(1995) 08 KL CK 0051

High Court Of Kerala

Case No: O.P. No. 8380 of 1989

M. Lakshmanan and Another — APPELLANT

Vs

H. Krishna Rao and Others — RESPONDENT

Date of Decision: Aug. 24, 1995

Acts Referred:

- Constitution of India, 1950 - Article 227

Hon'ble Judges: K. Sreedharan, J

Bench: Single Bench

Advocate: C.I. Joseph, for the Appellant; R.D. Shenoy, Govt. Pleader and (P.K. Shakeela), for the Respondent

Final Decision: Dismissed

Judgement

K. Sreedharan, J.

These two petitions are under Article 227 of the Constitution of India challenging the orders passed by the revisional authority under the Kerala Buildings (Lease and Rent Control) Act, herein after referred to as "Act" allowing the recovery of the property from the tenant. The first respondent in these Original Petitions is the petitioner before the Rent Control Court. He is one of the co-owners of the property. He initiated proceedings for recovery of the property on the ground of arrears of rent and bonafide requirements for reconstruction. Three petitioners in these Original Petitions are the tenants of the building. They opposed the prayer for eviction on the ground that rent is not in arrears, that reconstruction of the portion of the building occupied by them, cannot be carried out since two rooms in same building occupied by others are not available for demolition and that petitioner, a co-owner, is not entitled to evict the tenants.

2. The three petitions filed by the first respondent for recovering the three rooms in a row of building consisting of of five rooms were numbered as R.C.P. 39/83, R.C.P. 40/83 and R.C.P. 53/83. All these petitions were jointly tried and disposed of by a

common order. The Rent Control Court found that the physical condition of the building was such, that it requires reconstruction and that landlord, the petitioner before it has the ability to reconstruct the same. But the relief was denied on the ground that the claim put forth by the land-lord lacks in bonafides. The land-lord took up the matter before the appellate authority by filing R.C.A. 57/85. 43/85 and 48/85 respectively. The appellate authority concurred with the conclusion arrived at by the Rent Control Court and denied recovery of the building. Aggrieved by the decision of the appellate authority, the land-lord took up the matter in revision before the District Court, Ernakulam in R.C.R.P. 116/86 114/86 and 115/86 respectively. The learned District Judge allowed the revision petitions and directed the tenants to put the petitioner in the R.C.R.P.s in possession of the building within one month of the order. The land-lord petitioner was also directed to reconstruct the building within 10 months of getting possession of the buildings. Tenants have come up before this court by filing these petitions under Article 227 of the Constitution.

3. O.P. 8390 of 1989 is against the order of eviction in two cases. It is filed by two petitioners who were the respondents in R.C.P. 39/83 and R.C.P. 40/83. Pending these Original Petitions the second petitioner who was the respondent in R.C.P. 39/83 surrendered the room in his possession to the first respondent. So he is not prosecuting the Original Petition in so far as it relates to the building schedule to R.C.P. 39/83.

4. In view of the decision of the Supreme Court in Kanta Goel Vs. B.P. Pathak and Others, and Pal Singh Vs. Sunder Singh (Dead) by Lrs. and Others, it is too late in the day for the petitioners to contend that the first respondent, one of the co-owners of the building, is not entitled to maintain the petition for eviction of the tenants. So long as the other co-owners do not object to the first respondent''s application, the petition filed by him is maintainable and the courts are justified in overruling the objection raised by the tenants on the maintainability of the petition for eviction.

5. Learned counsel representing the petitioners raised the argument that the ratio in the above mentioned decisions/rendered by the Supreme Court cannot apply to a case where one of the co-owners seek recovery of the property on the ground of bonafide requirement to reconstruct. According to the counsel, if the co-owner who gets the building evicted, may be prevented by other co-owner who can file suit for partition or for injuction. In such a situation it will not be possible to the co-owner to reconstruct the building and so the tenant who is ousted will have to go without any remedy. His right to exercise the first option to have the reconstructed building allotted to him will be defeated. Since this aspect was not considered by the Supreme Court in either of the decisions referred to above, the learned counsel went to the extent of saying that those decisions are to be treated as sub silentio in relation to section 11(4) (iv) of the Act. It is also contended by the learned counsel that the revisional authority, namely, the District Court, acted in exercise of its

jurisdiction u/s 20 of the Act in reversing the finding arrived at the Rent Control Court and the appellate authority and consequently the said order has to be interfered with.

