(2012) 02 KL CK 0163

High Court Of Kerala

Case No: R.C.R. No. 189 of 2007

Abdul Hai, N. and others	APPELLANT
Vs	
Nandakumar, K. and others	RESPONDENT

Date of Decision: Feb. 23, 2012

Acts Referred:

- Kerala Buildings (Lease and Rent Control) Act, 1965 - Section 11(2)(b), 11(2)(b), 11(3), 11(4)(1), 11(4)(iv)
- Transfer of Property Act, 1882 - Section 106

Citation: (2012) 2 ILR (Ker) 715 : (2012) 2 KLJ 833

Hon'ble Judges: Pius C. Kuriakose, J; A.V. Ramakrishna Pillai, J

Bench: Division Bench

Advocate: T.C. Suresh Menon, Sri Jibu P. Thomas and Sri Sunil J. Chakkalackal, for the Appellant; R. Harikrishnan, Sri S. Saidumuhammed, Sri E. Ramachandran, Smt. S. Santhy and Smt. O.K. Santha, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Ramakrishna Pillai, J.
Tenant''s revision. The respondent sought eviction of the revision petitioner from the tenanted premises under Sections 11(2)(b), 11(3) and 11(4)(iv) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as, ''the Act''), alleging as follows:

The mother of the respondent, who was the owner of the petition schedule building, leased out the same to the revision petitioner in September, 1968, on a monthly rent of Rs. 1,350 for conducting a boarding and lodging business, on condition that the building should not be sublet to others. This was after getting vacant possession of the building from one Govindan Nair, who was the previous tenant. It was found that the revision petitioner had sublet various rooms of the building to other lessees without the consent of the respondent''s mother. Payment of rent was also

defaulted. Respondent got the petition scheduled building allotted to his share in the family partition. He needed the building to run a boarding and lodging business to earn a livelihood.

2. The revision petitioner countered that the respondent is not entitled to claim rent. The building was taken on lease for the purpose of letting out. Previously, the building was being used as a hostel. The building does not have the amenities to carry out the business of lodging. The revision petitioner is depending on the income derived from the petition schedule building and no buildings are available in the locality to shift the business. The respondent was aware of the occupation of various tenants. Most of them were in possession of the building, even before tenancy arrangement and the allegation that the building was let out without the consent of the respondent is not true. The need alleged by the respondent is not a bona fide need. The intention of the respondent is to sell out the property.

3. The learned Rent Controller declined eviction under Sections 11 (2)(b) and 11(3) of the Act. However, eviction was ordered u/s 11(4)(iv). The revision petitioner appealed, but without success. Thus, he has come up in revision u/s 20 of the Act.

4. We have heard the learned counsel for the revision petitioner and learned counsel for the respondent. We have also perused the impugned judgment of the Rent Control Appellate Authority as well as the order of the Rent Control Court.

5. The first argument advanced by the learned counsel for the revision petitioner is that the building, which admittedly, was let out for running a boarding and lodging, is in fact exempted from the provisions of the Act itself. In support of this argument, the learned counsel relied on Sec. 2(1) of the Act which defines "building" as under:

(1) "building'' means any building or hut or part of a building or hut, let or to be let separately for residential or nonresidential purposes and includes--

(a) the garden, grounds, wells, tanks and structures, if any, appurtenant to such building, hut, or part of such building or hut, and let or to be let along with such building or hut;

(b) any furniture supplied [****] by the landlord for use in such building or hut or part of a building or hut;

[(c) any fittings or machinery belonging to the landlord, affixed to or installed in such building or part of such building, and intended to be used by the tenant for or in connection with the purpose for which such building or part of such building is let or to be let,]

but does not include a room in a hotel or boarding house;

(emphasis supplied)

6. According to the learned counsel, the revision petitioner can be evicted only by filing a suit in a civil court after terminating the lease as provided under Sec. 106 of the Transfer of Properties Act. It was argued that this question has escaped the attention of the courts below and the order of eviction is, therefore, liable to be set aside.

7. There cannot be any quarrel against the proposition that a rentee of a room in a hotel or boarding house can be evicted only by a regular suit instituted under the general law and not by a proceeding instituted under the provisions of the Act. The tenanted premises in the present case is not a room in a hotel or boarding house. The petition schedule building was leased out, admittedly, for the purpose of conducting a business in boarding and lodging.

