Ramanatha Bhattar Vs Padmanabha Pillai and Another

Court: High Court Of Kerala

Date of Decision: Oct. 5, 1961

Acts Referred: Constitution of India, 1950 â€" Article 226, 227

Citation: (1962) KLJ 155

Hon'ble Judges: M.S. Menon, Acting C.J.; T.K. Joseph, J

Bench: Division Bench

Advocate: Kalathil Velayudhan Nair and V.S. Moothath, for the Appellant; P. Govindan Nair, K. Sukumaran and G. Balagangadharan Nair, for the Respondent

Final Decision: Dismissed

Judgement

M.S. Menon, Ag. C.J.

1. This is an appeal from the judgment of Vaidialingam J. dismissing the appellant"s petition under Articles 226 and 227 of the Constitution, O. P.

No. 93 of 1959. The petition was directed against Ext. P. 3, an order of the Deputy Collector and Building Rent Controller, Quilon, fixing the fair

rent for the appellant"s building at Rs. 60/- per month. The tenant was apparently receiving more than Rs. 125/- per month by sub leasing a portion

of the building. The appellant contended that in view of that the fair rent should not be fixed at any figure below Rs. 125/- per month. The

contention was negatived by the Rent Controller, in the subsequent proceedings by way of appeal and ""revision"", and in O. P. No. 93 of 1959.

2. We are concerned with a non-residential building and it is common ground that the only provisions to be considered are sub-clauses (2) and (4)

of clause 4 of the Travancore-Cochin Buildings (Lease and Rent Control) Order, 1950. Sub-clause (2) reads as follows:

In fixing the fair rent under this clause the Controller shall have due regard--

(a) to the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances during the twelve months prior to

(i) the 1st day of Chingom 1118 in respect of buildings situated in Travancore.

(ii) the 1st day of April 1940 in respect of buildings situated in Cochin;

(b) to the rental value as entered in the property tax assessment book of the Municipal Council or the Corporation of Trivandrum, as the case may

be, relating to the period mentioned in sub-clause (a);

(c) to the circumstances of the case, including any amount paid by the tenant by way of premium or any other like sum in addition to rent after the

1st day of Chingom 1118 if the building is situated in Travancore or the 1st day of April 1940 if the building is situated in Cochin.;

and sub-clause (4):

In fixing the fair rent of non-residential buildings, the Controller may allow--

(i) if the rate of rent or rental value referred to in sub-clause (2) does not exceed Rs. 50/- per mensem an increase not exceeding 37Ã¯Â¿Â½ per cent

on such rate of rental value;

(ii) if the rate of rent or rental value exceeds Rs. 50/- per mensem, an increase not exceeding 50 per cent on such rate or rental value :

Provided that in the case of a non-residential building which has been constructed after the 1st day of Chingom 1118 if in the territory of the

erstwhile Travancore State or after the 1st day of April 1940, if in the territory of the erstwhile Cochin State, the percentage of increase shall not

exceed 50 and 100 per cent respectively.

3. The Learned Judge dealt with the appellant''s contention as follows:

The contention of Mr. T. S. Krishnamurthy Iyer is that the rent realised from the sub-lessee by the lessee in this case namely, the respondent

should have also been taken into account while fixing the fair rent of the premises.

In my view, as held by all the subordinate authorities, this contention cannot be accepted and is not warranted by the provisions of sub-rule (2) of

rule 4 extracted above.

There is, no doubt, hardship for the particular landlord in this case, because there is some evidence to show that the respondent has been realising

either the same rent that he was paying to his landlord, or even a higher rent than that he was paying to the landlord, from his sub-tenancy or even

part of the premises. But unfortunately, law does not permit this circumstance to be taken into account and the remedy of the landlord was to ask

for eviction on the ground that the premises have been sub-let without the landlord''s permission.

4. Neither the contract rent which the tenant should pay under the terms of the lease nor the rent which he obtains as a result of the creation of a

subtenancy seems to have any material bearing on the fixation of fair rent. The only rent that has any reference to the fixation of fair rent in a case

like this is the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances during the twelve months prior

to the 1st day of Chingom 1118 as provided in clause 4(2)(a) of the Order.

5. We are also of the view that ""the circumstances of the case"" referred to in sub-clause (2)(c) of clause 4 will not include within its ambit the rent

obtained by a tenant by the creation of a sub-tenancy. It follows that this appeal should fail and has to be dismissed. Judgment accordingly. No

costs.