

(2009) 01 KL CK 0052
In the High Court Of Kerala
Case No : RC Rev. No. 14 of 2009

Valiyaparambathk Rajan and Valiyaparambathk Vilasini	APPELLANT
Vs	
Poill Raghavan	RESPONDENT

Date of Decision : 15-01-2009

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(10), 11(2), 11(3), 11(8), 2(1)

Citation : (2009) 1 ILR (Ker) 389 : (2009) 1 KLT 403

Hon'ble Judges : Pius C. Kuriakose, J; M.C. Hari Rani, J

Bench : Division Bench

Advocate : C. Valsalan, for the Appellant; B. Krishnan, for the Respondent

Judgement

Pius C. Kuriakose, J.—The defeated tenants husband and wife, against whom an order of eviction on the grounds u/s 11(2)(b) and 11(8) of the Kerala Buildings (Lease And Rent Control) Act 2 1965 has been concurrently passed by the Rent Control Court and the Appellate Authority, are the petitioners in this revision petition u/s 20 of the Act. The revision petitioners' defence to the case for eviction u/s 11(2)(b) was that the entire arrears of rent demanded in the statutory demand notice issued u/s 11(2) was discharged by them during the pendency of the rent control petition. This defence was rightly turned down by the Rent Control Court and the Appellate Authority taking the view that in view of the terms of Section 11(2)(b), it is obligatory that if the tenant does not discharge the arrears of rent together with interest at 6% p.a. and postal charges within 15 days of receiving the notice, an order of eviction u/s 11(2)(b) shall follow. According to us, the orders of eviction passed u/s 11(2)(b) are not absolute orders of eviction. They are only provisional orders and the petitioners tenants do not have to worry about such orders since those orders are liable to be vacated by the Rent Control Court on application u/s 11(2)(c) being filed before that court. Therefore, we do not find any reason for interfering with the order of eviction u/s 11(2)(b). We grant one more month's time from today to the petitioners to apply to the Rent Control Court u/s 11(2)(c) for getting the

orders passed u/s 11(2)(b) vacated.

2. The landlord's case in the context of the substantial ground u/s 11(8) was that the petitioners' shop room is one of the four rooms in a larger building belonging to the landlord. The landlord averred that he himself is in occupation of one of the four rooms and is doing grocery business therein. He averred further that two rooms (obviously the two middle rooms) were under the occupation of his sons, who were doing their independent business therein. The fourth room of the building is the subject matter of the Rent Control proceedings. According to the landlord, he requires the room in the possession of the revision petitioners, for expanding the grocery business, which is being conducted by him. The landlord's plea was resisted by the revision petitioners, who contended that at the time of issuance of lawyer notice and also at the time of institution of the rent control petition, the landlord was in possession of three rooms including the two rooms alleged to be possessed by the landlord's sons. The claim was not at all bona fide. If the claim was genuine, the same could have been accomplished by utilising either of the two rooms, which were remaining vacant at the time when the need arose. The revision petitioners also contended that the petition should fail in view of the 1st proviso to Sub-section 10 of Section 11, since the hardship, which will be occasioned to the petitioners on account of eviction, will out weigh the advantages which the landlord may gain by getting eviction. The evidence at trial before the Rent Control Court consisted of the oral testimony of the landlord as PW1 and that of the revision petitioners as RW1. The documentary evidence on the side of the landlord consisted of Exts.A1 to A8 while the same consisted on the side of the tenant of Ext.B1 to B3. Ext.A2 was a copy of the lawyer notice and Ext.A7 was a copy of the reply notice sent by the revision petitioners. Ext.A8 dated 15/3/2007 (some two months after the institution of the RCP) was a licence fee receipt issued by the local authority in favour of the son of the landlord regarding the conduct of the business by him in the middle rooms of the four room building. The Rent Control Court, on evaluation of the evidence, came to the conclusion that the landlord's claim for additional accommodation was bona fide and that the advantages which will enure to the landlord by getting the eviction will out weigh the hardships which may be occasioned to the petitioners and accordingly, ordered eviction. The appellate authority also after a reappraisal of the evidence concurred with the conclusions of the Rent Control Court and confirmed the order of eviction.

3. Sri. C. Valsalan, the learned Counsel for the petitioners has addressed us extensively. Sri. Valsalan submitted that at the time of issuance of Ext.A2 lawyer notice and even at the time of institution of the Rent Control Petition, the two middle rooms of the four room building were under the possession of the landlord himself and it is only after receiving Ext.A7 reply notice that the landlord would incorporate a plea to the effect that the middle rooms are in the possession of his sons. Drawing our attention to Ext.A8, Sri. Vasalan submitted that Ext.A8 is a postlitem document and barring that, there is no acceptable legal evidence to support the findings of the authorities below that the middle rooms

are possessed by the sons. The question of comparative advantages and hardships has also not been correctly decided by the authorities below, according to Sri. Valsalan.

