(2005) 06 KL CK 0069

High Court Of Kerala

Case No: R.C.R. No. 243 of 2004

Madhava		APPELLANT
	Vs	
Pathumabi		RESPONDENT

Date of Decision: June 30, 2005

Acts Referred:

- Kerala Buildings (Lease and Rent Control) Act, 1965 - Section 11(12), 11(2), 11(3), 11(4), 2(1)
- Kerala Buildings (Lease and Rent Control) Rules, 1979 - Rule 11(8), 12, 12(6), 13(6), 7

Citation: (2005) 3 KLT 369

Hon'ble Judges: P.R. Raman, J; K.T. Sankaran, J

Bench: Division Bench

Advocate: S.V. Balakrishna Iyer and P.B. Krishnan, for the Appellant; K.G. Gouri Sankar Rai, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.T. Sankaran, J.
The tenant is the Revision Petitioner. The Rent Control Court and the Rent Control Appellate Authority concurrently held that the Revision Petitioner is liable to be evicted from the petition schedule building u/s 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as ''Act''). The tenant has since then paid the arrears of rent and therefore, the only question arising for consideration in this Revision is whether the order u/s 11(3) of the Act suffers from any illegality requiring interference u/s 20 of the Act.

2. The tenant conducts a tailoring shop in the petition schedule building, namely, Door No. 111 -1160 of Kasaragod Municipality. The building was let out to him under Ext. A1 rent bond dated 16.11.1983. The monthly rent payable was Rs. 400/-. Rent was subsequently enhanced to Rs. 450/- and Rs. 550/-. The landlady (hereinafter

referred to as the ''landlord'') contended that she bona fide needs the petition schedule building for providing accommodation to her unemployed children Mohammed Ashraf and Abdul Nawaz, who are dependents on the landlord, for the purpose of conducting business in ready-made garments.

3. The tenant contended that the children of the landlord are running a ready-made garment shop in their own building in the town. Another textile shop is being run by them along with their father in their own building. The bona fide need put forward by the landlord is not genuine. The intention of the landlord is to let out the building to others for higher rent. The petition schedule building is situated on the side of a branch road which is not a good business centre. The petition schedule room is "very small" and insufficient for conducting business in ready-made garments. The tenant claimed that he is entitled to the protection of the second proviso to Section 11(3) of the Act.

4. The Rent Control Court relied on the oral evidence of PW1 and PW2 (husband of the landlady and her son) and held that the bona fide need is genuine and that the landlord has no other building in her possession. It was also held that the tenant is depending for his livelihood mainly on the income derived from the business carried on in the petition schedule building. However, on the finding that the tenant failed to prove that there is no other suitable building available in the locality for carrying on his business, it was held that the tenant is not entitled to the protection of the second proviso to Section 11(3) of the Act. It was held that there is no evidence to show that the landlord has any other building in her possession. The Appellate Authority confirmed the findings of the Rent Control Court.

5. Sri. P.B. Krishnan, the learned counsel for the Revision Petitioner submitted that the evidence of PW2 itself would show that the need put forward is not bona fide. He pointed out that PW2 stated in evidence that "to start the ready-made business, minimum space of 19 feet x 15 feet is necessary". According to the tenant, the petition schedule building has an area of only 6 feet x 5 feet and suggestions were made to that effect to PW1 and PW2. They denied the suggestions. PW1 stated in evidence thus: "It is not correct to say that the plinth area of the petition schedule room is 6 feet x 5 feet. But I say that it is 6 metres in length and 5 metres in width". After the closure of the evidence, an application was filed by the tenant to appoint a Commissioner to measure the plinth area of the petition schedule building. The landlord opposed the application and the Rent Control Court dismissed that application. In the application for the issue of commission, the tenant stated that the petition schedule building has a plinth area of only 8 feet x 8 feet. The counsel for the tenant pointed out that in the counter filed by the landlord, she has not denied this averment but only stated that "even an erroneous answer or admission will not be a ground for issuing commission". Sri. P.B. Krishnan also pointed out that the landlord did not specifically challenge in cross examination the statement of the tenant in evidence that the room is having a plinth area of only 8 feet x 8 feet.

