

(2005) 3 KLJ 697

High Court Of Kerala

Case No: O.P.No. 19406 of 1996

Thalayodi Raghavan

APPELLANT

Vs

Koorantavitta Kelappan
and OthersRESPONDENT

Date of Decision: Nov. 16, 2005**Acts Referred:**

- Kerala Buildings (Lease and Rent Control) Act, 1965 - Section 11(3)

Citation: (2005) 3 KLJ 697**Hon'ble Judges:** Rajeev Gupta, J; Kurian Joseph, J; K.S. Radhakrishnan, J**Bench:** Full Bench**Advocate:** N. James Koshy and T. Sanjay, for the Appellant; P.N. Purushothama Kaimal, for the Respondent**Final Decision:** Dismissed

Judgement

K.S. Radhakrishnan, J.

Love your beloved ones, give a helping hand to the members of your family dependant on you, a message underlined in Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act. Legislature recognises human relationship, family bonds and encourages it to promote justice in human relationship. Manifestly with this intention the expressions, "family" and "dependant" are left undefined in the statute, giving freedom to interpret those expressions depending upon the fact situation. Noticing that the earlier Division Benches had not taken into consideration the variety of circumstances under which a person would fall under the expressions "family of the landlord" and "dependant" u/s 11 (3) of the Act the matter has been placed before a larger bench for an authoritative pronouncement. The meaning that could be ascribed to those words were guardedly left undefined by the earlier Division Benches in our view rightly.

2. The expression "family" as such has not been defined in the Act; so also the expression "dependent". Therefore, the meaning that is to be ascribed to these

expressions appearing in Section 11(3) of the Act has to be examined in the light of the judicial precedents as well as the context in which those expressions have been placed in Section 11(3).

3. Judges are confronted with the task of interpreting various expressions used by the Legislature in a statute so as to find out the intention of the legislature from the meaning of the words used and in the context in which those words have been placed. If definition clause, which finds a place in various statutes, gives the meanings of those expressions judges' task is considerably easy. We are in this case faced with a situation where those expressions, "family", "dependent" etc. are left undefined in the Act. At the same time, certain similar statutes in other States have given meaning to some of those expressions. For example, Section 2(1) of the Goa Act defines the expression "member of the family", Section 22 (ff) of the Karnataka Rent Control Act 1961 defines the expression "family", Section 2(e) of the M.P. Act defines the expression "member of the family". Section 2(6A) of the Tamil Nadu Act also defines the expression "member of his family". Section 3(g) of the U.P. Act, 1972 also defines the expression family. Section. 2(c) of the Tripura Act defines the expression "family". Judicial decisions interpreting those expressions under the Kerala Rent Act are uniform holding that those expressions be not given any restricted meaning.

4. Learned single judge of this court in Muhammad and others v. Sinnamalu Amma (1977 KLT 795) held that the expression "family" which is undefined by the Act is elastic and its ambit has to be determined in all the circumstances of the case, having regard to the habits, ideas and socio-economic milieu of the parties. Same view has been taken by a Bench of this court in Balakrishna Menon v. District Judge (1994 (1) KLT 102). Another Division Bench of this court followed the above decision in Krishnan Thambi v. Sankaradas (2002 (1) KLT 930). Later a Bench of this court in [Janaki Vs. Govindan Nair](#), to which one of us (Radhakrishnan, J.) was a party, held as follows:

"In the socio-economic condition of our country, the expression "family" has to be given a wider meaning which is elastic and that it has to be determined on the facts and circumstances of each case and the status of the dependent in the family."

Later another Division Bench of this court in [Ismail Vs. Kesavan](#), held as follows:

"Dependency does not mean financial dependency, but dependency for the building which belongs to the landlord. In our society generally son, daughter, son-in-law, brother, sister etc. are members of the family and would in many cases depend upon the head of the family. The Kerala Rent Control Act does not define the term "family". But what constitutes the family in a society depends upon ancestry, birth, blood relations, common lineage, line of descent and the habits and ideas of persons constituting the family. In short its ambit has to be determined with regard to the socio-economic milieu of the parties."

In [Prathapan Vs. Rama Warriar](#), a Bench of this court while construing the word "family" took the view that there may also be cases where sisters, brothers, brothers-in-law, sisters-in-law be treated as members of the family and it all depends upon the family relations and family bonds. A domestic servant who has served the family throughout his life could also in a given situation be treated as member of the family. Personal laws of the parties as such may not guide us to find out the meaning of the expression "family". The expression "family" has been defined in the Chambers 20th Century Dictionary to mean "all those who live in one house (as parents, children, servants), the descendants of one common progenitor etc. The word "family" may also be taken to mean collective body of persons who live in one house under one head or manager and includes within its fold household, children and servants as the case may be. Osborn's Concise Law Dictionary defines the word "family" so as to include all those persons who were subject to the potestas of the same individual, whether his children, grandchildren, etc. or unconnected in blood, e.g. slaves. Further all descendent of the same ancestors, all persons connected by agnation, slaves of a paterfamily or property of a paterfamily. Various High Courts have also give a wider meaning to the expression "family" as well as the expression "dependent". In [B. Balaiah Vs. Chandoor Lachaiah](#), the court held that it is not only permissible but it is proper and desirable for the court to bear in mind the context of the social order, the habits and ideas of living and the individual concerned belongs. The Delhi High Court in [Govind Dass and Others Vs. Kuldip Singh](#), held that the word family must be construed with reference to habits and ideas of the persons constituting the particular society and the religious and the socio religious custom of the community to which such persons belong. The Bombay High Court in *Kamal Chintaman Mithari v. Ganpatrao Ramachandra Powar* (AIR 1977 Bombay 163) held that the mistress of a tenant who was living with him along with their children in the disputed premises at the time of his death must be regarded as a member of his family for the purpose of Section 5(11)(c) of the Bombay Rent Hotel and Lodging House Rates Control Act. Similar view is taken by other High Courts, namely, in *V.M. Deshmukh v. K.M. Kothari* (AIR 1951 Nag. 51), *Firm Rajnilal and co. v. Vithal Pandurang* (AIR 1953 Nag. 144), *Seshanarayana Rao v. Venkatesa Rao* (AIR 1953 Mad. 531), *Kolandavely Chettiar v. Koolayana Chettiar* (1961 mad. L.J. 1841. *Runju v. Ahmed Unnisa Begum* (1963 (1) Mad. L.J. 97). [Bidhubhusan Sen Vs. Commissioner, Patna Division and Another](#), etc. Reference be made to a few decisions of English Courts. In *Smith v. Penny* (1946) 2 All. E.R. 672) it was held that children of landlord's friend and his wife to look after the children are considered to be member of the family. In *Jones v. Whitehil* (1950 (1) All. E.R.71) it was held that niece of the tenant's wife who had nursed the tenant and his wife is also a member of the family.

