E.K. Devaky and Others Vs T. KrishnankMty

Court: High Court Of Kerala

Date of Decision: Nov. 18, 1986

Acts Referred: Kerala Buildings (Lease and Rent Control) Act, 1965 â€" Section 11, 11(2), 11(3), 11(4)(iv), 20

Citation: (1987) KLJ 507

Hon'ble Judges: K.P. Radhakrishna Menon, J

Bench: Single Bench

Advocate: V.R. Venkitakrishnan, N.C Joseph and K.T. Sankaran, for the Appellant; C.P. Damodaran Nair and D. Krishna Prasad, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.P. Radhakrishna Menon, J.
The tenants are the revision petitioners. The landlord is same in all these petitions. The applications of the

landlord under Sections 11 (2) and (3) of the Kerala Buildings (Lease and Rent Control) Act, for short The Rent Control Act, were dismissed by

the Rent Control Court. On appeal the appellate authority reversed the orders and allowed the potitions. In the meantime there was a

relinquishment of possession of rooms by two tenants and taking over possession by the land-lord.

2. The revisional authority has concurred with the findings of the appellate authority and as a result of which the revisions, the tenants had filed u/s

20 of the Rent Control Act, were dismissed. These revisions challenging the said orders of the Revisional Authority u/s 20. have been filed by the

tenants.

3. The facts which are relevant and requisite to consider the questions arising for consideration in these revision petitions, briefly stated are: The

petitions for eviction are brought u/s 11 (3). That means the landlord has prayed for an order directing the petitioners-tenants, to put him in

possession of the buildings in question, as he bonafide needs the same for his own occupation. In their respective counter statements, the tenants

(identical contentions have been raised in all the counter statements) have stated thus:-

4. The appellate court after considering the various aspects of these contentions, has found as follows:-

There is no case for the tenants that the landlord does not require the petition schedule building for his own use. There is no case for the tenants

that the landlord has got another building of his own in the same town.

5. The learned counsel for the petitioner submits that the above findings of the appellate court and the specific case set up by the petitioner in his

pleadings stand apart. In short the said findings are based on conjectures and surmises. He further submits that it has clearly been stated in the

counter statement that the bonafide need pleaded in the petition for eviction is but a ruse adopted by the landlord to evict the petitioners. The

above findings of the appellate authority therefore are liable to be vacated.

6. On going through the memorandum of revision filed u/s 20 of the Rent Control Act, it is clear that the petitioners have no case that the bonafide

need pleaded by the respondent is only a ruse adopted by the respondent to get them evicted. On the other hand, what is discernible, from the

memorandum of revision is, that the rooms already surrendered by some of the tenants are sufficient to meet the bonafide requirements of the land-

lord.

I shall in this connection extract the grounds, the petitioners have taken in the memorandum of revision u/s 20.

2. The Appellate Authority failed to note the very significant circumstances which has developed after the filing of the appeal that out of the 5

tenants against whom eviction was claimed, 2 tenants have surrendered possession and the landlord is now in possession of those two premises.

3. The Appellate Authority failed to note that the landlord has no case that he cannot carry on his business unless he gets eviction of all the

premises and that the entire place is required for reconstruction. In the absence of such evidence, the Appellate Authority should have held against

the bonafides of the landlord since he has already taken possession of portions of the premises viz., one shop-room in the ground floor and the

entire first floor.

4. Even otherwise the Appellate Authority should have held that there is no acceptable evidence on the side of the landlord, that he cannot Carry

on his business in the premises which is now in his possession and that he requires the petition schedule building for such purpose.

It can be seen from the above statements in the memorandum of revision that the petitioners have conceded that in any ''event, the landlord

bonafide required a portion of the building, for his own occupation.

7. The revisional court after considering the above case of the petitioners however, has held that the landlord has established his case that he

bonafide needs the entire building for his own occupation. This is what the revisional court has expressed in this reeard:-

8. Even otherwise the claim of the landlord is for eviction of all the tenants for reconstruction and bonafide occupation. The building is said to be in

a very rotten and dilapidated state. The learned Rent Controller misconstrued this claim as one falling u/s 11 (4)(iv) and rejected the claim for want

of proof. It has been held in Mohammed Kannu Vs. Assnar Kunju (1965 1 KLR 32) that for the purpose of his occupation a landlord may have

to demolish the building and reconstruct it and that dose not mean that the landlord''s claim is not u/s 11(3). In Panchamal Narayan Shenoy Vs.