6. Sri. P.B. Krishnan relied on the decisions of the Supreme Court in Atma S. Berar Vs. Mukhtiar Singh, , Pratap Rai Tanwani and Another Vs. Uttam Chand and Another, , Sri Kempaiah Vs. Lingaiah and Others, and AIR 1943 208 (Privy Council) . He also raised a contention that Rule 13(6) of the Kerala Buildings (Lease and Rent Control) Rules read with Section 27 is not complied with by the ''landlord'', as the "ground area" is not mentioned in the statement filed by her and therefore, the Rent Control Petition is liable to be dismissed. It was also contended that as per Rule 11(8), the Rent Control Court and the Appellate Authority shall decide the case in accordance with justice, equity and good conscience.

7. Sri. Gowri Shankar Rai, learned counsel for the landlord contended that in deciding the question whether the need put forward by the landlord is bona fide, the plinth area of the building is irrelevant. Section 11(3) does not provide for any such consideration and one cannot read into Section 11 (3) something which is not the requirement of law. He also added, wherever sufficiency of accommodation is intended, the statute has provided therefore; for example, Section 11(4)(iii). Sri. Gowri Shankar Rai pointed out that in the cross examination of PW2, he also stated that the petition schedule shop room measures 19 x 16 feet. The statement of PW2 that for ready-made business the minimum space required is 19 feet x 15 feet is to be read in the light of the aforesaid statement, Sri. Rai argued.

8. In Atma S. Berar Vs. Mukhtiar Singh, , the Supreme Court quoted with approval the following passage in Ram Dass Vs. Ishwar Chander and Others, which reads as follows:

"...But the essential idea basic to all such cases is that the need of the landlord should be genuine and honest, conceived in good faith; and that, further, the Court must also consider it reasonable to gratify that need. Landlord''s desire for possession, however honest it might otherwise be, has inevitably a subjective element in it and that, that desire, to become a ''requirement'' in law must have the objective element of a need...".

In Atma S. Berar''s case, the Supreme Court also relied on Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, , wherein it is held:

"...A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of the landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the Court. The judge of facts should place himself in the armchair of the landlord and then ask the question to himself- whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona

fide...."

9. In Pratap Rai Tanwani and Another Vs. Uttam Chand and Another, , the Supreme Court referred to Ram Dass (supra), Shiv Sarup Gupta (supra), Gulabbai Vs. Nalin Narsi Vohra and others, and Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others, , wherein it is held that words "reasonable requirement" undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish, and held that the above position has remained unaffected in Atma S. Berar''s case.

10. In Sri Kempaiah Vs. Lingaiah and Others, , it was held that the word "require" implies something more than a mere wish or impulses or desire on the part of the landlord. It was held:

"Although the element of need is present in both the cases, the real distinction between "desire" and "require" lies in insistence of the need. There is an element of "must have" in the case of "require" which is not present in the case of mere "desire"."

In Jerrry Joseph v. Selvaraj 2002 (2) KLT 129, this Court relied on the decision of Shiv Sarup Gupta''s case (supra) and held that bona fide requirement of the landlord should be objectively tested and the landlord need not establish that it is dire need.

11. We have gone through the pleadings and evidence. The statement of PW2 that for conducting business in ready-made garments a minimum space of 19 feet x 15 feet is required, cannot be read in isolation. This statement is to be taken along with his statement that the building in question measures 19 x 16 feet. He understood, may be wrongly, that the space available is that much. He thought, that space is sufficient for his need. Nobody has a case that PW2 has not seen the building. He believes that the petition schedule building suits his need for running a business in ready-made garments. His understanding of the area or measurement may be wrong. But he knows that the available area is sufficient for his business purpose. His mother, the ''landlord'' also felt that her son could do business there. It is for the landlord to decide whether the space available is sufficient for the need. Of course, the Court can definitely consider whether the need put forward is bona fide. In that process, the Court may also consider whether the need put forward is only a ruse to evict the tenant. The Court cannot, and is not expected to, fix standards for the business purposes of the landlord, in a Rent Control Petition u/s 11(3). We do not say that the Court cannot take into account common knowledge and the evidence touching upon the business transactions in the locality in question. If the landlord says he needs a building having 100 square feet for running a star hotel, one can easily say that the need is not bona fide. Similarly, if the landlord wants to get vacant possession a tenanted building having an area of 5000 sq. feet on the ground that he desires to conduct a milk booth or pan shop there; definitely one can say that the need is only a ruse to evict the tenant. The Court is not expected to embark upon an

enquiry to find out whether the landlord would succeed in establishing the proposed business in the tenanted building. Adequacy of the space is a matter to be considered by the landlord. The tenant cannot have a dictatorial role in that assessment of the landlord. The Court need not hear the tenant on that aspect. The tenant could very well contend that the need put forward is not bona fide. To substantiate that contention, he can bring forth all relevant materials in evidence. The state of mind of the landlord in assessing his bona fide requirement need not agree with that of the tenant; that is quite irrelevant in considering a case u/s 11(3) of the Act.

