

(2016) 01 KL CK 0119

In the High Court Of Kerala

Case No : R.C.R. Nos. 234, 284, 285 of 2013, 315 of 2012 and 339 of 2013.

Velayudhan Nair

APPELLANT

Vs

Young Men's Christian Association, Kollam

RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(7), 2(3), 2(6)

Citation : (2016) 2 KerLJ 209 : (2016) 2 KHC 640 : (2016) 1 RCRRent 691

Hon'ble Judges : P.N. Rabindran;K. Ramakrishnan, JJ.

Bench : Division Bench

Advocate : P.C. Chacko and Asha P. Kuriakose, Advocates, for the Appellant; T. Krishnan Unni (Sr.), Saju S.A. and Jamsheed Hafiz, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramakrishnan, J. - Tenants in R.C.(OP)No.29 of 2010, R.C.(OP)No.34 of 2010, R.C. (OP)No.31 of 2010, R.C.(OP)No.30 of 2010 and R.C.(OP)No.33 of 2010 on the file of the Rent Control Court, Kollam, are the revision petitioners herein. Though independent rent control petitions have been filed by the landlord to evict the tenants in possession of different rooms in the same building, it is for a common cause of starting an internet cafe, shifting their mess to establish health club and gymnasium, public library cum reading room, reception cum lounge etc., and the claim was made under Section 11(7) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act"). The common allegation in all these cases was that the landlord is a religious charitable institution registered under the Travancore Cochin Literary Scientific and Charitable Societies Act, 1955 and affiliated to National Council of YMCA's. The society formed principally for noble objects as its objects to open libraries and reading rooms and provide for conducting indoor and outdoor recreation games, sports and entertainments. They are competent to acquire and hold and transfer movable and immovable properties to start restaurants and community centres,

construct and maintain buildings. The society was formed in the year 1924 and has got considerable growth with 350 members now. There is no open space for construction of any new building within the premises. The society constructed a golden jubilee building by the side of YMCA road and agreed to let out its portion on rent.

2. The tenant in R.C.P. No. 29/2010 was granted a room as per agreement dated 01.03.2009 for a period of 11 months with effect from 15.03.2009 with liability to pay rent of Rs. 2,480/- with an increase of 5% every 12 months. Though it was termed as a license agreement, it was intended as a lease agreement and the relationship between them is that of landlord and tenant. The Board of Association has decided in its meeting held on 19.01.2010 resolved to have all the shops functioning in the golden jubilee building for utilising the area for its purpose like reception cum lounge, travel desk, shifting of YMCA mess and for starting a multi gymnasium cum health club and a library cum reading room etc. There are altogether five shop rooms, including one in the occupation of the tenant in this case.

3. In RC(OP)No.34/2010, the building was let out as per agreement dated 01.08.2009 for a rent of 6,165/- with an increase of 5% every 11 months. The present rent is Rs. 6,794/- per month. In R.C.(OP)No.31/2010, the building was entrusted having an extent of 1245 square feet for conducting a book stall as per agreement dated 17.09.2007 for a period of three years with effect from 20.04.2007 with an increase of 5% on every 12 months. In R.C.(OP)No.30/2010, it was let out to the tenant for conducting a showroom of handicraft items as per agreement dated 20.09.2005 for a period of five years with effect from 01.06.2005, (though it was wrongly mentioned in the judgment as book stall as per agreement dated 17.09.2007 for the period of three years with effect from 20.04.2007). In R.C.(OP) No.33/2010, the building was let out for the purpose of book stall as per agreement dated 17.09.2007 with effect from 20.04.2007 the rent was Rs. 4,783/- with an increase of 5% and the present rent is Rs. 5,811/-. Though notices have been issued to the tenants to vacate the premises and surrender possession, they did not surrender possession. So they have no option except to file these petitions for eviction under Section 11(3) and 11(7) of the Act is the allegation in the petitions.

