

Balan Vs Bijina

Court: High Court Of Kerala

Date of Decision: July 2, 2004

Acts Referred: Kerala Buildings (Lease and Rent Control) Act, 1965 " Section 11(3)

Citation: (2004) 3 KLT 180

Hon'ble Judges: K.S. Radhakrishnan, J; J.M. James, J

Bench: Division Bench

Advocate: B. Jayasankar and P. Suresh, for the Appellant; C. Varghese Kuriakose, for the Respondent

Final Decision: Dismissed

Judgement

K.S. Radhakrishnan, J.

Whether the attempt made by the landlady to sell away the tenanted premises to the tenant during the pendency of

the rent control proceedings is fatal to a plea u/s 11(3) is the question that has come up for consideration in this case.

2. Eviction was sought for by the landlady under Sections 11(3) and 11(4)(iii) of Act 2 of 1965. Rent Control Court rejected the ground u/s

11(3), however, eviction was ordered u/s 11 (4)(iii). Landlord filed RCA, 145/02 against the order u/s 11(3) and tenant filed RCA. 134/02

against the order u/s 11 (4) (iii). Both the appeals were heard by the Appellate Authority and a common judgment was rendered. Appeal filed by

the landlord was allowed and the appeal preferred by the tenant was rejected.

3. The tenant is conducting a bakery by name Famous Bakery in the tenanted premises from 1984 onwards on a monthly rent of Rs.1800/-.

Tenanted premises originally belonged to the father of the landlady. She became the owner by virtue of settlement deed No. 1102/97 of SRO

Maradu. Landlady required the tenanted premises for the purpose of conducting a provision store. Landlady's husband who is experienced in that

line of business would help her for the conduct of business. Landlady issued lawyer notice Ext.A5 on 2.9.1988 demanding surrender of the

tenanted premises for the purpose of conducting business. Later she sent another lawyer notice A2 dated 19.1.2000 and requested the tenant to

surrender the premises. She has also claimed eviction u/s 11(4) (iii) since tenant has acquired another building in the same locality.

4. Tenant resisted the petition contending that there is no bona fides in the plea. It was pointed out there is inconsistency in the need urged in the

two notices and consequently there is no bona fides in the plea. Further it was also stated after the issuance of first notice there was a demand for

hike in rent which was not agreed to by the tenant, consequently second notice was issued. Further it is also pointed out while the rent control

proceedings were pending attempts were made by father of the landlady to sell away the property to the tenant and consequently it was contended

that there is no bona fides in the plea. Tenant also pointed out that he has not purchased any property subsequent to the filing of the Rent Control

Petition, In any view the property is not in the possession of the tenant, but in the occupation of his son. Landlady's husband was examined as

PW.1 and PWs.2 and 3 were also examined on the side of the landlady and produced A1 to A13 documents. Tenant got himself examined as

RW. 1. RW.2 was also examined on the side of the tenant. B1 to B7 documents were produced on the side of the tenant. C1 is the commission

report and C1(a) is the sketch.

5. We may first examine whether the attempt made by the landlady's father to sell away the tenanted premises to the tenant during the pendency of

the rent control proceedings would defeat the plea of bona fides. The crucial date to decide the question as to whether the need urged by the

landlady is genuine or not is the date of filing of the rent control petition. Rent Control Petition was filed in the year 2000. Counsel for the tenant

submitted though landlady is the owner of the tenanted premises her father tried to sell away the property at her instance and received Rs.10,000/-

from the tenant. To prove the said transaction tenant examined RW.2, President of the Palarivattom Unit of Vyapari Vyavasai Aekopana Samithi

who produced XI dated 25.3.2002 which is alleged to have been issued by the father of the landlady to the tenant.

6. We are of the view even if such a proposal was originated from the side of the landlady that itself would not show there is no bona fides in the

plea. During the pendency of the rent control proceedings if tenant makes an attractive offer so as to subdue the bona fide need the Rent Control

Petition cannot be rejected on the ground that the landlady was also desirous of selling away the tenanted premises. The delay in disposal of the

rent control proceedings, uncertainty in conduct of business and many other factors might have influenced the mind of the landlady while an

attractive offer was made. Landlady may also in a given case sell away the tenanted premises and start business elsewhere with the amounts

received. Rent Control Court took the view that since attempts were made by the landlady to sell away the property during the pendency of the

proceedings to the tenant it would be sufficient to hold that there is no bona fides in the plea. We find it difficult to accept the reasoning of the Rent

Control Court. Appellate Authority came to the conclusion that the mere fact that there was some negotiations between the father of the landlady

and the tenant that itself is not a ground to hold that there is no bona fides in the plea. We are in agreement with the reasoning of the Appellate

Authority.

7. Counsel appearing for the tenant further submitted the Rent Control Court and Appellate Authority committed an error in ordering eviction u/s

11(4)(iii) of the Act. Placing reliance on the decision of the Apex Court in Mehrunnisa (Smt) and Others Vs. Visham Kumari (Smt) and Another,

counsel contended that the relevant notice to be taken into consideration while considering the ground for eviction u/s 11 (4)(iii) is the second

notice. Counsel contended that the tenant purchased the property on 25.10.1998 prior to the issuance of second notice by the landlady and

therefore Section 11 (4)(iii) would not apply.

8. Section 11 (4)(iii) deals with various contingencies. Landlord is entitled to get an order of eviction if the tenant already has in his possession a

building or subsequently acquires possession of or puts up a building reasonably sufficient for his requirements in the same city, town or village.

Question is whether he has come into possession of any other buildings. A Division Bench of this Court in Kanhangad Co-op. M.S. Society Ltd.

v. Ganapathy Kamath(1995 (1) KLT 681) held that the time with reference to which the sufficiency of the new building has to be determined is the

time when landlord demands vacant possession from his tenant. Counsel submitted going by the decision of the Apex Court the landlady made a

legal demand only by A2 dated 19.1.2000 and the tenant has acquired possession of a building prior to the said date. Consequently the plea u/s

11(4)(iii) would not lie. This contention in our view cannot be accepted.

9. While examining the plea u/s 11 (4)(iii) Rent Control Court has to take into consideration various other factors. The conduct of the tenant is very

relevant factor which is to be taken note of by the Rent Control Court, especially, in a case where no statutory notice is contemplated u/s 11 (4)

(iii). The mere fact that the landlady has sent two notices which is not contemplated under the statute does not mean that the landlady cannot urge

the plea u/s 11(4)(iii) de hors these notices. It has come out in evidence that the tenant has purchased a building on 25.10.1998 and the same was

rented out to his son on a monthly rent of Rs.500/-. This is evidently to defeat the claim u/s 11(4)(iii),so found by the Rent Control Court and

Appellate Authority concurrently. We also notice that the tenant has got other buildings wherein he is conducting the same business. In the facts

and circumstances of the case we find no reason to interfere with the concurrent finding rendered by the Rent Control Court and Appellate

Authority u/s 11(4) (iii).

10. Under such circumstance both these revisions lack merits and the same would stand dismissed. Considering the entire facts and circumstances

of the case we are inclined to grant time to the tenant upto 31.12.2004 for vacating the premises provided he files an undertaking in the form of an

affidavit before the Rent Control Court within one month stating that he would vacate the premises within the aforesaid time and that he would pay

arrears of rent, if any, and also future rent.