12. Section 11(3) does not provide that the building should be one which is reasonably sufficient for the need put forward by the landlord, while Section 11(4)(iii) provides that the alternate accommodation which the tenant has acquired should be one which is reasonably sufficient for his requirements to make him liable for eviction from the tenanted building. The logic for this difference in wording in Section 11(3) and 11(4)(iii) is obvious. u/s 11(3), the landlord seeks eviction of his tenant to enable the landlord to occupy the same by himself or by any member of his family dependant on him. He wants his own building for his own needs or for providing for his dependents. Had the building been not let out, he could use the building for that purpose. Eviction u/s 11(4)(iii) is not on the ground that the landlord bona fide needs the building for his occupation. On the other hand, it is on the ground that the tenant "already has in his possession a building or subsequently acquires possession of or puts up a building". In a case coming u/s 11(4)(iii), the tenant loses the protection under the Act. But it is not enough that the tenant just acquires possession of another building. It must be "reasonably sufficient for his requirements", so as to attract Section 11(4)(iii) of the Act. That is a protection to the tenant provided under the Act. After eviction u/s 11(4)(iii), the landlord need not occupy the building: he can very well let it out to another. But after eviction u/s 11(3), if the landlord does not occupy the building without reasonable cause within one month of the date of obtaining possession, or having so occupied it, vacates it without reasonable cause within six months of such date, the tenant is entitled to apply to the Rent Control Court u/s 11(12) of the Act for restoration of possession of the building to him. This provision is also a protection to the tenant and is aimed at meeting a situation resulting from unreasonable eviction.

13. It is a well established canon of construction that the Court should read the statutory provision as it is and cannot rewrite it to suit its convenience. (Vide A.R. Antulay v. Ramdas Sriniwas Nayak and Anr. The normal rule of interpretation is that the words used by the Legislature are generally a safe guide to its intention Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, . In G. Narayanaswami Vs. G. Pannerselvam and Others, , Constitution Bench of the Supreme Court quoted with approval the following passage in Crawford''s "Construction of Statutes", which reads thus:

"Where the statute''s meaning is clear and explicit, words cannot be interpolated. In the first place, in such a case, they are not needed. If they should be interpolated, the statute would more than likely fail to express the legislative intent, as the thought intended to be conveyed, might be altered by the addition of new words. They should not be interpolated even though the remedy of the statute would thereby be advanced, or a more desirable or just result would occur. Even where the meaning of the statute is clear and sensible, either with or without the omitted word, interpolation is improper, since the primary source of the legislative intent is in the language of the statute".

The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. Union of India and Anr. v. Deoki Nandan Aggarwal AIR 1992 SC 96. In J.P. Bansal Vs. State of Rajasthan and Another, , the Supreme Court held:

"Where, however, the words are clear, there is no obscurity, there is no ambiguity and the intention of the Legislature is clearly conveyed, there is no scope for the Court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the Judge should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation".

In Mohd. Aslant alias Bhure v. Union of India and Ors., : (2003)2SCC576 , the Supreme Court held, with reference to Rajasthan Premises (Control of Rent and Eviction) Act, that "in a case where the statutory provision is plain and unambiguous, the Court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom". It was also held thus:

"It is also pertinent to note that the Rent Control Act is a welfare legislation not entirely beneficial enactment for the tenant but also for the benefit of the landlord. (See: Shri Lakshmi Venkateshwara Enterprises Pvt. Ltd. Vs. Syeda Vajhiunnissa Begum (Smt) and Others, . Inthatview of the matter, balance has to be struck while interpreting the provisions of the Rent Control Act".

14. It is impermissible to read words in a statute which are not there. The Legislature in its wisdom did not use the words "reasonably sufficient" in Section 11(3), while it did in Section 11(4)(iii) of the Act. You cannot import the "reasonably sufficient" theory into Section 11(3) of the Act.

