

(2009) 05 KL CK 0124

High Court Of Kerala

Case No: WP (C) No. 30621 of 2008 (U)

D. Vijayappa Kurup

APPELLANT

Vs

Padmanabhan

RESPONDENT

Date of Decision: May 23, 2009

Acts Referred:

- Constitution of India, 1950 - Article 227
- Kerala Civil Courts Act, 1957 - Section 13
- Kerala Panchayat Raj Act, 1994 - Section 11, 12, 13, 13(1), 14

Citation: (2009) 3 ILR (Ker) 28 : (2009) 2 KLT 939

Hon'ble Judges: Pius C. Kuriakose, J; P.Q. Barkath Ali, J

Bench: Division Bench

Advocate: B. Krishna Mani, for the Appellant; R. Sudhir, for the Respondent

Final Decision: Dismissed

Judgement

Pius. C. Kuriakose, J.

In this writ petition under Article 227 of the Constitution, the landlord impugns Ext.P5 order passed by the Rent Control Court in execution proceedings and Ext.P7 order passed by the District Court in confirmation of Ext.P5. Eviction order was passed by the Rent Control Court in favour of the petitioner on the ground of reconstruction and after a long drawn out battle which was fought up to the Supreme Court of India, the petitioner took possession of the building. Once possession was obtained, the building was demolished. The tenant filed an execution petition complaining that the landlord has wilfully neglected in complying with the directions in the eviction order which were to the effect that reconstruction should be carried out within six months and the tenant must be provided with an area more or less equal to the area previously occupied by him subject to the tenant's liability to pay fair rent. The above E.P. was resisted by the landlord on various grounds and ultimately the issue was settled by this Court by Ext.P3 order.

Under Ext.P3 order, this Court found that in the event of the landlord not completing the reconstruction within six months of Ext.P3, the petitioner/landlord will become liable to pay compensation at the rate of Rs. 1,000/- to the respondent tenant and at the rate of Rs. 2,000/- per month to another tenant against whom also similar order of eviction had been passed in favour of the petitioner. Fresh E.P. No. 209/2003 was filed by the respondent complaining that reconstruction is not completed and that the compensation amount directed to be paid under Ext.P3 is not paid. This E.P. was resisted by the petitioner inter alia on the ground that there is no willful negligence on his part in carrying out the reconstruction, but he is unable to carry out the reconstruction because of prohibitory orders issued by the local authority on the reason that the proposed construction is in violation of Section 220(b) of the Kerala Panchayat Raj Act. The execution court repelled the contentions and passed Ext.P5 order directing proclamation and sale of properties belonging to the landlord. Against Ext.P5, a revision petition u/s 14 was preferred by the petitioner to the District Court, Alappuzha. That revision has been dismissed by Ext.P7 order by the learned District Judge and the present writ petition under Article 227 is filed seeking quashment of Ext.P7.

2. Sri.B. Krishnamani, learned Counsel for the petitioner has addressed us very strenuously and extensively. Sri.Krishnamani submitted that Ext.P7 order is a nullity since the learned District Judge lacked inherent jurisdiction to pass that order. My attention was drawn by Sri. Krishnamani to Section 14 of Act 2 of 1965. According to him, against the decisions of the Munsiff Court, Cherthala which passed Ext.P5, appeals ordinarily lie to the Sub Court, Cherthala and in terms of the proviso to Section 14, the Sub Court, Cherthala alone has the jurisdiction to decide revision petitions which are filed against orders like Ext.P5. He pointed out that a similar order had been passed by the same Munsiff against the tenant who was respondent in R.C.P. No. 34/1990 and against that order, the petitioner had filed a revision petition raising grounds identical to those raised in the revision petition leading to Ext.P7. That revision petition - R.C.R.P. No. 1/2008 was considered by another District Judge and that RCRP was not entertained and was returned to the petitioner for presentation before the proper court. Pursuant to that order, that RCRP was presented to the Sub Court, Cherthala and that RCRP has been renumbered by the Sub Court, Cherthala and is being considered by that court. According to the learned Counsel, any order passed by a court which did not have inherent jurisdiction to pass the same is a nullity and the contention that an order is a nullity due to lack of inherent jurisdiction for the court which passed the same, can be raised at any stage of the proceedings. Sri.B.Krishnamani would fortify his arguments by relying on the judgment of this Court in *Thankamma v. State of Kerala* 1982 KLT 496 and also the judgment of the Supreme Court in Sunder Dass Vs. Ram Prakash, . Coming to the merits, Sri. Krishnamani submitted that at any rate the petitioner landlord is not to blame for the delay which has been caused in the matter of carrying out the reconstruction. There has been no wilful negligence on the part of the petitioner in

carrying out the reconstruction. The petitioner was prevented from carrying out the reconstruction by the local authority which issued Ext.P2 prohibitory order restraining reconstruction alleging that the on going construction violates Section 220(b) (3 meter distance Rule) of the Kerala Panchayat Raj Act. According to Sri.Krishnamani, any construction in violation of Ext.P2 will be illegal and the petitioner may not be compelled to carry out an illegal construction. Sri.Krishnamani also submitted that the issue regarding the legality of Ext.P2 as well as the construction undertaken by the petitioner is being pursued by the petitioner before other authorities.