6. It is common case that eviction is sought for by the first respondent, of all the three tenants, who were occupying three rooms out of five rooms in a row. The southern most room was sold by the first respondent to a stranger. The room adjoining to that is held by another tenant. That tenant was not sought to be evicted. The remaining three rooms occupied by the petitioners herein alone, are sought to be recovered. According to the Rent Control Court, while retaining the southern most two rooms, it is not possible to reconstruct the three rooms in the possession of these petitioners and the need put forth is lacking in bonafides. The Rent Control Court observed that all the five rooms have a common roof and the petitioner is not intending to reconstruct all the rooms under the same roof. So the bonafides of the need put forth by the first respondent for reconstruction of the three rooms alone is to be doubted. When it is not found that it is not possible to reconstruct the portion covered by the three rooms held by the petitioners, I fail to understand how the bonafides of the need put forth by the first respondent is to be doubted. Further, the Rent Control Court doubted the bonafides of the first respondent on the ground that the plan of the building was prepared by an official of the local body which granted the licence. To say the least, the Rent Control Court was carried away by extraneous factors in refusing to find the bonafides in the claim put forth by the first respondent. This is more so, when there is no evidence in the case to show that a building cannot be constructed in the space occupied by the three rooms in possession of the petitioners herein.

7. The appellate authority found against the bonafides of the first respondent on the ground that the validity of the licence has already expired, that the building as per the plan and the licence cannot be reconstructed and that the proposed building is not possible to be put up while retaining the southern most two rooms. The appellate authority has even gone to the extend of doubting the correctness of the licence granted by the local body namely, the Municipality. Municipality gave licence and approved the plan as per the rules governing the construction of new buildings. The appellate authority under "Act" is not to sit in judgment over the action taken by the Municipality. According to me, the appellate authority went wrong in criticising the first respondent in getting the plan of the building prepared by his friend who is working in the Municipality. That could not have been a matter taken into consideration by the appellate authority to hold against the bonafides of first respondent.

8. On going through the order passed by the Rent Control Court and the judgment of the appellate authority it is crystal clear that they were carried away by irrelevant matters in finding against the bonafides of the claim for reconstruction. Since the finding arrived at by these authorities are based on irrelevant matters and against

the evidence in the case, the revisional court was justified in reversing the said findings. The revisional court in exercise of its powers u/s 20 of the Act is well within its jurisdiction in setting right the wrong orders passed by the authorities below. This is more so, in a case where the findings can be termed as perverse. Viewed in this light, I hold that the revisional court acted well within its jurisdiction in reversing the findings arrived at by the two authorities below on the issue of land-lords bonafides.

9. The argument that if the first respondent''s prayer for recovery of the building is granted, he may not be in a position to reconstruct is in the field of surmise, I am not to decide this case on the basis of imponderables or surmises. No other co-owner has come forward to deny the right of the first respondent to claim recovery of the property. So this court is not called upon to consider the piquant situation that might arise if some of the co-owners wanted the first respondent not to reconstruct the building or wanted to have a partition of the property. In case the first respondent after getting possession of the building is not able to reconstruct the same, tenants are entitled to the benefits contained in the provisos to section 11(4) (iv) of the Act. Those provisions amply take care of all interests of the tenants who are evicted on the ground of reconstruction. In case any such imaginary incident as suggested by the learned counsel take place, petitioners can have recourse to the rights under the provisos to Section 11(4) (iv). In view of what has been stated above, I find no merit in these Original Petitions. They are accordingly dismissed. At this juncture, it is worthwhile to note that due to the recalcitrant attitude of the first petitioner in O.P. 8390 of 1989 and of the petitioner in 8504 of 1989, the reconstruction of the building has been delayed from 1989 to 1995. This has gone to the prejudice of the first respondent on account of the escalation in the cost of construction. First respondent will have to spend at least 30 to 40% more than what he would have spent if the construction had taken place in 1989.
The Original Petition is dismissed. I make no order as to costs.