15. We shall now deal with the contention of the tenant that the Rent Control Petition is not maintainable due to non-compliance of Rule 12(6) of the Rules. Section 27 of the Act says:

"Every landlord and every tenant of a building shall be bound to furnish to the Accommodation Controller, the Rent Control Court or any person authorised by it in

that behalf, such particulars in respect of the building as may be prescribed by rules made under this Act."

Rule 12 of the Rules (relevant portion) reads thus:

"12. The particulars to be furnished u/s 27 shall be the following:-

...

(6) Details of accommodation available together with particulars as regards the ground area, garden and out-houses, if any, appurtenant to the building;"

The landlord has stated, as against this column in the particulars furnished, thus: "petition schedule building". In the schedule shown in the Rent Control Petition, it is stated thus: "Building situated within Kasaragod Municipality. Building bearing Door No. 111-1160 of Kasaragod Municipality". We do not agree with the contention of the petitioner that "ground area" in Rule 12(6) means "plinth area of the building". Section 2(1) of the Act defines "building", thus:

"2. Definitions:--.

(1) "building" means any building or hut or part of a building or hut, let or to be let separately for residential or non-residential 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;

...

(only relevant portion extracted)

The dictionary meaning of the word "ground" is: "the solid surface of the earth; a portion of the earth''s surface; land; soil; the floor etc; the solid land underlying an area of water; an area associated with some activity (such as football ground, play ground, battle ground) etc. The dictionary meaning of ''ground rent" is: "rent paid to a land owner for the right to use of the ground for a specified term". (Vide: The Chambers Dictionary) Black''s Law Dictionary defines "ground" as follows: "soil; earth; the earth''s surface appropriated to private use and under cultivation or susceptible of cultivation". "Ground Lease" is defined therein as follows: "A lease of vacant land, or land exclusive of any buildings on it, or unimproved real property. Usually a net lease". We are of the view that the expression "ground area" in Rule 12(6) means area of the ''ground'' as mentioned in Section 2(1)(a). It is area of the land and not that of the structure or the building.

16. It would be ideal always if all the relevant particulars mentioned in Rule 12 are clearly shown. But a Rent Control Petition cannot be dismissed for omission to state the plinth area of the building in the "particulars" to be furnished under Rule 12. Rule 12 is intended to make available all relevant data before Court. It could be

argued that the expression "details of accommodation available" in Rule 12(6) includes plinth area as well. At the same time, it could also be said "details" do not include plinth area. Even without mentioning plinth area, "details" could be furnished. Since the Rule does not specifically provide that plinth area should be shown in the "particulars to be furnished", a Rent Control Petition cannot be dismissed for not mentioning the same in the "particulars". It cannot be said that the tenant is prejudiced in any way because of non-inclusion of plinth area in the "particulars". The tenant did not raise any contention in that behalf before the Rent Control Court or the Appellate Authority or in Memorandum of Revision before this Court. Had the tenant raised such a contention before the Rent Control Court, the Court could have directed the landlord to furnish better "particulars". We hold that the contention of the tenant that the Rent Control Petition is liable to be dismissed for non-mention of plinth area is unsustainable. Rule 7 provides that every application under the Act shall contain the particulars prescribed in Rule 12 so far as they may be applicable. We are of the view that at the time of numbering the Rent Control Petitions, the office of the Rent Control Courts shall verify whether Rules 7 and 12 are complied with.

17. Now, we shall consider the contention of the petitioner touching upon "justice, equity and good conscience." Rule 11(8) of the Rules reads thus:

"11....

(8) The Accommodation Controller, Rent Control Court or the Appellate Authority deciding the dispute shall record a brief note of the evidence adduced by the parties and witness who attend, and upon the evidence so recorded, and after consideration of any documentary evidence produced by the parties, a decision shall be given in accordance with justice, equity and good conscience by Accommodation Controller, Rent Control Court or Appellate Authority. The decision given shall be reduced to writing. In the absence of any party duly summoned to attend, the dispute may be decided ex parte ".

