Sheela V.M. Vs KAMCO Employees Union, Athani

Court: High Court Of Kerala

Date of Decision: April 9, 2010

Acts Referred: Kerala Buildings (Lease and Rent Control) Act, 1965 â€" Section 11(10), 11(3), 11(7), 11(8)

Citation: (2010) 2 KLJ 110 : (2010) 2 KLT 435

Hon'ble Judges: Pius C. Kuriakose, J; K. Surendra Mohan, J

Bench: Division Bench

Advocate: K. Jayakumar, P.B. Krishnan and Geetha P. Menon, for the Appellant; V.K. Veeravunny, for the Respondent

Judgement

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K. Surendra Mohan, J.
This is a tenant''s revision filed challenging concurrent orders of eviction passed by the Rent Control Court, Aluva

and the Rent Control Appellate Authority, North Paravur. The respondent-landlord is the KAMCO Employees Union, represented by its General

Secretary. The Rent Control Court ordered eviction u/s 11(3), 11(7) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act, 1965. On

appeal, the Appellate Authority rejected the ground u/s 11(3) and confined the order of eviction to the grounds u/s 11(8) and 11(7) of the Act.

The respondent-landlord filed RCP No. 15 of 2004 of the Rent Control Court, Aluva seeking an order of eviction against the tenant u/s 11(3),

11(7) and 11(8) of the Act. According to the petitioner, the tenanted premises having an area of 750 sq.ft. was initially let out to the husband of the

revision petitioner on a monthly rent of Rs. 2,300/- for the purpose of conducting hotel business. However, the husband of the revision petitioner

could not conduct the business in his name for the reason that he was an employee of the ''TELK''. Therefore, on his request a renewed agreement

was executed by the landlord in favour of the revision petitioner. On the north of the petition schedule premises, there is another room from which

the office of the respondent-landlord is functioning at present. It is the case of the landlord that the space now available is not sufficient for its

activities. According to the landlord, for conducting its annual general body meeting, the space was absolutely insufficient. Therefore, it was

contended that the space occupied by the revision petitioner was also required for the purpose of organizing its activities and for conducting its

general body meeting.

2. The need put forward by the landlord was resisted by the tenant. According to her, the petition schedule premises was constructed by her

utilizing her own funds on the land owned by the Union after seeking its permission. According to her, she had spent an amount of Rs. 4,15,000/-

for the construction of the petition schedule room. However, she had been made to sign and hand over to the Union, blank stamp papers at the

time of commencement of the tenancy. The allegation is that Union had fabricated a rent deed on such signed blank stamp papers.

3. The tenant further contended that the office space presently available was more than sufficient for organizing the activities of the Union. The

annual general body meeting is convened only once a year. On other days, the Union is letting out the available space on daily rent. Therefore, the

tenant contended that the need alleged was only a ruse for eviction.

4. The Rent Control Court tried the petition on the above pleadings. The landlord examined PWs. 1 to 3 witnesses while the tenant examined

herself and her husband as RWs. 1 and 2. On the side of the landlord. Exts. A1 to A23 (series) documents were marked Ext. C1 Commission

Report was marked as Court Exhibit.

5. After an elaborate consideration of the contentions of the parties and the evidence on record, the court below granted an order of eviction on

the three grounds put forward in the Rent Control Petition. The order of the Rent Control Court was challenged by the tenant in RCA No. 29 of

2005 before the Rent Control Appellate Authority, North Paravur. The Appellate Authority, on a reappraisal of the pleadings and the evidence on

record found that the order of eviction u/s 11(3) was unjustified and therefore set aside the same. However, the order of eviction u/s 11(7) and

11(8) were sustained. The aggrieved tenant is the revision petitioner

6. We have heard Adv. P.B. Krishnan, the counsel for the revision petitioner and Sri. V.K. Veeravunni, the counsel for the respondent-landlord.

We have been taken through the pleadings and the evidence in the case. We have

anxiously considered the rival contentions of the parties and the evidence in the case.

7. The point that arises for consideration is;-

Whether the composite order of eviction granted u/s 11(7) and 11(8) of the Act is sustainable?

8. Though the tenant has a contention that the petition schedule premises were actually constructed by her spending an amount of Rs. 4,15,000/-.

there is no reliable evidence available in support of the above contention. The said contention has also not been canvassed with any vigour before

us by the counsel. We do not find any grounds to upset the findings of the authorities below in this regard.

9. According to the counsel for the revision petitioner, the Commission Report Ext. C1 shows that the present room occupied by the Union has an

area of 404 sq.ft According to the counsel, the Union Office has an area of 275 sq.ft. and the verandha portion had an area of 128 sq.ft., and

therefore, the space was sufficient to accommodate to upset the findings of the authorities below in this regard.

10. According to the counsel for the revision petitioner, the Commission Report Ext. C1 shows that the present room occupied by the Union has

an area of 404 sq.ft. According to the counsel, the Union Office has an area of 275 sq.ft. and the verandha portion had an area of 128 sq.ft., and

therefore, the space was sufficient to accommodate at least 40 people. The Commissioner has reported that the space was not sufficient to

accommodate all the members. It is pointed out that the Union has only 54 members and even if all the members were present to attend a general

body meeting, the others could be easily accommodated on the covered veranda that forms part of the office room. Relying on Ext. A22 Minutes

Book of the Union, it is pointed out by the counsel that the two general body meetings, prior to the rent control proceedings were attended only by

29 and 32 members respectively. Therefore, it is pointed out that the space available was more than sufficient to satisfy the need of conducting

general body meetings of the Union.