5. This court in *Prathapan v. Rama Warriar* (20C4 (2) KLJ 394) examined the scope of the word "dependent" and held that the expression "dependant" is used as an adjective and it literally means person who depends on or looks to another for support or favour or for his maintenance or livelihood. The court held that dependant member must be a member of the landlord's family and that dependency is not financial dependency but dependency so far as the tenanted premises is concerned. The word "dependent" as

such is not defined in the Act. "Dependent" means one who depends on another for support or otherwise; state of being dependant. The word "dependant" carries with it undue help of depending upon on another person. In other words there is some nexus between the dependant and the person on whom he depends. Dependency does not mean financial dependency. The word "dependant" in the context of Rent Act is generally considered as dependant on the landlord for the building. In short, it would not be possible to give a clear cut definition as to who all will fall within the expression "member of the family dependant on the landlord", which depends upon variety of factors including relationship landlord has with his members of the family. Courts dealing with rent control matters have to make a pragmatic approach on the issue depending upon the facts and circumstances of each case and it would not be possible to give precise and definite meaning to that expressions in the context of Section 11(3) of the Act.

6. We may in this connection refer to the decision of the apex court in [Joginder Pal Vs. Naval Kishore Behal](#), wherein the court was examining the scope of the expression "for his own use" in Section 13(3)(a)(ii)(a) of the East Punjab Urban Rent Restriction Act, 1949. The court held that the expression "for his own use" cannot be narrowly construed. It must be assigned a wider, liberal and practical meaning. The court held that the requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfil the requirement he must himself physically occupy the premises. The court held as follows:

"The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided case referred to hereinabove, we have found the pari material provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew coparceners, members of family and dependents and kith and kin in the requirement of landlord as "his" or "his own" requirement and user. Keeping in view of the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it maybe the obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord.

Above mentioned dictum was later followed by the apex court in a recent decision in [Kailash Chand and Another Vs. Dharam Das](#), where the court pointedly considered the meaning of the expressions "his own occupation", "for his own use", and "for occupation by himself. The court held that the requirement of members of the family of the landlord or of the one who is dependant on the landlord is the landlord's own requirement. The court further held that regard would be had to the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region to which the landlord belongs, while interpreting such expressions. The requirement of the family members for

residence is certainly the requirement by the landlord for his own occupation.

7. The expression used in Section 11(3) of the Kerala Act is also "own occupation".

Therefore the occupation of a member of the family dependant on the landlord may also in a given case would fall within the expression "for his own occupation". We have already indicated, the question as to whether the requirement of a dependant of a family would be the requirement of the landlord himself and would fall within the expression "for his own occupation" would depend upon variety of factors such as inter relationship and inter dependence, economic or otherwise in the background of social, socio religious and local customs and obligations of the society or region to which they belong and other of other circumstances.

8. We have to examine the facts of the case bearing in mind the above mentioned legal principles. Petitioners have proved that third petitioner has married an orphan girl and he is now employed abroad. Facts would indicate that before he left India he was engaged in the work of electric wiring and third petitioner's brother-in-law was assisting him in that work and gained experience. Petitioners including third petitioner wanted to see that his brother-in-law be settled down in life. He was discharged from an orphanage at Thalassery in the year 1985. Facts would indicate that third petitioner has married sister of P.W.2, for whom the building is required. Requirement of the landlord's wife is also requirement of the landlord. Third petitioner's wife was also an orphan and the building is required for the third petitioner's wife's brother, who was assisting third petitioner while he was in India. Brother-in-law was depending upon the third petitioner and it is the bonafide need of the third petitioner himself that his dependant brother-in-law be accommodated in his building.

9. The Division Bench in the reference order has expressed a doubt as to whether a person can be dependant on two families, his own and to which he had come across. It is trite that dependency is not financial dependency and in the context of the Act it is the dependency for a building. The mere fact that a person has a family of his own does not mean that he cannot be a member of landlord's family, but the test is whether he is also treated as a member of the landlord's family and he is dependant on the landlord's family for the building. Unless on facts it is established that dependant has got other building of his own he can be dependant on another family provided he comes within the expression "member of the family dependant on him" within the meaning of Section 11(3) of the Act. The Rent Control Court and the Appellate Authority have concurrently found that brother-in-law is dependant on the third petitioner and he is a member of that family. We therefore find no merits in the original petition and the same would stand dismissed. Reference is answered accordingly. C.M.P. No.35006 of 1996 is dismissed.