4. In all these cases Except in RC(OP) Nos. 29/2010 and 31/2010, the respondents have taken up the contention that the landlord has no right to file an application for eviction under this Act as the relationship between them is not that of landlord and tenant but only that of licensor and licensee. As per the agreement, it was termed as license agreement and the relationship as licensor and licensee and the monthly payment to be paid is mentioned as licence fee. So the petition is not maintainable. They also contended that the Government has taken a decision to evict them and misrepresenting that they are the owner of the building and the land they have inducted these persons and since the Government has decided to evict them from the premises by cancelling the

lease, they are not entitled to maintain the application for eviction. They denied the allegation that they require the premises for the purposes mentioned above. This is only a ruse to evict them. They also contended that the attempt of the petitioner is to evict the present occupants and to let out the same at higher rent to other persons and there is no bonafides in filing the application and they prayed for dismissal of the application. Except not denying the relationship, the other contentions raised by them were adopted by the respondent in R.C. (O.P)Nos.29/2010 and 31/2010 as well. In these cases they have admitted that they are tenants of the building under the petitioners in the court below.

5. In all these cases, the Secretary of the Landlord Association was examined as PW1 and the counter petitioners were examined as CPW1 and in R.C.P.No.31 of 2010, an agent of the counter petitioner was examined as RW1 and they have produced respective documents to prove their cases as well which are not much relevant for the purpose of considering the revisions except the document of entrustment to consider the question of jural relationship between the parties. So we are not enumerating the same in these revisions.

6. After considering the evidence on record, the Rent Control Court found that though the document was styled as licence agreement, really it is a lease agreement and there is a landlord tenant relationship between them and found that the applications are maintainable. It is also found that the need alleged by the petitioner is genuine and ordered eviction under sections 11(7) and 11(3) of the Rent Control Act. In R.C.(OP). No.34/2010, the Rent Controller found that the eviction can be ordered under section 11(8) of the Act. Against all these cases, R.C.A.Nos.26/2011, 35/2011, 23/2011, 40/2011 and 37/2011 were filed by the respective counter petitioners in the lower court. The Rent Control Appellate Authority dismissed these appeals by separate judgments confirming the order of eviction passed by the Rent Controller. Aggrieved by the same, the above revisions have been filed by the respective counter petitioners in the Rent Control Court.

7. Though separate rent control petitions were filed and they were decided on independent evidence by separate judgment and separate appeals have been filed and they were disposed of by separate judgments, since common question of law and need have been alleged in all these cases, this Court felt that these revisions can be disposed of by a common order.

8. The counsel for the revision petitioners/tenants in all these cases submitted that, a reading of the agreement by which they have been put in possession, will go to show that it is a licence agreement and there is no landlord tenant relationship between the petitioners and the counter petitioners in the court below. They also contended that a reading of the agreement will go to show that exclusive possession of the building has not been given and they have mentioned that, the occupants have no interest in the building and the licensees are deemed to be in possession of the building as well which will go to show that there is no exclusive possession of the building given so as to treat this as a

lease agreement as found by the courts below. Further, they also contended that the need alleged is not bona fide and the Government has taken decision to cancel the lease and, it is only after that decision that they have decided to file an applications for eviction and they are not going to implement the same and this is only a ruse for eviction and the courts below had not property appreciated the same. They have also argued that scope of the bonafides under section 11(10) of the Act has not been considered by the court below before ordering eviction. They prayed for allowing the revision petitions and dismissal of the rent control petitions.

9. On the other hand, learned counsel for the landlord in all these cases submitted that though the agreement was termed as licence agreement, they have treated it as a lease agreement and not as a licence agreement. Landlord has no control over the same and exclusive possession of the building has been given to them for conducting respective business. So the court below was perfectly justified in holding that it is a lease agreement. Under section 11(7) of the Act, they need only to prove that they wanted the building for their purposes and there is no necessity to prove the bona fide need strictly as required and proved under section 11(3) of the Act. So, according to them, the concurrent findings of the court below on this aspect need not be interfered with under section 20 of the Rent Control Act.

10. The main question that has been raised in these revision petitions is that there is no landlord-tenant relationship between them and the agreement by which they have been put in possession is licence agreement. All the persons were put in possession by a similar agreement like Ext.A4 in R.C.P.No.29/2010 except some variation on the rent and period of lease. It will be seen from the terms of the agreement that except stating that they mutually agreed that there is no interest created and the landlord is deemed to be in possession of the same, a reading of the clauses will go to show that they were put in exclusive possession of the respective rooms. Further, it is also seen from the clauses in the agreement that the right to terminate lease by giving notice has been provided which normally is not expected to be given as in the case of licence, which can be terminated at will of the licensor. Further, the evidence in this case also will go to show that the persons in possession of the building are conducting business of their choice and can conduct as they like without the intervention of the owner of the building. The owner of the building has no control over the conduct of the business in the respective buildings as well. Further, in spite of the fact that the lease period is over, they are allowed to continue in the premises and that also will go to show that the real intention of the parties is only to treat them as landlord and tenant and not as licensor and licensee. Further, it is clear from the evidence that as per the arrangement between the Government and the landlord, they are not entitled to sublet the property to others. Though the buildings have been let out to the tenants on the basis of the lease arrangement, it was mentioned in the document as licence agreement to overcome the bar provided under the lease agreement between the Government and the

petitioners in the rent control petitions.

