building is required for its purpose to accommodate Tourists is a false one and is a pretext for eviction.

The tenants filed an appeal from the decision of the Rent Controller before the fourth respondent, the Principal Sub-Judge, Trivandrum; who allowed the appeal by his order Ex. P-2. The question whether the need stated by the landlord for eviction was bona fide was not rightly raised before him, in the light of the above finding of the Rent Controller on that point. Ex. P2 shows that in addition to grounds (i) and (ii) taken before the Rent Controller, an additional ground was raised before the Subordinate Judge. The new ground was that the tenants were entitled to protection u/s 11 (77) of the Act. The Subordinate Judge concurred with the finding of the Rent Controller on the first ground; but they differed on the second ground. The Subordinate Judge held that the need alleged for eviction was not one for the purposes of the institution. He also held that the tenants were entitled to protection u/s 11(17). The petitioner took the order of the Subordinate Judge in revision before the fifth respondent, the District Judge, Trivandrum. The learned Judge disagreed with the finding of the fourth respondent, on the question whether the need alleged by the petitioner was one for the purposes of the institution. He, however, agreed with the fourth

respondent regarding the application of Section 11 (17) of the Act, with the result the revision petition was dismissed.

2. There is no dispute about the facts of the case. The learned counsel for the petitioner contended that the decision of the District Judge is based on a clear misconstruction of Section 11 (17) of the Act. The learned counsel for the tenants not only supported the decision of the District Judge on this point; but he further submitted that his decision on the question whether the alleged need for eviction was for the purposes of the institution was wrong. I shall consider the last contention first.

3. Section 11 (7) of the Act reads:--

11(7) where the landlord of a building is a religious, charitable, educational or other public institution, it may, if the building is needed for the purpose of the institution, apply to the Rent Control Court, for an order directing the tenant to put the institution in possession of the building,

Regarding the alleged need for the eviction, the first respondent stated in the written objection filed by him before the Rent Controller, that it was false to state that the building was meant to provide accommodation for tourists as part of the service objects of the petitioner since there were guest rooms in the Y.W.C.A. hostel building where tourists were accommodated. The constitution of the petitioner states, among other things, that its object shall be to promote spiritual, social, intellectual and physical welfare of women of Trivandrum and to present fellowship and service as the ideal life. The constitution further states that the association is affiliated to the National Young Women's Christian Association of India through the District Committee of Travancore and Cochin and to the Worlds Young Women's Christian Association. In the light of the above objects of the institution, particularly its international character, and the admitted fact that it has been providing accommodation for tourists in its hostel, it cannot be said that providing accommodation for tourists is not one of the purposes of the institution. The Rent Controller has rightly found, and there is also no dispute before, me that the need alleged is bona fide, and that, for providing better and more accommodation for tourists, the reconstruction and remodelling of the building are necessary. What all activities the institution should carry on is essentially a matter to be decided by the institution; and it cannot be said that the decision taken by it to reconstruct and remodel the building for the purpose of providing accommodation for tourists is not within the object of the institution or the scope of its permitted activities. The finding of the learned District Judge that the petitioner is entitled to eviction u/s 11 (7) of the Act is, therefore, correct.

4. The next question for consideration is whether the tenants are entitled to any protection u/s 11(7) of the Act, which reads as follows:-- 11(17) Notwithstanding anything contained in this section a tenant who has been in continuous occupation of a building from 1st April 1940 as a tenant, shall not be

liable to be evicted for bona fide occupation of the landlord or of the occupation by any member of his family dependent on him provided that a landlord of a residential building shall be entitled to evict such a tenant of that building if the landlord has been living in a place outside the city, town or village in which the building is situated for a period of not less than five years before he makes an application to the Rent Control Court for being put in possession of the building and requires the building, bona fide for his own permanent residence or of the permanent residence of any member of his family or the landlord is in dire need of a place for residence and has none of his own.

On reading Section 11 as a whole, it is seen that there are only two provisions, which entitle a landlord to have an order for eviction of a tenant for the purpose of his own occupation. One is Sub-section (3), and the other is Sub-section (8). It appears to be clear that the protection given u/s 11(17) to a tenant, who has been in continuous occupation of a building from 1st April, 1940, is available only against a landlord who seeks eviction bona fide for his own occupation or for the occupation of any member of his family. In other words the said protection is available only for a tenant who is sought to be evicted under Sub-section (3) or Sub-section (8) of Section 11. They are two of the numerous grounds on which a landlord may seek eviction. The ground stated in Sub-section (7) is entirely different from those mentioned in Sub-sections (3) and (8). Eviction in this case is sought under Subsection (7); and Sub-section (17) has no application to such a case. Respondents 1 and 2 are not, therefore, entitled to any protection u/s 11 (17) of the Act.

In the result, I set aside Exts. P-2 and P-3, the orders passed by the Subordinate Judge and the District Judge (Respondents 4 and 5), and restore the order, Ex. P-1, passed by the third respondent. Accordingly respondents 1 and 2 are directed to put the petitioner in possession of the building. In view of the fact that respondents 1 and 2 have been in occupation of the building continuously for a long number of years, and they have also been carrying on business there, I give them the maximum time of three months allowed u/s 11 (10) of the Act for giving possession of the building to the petitioner. In the circumstances of the case, the "parties will bear their own costs.