

(1996) 06 KL CK 0021

High Court Of Kerala

Case No: O.P. No. 14123 of 1995

A. Parameshwaran

APPELLANT

Vs

R.D.O.

RESPONDENT

Date of Decision: June 5, 1996

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 13, 133

Citation: (1996) 2 KLJ 280

Hon'ble Judges: P.K. Balasubramanyan, J

Bench: Single Bench

Advocate: S. Parameswaran, for the Appellant; Bechu Kurian Thomas, Rajesh R. and T.V. George, for the Respondent

Judgement

P.K. Balasubramanyan, J.

The petitioners are the tenants of "two buildings" within the meaning of the Kerala Buildings (Lease & Rent Control) Act under the third respondent. The premises occupied by the petitioner in O.P. 13989 of 1995 is XXVI/816 and that occupied by the petitioner in O.P. 14123 of 1995 is XXVI/817. There were two other rooms or units in the said building having numbers XXVI/818 and XXVI/819. The said two units were occupied by two other tenants under the third respondent. All these separate units were part of a multi storied structure. The petitioners have approached this court challenging the proceedings initiated for the demolition of the structure under Sec. 133 of the Code of Criminal Procedure. The notices Exts.P1 and P3, in that behalf issued to the petitioners are sought to be challenged. Ext.P1 is the preliminary notice issued to the third respondent landlord and Ext.P3 is the notice by the Sub Divisional Magistrate, Alappuzha posting the case to 23-8-1995 for enquiry with notice to the petitioners herein. From the counter-affidavit it is revealed that subsequently, the Sub Divisional Magistrate passed an order in respect of the premises bearing Nos. 818 and 819 and the tenants in occupation of those units had left the premises and the premises were demolished. No order was

passed by the Sub Divisional Magistrate in respect of the units occupied by the petitioners. Door Nos. 816 and 817 in view of the pendency of these Original Petitions. The order passed in that behalf by the Sub Divisional Magistrate is produced along with the counter affidavit of the third respondent and is marked as Ext.R3(e) in both the original petitions.

2. According to the petitioners, the attempt of the third respondent landlord was to bypass the provisions of the Kerala Buildings (Lease and Rent Control) Act and this was an attempt to get the tenants thrown out of the premises. This is strongly denied by the landlord who points out that a portion of the structure had earlier collapsed and the tenants in occupation of building Nos. 818 and 819 had already left the premises and an order for demolition had been passed and carried out. It is also pointed out that the whole proceeding arose out of an application filed by one Mariam Haji Moosa, the neighbouring owner who complained of obstruction due to the collapse of a portion of structure and danger to life, because of the dangerous condition of the structure. It is pointed out that the landlord had not approached the Rent Control Court even for getting the tenants evicted and she should not be responsible for any damage caused to the neighbouring owners or pedestrians by the collapse of the entire structure. It is pointed out that the structure was about 60 to 70 years old and being built of laterite stones and lime mortar, was in a dangerous condition.

3. The fact that the petitioners are entitled to protection of the Kerala Buildings (Lease and Rent Control) Act does not exclude the operation of S. 133 of the Code of Criminal Procedure or the exercise of power thereunder, by the authorities concerned. That position has been laid down by this court in more than one decision. It cannot therefore be said that the Sub Divisional Magistrate has no jurisdiction to initiate proceedings under S. 133 of the Code of Criminal Procedure or to pass orders thereon. The proceedings challenged before this court by the petitioners are only the preliminary notices issued under Sec. 133 of the Code of Criminal Procedure and the notices posting the proceedings to a particular date for consideration. As regards the two units occupied by the petitioners, no final orders have been passed by the Sub Divisional Magistrate. Ext.R5(e) indicates that the Sub Divisional Magistrate did not take a final decision in respect of building Nos. 816 and 817, occupied by the petitioners herein in view of the pendency of these Original Petitions. I think that the action of the Sub Divisional Magistrate in keeping the proceedings in abeyance in view of the pendency of the Original Petitions cannot be faulted. Since I find that there is no bar to the initiation of the proceedings by the Sub Divisional Magistrate, the proper course to adopt in these cases is to direct the Sub Divisional Magistrate to pass final orders on the proceedings initiated by her under Sec. 13 of the Code of Criminal Procedure after the enquiry contemplated by the notice Ext.P3.

4. Learned counsel for the petitioners has a contention that the whole exercise was malafide and was initiated by the landlord. In the circumstances of this case, the said contention cannot be accepted. It is seen that a portion of the building had collapsed and there was a motion by a neighbouring owner whose passage was blocked by the debris from the fallen portion of the structure. The order Ext.R3(e) dealing with the premises bearing Nos. 818 and 819 also refers to reports of the Engineer concerned regarding the condition of the building. It cannot therefore be said that the action of the Sub Divisional Magistrate was motivated or malafide. On being moved, the Sub Divisional Magistrate had a statutory duty to look into the complaint made by the complainant. I therefore find no substance in the contention of the petitioners that the proceedings were initiated malafide. Having found that there is no absence of jurisdiction of the Sub Divisional Magistrate to initiate action under Sec. 133 of the Code of Criminal Procedure merely because the occupant of a building is entitled to the protection of the Kerala Buildings (Lease and Rent Control) Act and having found that the initiation of the action was not vitiated by malafides or irrelevant consideration, I do not think it proper to interfere at this stage with the notices issued by the Sub Divisional Magistrate. I am of the view that the proper direction to make is to direct the Sub Divisional Magistrate to pass final orders in the proceedings covered by Exts.P1 to P3 in these Original Petitions in respect of the building Nos. 816 and 817 and to take a final decision in the proceedings covered by the notices Ext.P3 in these Original Petitions. The Sub Divisional Magistrate will give an opportunity to all the parties, including the landlord and the tenants to put forward their contention and pass final orders in respect of buildings bearing Nos. 816 and 817 in the proceedings covered by the notices Ext.P3 in these cases. The final orders will be passed by the Sub Divisional Magistrate as expeditiously as possible.

The Original Petitions are disposed of with the above directions. There will be no order as to costs.