8. The oral lease arrangement between the mother of the respondent and the revision petitioner is not disputed. Ext. A-4 is a handbook showing the payment of rent and the terms of letting. Evidently and admittedly too, there was an earlier tenancy arrangement between the mother of the respondent and Govindan Nair. In Ext. A-4, there is an endorsement by the said Govindan Nair that he had surrendered possession of the petition schedule building to the respondent''s mother. There is nothing in Ext. A-4 to show that any of the tenants under Govindan Nair continued to hold possession of the building. The learned Rent Controller deputed a Commissioner, who filed Ext. C-1 report and Ext. C-1(a) rough sketch, which would go to show that the building which is about 40 to 50 years old, with two floors, is having twenty rooms. The Commissioner could note several persons occupying different rooms in the building, where different commercial activities are being carried out. Evidently there was induction of strangers in the petition scheduled premises, that too, after the lease arrangement between the revision petitioner and the respondent''s mother. This is not a case where the room in a hotel or lodging house has been let out This is a case where the building has been rented out for conducting a lodging house. However, it was sublet by the revision petitioner to strangers for other commercial activities. Had it been a case where exclusive occupation of the room in a hotel has been leased out to the revision petitioner, he could have been treated as a lessee of that room and in such a case, the remedy open to the landlord is to seek eviction under the general law of the lands, that is, u/s 106 of the Transfer of Property Act. Here, we are dealing with a case where the revision petitioner has inducted strangers to the tenanted premises, who are conducting different commercial activities there. Induction of strangers to certain portions of the building for purposes unconnected with the purpose for which the petition scheduled building was leased out, takes away the character of hotel or lodging house as far as those portions are concerned. Hence, the argument that the petition scheduled building will not come within the definition of ''building'' u/s 2 (1) of the Act, is repelled as unsustainable.

9. Though, it was strenuously argued by the learned counsel for the revision petitioner that some of the boarders or lodgers under the earlier tenant continued occupation, even after the renewal of the lease in favour of the revision petitioner, the same stands disproved in the light of the endorsement in Ext. A-4 by the previous tenant that the building has been surrendered to the respondent''s mother unconditionally.

10. It was further argued that, the fact that the building was let out to several other persons on monthly basis and they were openly conducting the business in the above building, were known to the respondent and he was estopped from claiming eviction. It was argued that the landlord in fact had filed Ext. B-10 petition seeking eviction on the ground of arrears of rent and sublease which was, however, compromised by Ext. B-11 order on hiking the rent. This according to the learned counsel for the revision petitioner is nothing short of an acknowledgement of the alleged sublease which makes it non objectionable. According to the learned counsel, the long acquiescence of the landlord in not initiating proceedings earlier when the lodgers were conducting the business under his very nose estops him from claiming eviction under sublease. There is, therefore, no objectionable sublease as to warrant an order of eviction u/s 11(4)(1) of the Act, it was argued.

11. But, as rightly pointed out by the Rent Control Appellate Authority, a mere knowledge of the landlord that the building has been let out is not sufficient to presume the acquiescence on his part. The consent cannot be presumed on the basis of an inaction of the landlord in not initiating the proceeding; as held by the Apex Court in Johny Chandy & Company v. John P. Thomas (2002 (2) KLT 220 (S.C.)). The meaning of the word ''consent'' in the context of sublease was elaborately discussed by this Court in Raghavan v. Sreedhara Panicker (2001 (1) KLT 772) as well as in Mohammed Sageer Vs. Prakash Thomas, . It is well-settled that the mere knowledge of sub tenancy will not bind the landlord unless there was a specific consent from him.

12. The Rent Control Appellate Authority has considered Exts. B-10 and B-11 relied on by the learned counsel for the revision petitioner. What was alleged was that the building was let out to one Akbar Shaw for conducting ''Cape Victoria'' and it is in evidence that the said tenant is not occupying the premises at present. This is evidenced by Ext. B-11.

13. As rightly pointed out by the Rent Control Appellate Authority, the building which has been let out for conducting boarding and lodging house was used for that purpose only for a short duration, that too, for the stay of boarders. Now, as per the evidence, the building was in exclusive possession of several other persons for a long period, who are conducting different commercial activities which are contrary to the terms of lease. Evidence to the effect that the respondent had given consent for sublease to the tenant or has acquiesced to the sublease by any positive act, is not forthcoming. Hence, both the courts below are perfectly justified in

finding that the sublease was objectionable and viewed in that profile, the impugned judgment does not call for any interference u/s 20 of Act 2 of 1965, as it does not suffer from any illegality, irregularity or impropriety.

14. We decline jurisdiction u/s 20. Accordingly, the revision petition is dismissed. When our decision was brought to the notice of the learned counsel for the revision petitioner, he requested one year time to give vacant possession of the tenanted premises. This was seriously opposed by the learned counsel for the respondent. However, considering the entire facts and circumstances of the case, we are of the view that six months time can be granted to the revision petitioner to surrender the petition schedule premises, subject to the following conditions:

(a) The revision petitioner shall pay charges for the use and occupation of the petition scheduled premises with effect from 23-2-2012 till the date of surrender at the rate of Rs. 2,000 per mensem.

(b) The revision petitioner shall file an affidavit within one month from today before the Rent Control Court or the Execution Court as the case may be, undertaking to give peaceful surrender of the building on 23-8-2012 and undertaking further to pay occupational charges at the rate of Rs. 2,000 with effect from 23-2-2012 till the date of surrender.

We make it clear that the revision petitioner will get the benefit of time as allowed above, only if he files the affidavit on time and honours the undertakings contained therein