Kunhalumma Vs Tahsildar and Accommodation Controller and others

Court: High Court Of Kerala

Date of Decision: March 24, 1982

Acts Referred: Evidence Act, 1872 â€" Section 114
General Clauses Act, 1897 â€" Section 26, 27
Kerala Buildings (Lease and Rent Control) Act, 1965 â€" Section 17(2)

Citation: (1982) KLJ 225

Hon'ble Judges: P. Janaki Amma, J

Bench: Single Bench

Advocate: P.A. Mohammed, for the Appellant; Govind Bharathan, for the Respondent

Final Decision: Allowed

Judgement

P. Janaki Amma, J.
The petitioner is the owner of a building in Thalikkavu, Cannanore. The first floor of the building was rented out to the

second respondent on a monthly rent of Rs. 15-. On 23-5-1979 the petitioner issued Ext. P1 notice to the second respondent stating that she had

damaged the building by storing water and by splitting fire-wood on the floor. Since she felt that it was not possible to restore the building to its

original condition she claimed recovery of possession of the building with arrears of rent. The second respondent issued Ext. P2 reply notice

denying that it was due to her neglect or action that damage was caused to the building. She had been permitted to use a portion of the upstair as

kottaihalam"" and as such she was using the same for the purpose. According to her, the petitioner was not in the habit of effecting repairs to the

building in spite of demands by her. She also denied that she had kept rent in arrears. An amount of Rs. 360|- was sent by Money Order dated 7-

11-1978, which was received by the petitioner on 13-11-1978. Another Money Order for Rs. 60- was sent on 8-5-1979 being the rent for the

months from December to May 1979, both inclusive. But the petitioner refused to accept the money without assigning any reason. She denied her

liability to be evicted. Thereafter, on 14-5-1979 the second respondent filed petitions before the District Collector and the Tahsildar for getting the

building repaired. The Tahsildar, who is also the Accommodation Controller, returned the petition as it was unstamped, and it was not preceded

by a notice to the petitioner. The second respondent re-presented the petition on 11-6-1979. Ext. P4 is a copy of that petition. Ext. P3 is a notice

issued to the petitioner to the effect that the petition stood posted to 20-6-1979. On 7-7-1979 the petitioner filed Ext. P5 counter denying the

allegations in the petition and stating that the damage caused was due to the second respondent''s negligence and that it was beyond repair. The

petitioner contended that in the absence of a notice as contemplated in the Act, the claim for getting the repairs done was unsustainable. In the

meanwhile on 20-6-1979 the Accommodation Controller visited the building and found that there were two huge openings developed on the floor,

through which, according to the Officer, there was every possibility of the inmates of the house falling down to the groundfloor. According to him,

the condition of the building was dangerous and warranted immediate interference on humanitarian grounds. The second respondent was given

permission on the spot to carry out immediate repairs to avoid danger to the inmates of the house. After the counter was filed on 18-7-1979 the

petitioner moved Ext. P6 petition stating that the second respondent had replaced the damaged beams and that she had no authority to carry out

any work without her consent or an order from the competent authority. She prayed that the work should be inspected by the Accommodation

Controller. The Accommodation Controller inspected the property again on 21-7-1979 in the presence of the advocate for the petitioner. The

second respondent was also present. It was found that two beams and ten wooden planks had been replaced and the kitchen room had been

replastered. On 30th July, 1979 the Accommodation Controller passed Ext. P7 order allowing the second respondent''s petition and over-ruling

the contention of the petitioner that it was due to the negligent use by the second respondent that the damage was caused to the building. The

Accommodation Controller directed that the expenses incurred for the replacement of the beams and planks and the charges for replastering the

floor of the kitchen room should be deducted with interest at six per cent per annum from the rent due from the second respondent to the

petitioner. It was also directed that the second respondent should render necessary accounts for the expenses incurred by her to the satisfaction of

the Accommodation Controller.

2. The present petition is filed for the issue of a writ of certiorari or other appropriate writ, direction or order calling for the records leading to Ext.

