(1977) 07 KL CK 0028

High Court Of Kerala

Case No: C.R.P. 2807 of 1975

Sudarsan Trading Co. Ltd.	APPELLANT
Vs	
Narayanan Nair	RESPONDENT

Date of Decision: July 20, 1977

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Kerala Buildings (Lease and Rent Control) Act, 1965 - Section 11, 11(2), 11(3), 11(4), 18

Hon'ble Judges: R.Bhaskaran, J

Bench: Single Bench

Advocate: K.P. Dandapani and Sumathy Dandapani, for the Appellant; P.C. Balakrihishna Menon and V.P. Mohankumar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Bhaskaran J.

1. Earlier the revision was heard and disposed of on 27th October 1976; but a review Petition has now been filed by the Respondent stating, inter alia, that the said order really happened to be passed without hearing him, as at that time he had not received notice of the revision Petition and the names shown as those of the counsel for the Respondent in the cause title were apparently wrong. I am satisfied that the Petitioner had no notice of the revision Petition at the time when it was heard, and that interests of justice demand a re-hearing of the matter. I, therefore, set aside the order that was passed on 27th October 1976 and proceed to consider the matter on merit afresh.

2. An order of eviction, against the Respondent, passed by the Rent Controller u/s 11(3) of the Kerala Buildings (Lease and Rent Control) Act, Act 2 of 1965, for short the Act, was reversed by the Subordinate Judge in appeal u/s 18 of the Act; and the decision of the Appellate Authority has been confirmed by the District Court on

revision u/s 20 of the Act. In this further revision u/s 115 CPC the revision Petitioner company challenges the legality, regularity and propriety of the order passed by the District Court.

3. The Petition was u/s 11(2), (3) and (4) of the Act. The Rent Controller, however, appears to have overlooked the contention based on damage, as is evident from the fact that only two questions, one relating to the arrears of rent and the other relating to the bona fide need of the Petitioner, were formulated for consideration. On the question of arrears of rent the finding of the Rent Controller was in favour of the Respondent tenant. The order of eviction was based solely on the ground of the revision Petitioner''s bona fide need for own occupation.

4. The legal question that falls for decision in this revision is whether the need, if it exists, of the revision Petitioner company to provide residential accommodation to its employees would constitute bona fide need for its own occupation, within the meaning of Section 11(3) of the Act. This point does not appear to have been specifically raised in the counter or in the memorandum of C.M. Appeal. The learned Subordinate Judge, however, held that the Petitioner company could not seek eviction u/s 11(3) of the Act for the purpose of occupation by its staff, since such occupation "would not amount to the landlord''s own occupation as contemplated in Section 11(3) of the Act". The further question whether the company had bona fide need provide accommodation to its staff never engaged the attention of the learned Subordinate Judge. The counsel for the revision Petitioner submitted that the view taken by the learned Subordinate Judge was wrong and it is without considering this aspect of the matter and in effect by-passing this question that the revisional court confirmed the judgment of the appellate authority. In my view the learned Subordinate Judge appears to have taken a narrow view about the scope of the expression "own occupation" appearing in Sub-section (3) of Section 11 of the Act. The occupation of a building owned by a company may take various forms; one of the forms of occupation would reasonably be occupation by its employees. Much would depend upon the object of eviction sought. A company may as part of its efficiency drive or welfare measure, undertake or intend to provide residential accommodation to its employees in place where it is scarce; and, if the eviction sought is for achieving this objective, it would, in my opinion, squarely fall within the ambit of "own occupation" u/s 11(3) of the Act. An employee occupies such accommodation, when allotted, as a licensee, not as a lessee; and there exists no jural relationship of landlord and tenant between the company on the one hand, and himself on the other, inasmuch as his right to occupy the accommodation is incidental to his employment, and would, ordinarily, stand automatically terminated with cessation of his employment with the company. It is needless to say that the occupation of the accommodation by the employee as a licensee would be on behalf of the company; and the company''s requirement would be for its own occupation. For this view I express I find support in the decision of the Supreme Court reported in B.M. Lall (Dead) by Lrs. Vs. Dunlop Rubber and Co. Ltd. and Others, . While

construing the provisions of Section 13(1)(f) of the West Bengal Premises Tenancy Act, 1956, Bachawat, J. has observed as follows in paragraph 3 of the decision at page 176:

...The Company is under an obligation to provide free residential accommodation for its officers in properties either rented or owned by it. In view of the acute scarcity of accommodation in the city, it is not possible to find other convenient flats for officers who were transferred to the city from other stations. Suitable provision for the accommodation of officers visiting Calcutta on tour is a matter of necessity. The sole question is whether the occupation by its staff officers would be the company''s own occupation. The point of dispute on which the two courts differed is whether the officer to whom the flat would be allotted would occupy it as a tenant or as a licensee. It is common case before us that if he is a licensee his occupation would be on behalf of the company and its requirement would be for its own occupation. On the other hand, if he is a tenant his occupation would be on his own account and the company''s requirement would not be for its own occupation.

(Emphasis supplied)

5. Though this question, whether Section 11(3) of the Act could be invoked by the Petitioner company when the allegation is that eviction is necessary for meeting its bona fide need for providing accommodation for its employees, was not raised by the Respondent in his pleadings, the Appellate Authority went into that question and recorded a finding in favour of the Respondent, presumably treating it as a pure question of law. The District Court, while confirming the judgment of the Appellate Authority after having examined the evidence on record and entered a finding that a case of bona fide need was not made out, is seen to have evaded an answer to the pertinent question whether the Petitioner company could invoke Section 11(3) of the Act if bona fide need for providing residential accommodation for its employees did exist, the decision on which question really gave rise to the revision. It may be noted that the Appellate Authority had not reversed the finding of the Rent Controller that the bona fide need did exist. In fact the learned Subordinate Judge did not advert to this aspect at all. The power exercised by the District Court u/s 20 of the Act, no doubt, is wider than that of the High Court u/s 115 of the Code of Civil Procedure. Even then, I do not think that it extends to making a reappraisal of the evidence so as to arrive at a conclusion different from what was reached by the Rent Controller where the Appellate Authority did not consider or disturb that finding. I am also of the view that the District Court ought to have answered the question as to whether the bona fide need for the occupation of the employees of the landlord-company would entitle it to invoke Section 11(3) of the Act inasmuch as the Appellate Authority''s decision rested solely on the finding on that question, and it was the legality, regularity and propriety of that judgment that was challenged before the District Court.

Having given my careful and anxious consideration to all aspects of the matter, I am convinced that the matter requires to be remanded to the Rent Controller for fresh disposal, and I do so setting aside the order of the Rent Controller, the judgment of the Appellate Authority, and the order of the District Court. The Rent Controller shall dispose of the matter in accordance with law and in the light of the observations contained in this order. The parties will be at liberty to adduce evidence, oral and documentary, if any, to substantiate their respective contentions.

If the Rent Controller is moved by either of the parties for amendment of the pleadings, the application filed for that purpose may be considered and decided by the Rent Controller on its merit.

The revision is disposed of as above. There will be no order as to costs.