

(1983) 09 KL CK 0021

High Court Of Kerala

Case No: C.R.P. No. 1145 of 1983

C.M.A. Muhammed and Another

APPELLANT

Vs

Abdul Rahim

RESPONDENT

Date of Decision: Sept. 9, 1983

Acts Referred:

- Kerala Buildings (Lease and Rent Control) Act, 1965 - Section 11, 11(3), 17, 17(1)
- Transfer of Property Act, 1882 - Section 108, 111

Citation: (1983) KLJ 571

Hon'ble Judges: P.C. Balakrishna Menon, J

Bench: Single Bench

Advocate: P.K. appa Nair and P.K. Suresh Kumar, for the Appellant; M.K. Narayana Menon, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P.C. Balakrishna Menon, J.

This revision at the instance of the Respondents-tenants is against the concurrent decision of the courts below, for their eviction u/s 11 (3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as the Act). Two shop rooms in a building belonging to the petitioner-landlord were let to the respondents-tenants for conducting a grocery shop. The landlord is in possession of two rooms and a side room in the same building. Eviction was ordered by the courts below on the finding that the landlord bona fide requires the two rooms in question for the purpose of his residence as well as to carry on a trade for his living.

2. Even though the finding of bona fide need for own occupation of the landlord is challenged in this revision, nothing is brought out before me to interfere with the concurrent finding of fact. The courts below have accepted the evidence adduced on behalf of the landlord that he is presently residing in a house belonging to his step mother, he has no right of residence in the said house, there are other persons

residing with the step mother and there is no sufficient space for the occupation of the landlord and his family. On the evidence in the case, the finding of bonafide need of the landlord for the occupation of himself and his family for the purpose of residence and to conduct a trade to earn a living is perfectly justified and cannot be interfered with in this revision.

3. Learned Counsel for the revision-petitioners contended that since part of the building is in the possession of the landlord himself, it is not open to him to apply for eviction under sub-section (3) of Section 11 and the only ground on which he can seek eviction is under sub-section (8) of Section 11 of the Act. Section 11 of the Act enacts that a tenant shall not be evicted except in accordance with the provisions of the Act, and enumerates the grounds on which the landlord may apply to the rent control court for the eviction of the tenant. Under the general law of landlord and tenant, a landlord is entitled to evict the tenant on the determination of the lease. Section 111 of the Transfer of Property Act provides for the various modes under which a lease of immovable property determines. Under clause (q) of Section 108 of the T.P. Act the lessee is bound to put the lessor in possession of the property on the determination of the lease. The preamble of the Kerala Buildings (Lease and Rent Control) Act 1965 states the purpose of the Act is to regulate the leasing of buildings and to control the rent of such buildings in the State. It is in the context of acute scarcity of residential and non-residential accommodation that the Act was passed restricting the right of the landlord to evict the tenants. Under sub-section (3) of Section 11 of the Act, the landlord in bona fide need of the building for the occupation of himself or of any member of his family dependent on him may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building. The expression "Building" as defined in the Act includes part of a building. Sub-section (8) of Section 11 enacts another ground, as per which a landlord in occupation of part of the building may apply for the eviction of the tenant in occupation of the whole or any portion of the remaining part if he requires additional accommodation for his personal use. Sub-sections (3) and (8) of Section 11 are not mutually exclusive. If both the grounds are available to the landlord it is open to him to apply for eviction on either of the grounds or on both. The mere fact that there is a specific provision applicable to a situation where the landlord is in occupation of a part of a building and the remaining portion or part thereof is in the possession of a tenant, does not preclude the landlord from seeking eviction under sub-section (3) of Section 11 of the Act. It is not a sound principle of statutory construction to place more restrictions on the rights of parties than what is provided for in the Statute itself. There is therefore no substance in the plea that for the reason of the landlord's possession of a part of the building, sub-section (8) excludes the operation of subsection (3) of Section 11 of the Act for a landlord to apply for eviction of his tenant.