3. We have anxiously considered the submissions of the learned Counsel. Section 14 of Act 2 of 1965 which is relevant for deciding the issue is extracted below:

Every order made u/s 11 (or section 12) or Section 13 or Section 19 or Section 33 and every order passed on appeal u/s 18 or on revision u/s 20 shall, after the expiry of the time allowed therein, be executed by the Munsiff or if there are more than one Munsiff, by the Principal Munsiff having original jurisdiction over the area in which the building is situated as if it were a decree passed by him:

provided that an order passed in execution under this section shall not be subject to an appeal but shall be subject to revision by the Court to which appeals ordinarily lie against the decisions of the said Munsiff.

4. The argument of Sri.Krishnamani was that appeals against orders passed by the court which passed Ext.P5 ordinarily lie not to the Alappuzha District Court, but to the Sub Court, Cherthala and hence the Sub Court, Cherthala alone has the jurisdiction to entertain revision petitions against Ext.P5. We find it difficult to accept the above argument. It is the Kerala Civil Courts Act 1957 which consolidates the law relating to the various Civil Courts in Kerala subordinate to High Court. Section 13 of that Act deals with the appellate jurisdiction of District Court and Subordinate Judge's Court and we are extracting Section 13 as follows:

Section 13(1) : appeals from the decrees and order of a Munsiff's court and where the amount, or value of the subject matter of the suit does not exceed two lakhs rupees from the original decrees and orders of a Subordinate Judge's Court shall, when such appeals are allowed by law, lie to the District Court:

Provided that whenever a Subordinate Judges Court is established in any District at a place other than the place where the District Court is stationed, appeals from the decrees or orders of the Munsiff Courts within the local limits of the jurisdiction of such Subordinate Judge's Court may be preferred in such Subordinate Judge's Court:

Provided further that the District Court may remove to itself from time to time appeals so preferred and dispose of them itself or may, subject to the orders of the High Court, refer any appeals from the decrees and orders of Munsiff's Courts

preferred in the District Court to any Subordinate Judge's Court within the district.

13(2):- Omitted .

5. Even a cursory reading of the above quoted section will show that appeals against the decrees and orders of a Munsiff Court irrespective of valuation lie ordinarily to the District Court. But in an extraordinary situation where the Sub Court is established in a place other than the place where the District Court is stationed, appeals against the decrees and orders of the Munsiff Court may be preferred in the Sub Court. In our view it is to the District Court that appeals against orders of decrees of the Munsiff Court ordinarily lie though under the extraordinary situation envisaged by the first proviso to Section 13 appeals may be filed to the Sub Court. In the instant case, the revision petition preferred by the petitioner against Ext.P5 before the District Court, Alappuzha was entertained by that court which had every justification to entertain the same and we are not prepared to accept the argument that the said court lacked in inherent jurisdiction.

6. We are not called upon in this writ petition to examine the correctness of the order said to have been passed by the other District Judge in R.C.R.P. No. 1/2008. According to us, the petitioner who instituted the R.C.R.P against Ext.P5 before the District Court, Alappuzha and argued that revision petition before that court is not entitled to canvas the proposition that the Alappuzha District Court lacked in inherent jurisdiction. At any rate, in view of our finding that the Alappuzha District Court did not lack in inherent jurisdiction, the argument of Sri.B.Krishnamani that Ext.P7 is a nullity is only to be repelled.

7. It is trite that the jurisdiction of this Court under Article 227 is a visitatorial jurisdiction. The said jurisdiction is not to be invoked for correcting every order which is passed by a Subordinate Court even if the order is found to be wrong. The supervisory jurisdiction under Article 227 is invoked only when the order passed by the lower court can be said to be without jurisdiction or per se illegal in the sense that it violates clear provisions of law - statutory or settled. The supervisory jurisdiction can also be invoked when the order passed by the court below is so wholly unreasonable that it can be branded as a perverse order in the sense that such an order will not be passed by any person having reasonable learning and training in law. Gauging Ext.P7 by the parameters which are applicable for the invocation of the powers under Article 227, we do not find any reason to interfere with Ext.P7.

8. As for the grievance voiced by the petitioner that he is unable to complete the reconstruction due to prohibitory order passed by the Panchayat, it is submitted by the learned Counsel that the issue is being agitated by the petitioner before other fora and also before this Court. It is doubtful whether Section 220(b) will apply to the present construction which is actually a reconstruction in compliance with the orders passed by the authorities under the Rent Control Act and not a brand new

construction. We do not propose to decide on that issue finally since admittedly the issue is before this Court, in other proceedings.

The result is that the writ petition will stand dismissed. The appellant is given two more month"s time from today for paying the entire balance amount which he is liable to pay in terms of the impugned orders and earlier orders.