

P.a.Johnson vs Akhil Syamkumar

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Court : Kerala

Decided On : Jul-21-2022

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : RCRev./76/2021

Appellant : P.a.Johnson

Respondent : Akhil Syamkumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR THURSDAY, THE 21ST DAY OF JULY 2022 / 30TH ASHADHA, 1944 RCREV. NO. 76 OF 2021 AGAINST THE JUDGMENT DATED 20/12/2019 IN R.C.A.NO.3 OF 2017 OF THE RENT CONTROL APPELLATE AUTHORITY-II (ADDITIONAL DISTRICT JUDGE), KOTTAYAM ARISING OUT OF THE

ORDER DATED 31/10/2016 IN R.C.P.NO.31 OF 2015 OF THE

PRINCIPAL RENT CONTROL COURT (PRINCIPAL MUNSIF COURT), KOTTAYAM REVISION PETITIONER/APPELLANT IN RCA/RESPONDENT IN

RCP: P.A.JOHNSON, AGED 59 YEARS SON OF ANTHRAYOSE, RESIDING AT ROSHAN VILLA, S.H. MOUNT P.O. NATTASSERY KARA, PERUMBAIKADU VILLAGE, KOTTAYAM TALUK, KOTTAYAM DISTRICT, PIN 686 006 BY ADVS.ABRAHAM GEORGE JACOB SRI.C.MURALIKRISHNAN (PAYYANUR) SHRI.AKSHAY R RESPONDENT/RESPONDENT IN RCA/PETITIONER IN RCP: 1 AKHIL SYAMKUMAR SON OF THE LATE K.K. SYAMKUMAR, KUTTICKAL HOUSE VADAVATHOOR P.O. KOTTAYAM TALUK, KOTTAYAM DISTRICT, PIN 686 010. 2 RAHUL SYAMKUMAR, SON OF THE LATE K.K. SYAMKUMAR, KUTTICKAL HOUSE VADAVATHOOR P.O. KOTTAYAM TALUK. -2- BY ADVS.M.KIRANLAL R.RAJESH MANU RAMACHANDRAN T.S.SARATH THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 21.07.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: - 3-

ORDER

Anil K. Narendran, J.

The petitioner is the respondent-tenant in R.C.P.No.31 of

2015 on the file of the Rent Control Court (Principal Munsiff), Kottayam, a petition filed by the original landlord, namely, K.K.Shyamkumar, father of the respondents herein, seeking eviction of the tenant from the petition schedule building under Section 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act, 1965. Such a petition was filed on the ground that the tenant, who was conducting lottery business in the petition schedule building, ceased to occupy that building from June 2013 onwards. Before the Rent Control Court, the tenant entered appearance and filed objection, opposing the order of eviction sought for. On the side of the landlord, Exts.A1 to A4(a) were marked and PWs.1 to 3 were examined. On the side of the tenant, he was examined as CPW1 and Exts.B1 to B10 were marked. The report and rough sketch submitted by the Advocate Commissioner were marked as Exts.C1 and C1(a) respectively. The meter reading details of Consumer No.11146344001336 was marked as Ext.X1. After considering the pleadings and evidence on record, the

-4- Rent Control Court granted an order of eviction under Section 11(4)(v) of the Act and the tenant was directed to vacate the petition schedule building within 15 days. Challenging the

order of eviction granted by the Rent Control Court, the

tenant filed R.C.A.No.3 of 2017 before the Rent Control Appellate Authority-II (Additional District Judge-II), Kottayam, which ended in dismissal by the judgment dated 20.12.2019. During the pendency of R.C.A.No.3 of 2017, the original landlord died and his children were impleaded as additional respondents 2 and 3. Challenging the order dated 31.10.2016 of the Rent Control Court in R.C.P.No.31 of 2015 and the

judgment dated 20.12.2019 of the Rent Control Appellate

Authority in R.C.A.No.3 of 2017, the tenant is before this Court in this Rent Control Revision, invoking the provisions under Section 20 of the Act.