4. In the present case even though the landlord is in possession of two rooms and a side room in the building he has not yet occupied the same for the reason of

insufficiency of accommodation for the purpose of residence and trade. Occupation is different from possession is clear from sub-section (8) of Section 11 itself. The sub-section enables "a landlord who is occupying only a part of a building", to apply to the Rent Control Court for an order directing a tenant occupying the whole or any portion of the remaining part of the building to put the landlord in "possession" thereof if he requires additional accommodation for his personal use. Personal use referred to therein is for the purpose of occupation. The word "occupying" in subsection (8) should be understood in the context in which the expression is used. In the decision of the Mysore High Court in *Ratilal Brothers v. Government of Mysore and Another* (AIR 1951 Mys. 65), it is stated at page 67:

The word "occupy" is a word of uncertain meaning. Sometimes it indicates legal possession in the technical sense. At other times "occupation" denotes nothing more than physical presence in a place for a substantial period of time. In *Queen v. The Justices of the West Riding of Yorkshire*, (1842) 11 E.R. 198: Patteson J. expressed thus:

Now I quite concede that the word "occupy" applied to a house, conveys to any man the meaning of living in the house; ninety-nine persons in a hundred, at least would so understand it..... Even "actual occupation" would not necessarily mean "residence", because a man might dwell in one parish and "rent a house and land in the adjoining one, occupying It by his servants. Some other words therefore, are necessary to show residence.

Occupation and possession are not synonymous terms. One may possess land or building without occupying the same. Unless the landlord is occupying part of the building, he will not be entitled to invoke sub-section (8) Section 11 to evict the tenant occupying the remaining part of the building.

5. Learned counsel for the petitioners contends that even if bonafide need under sub-section (3) of Section 11 is made out by the landlord, the tenants are entitled to the protection of both the provisions thereto. As per proviso (1) the landlord is not entitled to an order for eviction if he has another building of his own in his possession in the same city, town or village except where the rent control court is satisfied that for special reasons in any particular case it will be just and proper to order eviction. No such point as is now pressed before me was urged before the courts below. The two rooms and the side room of the building in the possession of the landlord are not sufficient for the purpose of his residence and a small trade to earn a living and that is the reason why those rooms are kept unoccupied. This will constitute special reason for ordering eviction of the two rooms in the occupation of the tenants. As per the second proviso, the landlord will not be entitled to an order for eviction if the tenant is depending for his livelihood on the income derived from any trade or business carried on in the building and there is no other suitable building available in the locality for the tenant to carry on such trade or business. In the present case the courts below have found that the tenants have shifted their

business to a new building and they are carrying on trade in the name and style of "Amina Stores" there. The burden is on the tenants to prove that they are depending for their livelihood on the income derived from the business carried on in the building from which they are sought to be evicted. The evidence adduced by the tenants would show that they are using the two rooms in question for storing articles of trade such as cattle feed, rice, oil etc. The Amina Stores in the new building and the petition schedule shop rooms are situated within 50 feet of each other. There is no evidence as to the income derived from the petition schedule building, nor is there anything to show that they are depending on the income from the trade or business carried on in the said building for the purpose of their livelihood. The tenants have also failed to prove that there is no other building available in the locality for carrying on their trade. It is on the other hand admitted that they have secured alternate accommodation and have shifted the business to a new building, where they are carrying trade in stationary articles. There is therefore no substance in the contentions based on provisos 1 and 2 of subsection (3) of Section 11 of the Act. It is next contended that the landlord seeks eviction of the building for the purpose of residence, the shop-rooms in question are non-residential buildings and under sub-section (1) of Section 17, no residential building shall be converted into a non-residential building vice versa except with the permission in writing of the Accommodation Controller. This Court in the decisions in Ammini Pandarathi v. Leelamma (1977 KLT 441) and Das Naik v. Narayanan (1980 KLT 951), has held that the prohibition in the sub-section is directed against the tenants only. This construction of the sub-section is perfectly in consonance with its proviso which requires the consent also of the landlord if the conversion involves structural alteration of the building. Merely for the reason of residence and trade in a shop-building, the building itself is not converted into a residential one. Even if the permission of the Accommodation Controller is required, it can only be at the time when a non-residential building is to be converted into a residential building or vice versa. Section 17(1) is not therefore a bar against the landlord seeking eviction of a non-residential building for his bonafide need of occupation for the purpose of residence.

No other question arises in this revision- The C.R.P. fails and is dismissed No costs.