

(1987) 09 KL CK 0005

High Court Of Kerala

Case No: O.P. No. 7913 of 1987

Smt. Thankamma and Others

APPELLANT

Vs

Vaikom Town Juma Masjid Mahal
Sangham

RESPONDENT

Date of Decision: Sept. 30, 1987

Acts Referred:

- Constitution of India, 1950 - Article 227
- Kerala Buildings (Lease and Rent Control) Act, 1965 - Section 11, 11(3), 11(3), 11(7), 20

Citation: (1987) KLJ 1374

Hon'ble Judges: K. T. Thomas, J

Bench: Single Bench

Advocate: K. R. Kurup and M. Rajagopalan, for the Appellant;

Final Decision: Dismissed

Judgement

1. After a variegated course in litigation a religious institution (Juma Masjid Mahal Sangham) succeeded in getting an order of eviction of a tenant from the building which belongs to the said institution. The impugned order is the one passed by the District Court in exercise of powers u/s 20 of the Kerala Buildings (Lease and Rent Control Act, 1965 (for short "The Act"). The challenge now is under Article 227 of the Constitution of India. "Vaikom Town Jama Masjid Mahal Sangham" (hereinafter Referred to as the society) filed an application before the Rent Control Court for an order of eviction on the ground that the building is bona fide needed by the sangham for its own purposes. The aforesaid ground was further expatiated in the averments stating that the society is conducting a school for teaching Arabic Language (Madrassa) in a small building which is too insufficient to accommodate all the students and that the student strength in the Madrassa is on the increase and that the society has, therefore, resolved to make the present building available to house the Madrassa therein. The Rent Control Court and the Appellate Authority concurrently found that the society bona fide needs the building. But since the

tenant depends mainly upon the income derived from the business conducted in this building for his livelihood and since there is no other suitable building available in the locality to shift his business, both the said courts refused to grant the relief prayed for by the society. The District Court, in revision, expressed the opinion that the first two courts did not consider the applicability of the ground envisaged in Section 11(7) of the Act. Hence the District Court remanded the case to the Appellate Authority with a direction to dispose of the appeal afresh after considering the scope of the applicability of the aforesaid sub section to the facts of the case. The Appellate Authority thus found that the society is entitled to an order of eviction u/s 11 (7) and hence passed an order directing the tenant to put landlord in possession of the building. That order was, in turn, challenged by the tenant in revision before the District Court without success. On the death of the said tenant, his legal representatives have now filed the present original petition.

2. Learned counsel contended that the society is not entitled to an order of eviction u/s 11(7) since the application for eviction did not mention the aforesaid sub section. It is true that the landlord-society has quoted in the application only sub section (2) and sub section (3) of section 11 of the Act. But the averments in the application are clear in that, what the landlord society wanted was an order of eviction of the tenant as the society needed the building very badly to house the Madrasa therein. It was contended by the learned counsel that when a landlord has sought for an order of eviction on a ground which affords certain protections to a tenant, it is not open to the court to grant him an order on a different ground which does not afford the tenant such protections. According to the counsel, the ground mentioned in sub section (3) is entirely different from the ground under sub section(7).

3. Can it be said that the ground envisaged in section 11(7) is entirely different from the ground mentioned in Section 11(3)? The main thrust in both the sub sections is the need of the landlord. Though the need of the landlord envisaged in section 11 (3) is specifically qualified to be his bona fide need, it cannot be contended that the landlord is not obliged to satisfy the court of its bona fides if the need urged is the one contemplated in Section 11(7). Non-mention of the word "bona fide" in Section 11(7) is of no consequence, since sub section (10) of Section 11 controls the former sub section and the Rent Control Court is duty bound to reject an application if it is not satisfied about the bona fides of the claim. A Division Bench of this court pointedly Stressed on the mandatory obligation of the court to investigate into the bona fides of the claim under sub section (7) of Section 11. The decision of the Division Bench is reported in Haridas v. Mercantile Employees Association (1975 K. L. T. 437). Thus the basic ingredient under sub section (3) and sub section (7) is the bona fide need of the landlord. But the landlord who seeks eviction under sub section (3) is not entitled to get the order if the case falls within the ambit of any one of the four provisos enumerated under the sub section, whereas the landlord who seeks eviction under sub section (7) is not subjected to any such conditions. The legislative purpose in giving two different treatments in that regard is obvious The

bona fide need of a public institution of the kind envisaged in sub section (7) is given supereminence over other considerations enumerated in the four provisos in sub section (3). If the landlord is not a public institution envisaged in sub section (7) his need, even if bona fide, must yield to those considerations whereas those considerations should surrender to the need of the public institution. That must be the rationale behind the legislative exercise in making the aforesaid distinction. The classification mentioned has thus a reasonable object to be achieved.

4. If a public institution of the kind mentioned in section 11 (7) applies to the Rent Control Court for an order to put the landlord in possession of the building on the ground that it needs the building for purposes of the institution, his application is not liable to be rejected merely because the particular sub section is not quoted in the application. Nor could it be rejected merely on account of making a mention of sub section (3) of Section 11 in the application. Quoting a wrong provision of law in an application for eviction shall not work to the fatal detriment of the applicant, if the averments in the application are sufficient to make out the case otherwise. The act does not require that the application should contain mention of the particular provision or provisions nor does any of the Rules enjoin on him to do so. The legal requirement is that every application shall contain the particulars necessary to support it, in addition to the particulars prescribed u/s 27 of the Act, and "every application for eviction u/s 11 shall also state the grounds on which the application is made" (Vide Rule 7 of the Kerala Building (Lease and Rent Control) Rules, 1979). The expression "the grounds on which the application is made" is not to be pedantically construed as one insisting on quoting the particular sub section or sub clause of the Act. "Grounds" are those relating to the facts upon which the grounds are to be made out. The appellate authority has come to the conclusion that the landlord is an institution falling within the purview of Section 11 (7) of the Act. The finding that the landlord needs the building bona fide for the institution is not challenged. Hence the order for eviction has been passed in proper exercise of the jurisdiction. Neither the appellate authority nor the District Court had transgressed out of the jurisdictional boundaries.

Accordingly, I dismiss this original petition in limine.