2. On 08.04.2021, when this Rent Control Revision

came up for admission, this Court admitted the matter on file and issued notice to the respondents. In I.A.No.1 of 2021, this Court granted an interim order staying all further proceedings in execution and enforcement of the judgment dated -5-20.12.2019 in R.C.A.No.3 of 2017 of the Additional Rent Control Appellate Authority-II, Kottayam, arising out of the

order dated 31.10.2016 in R.C.P.No.31 of 2015 of the Rent

Control Court, Kottayam, for a period of three months. The said interim order, which was extended from time to time, is still in force.

3. Heard the learned counsel for the petitioner-tenant and also the learned counsel for the respondents-landlords.

4. The issue that arises for consideration in this Rent Control Revision is as to whether any interference is warranted on the judgment dated 20.12.2019 of the

Appellate

Authority in R.C.A.No.3 of 2017 and the order dated 31.10.2016 of the Rent Control Court in R.C.P.No.31 of 2015, ordering eviction of the tenant under Section 11(4)(v) of the Act.

5. During the course of arguments, the learned

counsel for the petitioner would place reliance on the decision of the Apex Court in *Dunlop India Ltd. v. A.A. Rahna and another* [(2011) 5 SCC 778] and also the decision of a Division Bench of this Court in *Simon v. Rappai* [2008 (2) -6- KHC 863].

6. On the other hand, the learned counsel for the respondents-landlords would place reliance on the decisions of this Court in *Abbas v. Sankaran Namboodiri and others* [1993 (1) KLT 76] and *Kayikattil Rajagopalan v. Gopalan* [ILR 2004 (2) Ker.102].

7. Section 11 of the Act deals with eviction of tenants.

As per Section 11(1), notwithstanding anything to the contrary contained in any other law or contract a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Act. As per Section 11(4)(v) 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 tenant ceases to occupy the building continuously for six months without reasonable cause.

8. In so far as the ground of eviction under Section

11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act is concerned, it is well settled by various decisions of this Court that if the landlord has discharged the initial burden, it -7- is upto the tenant to lead evidence in the matter to show that he has been conducting business in the premises.

9. In *Abbas v. Sankaran Namboodiri* [1993 (1)

KLT 76] a learned Single Judge of this Court held that, the word 'occupation' is used to denote the tenant's actual physical use of the building either by himself or through his agents or employees and legal possession is not sufficient. However, if a landlord succeeds in proving that his tenant did not occupy the building almost near the period fixed in Section 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act, it may help the court to presume that there could have been

cessation of occupation for the statutory period. Such background presumption is not anathematic to the law of evidence. Be that as it may, burden is on the landlord to prove that the tenant ceased to occupy the building for six months. But it is hard to expect a landlord to prove the precise period during which his tenant ceased to occupy the building. However, if the court is satisfied on the evidence and/or with the aid of presumptions that the tenant did not occupy the building for such length of time as would cover the statutory

-8- period, then the burden would shift to the tenant to show that he had reasonable cause for such non occupation. But, possession must combine with something more to make it occupation. Legal possession does not by itself constitute occupation.

10. In *Kayikattil Rajagopalan v. Gopalan* [ILR

2004 (2) Ker. 102] a Division Bench of this Court held that, 'occupation' in the context of Section 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act means only physical occupation. When it pertains to a residential building, it means occupation through residence and when it pertains to a commercial building, it means occupation by conduct of business. Certainly it is not obligatory that the tenant of a residential building should be present physically in the building all the 24 hours of the day and tenant of a commercial building should be present all the business hours of the day. But in cases pertaining to commercial building like the one let out for business purpose, if it is seen that no business is being carried on in the premises and that the premises are remaining closed, there will be justification to presume that

there has been cessation of occupation. On the facts of the case on hand, the Division Bench noticed that, the premises were let out originally for the conduct of grocery business. Admittedly grocery business is no longer being conducted by the tenant. Reasonableness or otherwise of the cause due to which the tenant ceased to occupy the premises is a matter especially within the tenant's knowledge. Once cessation is shown, it is for the tenant to prove that the same has been due to a reasonable cause if he needs to avert eviction. Reasonable cause can never be a cause within the control of the tenant himself.