P7 order of the first respondent and for quashing the same, for the issue of a writ of mandamus or other appropriate writ, direction or order

directing the first respondent to consider Exts. P5 and P6 statements on the merits, and, also to direct the first respondent to abstain from

implementing Ext. P7 order.

3. The main contention of the petitioner is that section 17(2) of the Kerala Buildings (Lease and Rent Control) Act contemplates the issue of a

notice to the landlord calling upon him to effect the repairs. In the absence of the issue of a notice the Accommodation Controller had no

jurisdiction to dispose of the petition. It is stated that the (second respondent, in the instant case, has not complied with the direction regarding

notice as contemplated in section 17(2)

4. Even though the petition was filed as early as 20-9-1979 the second respondent chose to file a counter affidavit only on 9-1-1982. Therein she

denied the allegations in the petition and also stated that she had sent a registered notice on 18-5-1979. Ext. R1 was also produced as a copy of

the notice. According to her, the notice was returned with the endorsement that the petitioner was not at home and was at Cannanore. It is also

mentioned that she had received the money order for Rs. 360/- sent to her in the same address. The contention is that the petitioner was not at

home and was at Cannanore. It is also mentioned that she had received the money order for Rs. 360/- sent to her in the same address. The

contention is that the petitioner was evading the notice and that it should be taken as refused. She would also say that the order of the

Accommodation Controller is binding on the petitioner and that there are no proper reasons for quashing the same.

5. Section 17(2) of the Buildings (Lease and Rent Control) Act makes it obligatory on the landlord of a building to attend to the periodical

maintenance and necessary repairs of the building. If the landlord fails to attend to such maintenance or repairs to the building and to provide the

amenities there to within a reasonable time after notice is given by the tenant it is competent for the Accommodation Controller to direct on

application by the tenant that such maintenance and repairs are attended to by the tenant and that the charges and cost thereof are deducted with

interest at 6% per annum from the rent payable by him. The contention put forward on behalf of the petitioner is that in the instant case the damage

to the building was caused not on account of the failure to attend to periodical maintenance and repairs, but due to the acts of negligence and

misuse by the tenant of the building. It is an admitted fact that the petitioner has issued notice of eviction alleging that the tenant was using the

building in such a manner as to destroy and reduce materially and permanently its value and utility. That notice is Ext. P1 dated 23-5-1979 and

Ext. P2 dated 27-5-1979 is the reply thereto Ext. P4 the petition dated 11-6-1979 to the Accommodation Controller contains an averment to the

effect that a petition for effecting repairs had been filed on 14-5-1979, that a notice had been issued to the present petitioner by registered post

acknowledgement due on 18-5-1979, and that the cover thereof was returned stating that the addressee was at Cannanore. But Ext. P3 the notice

issued to the present petitioner mentions only about the petition dated 11-6-1979 and does not make mention of the prior petition sent on 14-5-

1979. It is also significant that no mention is made of Ext. R1 notice dated 18-5-1979 in Ext. P2 the notice sent by the second respondent in reply

to Ext. P1. There is a case for the second respondent that what the petitioner did was to evade the notice, copy of which is Ext. R1, and

manipulated its return stating that the addressee was at Cannanore; but in that case there was no reason why she should receive the original of Ext.

P2 reply notice which is seen sent on 27-5-1979. There are no materials to substantiate the case that the petitioner evaded the service of Ext. R1

notice or that it was at any time tendered to her. It could as well be that the petitioner was temporarily absent from her house. If that was the case

the proper course was to send a fresh notice to the petitioner.

6. The contention raised on behalf of the petitioner is that the Accommodation Controller gets jurisdiction to direct the tenant to effect repairs u/s

17(2) only after a notice is sent as directed in that section. Admittedly no notice was sent prior to 14-5-1979. There is also no case that a notice

had been served on the petitioner prior to 11-6-1979, the date of Ext. P4. The second respondent on the other hand would contend that from the

nature of the return of Ext. R1 notice it should be inferred that it was a case of deliberate refusal to accept notice and therefore it must be

presumed that there was proper service of notice. Reference is made to section 26 of the Interpretation and General Clauses Act, corresponding

to section 27 of the General Clauses Act (Central). Section 26 reads:

26. Meaning of service by post:- Where any Act authorises or requires any document to be served by post, whether the expression ""serve"" or

either of the expression ""give"" or ""send"" or any other expression is used, then unless a different intention appears, the service shall be deemed to be

effected by properly addressing prepaying and posting by registered post or anchal a letter containing the document, and unless the contrary is

proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post or anchal.

