
(2001) 06 KL CK 0041

High Court Of Kerala

Case No: C.R.P. No. 912 of 2001

Jaira

APPELLANT

Vs

Padmanabha Kamath

RESPONDENT

Date of Decision: June 22, 2001

Acts Referred:

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

Citation: (2001) 3 ILR (Ker) 185 : (2001) 2 KLJ 239

Hon'ble Judges: S. Sankarasubban, J; Kum. A. Lekshmikutty, J

Bench: Division Bench

Advocate: S.V. Balakrishna and P.B. Krishnan, for the Appellant; V. Sivaswamy and V.V. Asokan, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. Sankarasubban, J.

Tenant in a Rent Control Petition has come up in revision against the order passed by the Appellate Authority in R.C.A. No. 49 of 1997 on the file of the Rent Control Appellate Authority, Kasaragod. Landlord filed the petition under S. 11(2)(b) and S.11(3) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act"). The ground of arrears of rent has been concurrently found against the tenant and there was no argument before this Court challenging those concurrent findings.

2. The ground of attack was the order of eviction passed by the Appellate Authority. The landlord filed his application under S. 11(3) of the Act stating that the petition schedule building was required for the residence of his son, PW2, who is going to be married shortly. Accordingly to the landlord, the son wants to set up a separate residence in the building, which is tenanted by the petitioner. In reply, the tenant contended that PW2 is the only son of the landlord and the present building in

which the landlord and his son stay is comfortable enough for the residence of his son and his family. The need for separate residence is not bona fide and it has been set up only to evict the tenant.

3. Before the Rent Control Court, the landlord examined himself as PW1 and his son was examined as PW2. The tenant got himself examined as RW1. A commission was taken out to describe the building, which was occupied by the landlord and his son. The Commissioner filed his report, Ext. C1. The Rent Control Court took the view that the building in which the landlord and his son are residing is quite sufficient for the purpose of their residence and even if his son got married, it is not necessary to shift. It is further stated that when comparing to the building in which the landlord is staying, the plaint schedule building is an ordinary structure, which the landlord's son would not like to occupy. According to him, the plaint schedule building is not a modern building. It is built up with mud wall and in no circumstances, one can expect to occupy that building. The Rent Controller was of the view that one can never expect the only son to live separately from his father. It is on the basis of this reasoning that the Rent Control Court dismissed the petition under S.11(3) of the Act.

4. Learned Rent Control Appellate Authority took the view that the question whether a person wants to reside separately or not cannot be judged by the court. That depends upon the violation and desire of the particular party. What the Court has to look into is to find out whether the need expressed is bona fide. The Appellate Authority was also not impressed by the reasoning given by the Rent Control Court that since the plaint schedule building is an old one, the landlord's son will not shift to that building. The Rent Control Appellate Authority took the view that even if the petition schedule building is an old one, the landlord and his son have got sufficient funds to make necessary repairs and stay in the building. Thus, the Appellate Authority allowed eviction under S.11(3) also.

5. Sri.S.V.Balakrishna Iyer, learned counsel appearing for the revision petitioner contended that the Appellate Authority grievously erred in coming to the conclusion that the need is bona fide. According to him, the observations made by the Appellate Authority are based on mere conjectures. On the other hand, learned counsel for the respondent Sri. V.V.Ahokan, contended that the Appellate Authority have given a sound reasoning and is not to be interfered with under S. 20 of the Act.

6. After hearing both parties, we are of the view that the revision petitioner is not entitled to succeed. The Act regulates eviction of tenants. It prescribes conditions under which a tenant can be evicted. The purpose behind the Act is to prevent arbitrary eviction of tenants. Merely because the building is occupied by a tenant, it cannot be said that the landlord or his dependant is not entitled to get possession of the same for his own occupation. According to us, it is not within the powers of this Court to consider whether a son may reside separately from his father or a particular person may occupy the building of the nature mentioned in the plaint

schedule. These are all matters, according to us, which depend upon the particular attitude of the persons concerned. The question whether the son would reside separately after the marriage is a matter, which exclusively depends upon the attitude of the son and his parents. It is not always necessary that there should be difference of opinion or quarrel to justify a separate residence. In this case, we find, both the father and son have given evidence.

7. On the appreciation of evidence, we are satisfied that the son has decided to reside separately after his marriage. Hence, we agree with the lower Appellate Authority that the need alleged is bonafide.

8. The next question is whether PW2 will occupy the plaint schedule building as it now stands. There are many decisions of this Court, which says that it is not separately necessary to prove that a person, who gets eviction under S.11(3) of the Act will make necessary repairs to the building, so as to make it more convenient. It is also come in evidence that the children of the tenant are residing separately and not with him. The justification is that the building is a small one.

9. After considering the entire matter, we are of the view that the Appellate Authority has properly considered and appreciated the evidence and the petitioner has not made any case for interference under S. 20 of the Act. In view of the above, the Civil Revision Petition is dismissed. However, we grant two months time from today to the tenant to give vacant possession of the building to the landlord.