11. In Mathai Antony v. Abraham [2004 (3) KLT

169] it was contended by the landlord that intermittent opening of the shop or the presence of the tenant in the premises would not show that the tenant is using the premises. The Division bench held that, the word occupy occurring in Section 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act has got different meaning in different context. The meaning of the word occupy in the context of Section 11(4)(v) has to be understood in the light of the

-10- object and purpose of the Rent Control Act in mind. The rent control legislation is intended to give protection to the tenant, so that there will not be interference with the user of the tenanted premises during the currency of the tenancy. Landlord cannot disturb the possession and enjoyment of the tenanted premises. Legislature has guardedly used the expression occupy in Section 11(4)(v) instead of possession. Occupy in certain context indicates mere physical presence, but in other context actual enjoyment. Occupation includes possession as its primary element, and also includes enjoyment. The word occupy sometimes indicates legal possession in the technical sense; at other times mere physical presence.

12. In Mathai Antony the Division bench examined

the question as to whether mere physical possession would satisfy the word occupy within the meaning of Section 11(4)(v) of the Act. The Division Bench held that, mere physical possession of premises would not satisfy the meaning of occupation under Section 11(4)(v) of the Act. The word possession means holding

of such possession, animus -11- possidendi, means, the intention to exclude other persons. The word occupy has to be given a meaning so as to hold that the tenant is actually using the premises and not mere

physical presence or possession. If the landlord could establish that, in a given case, even if the tenant is in physical possession of the premises, the premises is not being used, that is a good ground for eviction under Section 11(4)(v) of the Act. Section 11(4) uses the words put the landlord in possession and not occupation, but Section 11(4)(v) uses the words the tenant ceases to occupy. In Section 11(4)(v) in the case of landlord the emphasis is on possession but in the case of tenant the emphasis is on occupation. The word occupy has a distinct meaning so far as the Rent Act is concerned when pertains to tenant, that is, possession with user.

13. In Simon v. Rappai [2008 (2) KHC 863 : 2008

(3) KLT 121] a Division Bench of this Court held that, the

word 'occupation' is used in Section 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act to denote the tenant's actual physical use of the building either by himself or through -12- his agents or employees and legal possession is not sufficient. However, if a landlord succeeds in proving that his tenant did not occupy the building almost near the period fixed in Section 11(4)(v) of the Act, it may help the court to presume that there could have been cessation of occupation for the

statutory period. Such background presumption is not anathematic to the law of evidence. Be that as it may, burden is on the landlord to prove that the tenant ceased to occupy the building for six months. But it is hard to expect a landlord to prove the precise period during which his tenant ceased to occupy the building. However, if the court is satisfied on the evidence and/or with the aid of presumptions that the tenant did not occupy the building for such length of time as would cover the statutory period, then the burden would shift to the tenant to show that he had reasonable cause for such non- occupation. But, possession must combine with something more to make it occupation. Legal possession does not by itself constitute occupation. The Division bench observed that, merely because

of the fact that there was a telephone in the room and that the room remained open when the -13-

Commissioner visited, it cannot be held that the tenant was doing business therein for the statutory period. The burden had clearly been shifted to the tenant in the light of the situation of non-user that is available in relation to the room as reported by the Commissioner. The tenant has failed to adduce any cogent evidence to substantiate his contention that he was conducting business in the schedule room.

14. In *Dunlop India Limited v. Rahna* [2011 (5)

SCC 778] a Two-Judge Bench of the Apex Court held that, the word occupy used in Section 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act is not synonymous with legal possession in technical sense. It means actual possession of the tenanted building or use thereof for the purpose for which it is let out. If the building is let out for residential purpose and the tenant is shown to be continuously absent from the building for six months, the court may presume that he has ceased to occupy the building or abandoned it. If the building is let out for business or commercial purpose, complete cessation of the business/ commercial activity may give rise to a presumption that the tenant has ceased to occupy the

-14- premises. In either case, legal possession of the building by

the tenant will, by itself, be not sufficient for refusing an order

of eviction unless the tenant proves that there was reasonable cause for his having ceased to occupy the building.