The contention raised is that in as much as a notice has been sent there has been compliance of the above provision. The section has no application

where evidence is to the effect that the notice was not served as the addressee was not in her residence. Reliance was then placed on the decision

Har Charan Singh v. Shiv Rani, AIR 1981 S.C. 1284. The ratio of that decision is that when a registered envelope is tendered by a postman to the

addressee and he refuses to accept it, there is due service effected upon the addressee and the addressee must be imputed with the knowledge of

the contents of what is contained in the envelope. The inference is based on the presumption available u/s 27 of the General Clauses Act read with

section 114 of the Evidence Act. The decision has no direct application in the instant case. It lays down only a rule of presumption. In this case no

tender of notice or refusal to receive it is made out. Nor is a case of refusal set up in Ext. P4. Such a refusal cannot be inferred from the fact that

money orders sent on previous occasions had been received by the petitioner. On the other hand, even according to the second respondent, the

return on the notice is that the addressee was not in her residence and had gone to Cannanore. If in the case of a refusal of an article sent by

registered post a presumption of knowledge of the contents of a refused notice is drawn it is based on the principle that nobody can take

advantage of his own wrong. But such an inference cannot be drawn in a case where the postman concerned failed to find out the addressee and

did not tender the document to him. Since it was not due to any fault of the petitioner in this case that the notice was not served on her the

presumption of knowledge of the contents is not available in her case. Since no demand to effect repairs is made in Ext. P2 and the issue of the

notice Ext. R1 is also not mentioned therein the necessary inference is that no such demand was made and no notice as directed in section 17(2)

was issued. It is also significant that the non-issue of notice is mentioned by the petitioner at the earliest possible occasion that she got, viz., in the

counter filed by her. u/s 17(2) of the Kerala Buildings (Lease and Rent Control) Act, the landlord is entitled to reasonable time for effecting repairs

after service of notice on him. The tenant is to approach the Accommodation Controller and the latter is to direct the former to effect the repairs

only in case the landlord fails to do the repairs within reasonable time after receipt of notice. In other words, the Accommodation Controller gets

jurisdiction to direct the tenant to effect repairs only if the landlord fails to do so within reasonable time after receipt of the notice mentioned in

section 17(2) . This condition is not satisfied in the instant case.

Reference may in this connection be made to rule 13(2) of the rules framed under the Buildings (Lease and Rnt Control) Act. The rule directs that

the Accommodation Controller should give the parties a reasonable opportunity to state their case. He should also record a brief record of the

evidence of the parties and witnesses if any. He is to pass orders only after considering the evidence so recorded and the documents produced by

the parties. See Ramachandra Shenoi v. Tahsildar & Accommodation Controller, 1964 KLT 639. In this case action was taken by the

Accommodation Controller only on the basis of the petition filed on 11-6-1979 and not on the earlier petition of 14-5-1979. That pettion is seen

posted for hearing on 20-6-1979. There is no evidence to show when the petitioner who is a resident of Irikkur was served with notice. The

counter is seen fild only on 7-7-1979. Even prior to that viz. on 20-6-1979 itself the Accommodation Controller inspected the building. There is

no material to show that the inspection was after notice to the petitioner. The permission to effect repairs was given to the second respondent on

the spot and before the final disposal of the petition filed by the tenant. In fact, the repairs were effected even before an opportunity was given to

the landlord to establish her case that the damage to the building was due to the mishandling of the building by the tenant. The order directing the

tenant to effect repairs was made contrary to the provisions contained in section 17(2) of the Kerala Buildings (Lease and Rent Control) Act and

rule 13(2) made thereunder. The said direction and the subsequent order Ext. P7 that the cost of repairs with interest be deducted from the rent

and that an account be rendered of the cost of repairs are thus unsustainable in law. The said orders will therefore stand quashed.

The petition is allowed. I make no order as to costs.