

Tharakesh vs E.a. Manoharan

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Court : Kerala

Decided On : Nov-14-2023

Judge : Honourable Mr. Justice P.B.Suresh Kumar, Honourable Mr. Justice Johnson John

Appeal No. : RCRev./136/2022

Appellant : Tharakesh

Respondent : E.a. Manoharan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR & THE HONOURABLE MR. JUSTICE JOHNSON JOHN TUESDAY, THE 14TH DAY OF NOVEMBER 2023 / 23RD KARTHIKA, RCREV. NO. 136 OF 2022 AGAINST THE ORDER DATED 19.07.2019 IN RCP NO.122 OF 2016 OF THE RENT CONTROL COURT, ERNAKULAM CONCURRING WITH THE COMMON JUDGMENT IN RCA NO.68 OF 2019 DATED 17.03.2022 OF RENT CONTROL APPELLATE AUTHORITY/ADDITIONAL DISTRICT COURT-V, ERNAKULAM REVISION PETITIONERS/RESPONDENTS/PETITIONERS: 1 THARAKESH, AGED 59 YEARS S/O. P.K. SREEDHARAN, 32/1176 B

ARAVINDHAM PONOTH HOUSE, PALARIVATTOM, KOCHI - 682025 2
M.A. AJMOL, AGED 49 YEARS W/O. THARAKESH, 32/1176 B
ARAVINDHAM PONOTH HOUSE, PALARIVATTOM, KOCHI - 682025
BY ADVS. D.G.VIPIN KAROL MATHEWS SEBASTIAN ALENCHERRY
DANIEL A.J. RESPONDENT/APPELLANT/RESPONDENT: E.A.
MANOHARAN, S/O. LATE A.K. ARAVINDAKSHA MENON, AGED 57
YEARS, KADVUNKAL HOUSE, CHALIKAVATTOM, VENNALA P.O.,
POONITHURA VILLAGE KANAYANNUR, ERNAKULAM, PIN - 682028
BY ADVS. K.M.SANAL ANUP T PAUL(K/743/2006)
B.K.CHANDRAN(K/412/2013) P.B.JEFIN(K/2568/2021) THIS RENT
CONTROL REVISION HAVING BEEN FINALLY HEARD ON
06.11.2023, THE COURT ON 14.11.2023 DELIVERED THE
FOLLOWING: -: 2 :- P.B.SURESH KUMAR & JOHNSON JOHN, JJ.

Dated this the 14th day of November, 2023

ORDER

P.B.Suresh Kumar, J.

Petitioners are the landlords in R.C.P.No.122 of 2016 on the files of the Rent Control Court, Ernakulam and the respondent is the tenant in the said proceedings. Among the petitioners, the second petitioner is the wife of the first petitioner.

2. The first petitioner owns a shop room in the

ground floor of a commercial complex. The said shop room was let out to the respondent on 15.05.1988 on a monthly rent of Rs.350/- and the respondent is using the said premises for his trade in batteries and allied products. The eviction petition was instituted by the petitioners against the respondent under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act (the Act). The Rent Control Court rejected the claim of the petitioners under Section 11(2)(b) and ordered eviction under Section 11(3) of the Act. In appeal by the respondent, the Appellate Authority reversed the decision of the Rent Control Court on the

claim of the petitioners for

-: 3 :- eviction under Section 11(3) and dismissed the eviction petition. The petitioners are aggrieved by the divergent decisions of the authorities below on their claim under Section 11(3) of the Act.

3. The need set out by the petitioners in the eviction

petition is that the second petitioner intends to start a churidar stitching unit to augment the income of the family; that the second petitioner is dependent on the first petitioner for accommodation for the said purpose; that the subject premises is suitable for the proposed business and that the petitioners do not have any other premises in their possession that could be used for the said purpose. The respondent filed objection to the eviction petition contending, among others, that the petitioners are in possession of several buildings which can be made use of for the proposed business; that in the lawyers' notice issued immediately prior to the institution of the eviction petition, the petitioners had not demanded vacant possession of the premises for the said purpose; that the area of the room is only approximately 100 sq.ft which is not suitable for the proposed business and that the need put forward by the petitioners is therefore not bona fide, but only a ruse to evict the respondent from the premises. It was also contended by the respondent that he is depending solely on the income from the business carried on by him in the premises for his livelihood and there are no vacant buildings in the locality for the respondent to shift his business, in

-: 4 :- the event of eviction.

4. The first petitioner gave evidence as PW1 and his

wife, for whose purpose the eviction of the premises is sought, has given evidence in the proceedings as PW2. Exts.A1 to A12 are the documentary evidence on the side of the petitioners and Ext.B1 and B2 are the documents on the side of the respondent. Exts.C1 and C1(a) are the report and sketch of the Advocate Commissioner appointed in the proceedings at the instance of the respondent. It is on the basis of the aforesaid materials that the Rent Control Court ordered eviction

of the tenant under Section 11(3) of the Act.

