

(2001) 10 KL CK 0075

High Court Of Kerala

Case No: O.P. No. 23957 of 2001

Davis

APPELLANT

Vs

Devasy

RESPONDENT

Date of Decision: Oct. 3, 2001**Acts Referred:**

- Kerala Buildings (Lease and Rent Control) Act, 1965 - Section 11, 11(4), 17, 17(2)

Citation: (2003) 1 KLJ 216**Hon'ble Judges:** N. Krishnan Nair, J; Cyriac Joseph, J**Bench:** Division Bench**Advocate:** V.M. Krishna Kumar and Renjith Thampan, for the Appellant; A.K. Srinivasan, Mathew John and Praicy Joseph (GP), for the Respondent

Judgement

1. The petitioner is a tenant, who filed an application before the Accommodation Controller (first respondent herein) u/s 17(2) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as "the Act") praying for a direction to the landlord (second respondent herein) to do the repairs and maintenance of the tenanted building. The landlord opposed the prayer in the said application and contended that in view of the judgment of this Court in Mable v. Harris (1998 (2) KLT 559), the Accommodation Controller had no jurisdiction to pass an order u/s 17(2) of the Act while the petition filed by the landlord for evicting the tenant was pending before the Rent Control Court. The Accommodation Controller, through Ext. P1 order dated 18-7.2001, disposed of the application holding that he had no jurisdiction to pass an order u/s 17(2) of the Act in view of the pendency of the proceedings in the Rent Control Court u/s 11(4) (iv) of the Act. The said order is under challenge in this Original Petition. According to the learned counsel for the revision petitioner, the Accommodation Controller was not right in disposing of the application u/s 17(2) of the Act without considering whether there was merit in the contention of the landlord that the building required reconstruction. In Mable v. Harris, the Rent Control Court had found that the tenanted building required

reconstruction and hence this Court set aside the impugned order of the Accommodation Controller and directed him to keep the application u/s 17(2) of the Act pending till the disposal of the appeal filed by the tenant against the order of the Rent Control Court. In the present case, there is no finding by the Rent Control Court that the building requires reconstruction. The application filed by the landlord u/s 11 (4) (iv) of the Act for eviction on the ground of reconstruction is still pending. It is, therefore, contended that the decision in *Mable v. Harris* has no application to the facts of this case. It is further contended by the learned counsel that the mere pendency of a petition u/s 11(4) (iv) of the Act will not oust the jurisdiction of the Accommodation Controller to entertain an application u/s 17(2) of the Act. If the landlord contends that the building requires reconstruction and that a petition u/s 11(4) (iv) of the Act is pending before the Rent Control Court, the Accommodation Controller is obliged to consider such contention on merits and examine whether the building requires reconstruction. If the Accommodation Controller comes to the conclusion that, prima facie, the building requires reconstruction, he should keep the application u/s 17(2) of the Act pending and await the decision of the Rent Control Court on the petition filed by the landlord u/s 11 (4)(iv) of the Act. If the Accommodation Controller comes to the conclusion that prima facie there is no merit in the contention of the landlord that the building requires reconstruction, the Accommodation Controller should consider the application of the tenant u/s 17(2) of the Act and pass appropriate orders in accordance with law. Thus, according to the learned counsel for the revision petitioner, the impugned order is liable to be set aside with a direction to the Accommodation Controller to consider the application of the tenant u/s 17(2) of the Act afresh and pass appropriate orders.

2. We have considered the submissions made by Mr. Ranjith Tampan, learned counsel for the revision petitioner, learned Government Pleader appearing for the first respondent and Mr. A.K. Srinivasan, Learned counsel for the second respondent.

3. According to Section 11(4) (iv) of the Act, a landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building 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 reconstruct and if the proposal is not made as a pretext for eviction. In this case, admittedly, the landlord has filed a petition for eviction of the tenant u/s 11 (4)(iv) of the Act and the said petition is pending before the Rent Control Court.

4. Section 17(2) of the Act provides that notwithstanding any law, custom, usage or contract to the contrary, the landlord shall be bound to attend to the periodical maintenance and necessary repairs of the building and that if the landlord fails to attend to such maintenance and repairs to the buildings and amenities thereto within a reasonable time after notice is given by the tenant, it shall be competent for

the Accommodation Controller to direct, on application by the tenant, that such maintenance and repairs may be attended to by the tenant and that the charges and cost, thereof may be deducted with interest at 6% per annum from the rent which is payable by him. In this case, admittedly, the tenant filed the application u/s 17(2) of the Act, but it was disposed by the Accommodation controller without considering the application on merits and without giving any direction to the landlord. The Accommodation Controller held that he had no jurisdiction to pass an order u/s 17(2) of the Act while the petition u/s 11(4) (iv) of the Act was pending before the Rent Control Court. For taking the above view, the Accommodation Controller relied on the judgment of this court in *Mable v. Harris*.

5. In *Mable v. Harris*, petitioners-landlords challenged an order passed by the Accommodation Controller u/s 17(2) of the Act holding that the building required repairs and directing the landlords to effect the same. The landlords therein had filed a petition for eviction u/s 11 (4) (iv) of the Act on the ground that the building was in such a condition that it required reconstruction and the Rent Control Court had found that the building was in such a condition that it needed reconstruction and that the landlords required it for reconstruction. It was in the light of the said finding of the Rent Control Court that this Court expressed doubt whether the Accommodation Controller could hold that the building required repairs and direct the landlord to effect such repairs u/s 17(2) of the Act. Since the tenant had filed an appeal against the order of the eviction passed by the Rent Control Court and since the eviction was stayed by the Appellate Authority, this court quashed the impugned order of the Accommodation Controller and directed the Accommodation Controller to keep the application filed by the tenant u/s 17(2) of the Act pending until the proceedings initiated u/s 11(iv) of the Act were terminated. We are of the view that the mere pendency of a petition u/s 11 (iv) of the Act cannot oust the jurisdiction of the Accommodation Controller to consider an application u/s 17 of the Act and pass orders thereon. If the landlord brings to the notice of the Accommodation Controller that he has filed a petition u/s 11(4) (iv) of the Act on the ground that the building requires reconstruction the Accommodation Controller is bound to consider whether there is prima facie merit in the contention that the building requires reconstruction. If the Accommodation Controller finds that prima facie there is merit in the contention of the landlord that the building requires reconstruction, the Accommodation Controller shall keep the application u/s 17(2) pending till the final disposal of the petition u/s 11(4)(iv) by the Rent Control Court and after the disposal of the said petition, the Accommodation Controller shall pass appropriate orders on the application u/s 17(2) in the light of the order passed by the Rent Control Court on the petition u/s 11(4) (iv). If the Accommodation Controller finds that there is prima facie no merit in the contention of the landlord that the building requires reconstruction, he should consider the application u/s 17(2) of the Act on merits and pass appropriate orders in accordance with law. In this view of the matter, we find that the impugned order of the first respondent is liable to be set aside and the first

respondent is liable to be directed to consider the matter afresh in the light of the legal position stated above.

6. In the above circumstances, Ext. P1 order of the first respondent is set aside. The first respondent is directed to consider the matter afresh in the light of the legal position stated above. In considering the matter, the Accommodation Controller shall take into account the written averment made by the parties before him and the documents and other materials if any placed on record by them. In the interest of justice, the first respondent is directed to consider the matter afresh and pass appropriated orders within a month from the date of receipt of a copy of this judgment; The original petition stands disposed of in the above terms. In the facts and circumstances of this case, there will be no order as to costs.