

(1998) 01 KL CK 0005
High Court Of Kerala
Case No: C.R.P. No. 486 of 1996

Mahammood and
Another

APPELLANT

Vs

Prema

RESPONDENT

Date of Decision: Jan. 21, 1998

Acts Referred:

- Kerala Buildings (Lease and Rent Control) Act, 1965 - Section 11(2), 11(4)(iv)

Citation: (1998) 1 KLJ 377

Hon'ble Judges: K.V. Sankaranarayanan, J; AR. Lakshmanan, J

Bench: Division Bench

Advocate: Grashious Kuriakose, for the Appellant; M. Rajagopalan, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

AR. Lakshmanan, J.

Both the revisions were filed by the respective tenants who are the respondents in R.C.P. Nos. 48 and 46 of 1993. The respondent herein filed the eviction petitions under S. 11 (2) and 11 (4)(iv) of the Kerala Buildings (Lease & Rent Control) Act. The Rent Controller dismissed the petitions. The order of dismissal was reversed by the Appellate Authority and eviction was ordered. Against the order of the Appellate Authority these two revisions were filed by the tenant. The case of the landlady in the eviction petitions was that the scheduled buildings are two of the four rooms in a line building situated in Kadirur town, on the side of Tellicherry--Koothuparamba road, that the building is an old one and the area in question is a fast developing area, that new buildings have come up in the near vicinity and that the building being an old one, it requires reconstruction.

2. The eviction petition was opposed by the tenants contending that the buildings are not in a dilapidated condition and has not sustained any damages and that the

eviction petitions do not disclose what exactly were the damages caused to the building and that the plan and licence required for reconstruction were not produced. Both the Rent Control Petitions were tried together and evidence was recorded jointly. A Commissioner was also appointed who visited the property twice and filed reports which are marked as Exts.C1 and C2. The Rent Controller found that the alleged need for reconstruction is not bona fide. However, the Appellate Authority reversed the finding of the Rent Controller.

3. Mr. Gracious Kuriakose, learned counsel for the petitioners placed the following submissions for our consideration:

(1) There was no sufficient pleadings and materials to support the plea for eviction under S. 11(4)(iv).

(2) The need put forward is not genuine or bona fide.

(3) The finding of the Appellate Authority that it is totally unnecessary to produce any plan is erroneous.

(4). The non-examination of the landlady in this case is fatal.

4. Learned counsel for the landlady reiterated his submissions made before the Appellate Authority and submitted that the order of the Appellate Authority is unassailable and that the Appellate Authority has passed the order of eviction on a consideration of the evidence let in by both sides.

5. We have gone through the pleadings and also the judgment/order rendered by the authorities below as well as the evidence placed on record. We are unable to countenance the contentions of the learned counsel for revision petitioner. As regards the first contention, we are of the view that the pleadings are more than sufficient to support the claim for eviction under S. 11(4)(iv) of the Act. In this case, in both the petitions it is specifically averred that the building is an old tiled one which requires reconstruction. It is also averred that the area is a fast developing area and new buildings have come up in the near vicinity. It is further stated that the landlady is having necessary plan and the ability to rebuild. There is no denial of the averments that the area is a fast developing one and that after reconstruction the landlady can put the building to a more profitable use. The Commissioner has also noted the damages in the building. He has noted certain cracks in the building and noted that some of the rafters are broken. He also noted damages to the rooms in the area now occupied by the landlord. It is seen from the report that in certain places the tiles are missing and leakage of rain water is also seen and there are cracks on the walls also. The evidence let in, in this case would show that the building is an old one and it requires reconstruction. The finding of the Appellate Authority on this point is correct and, therefore, no interference is called for. As regards point No. 2 we hold that the need put forward by the landlady is genuine and bonafide. The Rent Controller, in his order, found fault with the landlady for not

producing the plan and licence. As rightly pointed out by the Appellate Authority, the Rent Controller failed to note that the landlady in this case is not expected to produce any plan at all. Ext.A4 certificate produced by the landlady shows that the provisions of the Kerala Buildings (Lease & Rent Control) Act has not been enforced in Kadirur Panchayat wherein the building in question is situate and, therefore, no plan is required by the local authority for the reconstruction of an existing building under Sec. 11(4)(iv) of the Act. However, the landlady has filed Ext.A1 plan to show the nature of the construction that she proposed to make. In fact, P.W. 1 in his evidence deposed to the fact that the plan is only in respect of one unit and she proposes to construct four such units in the form of a line building. In Ext.A1 the length and width as also other details of the unit is given.

6. In support of his contentions, the learned counsel for the tenant relied on the decisions reported in [K.N. Kesava Pillai Vs. K.C. Paulose and Others](#), and the decision reported in [Nizzar Rawther Vs. Varghese Mathew and Others](#), taking a contra view. According to the learned counsel, the view taken by this Court in Nizzar Rawther's case (supra) requires reconsideration. In our opinion, the view taken in the decision in Nizzar Rawther's case does not require reconsideration since the said view was confirmed by a Division Bench of this Court in the decision reported in Rema Devi c. Janaki Amma, 1996 (1) KLJ 427 wherein the Division Bench held that the requirement of plan and licence can only be under the Kerala Building Rules or any other statute governing the matter and that when the building is sought to be put up in a place to which Building Rules are not extended, no licence is required, and in such situation, no plan is contemplated. We agree with the opinion expressed by the Division Bench in the above decision. In view of the above decision, the contention of the learned counsel for the tenant regarding plan and licence fails.

7. Counsel further submitted that the non-examination of the landlady is vital to the case. On behalf of the landlady, her brother was examined as PW.1. It has come out in evidence that the landlady is a widow and it is P.W.1 who is looking after her affairs. The competency of PW.1 to give evidence for and on behalf of the landlady is not disputed. It is settled law that it is not always necessary that the landlord himself should go to the box and give evidence. Therefore, this contention also fails. The order of the Appellate Authority in ordering eviction under Sec. 11(4)(iv) is unassailable. The Appellate Authority, for arriving at the decision, has considered the entire materials on record and has rendered a finding. We, therefore, confirm the order of the Appellate Authority and order eviction under S. 11(4)(iv) of the Act.

After pronouncing the judgment, learned counsel for the tenant prayed for some time to vacate the premises. Four months' time is granted to the tenants subject to their filing an affidavit before the Rent Controller undertaking to put the landlady in peaceful possession of the petition scheduled building on or before the time indicated above. The tenants shall also pay the rent arrears, if any before the same. The landlady shall commence reconstruction immediately on getting possession

from the tenants and complete the same within one year from that date.

Subject to the above directions, the civil revision petitions are dismissed. There will be no order as to costs.