5. A perusal of the decision of the Appellate Authority

indicates that the Appellate Authority found, based on the report and sketch prepared by the Advocate Commissioner appointed in the proceedings, that the premises being a narrow irregular shaped one, the same cannot be used for the proposed business of the second petitioner, especially since it has been stated by her in her deposition that it is necessary to keep a table of size 4 x 4 ft. in the premises for the purpose of the stitching unit. It is also found by the Appellate Authority that petitioners 1 and 2 are in possession of a vacant shop room in Deshabhimani Junction having an area of about 240 sq.ft. and there is no reason why the proposed business cannot

be conducted in the said premises. The Appellate Authority also found that if the need of the petitioners is bona fide, there is no :- 5 :-

reason why the petitioners did not mention about the same in Ext. A1 notice issued prior to the institution of the eviction petition demanding vacant possession of the premises from the respondent. The Appellate Authority also found that the second petitioner owns a residential building at Palarivattom and that a portion of the said building has been let out on a monthly rent of Rs.20,000/-. According to the Appellate Authority, inasmuch as the second petitioner is earning the said rental income, it cannot be said that she is dependent on the first petitioner for her day-to-day needs. It is on the basis of the aforesaid findings that the Appellate Authority found that the need set out by the petitioners in the eviction petition is not bona fide, but only a ruse to evict the respondent. It

was also observed by the Appellate Authority that even though there are a few vacant rooms in the vicinity of the subject premises, they are not convenient for the respondent to conduct the business carried on by him as is carried on in the subject premises, especially since there is no parking facility for the vacant rooms available in the locality.

6. The learned Senior Counsel for the petitioners

contended that the landlord is the best judge of his requirement and the courts have no concern to dictate the landlord as to how and in what manner he should accomplish his need. According to the learned Senior Counsel, the finding rendered by the Appellate -: 6 :-

Authority that the premises is not suitable for the proposed business of the second petitioner, is therefore, perverse. It was also argued by the learned Senior Counsel that the premises in the possession of the petitioners at Deshabhimani Junction as indicated by the Advocate Commissioner in her report and as referred to by the Appellate Authority in the impugned decision, is a premises taken on rent by the first petitioner for his business and that the view of the Appellate Authority that the second petitioner should have started the business proposed by her in the said premises is perverse. It was also contended by the learned Senior Counsel that Ext.A1 is only a notice issued in terms of the provisions of the Act seeking eviction on the ground of arrears of rent and merely for the reason that there is no mention in the said notice about the need set out in the eviction petition, it cannot be said that the need is not bona fide. It was also contended by the learned Senior Counsel that the question whether there are vacant premises in the locality for the tenant to shift his business in the event of eviction is not a matter that needs to be taken into account while considering the bona fides of the claim.

7. Per contra, the learned counsel for the respondent

supported the impugned judgment, pointing out that the question whether the need set out in a case for eviction is bona fide, is a pure question of fact to be decided on the facts of each case. -: 7 :- According to the learned counsel, inasmuch as the Appellate Authority came to the conclusion that the need set out by the petitioners is not bona fide on a cumulative consideration of the

facts and circumstances of the case, this Court may not be justified

in interfering with the said finding, in exercise of the limited jurisdiction under Section 20 of the Act.

8. We have examined the arguments advanced by the learned counsel for the parties on either side.

9. Before dealing with the argument advanced by the

learned counsel for the petitioners, it is necessary to understand the scope of the jurisdiction of this Court under Section 20 of the Act. It is well settled that the jurisdiction of this Court under Section 20 of the Act is only to ensure that the decisions of the Authorities below do not suffer from any illegality, irregularity or impropriety. This Court cannot, therefore, re-appreciate the evidence on record in

order to come to a different conclusion on any factual issues, unless

the finding is either erroneous or perverse. It has been held by the Apex Court in Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh, (2014) 9 SCC 78 that only findings of facts which have been arrived at without consideration of the material evidence, or findings which are based on no evidence or misreading of the evidence, or findings which, if allowed to stand, would result in gross miscarriage of justice, alone could be said to be erroneous or perverse,

-: 8 :- warranting correction under Section 20 of the Act.