11. Further, in the decisions reported in *Chandy Varghese v. K. Abdul Khader* (2003 (11) SCC 328) and *C.M. Beena v. P.N. Ramachandra Rao*, (2004 (3) SCC 595), the Apex court has held that litmus test to ascertain the difference between the lease and licence is as to whether any interest in the property has been created or exclusive possession has been given to the tenant. In the decision reported in *Beenas*" case (cited supra) in paragraph-12 of the judgment it has been mentioned that:

".... the nature of the premises is of a shop and not a garage meant and designed exclusively for parking a car. The premises are located in a busy commercial market. The appellant has exclusive possession over the premises and the owner neither can nor does interfere therein. A full-fledged stationery shop and allied business activities have been carried on by the appellant in the premises ever since 1972. The appellant was in possession of the premises for about 20 years before the date of the deed of licence and in spite of the "deed of licence" of 1981 having been executed continued to possess, use and enjoy the occupation of the respondent did not insist on the appellant putting back the respondent in possession of the premises but allowed him to remain in occupation and to continue to do so for a period of about seven years till the date of the institution of the suit".

So from the above nature of possession and conduct of the parties, it was held that it can only be held that it was a lease agreement though the arrangement was termed as licence agreement in the document.

12. In these cases also the tenants have no case that the landlord has got any domain over the conduct of the business or they have got any right to interfere with the conduct of the business as well. Further, it is also brought out in evidence that the rooms are under lock and key of the person in possession of the building. That shows that they are in exclusive possession of the building and no part of the rooms in the possession of the counter petitioners in the court below are being used or enjoyed by the landlord so as to come to a conclusion that they are retaining legal possession of the same as well. Further, two of the tenants have not even raised the contention that the relationship between them is not a lease agreement but a licence agreement. That also will go to show that what was intended by the parties is to treat the arrangement as lease arrangement and not licence arrangement as mentioned in the document. Further there is no restriction regarding user of the room or time during which it has to function etc. Further even a right to have security arrangement for their rooms has been given to the tenants though there is a security provided by the owner for the entire complex. All these things will go to show that the owner of the building has no control over the building, manner of user and conduct of the business etc and it is in the exclusive possession of the person in occupation. So under the circumstances, the courts below were perfectly justified in coming to the conclusion that the arrangements between the petitioners and the

respondent in the lower court are that of lease agreement and their relationship is that of landlord and tenants and the applications are perfectly maintainable under the Act and the concurrent findings of the court below on this aspect do not call for any interference.

13. As regards the need alleged is concerned, they want to expand their activities by providing mess, library and reading room etc. There is no dispute that the landlord is a charitable institution coming under section 11(7) of the Act. Further, in the decision reported in *Electric and Motor Works Ltd v. Y.W.C.A., Trivandrum* (1970 KLT 909), this Court has held that petition for eviction by Y.W.C.A for the purpose of expanding its activities and in particular to provide accommodation for tourists was held to be a purpose coming under section 11(7) of the Act and held that application is maintainable as Y.W.C.A is a public institution coming under section 11(7) of the Act. The same view has been taken in the decision reported in *Young Women's Christian Association, Trivandrum v. S. Jacob and others* (1969 KLT 919). In the earlier decision *Electric and Motor Works Ltd* (cited supra) it has been held that a society or organisation established for some object especially cultural, charitable or beneficial to the society or not to individuals, then it is a public institution falling under section 11(7) of the Act. In the decision reported in *Haridas v. Mercantile Employees Association* (1975 KLT 437) a Division Bench of this Court has held that a trade union registered under Indian Trade Union Act, 1926 is public institution falling under section 11(1) of the Act. Further in the decision reported in *Sree Naryana Dharmasabha v. Sathiapalan* (2004 (2) KLT 373), it has been held that a public institution requiring building to start a business for raising funds for achieving for the all-round welfare of the members of the society, it is held that the need is for the institution within the ambit of section 11(7) of the Act. In the decision reported in *Avinash V. Saraf and Others v. Ernakulam Karayogam Society* (2012(1) KLT 77) = ILR 2012 (1) Ker.205, it has been held that subsequent acquisition of any space by the society will not affect the claim of the landlord under section 11(7) of the Act provided the need is for the purposes of the institution and is bona fide under section 11(1) of the Act.

