(1993) 08 KL CK 0051

High Court Of Kerala

Case No: C.R.P. 1065 of 1992

Mrs. Narayana Bhat and Others		APPELLANT
	Vs	
Navaneethalal P. Lalan and Another		RESPONDENT

Date of Decision: Aug. 17, 1993

Acts Referred:

- Kerala Buildings (Lease and Rent Control) Act, 1965 - Section 11(10), 11(3), 11(4), 11(7), 11(8)

Citation: (1993) 2 KLJ 622

Hon'ble Judges: Varghese Kalliath, J; K.J. Joseph, J

Bench: Division Bench

Advocate: S. Venkitasubramanya Ayyar and V. Giri, for the Appellant; A.K. Seshadri, for the Respondent

Judgement

Varghese Kalliath, J.

Tenants under the Building''s (Lease and Rent Control) Act are the revision Petitioners. The revision is filed u/s 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965, for short, the Act. The landlord filed an application for evicting the tenants under Sections 11(3), 11(4)(iii), and 11(4)(iv) of the Act. We are not concerned about the grounds under Sections 11(3) and 11(4)(ii) of the Act, since they do not exist. But both the statutory authorities concurrently found that the landlord has established the ground u/s 11(4)(iv) of the Act. Section 11(4)(iv) of the Act reads thus:

11(4) A landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building,-

* * *

(iv) if the building is in such a condition that it needs reconstruction and if the landlord requires bona fide to reconstruct the same and if he satisfies the Court that he has the plan and licence, if any required, and the ability to rebuild and if the proposal is not made as a pretext for eviction?

* * *

2. The building in question is in a very important locality of Cochin City. It is facing a very important road by name Banerji Road. This building was given on lease under Ext. B-1 dated 1st February 1953. The rent fixed was Rs. 175 per month. By Ext. B-1, the tenant was allowed to-put up sheds on the northern side of the building at tenant''s cost; and with a condition that the tenant shall remove the same on his vacating the premises without causing any injury, damage or loss to the main building. Further, it is provided in Ext. B-1 that in case it cannot be so removed, viz. the structures made by the tenant, the same shall be left as it is and the tenant should vacate the building without claiming any compensation for the structures under any circumstances. The tenancy continued for a long time and even now, the tenants are occupying the building.

3. The landlord initiated proceedings for eviction in the year 1984. Several contentions were raised by the tenants to resist the eviction. Before us, Counsel for the tenants pressed the contention regarding the power of the Rent Control Court to order eviction in regard to the structures constructed by the tenants. Admittedly, the tenants have constructed certain structures and it must be pursuant to the direction or the permission given under Ext. B-1. Counsel for the tenants submitted that since the structures were constructed by the tenants in the northern side of the main building, that construction mast be considered as a construction made in a plot of land belonging to the landlord as per the permission given under Ext. B-1. Counsel submitted that even if it is taken as a construction made by a licencee, the Rent Control Court cannot have any jurisdiction over those structures and no order of eviction can be passed in regard to those structures.

4. At the first blush, the contention raised by Counsel for revision Petitioners may appear to be attractive, but on a closer examination of this contention, it is possible to hold that there is no merit in this contention. This contention was raised both before the Rent Control Court and before the appellate authority, but not in the same way it has been pressed before us by Counsel for the revision Petitioners. A reading of Ext. B-1 would show that what has been leased is the building and the premises on the northern side of the building. This is evident from the recitals in Ext, B-1. For clarity, we give Clause 3 of Ext. B-1 in full.

3. The lessor agrees to the lessee puting up a shed on the northern side of the building at lessee''s cost and the lessee shall remove the same on his vacating the premises without causing any injury, damage or loss to the main building and in case it cannot be so removed the same shall be left as it is and vacated and the

lessee not to claim any compensation under any circumstances.

5. When the question of removal of the structures was considered by the parties, the parties have used the words "remove the same on his vacating the premises without causing any injury". This is indicative of the fact that the place where the structures were allowed to be constructed is the premises attached to the main building which has been leased by the landlord in this case. Counsel for the tenants submitted that the permission to put up sheds in the property on the northern side of the building has to be treated as a permission in respect of a separate property which would not form part of the demise, for, according to him, the demise is that of the building. This is not a correct understanding of Ext. B-1. Ext. B-1 specifically refers to premises. We have to note the meaning of the word premises. The word "premises" is a comprehensive term which encompasses both the building and land appurtenant to it when used in a document of demise. In Earl Jowitt''s Dictionary of English Law, it is stated that in conveyancing parlance, the expression "premises" has gradually acquired the popular sense of land or buildings and it is now frequently found in instruments and in Acts of Parliament as meaning land or houses. The expression "premises" is therefore, an elastic and inclusive term, when used in statute; it is intended to signify lands with their appurtenances. See M. Mullick v. Burn and Co. Ltd. (1969) 1 S.C.W.R. 147.