Basthi Venkatesha Shenoy, it is held that where a landlord seeks eviction for immediate demolition and rebuilding for own occupation he need not

further prove that the condition of the building is such that it requires immediate demolition. The owner can occupy a place by making use of it in

any manner (RP Mehta v. I.A. Sheth AIR 1964 SC 1976) Therefore an eviction order on the ground of personal requirement can be passed

where it is proved that the landlord wanted to pull down the building and build another one and then occupy it. Admitedly the landlord is now

doing his trade in a rented building. The learned Rent Controller found that since the landlord has another building in his occupation the claim u/s

11(3) cannot be allowed. But as has been correctly distinguished by the Learned Appellate Authority such building must belong to the landlord. In

these petitions there is no case for the tenants that the landlord has any other building of his own in that place. Hence the bonafides of the landlord

cannot be questioned. The finding given by the appellate authority has only to be confirmed.

9. In the light of the rulings referred to in the above passage, the argument of the learned counsel for the petitioners that the eviction sought for,

must be treated as one falling u/s 11 (4) (iv) of The Rent Control Act, is liable to be rejected.

10. It should be remembered that the provisions of Sec. 11 are for the advantage of the land-lord and the grounds for adjustment enumerated

thereunder are such which justify the eviction of the tenant by the land-lord in the exercise of his general right to eject the tenant. And if that be so,

why should more restrictions be read into those grounds? I cannot therefore agree with the argument of the learned counsel that Sec. 11 (3) will

apply only if the land-lord bonafide needs to occupy the building without any alteration.

It therefore follows that once the land-lord establishes that he bonafide require the building for his occupation or the occupation of any member of

his family, he can recover possession of the building from the tenant irrespective of the fact whether he would occupy the same with or without

making any alterations.

11. The tenants wanted the revisional court to take cognisance of certain events and developments subsequent to the institution of the proceedings

for eviction. The Revisional Court however, rejected the said request entering the following findings:-

But there is no reason why this subsequent development had not been brought to the notice of the Appellate Authority when the appeals were

actually heard. There is clear acquiescence on the part of the revision petitioners. They are therefore waived from raising such a contention at this

very late stage.

The learned counsel for the petitioners submits that the above finding of the revisional court is not sustainable in the light of the ruling of the

Supreme Court in Pasupuleti Venkateswarlu Vs. The Motor and General Traders, . The Supreme Court has held thus:-

We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with

the current realities, the court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of

the proceeding provided the rules of fairness to both sides are scrupulously obeyed.

12. With a view to make the right or remedy claimed by the party just and meaningful, the court can, and in many cases must, take cautious

cognisance of events and developments subsequent to the institution of the proceeding! But it should be shown that the development or event,

arising after the list has come to the court has a fundamental impact on the right to the relief. If there is no such impact, the authority concerned can

be blind to the subsequent events or developments. The appellate authority in the case on hand has held that the landlord bonafide needs the entire

building for his own occupation. In arriving at the said finding it is not as if the appellate authority was not aware of the fact of surrender of the shop

buildings by two of the tenants. The development arising after the dispute has come to the court, is not capable of making any impact on the case

of the land-lord that he needs the entire building for his own occupation. The findings of the appellate court that the landlord bonafide needs the

entire building, are based on proved facts and hence unassailable. The revisional court has concurred with the said view. Subsequent development

therefore has rightly been held to be irrelevant in considering the grant of the decretal remedy.

13. From the facts stated above, it is clear that the allegation that the appellate authority has not approached the issue in the right perspective, is not

sustainable, it is not the case of the petitioners (as is discernible from the memorandum of revision under Sec. 20) that the landlord has not pleaded

the case that he bonafide needs the building for his own occupation The case of the petitioners however, is that there is no specific pleading and in

the absence of the specific pleadings, the case should not have been considered by the appellate authority. As already stated, no such case has

been put forward before the revisional court and that it is so can be seen from the memorandum of the revision filed before the revisional court.

14. The learned counsel for the petitioners pressed into service the avernments contained in an affidavit filed on 26-10-1986 in the revision petition

before this court. For what purpose this affidavit has been filed, is not clear either from the affidavit or from the argument. The facts, highlighted by

the avernments in the affidavit, have no relevance to the issues arising for consideration. Whether the landlord can construct a new building on the

property which is supposed to be owned by him, is not a fact relevant to consider the issue whether the landlord bonafide needed the building in

dispute for his own occupation. The above argument is therefore rejected. For the reasons stated above the C. R. Ps are liable to be dismissed.

Accordingly I dismiss the Civil Revision Petitions. No costs.

The learned counsel for the petitioners then submitted that the petitioners may be given some time to vacate the premises. Taking into account the

peculiar circumstances of the case, I am of the view that the petitioners must be given some reasonable time to vacate the buildings. I therefore

grant four months time to the petitioners to surrender the building pursuant to the directions contained in the order of the Rent Controller. The

petitioners will file an undertaking to the said effect within four weeks from today before the Rent Control Court.