

(1968) 03 KL CK 0022

High Court Of Kerala

Case No: O.P. 4251 of 1966

Narayana Panicker and Another

APPELLANT

Vs

Daveed Sait

RESPONDENT

Date of Decision: March 8, 1968

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Kerala Buildings (Lease and Rent Control) Act, 1965 - Section 11(3), 11(4)(iv), 18, 20

Citation: (1968) KLJ 478

Hon'ble Judges: V. P. Gopalan Nambiyar, J

Bench: Single Bench

Advocate: S. A. Nagendran, for the Appellant; G. Viswanatha Iyer, K. Sridharan and K. M. Devadathan, for the Respondent

Final Decision: Dismissed

Judgement

V. P. Gopalan Nambiyar, J.

This writ petition arises out of proceedings for eviction commenced under the Kerala Buildings (Lease and Rent) Control Act 1959, and continued under the practically identical provisions of the Act 2 of 1965. The two petitioners in this writ petition are related to each other as uncle and nephew, and claim to be tenants of the building from which eviction was sought. The respondent is the successor-in-interest of the original landlord who let the building in question. The grounds on which eviction was sought were: (1) non-payment of rent (2) sub-letting without the consent of the landlord; (3) Waste; (4) that the landlord needs the building bona fide for his own occupation; and (5) that the building is in such a condition that it needs re-construction and the landlord bona fide required to re-construct the same. The Rent Control Court found in favor of the landlord on grounds relating to nonpayment of rent, requirement for the purpose of re-construction and bona fide need for the landlord's own occupation and allowed eviction on these grounds. It recorded no finding on the ground of sub-letting, and

found against the landlord on the ground of waste. Against the order of the Rent Control Court the tenants preferred an appeal to the Appellate Authority (the Principal Sub Judge, Trivandrum). The said Authority found that as far as the ground relating to non-payment of rent is concerned, the landlord had not issued a valid notice, as he was required to do u/s 11(2) of the Act. Sub-letting was found against on the ground that there was no specific averment in the petition regarding the date or the time of sub-letting. Waste was also found against. It agreed with the Rent Control Court in its finding in regard to the landlord's bona fide need for the building for his own occupation and bona fide requirement to re-construct the same. The Appellate Authority was of the definite opinion that relief should be given to the tenant under the second proviso to section 11(3) of the Kerala Act 2 of 1965. It was of the view that it had been brought out that the tenant had a business of his own in the room from which eviction was sought and that there was no other building for him to occupy in the locality in case eviction was ordered. Having found this, instead of refusing eviction on the ground of bona fide need for the landlord's own occupation u/s 11(3) of the Act, the Appellate Authority made a direction that the landlord will provide a room for the tenant in the building to be re-constructed by him, of an area equivalent to that now occupied by him, with frontage to the East Fort Road within six months of the date of the vacation of the room by the tenant or of eviction by the landlord. In the result, it dismissed the tenant's appeal subject to the direction noticed above. Against the order of the Appellate Authority, the present petitioners preferred a revision to the Revisional Authority viz. the District Judge; and the present respondent preferred a memorandum of cross-objections objecting to the direction of the Appellate Authority regarding the provision of alternative accommodation to the tenant. The Revisional Authority confirmed the findings of the Appellate Authority and dismissed the appeal. It also accepted the cross-objections filed by the landlord and directed that the direction of the Appellate Authority that the landlord will provide a room in the reconstructed building to the tenant would stand discharged. The revision petition was accordingly dismissed. Ext. P-2, P-3 and P-6 respectively, are copies of the orders of the Rent Control Court, the Appellate Authority and the Revisional Authority. The writ petition is to quash these orders. The main ground on which the petitioner attacked the order of the Revisional Authority was that there was no scope or provision for filing a memo of cross-objections under the provision of the Rent Control Act before the Revisional Authority, and the Revisional Authority acted without jurisdiction in entertaining and allowing the same, and in vacating the directions incorporated by the Appellate Authority that the landlord should provide alternative accommodation to the petitioners in the re-constructed building. In evaluating this contention in these proceedings there are certain aspects to be noticed. No objection was raised before the Revisional Authority that a memo of cross-objections would not lie. Before me it was argued by the petitioner on the decision in *Sri Rajah Yenumala Latchanna Dora Varu v Sri Raja Venumala Mallu Dora Varu* (A. I. R. 1941 Mad. 55) and *Venkitarama Naicker v Ramaswami Naicker* (A. I. R. 1952 Mad. 504) that a memo of

cross-objections cannot be entertained in revision. Counsel for the respondent landlord relied on the decisions in *Official Assignee of Madras v Ranganayaki Ammal* (1928 Mad. 784); *Sundar Lal v Sabira Begam* (1950 Allah L.J. 672); and *Jia Lal Kak v Mohan Lal Kak* (A.I.R. 1960 J.&K. 22) and maintained to the contrary.

