

Gouthami and others Vs Indira Kunjamma and others

Court: High Court Of Kerala

Date of Decision: Feb. 9, 1994

Acts Referred: Kerala Buildings (Lease and Rent Control) Act, 1965 â€” Section 11, 11(1), 11(2), 11(3), 18

Citation: (1994) 2 KLJ 201

Hon'ble Judges: Varghese Kalliath, J; P.A. Mohammed, J

Bench: Division Bench

Advocate: N. Viswanatha Iyer, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

Mohammed, J.

This is a revision by the tenants of a "building" u/s 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for

short "the Act"). The original tenant Bharathan died and his legal heirs are the revision petitioners. The respondents are the landlords who are the

legal heirs of the original landlord deceased Karunakara Panicker. The respondents filed the petition for eviction, R. C. P. No. 31/85, before the

Rent Control Court, Ernakulam under Sections 11(2) and 11(3) of the Act. After the enquiry the Rent Controller ordered eviction of the

petitioners from the building in question under the aforesaid Sections, that is to say, on the grounds of "arrears of rent" and "bona fide need", In the

appeal, R. C. A. No. 165 of 1989, filed by the petitioner u/s 18 of the Act the Rent Control Appellate Authority, Ernakulam set aside the order of

eviction u/s 11(2) but confirmed eviction u/s 11(3) of the Act. It is against the said judgment of the appellate authority, this revision is filed by the

petitioners. Learned counsel, Sri N. Viswanatha Iyer, on behalf of the petitioners, in the first place, argued that the authorities below ought to have

referred the matter to a civil court as there is dispute regarding the ownership of the building. The contention is that the second proviso to sub-

Section (i) of Section 11 of the Act is attracted inasmuch as the tenants denied the title of the landlords in this case. It is pertinent to note in this

connection that the petitioners did not deny the title of the respondents in respect of the tenanted building; their denial is only limited to the "shed"

which came into being after the execution of Ext. A5 rent deed executed by the original tenant in favour of the original landlord. It is to be noticed

that the case of the respondents-landlords is that for all intentions and purposes the shed was treated as part of the leasehold premises though it

came into being after the commencement of the tenancy. In fact on this aspect the Rent Controller as well as the appellate authority after

independent assessment of evidence, came to same conclusion that the shed was treated by the parties as part of the leasehold premises.

2. It is admitted in this case that the plan (Ext. B1) and licence (Ext. B2) obtained from the Corporation of Cochin for the construction of the shed

stand in the name of the original landlord Karunakara Panicker. It has come out in evidence that Bharathan had obtained the sanction for the

construction of the shed from Karunakara Panicker. The shed is registered in the name of Karunakara Panicker as evident from Ext. A 11

properly tax assessment list of the Corporation. In this situation it is difficult for the tenants to argue that there is dispute with regard to the title of

the shed attached to the building. If there was any such claim, the tenants would have raised this plea at least when Ext P 8 lawyer notice was

issued to them by the respondents demanding to vacate the premises as there was continued default in payment of rent. The tenanted building and

the shed are referred to in Ext. A 8 as the subject matter of the lease. From the above evidence coupled with the conduct of the petitioners it is

crystal clear that the denial of title by the petitioners in respect of the shed was not bona fide under any circumstance.

3. The second proviso to sub-section (1) of Section 11 is as follows:

Provided further that where the tenant denies the title of the landlord, or claims right of permanent tenancy, the Rent Control Court shall decide

whether the denial or claim is bona fide and if it records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a

Civil Court and such court may pass a decree for eviction on any of the grounds mentioned in this section, notwithstanding that the Court finds that

such denial does not involve forfeiture of the lease or that the claim is unfounded.

The denial of title of the landlords or claim of permanent tenancy by the tenants does not ipso facto efface the jurisdiction of the Rent Control

Court to decide the petition for eviction under sub-Section (1) of Section 11. The essential requisite to attract the said proviso is that such benefit

or claim by the tenant shall be bona fide. When such question is raised by the tenant, the Rent Control Court shall decide whether the said denial or

claim is bona fide and record a finding thereon. It is only thereafter that the landlords shall be entitled to sue for eviction of the tenant in a civil court,

it is apposite here, no contention was advanced by the tenants before the authorities below that, those authorities have no jurisdiction to proceed

with the case or the matter required to be referred to the civil court, Whatever that be, in view of our conclusion that the denial of title of the

landlords in this case by the tenants is not bona fide, the second proviso to Section 11(1) cannot be invoked in this case.

4. The next argument advanced by learned counsel is that the petitioners are entitled to the protection available under the second proviso to

Section 11(3) of the Act. Indisputably the claim for eviction for "own occupation" is found to be bona fide. The finding of the authorities below on

this question is concurrent.

The question of bonafide need is always a question of fact. Therefore, it does not call for any interference by this court in the present proceeding.

As far as protection available under the second proviso to Section 11(3), the burden is always on the tenant to establish the requirements to be

satisfied for claiming the protection. A Division Bench of this court in Kochappan pillai v. Chellappan (1976 K. L. T 1) has laid down that "on a

review of the principle involved, it is clear that the burden of proving all the facts in the second proviso to Section 11(3) of the Act, is on the

tenant". The above decision rendered by Narayana Pillai, J. On behalf of the bench continues to hold the field. As far as the requirement that the

tenants are depending for their livelihood on the income derived from the business carried on in the building in question, we have the concurrent

finding of the authorities below in favour of the tenants. Then the only question remains to be considered is whether the second requirement,

namely, the non availability of an alternative building, so as to attract the proviso is satisfied in this case. The Rent Controller after considering the

evidence on record found that the tenants have not established that there was no alternative building in the locality which is reasonably sufficient for

them to carry on the present business. The appellate authority after independently considering the evidence also came to the conclusion that there

are suitable alternative buildings in the locality which are reasonably sufficient to carry on the business by the petitioners. This finding of fact

concurrently found by the authorities below cannot be interfered with by this court in this proceeding. The ambit and scope of the revisional power

of this court u/s 20 of the Act is very limited. It is not the function of this court u/s 20 of the Act to examine the evidence once again and to come to

a different conclusion on appreciation of evidence. The Supreme Court in K.A. Anthappai Vs. C. Ahammed, and in Rukmini Amma Saradamma

Vs. Kallyani Sulochana and others, has plainly laid down the limited scope of the power of this court u/s 20 of the Act. After hearing the

arguments of learned counsel, we are not persuaded to hold that the judgment of the appellate authority suffers from any illegality, irregularity or

impropriety. In the view that we have taken above, this revision is liable to be dismissed. It is accordingly dismissed.