14. Further section 11(7) of the Act reads as follows:

"Where the landlord of a building is a religious, charitable, educational or other public institution, it may, if the building is needed for the purposes of the institution, apply to the Rent Control Court, for an order directing the tenant to put the institution in possession of the building"

15. So if the landlord who is a religious charitable educational or other public institution and if they want the building for the purpose of the institution, they can apply to the rent control court for eviction under this section and if the court found that, that institution is a public institution coming under that section and it is required for their purpose, then order under section 11(7) can be passed by the court. It is true that under section 11(10) of the Act it has been mentioned that for the purpose of passing order under sections 11 (3), 11(4), 11(7) or

11(8), the court has to satisfy that the need of the landlord is bona fide before making an order of eviction. Though the tenants have taken the contention that the need is not bona fide, there is nothing brought out in the evidence of PW1 or in the evidence of counter petitioners in the court below that the need alleged is not bona fide. It is true that the Government has taken a decision to terminate the lease and proceedings have been initiated, which is evident from the proceedings marked as Ext.X1 in R.C.P.Nos.33 and 34 of 2010. In the order passed, the case was that in contravention of the clauses in the lease entered into between the Government and the Y.W.C.A, buildings have been constructed and they have sublet the buildings to others. Further, the proceedings of the Government is under challenge before this Court. It will be seen from the minutes of the landlord's Association produced on the side of the landlord that the decision in this regard was taken even prior to the initiation of the proceedings by the Government as evidenced in Ext.X1 proceedings. So it cannot be said that the present petitions have been filed for the purpose of escaping from the consequences of Ext.X1 order said to have been passed by the authorities under the Assignment of Land within Municipal and Corporation Areas Rules 1999 as the decision to evict the persons for the purposes mentioned had been taken much earlier to this. There is nothing brought out in the evidence to infer any ill motive for the landlord to file an application for eviction against the tenants as well. Further, even if the Government was able to cancel the lease and resume possession of the property, then automatically the person to be in possession by such lessee also will have to vacate premises and surrender possession to the Government. So long as the petitioners in the lower court are entitled to enjoy the land and till evicted in accordance with law, they can use it for their purpose in the manner in which they want and they can maintain an action for eviction of the building from the tenants for that purpose. So under such circumstances, the courts below were perfectly justified in coming to the conclusion that the need alleged is bona fide and rightly ordered eviction under section 11(7) of the Act, though in some cases the order was passed under section 11(3) and 11(8) of the Act, on going by the allegations in the petitions and the relief claimed, it can only fall under section 11(7) of the Act and we confirm the order of eviction passed by the court below under section 11(7) of the Act.

16. Before parting, Learned counsel for the revision petitioners sought one year time to vacate the premises which is opposed by the counsel for the respondent. It may be mentioned here that the landlord is a charitable public institution filed the rent control petitions in the year 2010 and they could not get possession of the building so far for implementing their intended purposes. But, however considering the hardship that caused to the tenants to shift their business to an alternate accommodation, we feel that six months time can be given to the tenants to vacate the premises. So the revision petitioners are given six months time from today to surrender vacant possession of the building in their possession on condition that they shall file an undertaking in the form of an

affidavit before the Rent Control Court or before the execution court, if any execution petition has been pending undertaking that, they will pay arrears of rent, if any, and continue to pay the rent at the rate agreed between them as per the agreement at the present rate till they surrender possession of the building and they will surrender possession on the expiry of the time fixed by this Court without any objection and they will not sublet or induct any third parties in the building and they shall file such an undertaking before the court below within three weeks from today. If they did not file an undertaking as directed above, then they will not be entitled to get the benefit of time to vacate the premises as granted by this Court.

17. With the above directions and observations, these revision petitions are dismissed. The parties are directed to bear their respective costs in the revision petitions.