6. In Ardeshir H. Bhiwandiwala Vs. The State of Bombay, the Supreme Court had occasion to consider the meaning of the word premises; of course not in a Rent Act but in a Factories Act. The Supreme Court held that "the word premises is a generic term meaning open land or land with buildings or buildings alone... The use of the expression therefore does not indicate that the word ''premises'' must be restricted to mean building and be not taken to cover open land as well". The case that the permission granted to put up structures is in respect of the northern side of building has to be taken as a different plot of land is not acceptable to us in the context of the case. According to us, it is only appurtenant land to the building in question and that is evident from the use of the word premises when the structures have to be removed by the tenant. We have to give to the word the ordinary interpietation and connotation given to it in the English language and when the dictionaries refer to the word "premises" as building and its adjuncts, there is no reason why the Court should import a different meaning when such a word is used in a statute simply because under certain conditions and circumstances the word "premises" includes land and everything appurtenant thereto. See Public Prosecutor Vs. Rajanga Chetti and Others,

7. So, the position that emerges from this factual situation, as we see, is this:

There is a main building and some appurtenant land, which can be conveniently used for the purpose of putting up sheds. Tenants wanted the main building for running a hotel and in that context, the tenants requested the use of the appurtenant land of the main building for putting up sheds, so as to enable them to

continue the hotel business in a proper manner. The landlord agreed for it. So, according to us, what has been leased is the building and the premises. Of course, the landlord has given permission to the tenants to use the premises by putting up buildings with certain stringent conditions. In the light of this, we have to decide the question raised by the Counsel for revision Petitioners that the Rent Control Court has no jurisdiction to order eviction with respect to the structures put up by the tenants.

8. In this context, we would refer to the definition of the word building. Building means:

''building'' means any building or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes and includes-

(a) the garden, grounds, wells tanks and structures, if any, appurtenant to such building, hut or part of such building....

We would like to note the nature of the order that has to be passed by the Rent Control Court, if it is satisfied that the landlord has established a case for eviction of the tenant on the grounds specified in the Act. Section 11(10) of the Act reads thus:

(10) The Rent Control Court shall, if it is satisfied that the claim of the landlord under Sub-section (3), (4), (7), or Sub-section (8) is bona fide, make an order directing the tenant to put the landlord in possession of the building on such date as may be specified by the Rent Control Court, and if the Court is not so satisfied, it shall make an order rejecting the application.

It is important to note that the words used in the section are "to put the landlord in possession of the building". So, the Court is enforcing the obligation of the tenant by its mandate to put the landlord in possession of the building. If the ground is established the Court is bound to give a mandatory direction to the tenant to put the landlord in possession of the building. In this context, we have to understand what is the building to be put in possession of the landlord. There we have to note the definition which we have already quoted and we would say that in Section 11(10) of the Act, the word building would include the building, garden, and grounds etc. and garden will include certainly the premises appurtenant to the building. So, the Rent Control Court has got the jurisdiction to pass orders, if grounds are established by the landlord directing the tenants to put the landlord in poreession of the building including the garden, grounds etc. so, there is no point in saying that the Rent Control Court has no jurisdiction to deal with the premises or the ground and garden of the building in question. We are of opinion that the Rent Control Court has got perfect jurisdiction to pass an order directing the tenant to put the landlord in possession of the building and appurtenant premises the ground and garden. If we take a different interpretation, we feel that it will lead the interpretation in the realm of absurdity. We interpret the provisions in a practical, pragmatic and meaningful manner. So, we hold that there is no merit in the first contention raised

by Counsel for revision Petitioners.

9. There is clear evidence in this case that the building is very old and it is situated in a very important locality and that the building needs reconstruction. No serious argument was advanced on the question of bona fides of the landlord and the requirement that the building needs reconstruction within the meaning of Section 11(4)(iv) of the Act. We are not adverting to any other points against the order of eviction now passed by the statutory authorities, since no other points were raised. We have to bear in mind that we are exercising a jurisdiction u/s 20 of the Act, which is a limited jurisdiction and which has been explained by the Supreme Court in the latest decision of the Supreme Court reported in Rukmini Amma Saradamma Vs. Kallyani Sulochana and others, thus:

Even the wider language of Section 20 of the Act cannot enable the High Court to act as a first or a second Court of appeal. Otherwise the distinction between appellate and revisional jurisdiction will get obliterated. Even by the presence of the word "propriety" it cannot mean that there could be a re-appreciation of evidence. Of course, the revisional Court can come to a different conclusion but not on a re-appreciation of evidence; on the contrary, by confining itself to legality regularity and propriety of the order impugned before it.

10. So, we hold that the order of the Rent Control Court, confirmed by the appellate authority is perfectly valid and does not require any interference by us exercising our jurisdiction u/s 20 of the Act.

11. Counsel for the revision Petitioners pointed out that certain other matters have to be considered by this Court and clear directions have to be given as a part of the order of the eviction now passed by the statutory authorities. Counsel for the revision Petitioners submitted that the revision Petitioners must be allowed to remove the structures they have constructed, viz. the dining hall, thecharthu and the work area. Counsel for the landlord agreed that these structures can be removed by the tenants. The building, plan and licence produced at the time of filing the application have been expired and new plan has to be submitted. We are told that the landlord is intending to construct a multi-storied building. Since eviction is sought u/s 11(4)(iv) of the Act, the tenants have got the option to get the building allotted to them, which only means that they have to get as much space they are occupying now in the building. This is an area where there will be controversy. But, Counsel on both sides agreed that in the building to be constructed, the landlord should after an area of 3750 sq. ft. in the first and second floor together. The tenants and landlords have agreed for the same.

12. Counsel for the revision Petitioners submitted that the rivision Petitioners must be given a little time to surrender the building and to remove the structures. Considering the fact that there is difficulty to get an alternative accommodation, we grant four months, time to the tenants to surrender the building on condition that

the tenants must pay the entire rent till the date of surrender and also should file an undertaking in the form of an affidavit before the Rent Control Court that they will surrender the building within four months from today. The affidavit has to be filed within 15 days from today. If the affidavit is not filed as stipulated above, the landlord can execute the order. The landlord is directed to re-construct and complete the building within 1 1/2 years after the date of surrender of the building and removal of the structures by the tenants.

C.R.P. is disposed of as above.