15. In *Mukreerakath Khadeeja and others v.*

Krishna Janaki [2011 (3) KHC 753] a Division Bench of this Court held that, in a case filed under Section 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act, the best mode of proof of cessation of occupation is to conduct surprise

inspection of the petition schedule building by the commissioner. The salient features noted by the Advocate Commissioner would be of much help to the court

to come to a conclusion as to whether the plea of cessation of occupation put forward by the landlord is true. The effect of that report cannot be nullified by adopting a stultifying strategy of getting a report after several months. Paragraphs 8 and 9 of the said decision read thus;

8. It was admitted by PW1 that the petition schedule building was leased out for using it as a godown. But it is important to note that the tenants did not produce any document to show that the fancy Article or other items -15-

sold in Mahima Fancy were actually stocked in the petition schedule building. The learned counsel for the revision petitioners has very much stressed on Ext.C2, the second report filed by the Commissioner. But the inspection for second report was conducted about ten months after the first inspection. Since the inspection was had about ten months after the appearance of the revision petitioner before the court below Ext.C2 cannot be of much assistance, for, it is easy for any tenant to stage manage things and to get a report regarding the then state of affairs which would nullify the effect of the report obtained first in point of time which alone would reflect on the real state of affairs as on the date of the first inspection by the Advocate Commissioner. In a case filed under Section 11(4)(v), the best mode of proof of cessation of occupation is to conduct surprise inspection of the petition schedule building by the commissioner. The salient features noted by the Advocate Commissioner would be of much help to the court to come to a conclusion as to whether the plea of cessation of occupation put forward by the landlady is true. The effect of that report cannot be nullified by adopting a stultifying strategy of getting a report after several months. Therefore, Ext.C2 is not of any help for the tenants to say that there was no cessation of occupation.

9. It was observed by the learned Appellate Authority that the Registration Certificate issued under the Shops and Commercial Establishments Act does not show the -16-

petition schedule building as the one used by the tenant as his go down or store room. Referring to the provisions of that Act, the learned Appellate Authority found that 'go down' also would come within the definition of Shop mentioned therein. That apart if actually the petition schedule building was used as a go down there would certainly be a register showing the stock of the Articles. Whenever new items are taken into the go down it must find a place in the stock register. Similarly whenever items are taken out for sale to be conducted in Mahima Fancy that must also find a place in the register. Simply because some items were sold to Mahima Fancy by some wholesaler it cannot be said that all those items were taken to the petition schedule building. The learned Appellate Authority has thoroughly scanned the evidence and come to the conclusion that the plea of cessation of occupation put forward by the landladies is true. On a re-appraisal of the evidence we could not find anything wrong in the conclusion arrived at by the learned Appellate Authority so as to upset that finding. There is no illegality, irregularity or impropriety in the finding of the learned Appellate Authority which is the final fact finding authority under the statutory scheme. The revision, therefore, must fail. It is hence, dismissed."

16. In Mathai Antony [2004 (3) KLT 169] it was

held that the word 'occupy' in the context of Section 11(4)(v)

of the Kerala Buildings (Lease and Rent Control) Act has to be understood in the light of object and purpose of the Rent -17-

Control Act in mind. Further it was held that, the word 'occupy' in certain context indicates mere physical presence but in other context, actual enjoyment. In Liji Agencies v. Raghunath [2012 (1) KHC 604] it was held that occupation in the context of Section 11(4)(v) of the Act with respect to a commercial building means occupation by conducting of business and not a mere physical presence in the shop. In Mahesh Babu v. Kuttiyl Meethal Moidu [2017 (4) KLT 884] a Division Bench of this Court reiterated the law laid down in Mathai Antony and Liji

Agencies.