4. We have considered the submissions of the learned counsel for the petitioner. We have gone through the copies of Exts.A2, A7 and A8 which were handed over to us by Sri. Valsalan. We have gone through the Rent Control Petition also. We cannot agree that the case of the landlord that the two middle rooms are in possession of his sons, who are doing independent business, was incorporated by the landlord only after receiving Ext.A7 reply. We find that in Ext.A2 lawyer notice itself, the landlord had raised such a case. Of course, Sri. Valsalan is right in his submission that Ext.A8 licence fee receipt was obtained by the landlord after the rent control petition was instituted. It is a matter of common knowledge that several trades are being conducted without taking out licence promptly from the local authorities and it is only when the bill collector of the local authority reaches the door steps, do the traders become alerted about the necessity of taking out licence. Ext.A8 is an yearly licence which in all probability was taken out long after the business was commenced by the landlord's sons. In view of Sri. Valsalan's assertions before us that even now the middle rooms are remaining vacant, we suggested to him that a commission can be issued from this Court immediately to have a local inspection of the premises. The learned Counsel expressed diffidence on the reason that the financial possession of his client will not permit adoption of such a course. We are not impressed. According to us, if in spite of PW1's assertion and Ext.A8, the petitioners maintained that the middle rooms remained vacant, they should have taken out commission or at least examined some neighbouring shop keepers and substantiated the contention that those rooms are vacant. On the evidence available on record, the authorities below were perfectly justified in accepting the landlord's case that middle rooms are occupied by the landlord's sons.

5. The standard of bonafides expected to be established by a landlord in a petition u/s 11(8) is not so rigorous as in the case of petitions u/s 11(3). In the instant case, it is not disputed that the landlord is conducting business in grocery in one of the rooms in the building having four rooms. The landlord testified before the rent control court that he intends to expand that business by utilising the petition schedule building also. The testimony given by the landlord as PW1 inspired the Rent Control Court and also the appellate authority which is the final court on facts under the statutory scheme. Going through the pleadings also we find that no oblique motives whatsoever are attributed by the revision petitioners to the landlord in seeking the revision petitioners' eviction. The contentions are only that the need can be accomplished by utilising the two middle rooms allegedly lying vacant. The thrust of the revision petitioners' defence was on the question of comparative hardship. We therefore approve the finding concurrently entered by the courts below that the need of the landlord brought u/s 11(8) for additional accommodation is bonafide.

6. Sri. C. Valsalan would then submit that need for additional accommodation for expansion of an ongoing business envisaged u/s 11(8) can be accomplished only by utilising a room which is adjacent to the petition schedule room. In the instant case, the petition schedule room was separated from the room in which the landlord was carrying on business in the two middle rooms. The above argument is only to be repelled in view of the language of Section 11(8). Section 11(8) only insists that the landlord should be in occupation of a part of the larger building and that the tenant should be in occupation of either the whole of the remaining part of that building or any part of the remaining part. Remaining part under the occupation of the tenant need not necessarily be the part adjacent to the part under the occupation of the landlord. We notice that this point is decided by this Court in John Vs. Manuel, where K.S. Radhakrishnan, J, as he then was, would speak for the Bench as follows:

From a combined reading of the above mentioned provisions it is clear that the landlord and tenant should occupy portions of the building. If the landlord and tenant are occupying different buildings, even though adjacent and owned by the landlord, those buildings are to be treated as separate buildings and therefore would not fall u/s 11(8) read with Section 2(1) of the Act. Seven rooms form as a compact block and the mere fact that landlord has divided the compact block into seven rooms it cannot be said that oneness of the building has been lost. The whole seven rooms form a block and part of the same building within the meaning of Section 11(8) read with Section 2(1) of the Act. The mere fact that the room in that compact block could be sold separately does not mean that oneness has been lost. Further the mere fact that tenanted premise is three rooms away from the room occupied by the landlord would not mean that Section 11(8) is not attracted. The question is whether all the rooms form part of one block and therefore part of a building. u/s 11(8) it is not necessary that the room should be adjacent, but the test is whether tenanted building forms part of the same building though separated by a few shop rooms. If all the rooms including the rooms occupied by the tenant and the landlord form part of a single building, though separated by two or three rooms, would not lose its oneness and therefore Section 11(8) could be attracted. u/s 11(8) the nature of additional requirement should have some nexus with the existing need.

We are in complete agreement with the views expressed by this Court in John v. Manuel 2004(3) KLT 380.

7. Sri. Valsalan would seriously urge before us that the findings of the courts below on the question of comparative hardship are wrong. u/s 11(8) what the rent control court is expected to do once it is found that the need for additional accommodation advanced by the landlord is bonafide, is to weigh the advantages which will enure to the landlord on one scale of the balance against the hardship which will be occasioned to the tenant on account of the eviction on the other scales. The authorities below have found on evidence that eviction will be of considerable advantage to the landlord in that he will be able to expand the

ongoing business and derive profit. It was for the tenants to have adduced evidence regarding the hardship which will be caused to them on account of eviction and show that such hardship will outweigh the advantages enuring to the landlord. The tenants' evidence is that they are small time tailors. The courts below found on evidence that it will be possible for the tenants to continue tailoring works either in a new building to be taken on lease or from their own residential house and that no real hardship is going to be occasioned to them by the order of eviction.

8. Having regard to the contours of our jurisdiction u/s 20, we will not be justified in interfering with the concurrent findings of the authorities below in the context of comparative advantages/hardship also. Revision petition fails and will stand dismissed.

9. Lastly, after we pronounced the order, Sri. Valsalan requested for a year's time to vacate the premises. Sri. Vasalan is directed to serve a copy of the revision memo to Advocate Sri. B. Krishnan and Sri. B. Parthasarathy. Show the names of Sri. B. Krishnan and Parthasarathy in the cause list and post tomorrow(16/1/2009) for considering the question of grant of time only.