10. At the outset, it is necessary to mention that even

though the respondent has disputed the case of the petitioners in the eviction petition that the area of the premises is approximately 185 sq.ft. and contended in the objection that the area is only about 100 sq.ft., in the application preferred by the respondent for appointment of an Advocate Commissioner for local inspection, no prayer is seen made to measure and report the area of the premises. The sketch prepared by the Advocate Commissioner and submitted before the court along with her report though mentions the width of the premises at its entry point and the length, the sketch does not indicate the width of the room on its rear side. Even the sketch is not one prepared to scale. In the circumstances, in the absence of any evidence on the side of the respondent as to the actual area of the premises, according to us, it has to be presumed that the area is approximately

185 sq.ft. as claimed by the petitioners.

11. As rightly argued by the learned Senior Counsel for

the petitioners, the landlord has to be the best judge of his requirements and the tenant cannot contend that the premises is not suitable for the business proposed by the landlord [See *Prativa Devi (Smt) v. T.V. Krishnan*, (1996) 5 SCC 353]. It is seen that it is on account of a suspicion entertained by the Appellate Authority

-: 9 :-

influenced by the sketch produced by the Advocate Commissioner which is not one prepared to scale, that a table of size 4 x 4 ft. cannot be kept inside the subject premises, that the Appellate Authority came to the conclusion that the premises is not suitable for the business proposed by the second petitioner. In the absence of a proper sketch indicating the size of the premises with actual measurements, according to us, the Appellate Authority ought not

have come to the conclusion that the premises is unsuitable for conducting the business proposed by the second petitioner. Even assuming that the premises is one where a table having a size of 4 x 4 ft. cannot be kept, inasmuch as PW2 has stated in her evidence that she is proposing to employ only three people in a space of approximately 185 sq.ft., according to us, merely on account of that reason, the Appellate Authority ought not have held that the premises is not suitable for conducting the business proposed by the second petitioner. The finding rendered by the Appellate Authority in this regard, in the circumstances, is perverse.

12. The specific case of the petitioners during trial was

that the premises in the possession of the petitioners at Deshabhimani junction is a premises taken by the first petitioner on rent for his business. The said fact has not been disputed by the respondent. If that be so, the view taken by the Appellate Authority that the second petitioner should have conducted the proposed

-: 10 :-

business in the said premises is erroneous, inasmuch as it has the effect of laying down a proposition that a landlord who institutes a proceedings for eviction of the tenant for the need of a person dependent on him for accommodation, cannot do independent business in a tenanted premises. Likewise, the view taken by the Appellate Authority that the second petitioner has not mentioned about the need in Ext.A1 notice and therefore it has to be inferred that the need is not bona fide, is equally erroneous, inasmuch as Ext.A1 is only a statutory notice issued to the respondent for seeking eviction on the ground of arrears of rent and there is no requirement under law to issue a notice specifying the need before seeking eviction of a tenant under Section 11(3) of the Act.

13. Yet another reason stated by the Appellate

Authority to hold that the need set out by the petitioners for eviction is not bona fide, is that the second petitioner owns a residential building at Palarivattom and that a portion of the said building has been let out on a monthly rent of Rs.20,000/- and that therefore, it cannot be said that she is dependent on the first petitioner for her day-to-day needs. The view aforesaid of the Appellate Authority is also perverse as the case of the petitioners is not that the second petitioner is dependent on the first petitioner for her financial needs. Their case, on the other hand, is that the second petitioner needs to conduct business to augment the income of the family. The

-: 11 :- Appellate Authority failed to take note of the said aspect.

14. As noticed, it is observed by the Appellate

Authority in the impugned decision that even though there are a few vacant rooms in the vicinity of the subject premises, they are not premises which are convenient for the respondent to conduct the business carried on by him as is carried on in the subject premises since there is no parking facility for the vacant rooms. Even though the question whether vacant premises are available in the locality for the tenant to shift the business carried on by him from the subject premises in the event of eviction is a matter to be considered by the authorities below while ordering eviction under Section 11(3) in the light of the provision contained in the

second proviso to Section 11(3), the same cannot have any bearing on the issue whether the need is bona fide or not. The Appellate Authority, in the circumstances, ought not have been influenced by the said fact in the matter of rendering its finding on the question whether the need is bona fide.

15. It is seen that the Rent Control Court found

categorically that the respondent is not entitled to the benefit of the second proviso to Section 11(3) of the Act and the said finding has not been reversed by the Appellate Authority, except to the extent of making an observation to the effect that the vacant rooms available in the locality are not convenient for the respondent to - : 12 :- shift the business carried on by him in the tenanted premises. The said observation is not sufficient to confer on the respondent the benefit of the second proviso to Section 11(3) of the Act.

16. Needless to say, the decision of the Appellate Authority is patently erroneous. In the result, the rent control revision is allowed, the impugned decision of the Appellate Authority is set aside and the decision of the Rent Control Court is restored. Sd/- P.B.SURESH KUMAR, JUDGE. Sd/- JOHNSON JOHN, JUDGE. ds
09.11.2023

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