

(1982) 02 KL CK 0011

In the High Court Of Kerala

Case No : C.R.P. No's. 2973, 3019, 3024 and 3058 of 1979

Vatiyil Moideenkunhi and Others

APPELLANT

Vs

Edacherikkandi Govindam and Others

RESPONDENT

Date of Decision : 19-02-1982

Acts Referred:

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

Citation : (1982) KLJ 698

Hon'ble Judges : Sukumaran, J

Bench : Single Bench

Advocate : P. K. Balasubramanyan, G.K. Usha, K. K. Ravindranath and T.V. Ramakrisirnan, for the Appellant; T. L. Viswanatha Iyer and P. S. Narayanan, for the Respondent

Final Decision : Allowed

Judgement

Sukumaran. J.

1. These are revision petitions filed by the tenants against landlords, landlords being same in all the four revision petitions. By a document Ext. A2 dated 6-6-1976, the landlords purchased the rights over the petition schedule properties. After so purchasing the rights over the properties, the landlords issued notice Ext. A3 dated 5-4-1976 seeking to terminate the tenancy and demanding possession of the building. The demand not having been complied with, eviction proceedings were initiated. Two grounds were mentioned; (a) the requirement of the petitioners for starting a business of their own; (b) arrears of rent. The second ground does not survive for determination, as it is now admitted that there are no arrears of rent.

2. The Rent Controller considered the question while discussing point No. 4; it referred to the admissions contained in the evidence of the petitioners and ultimately entered a finding: "With this evidence, I am not in a position to say that the need pleaded can be construed as bona fide". The alternate contention

about the availability of other suitable buildings, even on the assumption that the need pleaded was bona fide, was considered by that authority, it found that there was no evidence to prove the availability of other suitable buildings. The tenant was held to be depending upon the income of the trade carried on in the petition building for his livelihood.

3. In appeal by the landlord, the findings of the Rent Controller were reversed, as regards the question relating to the bona fide need. It found that the property had been purchased by the landlords for starting a business and that it stood to reason that they purchased petition schedule building "to translate their desire into practice." According to the Appellate Authority the tenant was not in a position to prove any ulterior motive on the part of the landlord. The contentions based on Section 11(3) were also rejected except in regard to the respondents in C.M.A. Nos. 29 and 59 which respectively related to Rent Control Petition No. 45 of 1976 and Rent Control O.P. No. 36 of 1976.

4. The matter was taken up in revision. By its order dated 22-9-1979, the revisional authority allowed R.C.R.P. No. 60 of 1978 and granted eviction u/s 11(3) of the Act in that case. R.C.R.P. No- 43 of 1978 by the tenant in Rent Control Petition 35/76, R.C.R.P. No. 47/78 by the tenants in Rent Control Petition 45/76, and R.C.R.P. No. 48/78 by the tenant in Rent Control Petition 36/76 were all dismissed. Eviction was granted in those cases also.

5. The tenants have come up in revision before this Court complaining about the orders of the authorities below.

6. The objection filed for eviction, did not contain any formal statement relating to the bona fide need justifying the eviction. Even assuming that other averments could also be taken into account and a plea of bona fide need could be read into them, such a plea does not satisfy the requirements of law. The question relating to the necessity of giving detailed and specific particulars in a plea of bona fide need in an application for eviction had been considered by judicial decisions. This court dealt with the matter three years back in the decision in C.R.P. No. 841 of 1978. Following the decision of the Rajasthan High Court in *Birdhichand v. Ram Prashad*, 1970 R.C.R. 442, it was held that specific particulars regarding the bona fide requirement were essential so as to enable a court to evaluate the claim of bona fide. It was also explained that particularisation of the details constituting the bona fide claim was necessary to enable the respondents-tenants to put forward their contentions effectively. The decision of the Andhra Pradesh High Court in *Tiruveedhi Ramanjaneyulu v. Arveti Venkata Subbamma*, 1978 (1) R.C.J. 716 also considered the requirement of this plea from the objective of the statutory scheme. I too had occasion to consider this question in a recent decision in *Rcmgaier Son (Pvt.) Ltd. v. Chinnappa Rukhiyabi*, C.R.P. No. 27 of 1982-F. (1982 K.L.N. (CN) 27 Case No. 21). Notwithstanding the fact that the plea was not specific, interference in revision was declined in C.R.P. No. 27 of 1982 on the ground that the tenants had no grievance of the same before any of the authorities below. That is not the

position in the present case. As is evident from the reference to the orders of the Appellate Authority and the revisional authority, this question had been very clearly raised and forcefully argued. The authorities below, however, apparently unaided by any authoritative decision brought to their notice, thought that the lack of sufficient pleadings could not deter those authorities in ordering the eviction. This approach is fundamentally erroneous in view of the requirements of the pleadings as laid down by this Court.

7. The revisional authority, dealt with this question in paragraph 22 of its order. It referred to the arguments of the revision petitioners and dealt with them in the following words:

The first argument advanced by the 3 revision petitioners-tenants is that it is not stated in para 5 of the petition that the landlords "bona fide" require the building while dealing with that aspect. On a perusal of the petition, I feel that the absence of the expression "bona fide" in para 5 in the petition is only an inadvertent omission and the expression find a place in para 7 while dealing with the notice issued and therefore nothing turns on that. The next argument advanced by the learned counsel for the revision petitioners is that the type, extent, purpose and space required for the proposed trade in the building are not set out much less is there any evidence on that aspect." I do not think that it is necessary that such details showed be incorporated in extense in the petition.

As stated earlier, this approach is not in. tune with the decisions of this Court. The assumption that the pleadings lacked only in particulars in extense, is erroneous. For all practical purposes, there was no proper plea at all. In view of the law as laid down by the decisions aforesaid, the orders of the Appellate Authority and the revisional authority have to be set aside, on the short ground that the petitioners did not plead the case in the manner required by law. I do so.

8. Having regard to the above conclusion, it has become unnecessary to consider the other claims of the tenants.

9. Counsel for the petitioners had filed C.M.P. No. 2837 of 1982 in C.R.P. No. 3058 of 1979 and had filed affidavit in the connected cases, with a view to point out that in the partition suit and connected proceedings, the assignee of the present landlord have not obtained any right in respect of the petition schedule buildings, that a receiver appointed by that court is in possession of the properties, that the rent is being paid to the receiver so appointed by the court and that in those circumstances, which according to the revision petitioners are subsequent events and that could be taken due note of by this Court, no eviction could be granted at the instance of the landlords, who have no claim at present as regards the petitions schedule building. It has become unnecessary to consider these matters, in view of the conclusions I have reached relating to the lack of pleadings in the case. Counsel for the respondents submitted that in case this Court felt that the pleadings were so much wanting in material and particulars, the petitioners may be permitted to amend the pleadings. I am not

inclined to grant such a request at this stage. He made another prayer that the disposal of this petition on the ground of defective pleadings shall not preclude him from instituting appropriate proceedings with sufficient and proper pleadings. Having regard to the circumstances, I feel, that this request can be granted. I make it clear that the disposal of this revision will not preclude the landlords, to institute appropriate other proceedings in accordance with law, as explained by the decisions of this Court, if they choose to do so. With the above observations the revision petitions are allowed. The orders of the Appellate Authority and the revisional authority are set aside. I direct the parties to bear the costs.