Section 31 provides that the Government may make rules to carry out the purposes of the Act. The Rule making power includes "the procedure to be followed by the Rent Control Courts, Accommodation Controller and Appellate Authorities in the performance of their functions under this Act". Rule 11(8) comes under this Rule making power. Section 24 of the Act states that the Rent Control Court, as far as may be practicable, pass final orders in any proceeding within four months from the date of appearance of the parties. The Rent Control Authorities need not record the evidence in a case as is expected to be done by a Civil Court. It is sufficient if a brief note of the evidence is recorded. The procedure to be followed is summary, as is evident from Rule 11(8). It is in that context, it is provided that the decision shall be given in accordance with justice, equity and good conscience. It is in the area of discretion of the Court. It does not mean that the Rent Control Court shall not record evidence in full and consider each and every aspect of the case.

18. In Niemla Textile Finishing Mills Ltd. and Ors. v. The 2nd Punjab Tribunal and Ors. AIR 1957 SC 329, it was held:

"A legislator cannot anticipate every possible legal problem; neither can he do justice in cases after they had arisen. This inherent limitation in the legislative process makes it essential that there must be some elasticity in the judicial process. Even the ordinary Courts of law apply the principles of justice, equity and good conscience in many cases; eg. cases in tort and other cases where the law is not codified or does not in terms cover the problem under consideration".

In the case on hand, the Rent Control Court has recorded the evidence in full, considered all the relevant facts and circumstances of the case and passed an order. It cannot be said that the order passed by the Rent Control Court or the judgment of the Appellate Authority does not conform to the justice, equity and good conscience.

19. In view of the evidence already on record, we do not think that an inspection of the petition schedule building by appointing a Commissioner was necessary. The Rent Control Court cannot be blamed for dismissing the application for appointing a Commissioner, since the application was filed after closure of the evidence. The tenant could have taken steps to get a Commissioner appointed before the evidence commenced. He did not do so. We are of the view that no interference is called for on the ground that a Commissioner was not appointed by the Rent Control Court.

20. The Rent Control Court as well as the Appellate Authority concurrently found on facts that the bona fide need put forward by the landlord is genuine. It has come out in evidence that there are several business establishments very near to the petition schedule building. The evidence of PWs.1 and 2 would indicate that the petition schedule building is suitable for commencing the business in ready-made garments. The Rent Control Court as well as the Appellate Authority found on evidence that vacant buildings are available in the locality and, therefore, the tenant is not entitled to the protection of the second proviso to Section 11(3) of the Act. The availability of vacant buildings in the locality is proved by Exts.A5 and A6. The tenant stated in evidence that he has not verified whether other vacant buildings are available in the locality. A suggestion was made to the tenant whether he could shift his business to another vacant building if the landlord of that building was willing to let it out to the tenant. The tenant stated that he is not prepared to shift his business to another building. We are of the view that no interference is called for either on the findings u/s 11(3) or on the findings under the second proviso to Section 11(3) of the Act. The tenant failed to discharge the burden of proof cast on him under the second proviso to Section 11(3) of the Act. The counsel for the petitioner relied on the decision of the Supreme Court in Pareed Kaka v. Shafee Ahmed Saheb 2004 (2) KLT 130 (SC), wherein it is held as follows:

"...Hence, the High Court has powers to entertain a revision and reappreciate the evidence and dispose of the same. The High Court has jurisdiction to go into the

legality or correctness of the decision which, in our view, includes the power to reappreciate evidence and that the High court can interfere with the findings of fact also. This apart, the jurisdiction of the High Court u/s 50 is to examine the legality and correctness of the order of the Trial Court. The examination as to the correctness involves appreciation of evidence and that the High Court can interfere if the finding of the Rent Controller is entirely improbable".

We have carefully gone through the evidence and we do not find any improbability in the findings of the authorities below. We are also of the view that the decision in AIR 1943 208 (Privy Council) , taking the view that failure to appreciate and determine questions of fact amounts to a question of law, has no application in the facts of the case on hand. No grounds are made out to interfere in Revision. The Revision is accordingly, dismissed.

However, taking into account the facts and circumstances of the case, three months'' time is granted to the tenant to vacate the building, provided he files an affidavit before the Rent Control Court within one month, undertaking to vacate the petition schedule building before the expiry of three months from today. The tenant shall also pay the arrears of rent within one month and continue to pay the amount equal to the monthly rent till he vacates the building. If the tenant fails to comply with any of these conditions, the landlord will be entitled to execute the order.