11. It is clear from the above contentions that the attempt of the tenant is to show to this Court that the covered veranda that forms part of the

building could be utilized by the landlord for accommodating the members of the Union while conducting the general body meeting. It is trite that, it

is not for the tenant to dictate to the landlord how to satisfy his need. When the landlord has a sufficiently spacious room owned by it, there is

nothing wrong in the landlord wanting possession of the said room for its need. The need cannot be rejected on the ground that the landlord would

be able to satisfy its need by utilizing the veranda. Therefore, the said contention of the revision petitioner cannot be accepted. The courts below

were right in finding that the need of the landlord was genuine and bonafide. There is nothing wrong in the landlord wanting possession of a more

spacious room for the purpose of conducting its Union activities including its general body meeting.

12. It is the admitted case of the revision petitioner that the respondent/landlord is a Union registered under the Indian Trade Unions Act, 1926.

The respondent has produced a certified copy of its bye laws, which is Ext. A7. The annual returns has been produced and marked as Ext. A8(b).

The accounts maintained by the Union are Exts. A20 and A21. The Minutes Book of the Union from 5.4.2002 has been marked as Ext. A22. The

above documents clearly prove that the landlord Union has been functioning as a trade union.

13. The question whether a trade union is a public institution u/s 11(7) of the Act has been considered by a Division Bench of this Court in Haridas

v. Merchantile employees Association (1975 KLT 437). After going through the constitution of the trade union, this Court found that, trade union

was a public institution u/s 11(7) of the Act. In conclusion, this has Court observed as follows:

It is clear, that judged by the objects for which the Association stands and the nature of its membership which consists of various classes of

industrial workers and commercial employees who certainly constitute a substantial section of the public, the Association cannot be said to be a

private body and must be held to be a public institution.

14. Therefore, there cannot be any doubt that the respondent union is a public institution for the purpose of section 11(7) of the Act

15. It has been contended by the counsel for the revision petitioner that the Appellate Authority erred in clubbing together the grounds u/s 11(7)

and 11(8) of the Act. In fact, in the present case, eviction was sought on the combined grounds u/s 11(3), 11(7) and 11(8). Eviction was also

ordered by the Rent Control Court initially on all the three grounds. The Appellate Authority however set aside the grounds u/s 11(3) of the Act

and confined the order of eviction to Sec. 11(7) and 11(8) of the Act.

16. It has been held by this Court in various decisions that the grounds u/s 11(3) and 11(8) are mutually exclusive and a combined order of

eviction cannot be passed under both the above grounds. As rightly noted by the Appellate Authority, one of the important differences between the

two grounds is the absence of the protection given to the tenant by the proviso to Section 11(3). In fact there are two provisos to Section 11(3),

the first one disentitling the landlord from obtaining an order of eviction where he is in possession of another premises of his own. In such cases, in

the absence of specific reasons, no eviction could be granted in favour of the landlord. The second proviso clothes the tenant with an immunity

from eviction on his establishing that he was dependent on the business carried on by him in the premises for his livelihood and that there were no

other rooms available in the locality for shifting his business. The rigor of the requirements of Section 11(3) is considerably reduced in the case of

the protection u/s 11(8). The concept of comparative hardship is introduced by Section 11(10) of the Act. However, the question of bonafides is

certainly relevant not only in Section 11(3) and Section 11(8) but also in Section 11(7). The content of the requirement of bonafides in each of the

sections is different.

17. As far as the requirement of Section 11(7) is concerned, what is important is to consider whether the need put forward is genuine or not. In the

present case, it has been established by Ext. C1 and the oral evidence of PWs. 1 to 3 that the respondent is actually in need of more spacious

premises, which is available in the occupation of the revision petitioner. There is nothing on record to show that the need is put forward as a ruse

for evicting the revision petitioner. Since the respondent is a public institution, the ground u/s 11(7) is available to it. Therefore, the authorities

below were right in finding that the respondent has made out a need u/s 11(7) of the Act. We do not find any ground to interfere with the

concurrent findings of the authorities below.

18. The ground u/s 11(8) has also been found by the authorities below. It has already been found by us that the space available to the respondent

is not sufficient for holding the meetings of the Union in a comfortable manner. The above fact is evident from Ext. C1 report of the Commissioner

also. The relevant consideration in an action u/s 11(8) should be of the comparative hardship of the landlord and the tenant. The tenant is the wife

of an employee of the TELK, where her husband is already employed. Therefore, the hardship that would be caused to the revision

petitioner/tenant would be less in comparison to the hardship that would be caused to the landlord.

19. In view of the above, the authorities below were right in finding that the revision petitioner/tenant was liable to be evicted u/s 11(8) of the act

also.

20. For the foregoing reasons, we do not find any grounds to interfere with the findings of the Appellate Authority. As a last submission; the

counsel for the revision petitioner prayed for the grant of one year''s time to vacate the premises. We do not think that the grant of such a long

period of time to the tenant to vacate the premises is justified. However, we feel that a reasonable time can be granted.

In the result, the Rent Control Petition is disposed of with the following directions:-

i) The order of eviction granted against the tenant is confirmed.

ii) The tenant is granted time up to 30.4.2010 to surrender vacant possession of the tenanted premises to the respondent/landlord. The grant of

time as aforesaid is subject to the further condition that the revision petitioner/tenant shall file an affidavit before the Rent Control Court or the

Execution Court as the case may be, within a period of two weeks from today, undertaking to vacate the tenanted premises on or before

30.4.2010.

iii) The revision petitioner/tenant shall pay all arrears of rent in respect of the premises remaining unpaid till date and shall continue to pay the rent in

respect of the tenanted premises until vacant possession thereof is surrendered to the respondent-landlord.

iv) In the event of the tenant committing default of any of the above conditions, the landlord shall be at liberty to execute the order of eviction

passed against the tenant.

In the circumstances, there will be no order as to costs.