2. The decisions relied on by either counsel were rendered with respect to section 115 of the Civil Procedure Code. The right of revision under the Buildings (Lease and Rent) Control Act is conferred by Section 20 of the Act, which reads as follows:

20 Revision - (1) In cases where the appellate authority empowered u/s 18 is a Subordinate Judge, the District Court, and in other cases the High Court, may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceedings taken under this Act by such authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings, and may pass such order in reference there to as it thinks fit.

(2) The costs of and incident to all proceedings before the High Court or District Court under sub-section (1) shall be in its discretion.

It is unnecessary to pronounce finally on the question as to whether a memo of cross-objections can be entertained in a revision under the above provision. On the actual facts disclosed it is plain that the appellate authority's direction to the landlord to provide alternative accommodation to the tenant in the re-constructed building was clearly illegal and cannot be justified with reference to the provisions of the statute. Under the 2nd proviso to Section 11(3) of the Act, if the appellate authority were of the view that the tenant was depending for his livelihood mainly on the income derived from the business carried on in the building from which eviction was sought and that there was no other suitable building available in the locality for him to carry on business, it shall not give any direction to the tenant to put the landlord in possession on the ground that the latter needs the building bona fide for his own occupation. Under the second proviso to section 11(4) (iv) of the Act, if the landlord who obtained eviction on the ground that he required the building for re-construction did not reconstruct the same within a time to be fixed by the Rent Control Court, the Court has power in appropriate cases on application by the tenant to put the tenant back in possession of the building. These being the different provisions of the statute, the appellate authority by clubbing these provisions together, seems to have evolved a method of protecting the interests of the landlord and the tenant by incorporating a direction for the provision of alternative accommodation to the tenant in the reconstructed building. This was clearly illegal and unsustainable, and was rightly vacated by the District Judge. Even if the Revisional Authority did so on the strength of the memo of cross-objections which may not be strictly entertainable as to which I express no opinion there is no ground to interfere with its order under Article 226, as, the result of doing so, would be to perpetuate the illegal order of the appellate authority. This is sufficient to decline interference.

3. Counsel for the petitioner next contended that interference by the Revisional Authority with the finding of the appellate authority that the tenant was plying his trade in the room from which eviction was sought and could not find a suitable building in the locality to carry on the same was unjustified. I was taken through the relevant portions of Ext. P-3 and P-6 orders. The Revisional Authority in Ex. P-6 order states:

In the first place, there is no evidence that the tenant is earning his livelihood by the trade in this building and that there is no other suitable building available in the locality. If the proviso to section 11(3) applies, then no eviction can be ordered.

The appellate authority in Ext. P-3 order stated:

It is brought out that appellant has the business of his own in the said room and there is no convenient building for him to occupy if the place is ordered to be vacated. Now on perusal of the evidence and on hearing arguments, I am of the definite opinion that relief should be given to the tenant, under proviso to section 11(3) of the Act, and for this I have given directions when point 3 was being discussed by me. In order to see that parties are not put to difficulty, I have found that the landlord will provide a room for the tenant of an area equivalent to the area now occupied by him with frontage to the East Fort Road within 6 months of the date of the vacating of the room by the tenant or eviction of the room by the landlord. So he can carry on his business in the same locality, I think this will sufficiently protect the interest of the tenant also.

4. Counsel for the petitioner stated that the evidence on the side of the tenant on the question stood contradicted, whereas counsel for the respondent landlord maintained the contrary. It is not my province in these proceedings to embark on an analysis or appreciation of the evidence recorded. There is no ground to interfere with the finding recorded by the revisional Authority.

5. The petitioner's counsel then contended that the finding regarding the landlord's bonafide need for the building for his own occupation cannot be sustained. In support thereof, he produced, and relied on, Ext. P-7 which is the copy of the agreement for sale stated to have been executed by the respondent in respect of the building in question in favor of a third party. Counsel for the respondent landlord denied that the said document covered the building which is the subject-matter of these proceedings. It is unnecessary to resolve this controversy. On the basis of this new document, I do not propose, in these proceedings, to re-evaluate the question of the landlord's bona fide need. On the materials placed, which have been considered and adjudicated upon, by the authorities below, I can find no scope for interference. Nor do I think that the interests of justice demand a remittal back of these proceedings for reinvestigation on the basis of Ext. P-7. It seems to me that if the proposed assignment by the respondent landlord materializes and covers the building in question, the petitioners will have their

adequate remedy under the fourth proviso to section 11(3) of the Act which reads as follows;-

Provided further that if a landlord after obtaining an order to be put in possession transfers his rights in respect of the building to another person, the transferee shall not be entitled to be put in possession unless he proves that he bona fide needs the buildings for his own occupation or for the occupation by any member of his family dependent on him.

In view of the provision, I see little force in the contention of the petitioner based on Ex. P-7.

6. The petitioner has not chosen to make any of the three tribunals which rendered Ext. P-2, P-3 and P-6 orders parties to the writ petition. In view of the decision in [Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar](#), the Tribunals ought to have been made parties. The defect of non-joinder was not raised in the course of the arguments and was not indeed noticed, till I began dictating judgment. In the circumstances, there is no need to rest the dismissal of this O.P. on this ground. I dismiss this writ petition but in the circumstances without costs.