17. In Sabeer v. Sabreena [2019 (2) KLT OnLine

2108] a Division Bench of this Court held that, when it is proved by the landlord that the tenant ceased to occupy the building continuously for six months, the burden of proving that there was 'reasonable cause for such cessation' is on the tenant. Reasonable cause is also a question of fact to be decided in the light of the facts proved in the case. No rigid formula can be evolved for proof of 'reasonable cause'. The

facts and circumstances of the case, the particular facts with

reference to the business activities of the tenant, the nature -18-

of the business, the magnitude of the business, the circumstance which led to the cessation of occupation are all relevant in considering whether there was 'reasonable cause'. If the cessation of occupation was due to circumstances beyond the control of the tenant, certainly the courts would be inclined to accept the case of the tenant that cessation of occupation was not without reasonable cause. Financial constraint of the tenant by itself may not be a sufficient reason to hold that there was reasonable cause.

18. In the instant case, on 10.08.2015 at 4.30 p.m.,

the Advocate Commissioner conducted inspection of the petition schedule building and submitted Ext.C1 report and C1(a) sketch, which would make it explicitly clear that at the time of inspection, the petition schedule building remained locked and the verandah of the building was seen in an unhygienic condition. A street vendor, who was conducting eatery on the side of the Municipal road, was keeping his vessels, buckets, etc., in the verandah of the petition schedule building. The electricity bill was seen inserted in the KSEB

meter fitted in the verandah with Consumer -19- No.1146344001336. The said bill showed previous meter reading as 3252. On inspection, the Advocate Commissioner noticed the meter reading as on the date of inspection as

3252. Ext.C1 report and C1(a) sketch of the Advocate Commissioner were marked through the Advocate Commissioner, who was examined as PW3.

19. The tenant has not chosen to file any objection to

Ext.C1 report of the Advocate Commissioner. Before the Rent Control Court, the tenant could not discredit the version of the Advocate Commissioner as PW3. The tenant could not produce any materials to show that he is conducting lottery business in the petition schedule building, after obtaining licence from the Municipality. Ext.B10 Kerala State Lotteries Agents Identity Folder in the name of the tenant is the one dated 31.12.2016, which is one obtained after the filing of the Rent Control Petition. After analysing the pleadings and evidence on record that the Rent Control Court arrived at a conclusion that the landlord is entitled for an order of eviction under Section 11(4)(v) of the Act. The said finding of the Rent Control Court stands confirmed by the Rent Control Appellate Authority in

-20-

the judgment dated 20.12.2019. The reasoning of the Rent Control Court or the Appellate Authority for granting eviction of the tenant under Section 11(4)(v) of the Act is neither perverse nor patently illegal. It cannot also be held that while arising at such a conclusion, the authorities below have committed a manifest error.

20. Section 20 of the Kerala Buildings (Lease and Rent Control) Act deals with revision. As per sub-section (1) of

Section 20, in cases, where the appellate authority empowered under Section 18 is a Subordinate Judge, the District Court, and in other cases the High Court, may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceedings taken under this Act by such authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings, and may pass such

order in reference thereto as it thinks fit. As per sub-section

(2) of Section 20 of the Act, the costs of and incident to all proceedings before the High Court or District Court under sub- section (1) shall be in its discretion. -21-

21. In Rukmini Amma Saradamma v. Kallyani

Sulochana [(1993) 1 SCC 499], the scope of revisional powers of the High Court under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 came up for consideration before the Three-Judge Bench of the Apex Court. While considering whether the High Court could have re-appreciated entire evidence, the Apex Court held that, even the wider language of Section 20 of the Act cannot enable the High Court to act as a first or a second court of appeal. Otherwise, the distinction between appellate and revisional jurisdiction will get obliterated. Hence, the High Court was not right in re-appreciating the entire evidence both oral or documentary in the light of the Commissioner's report. The High Court had travelled far beyond the revisional jurisdiction. Even by the presence of the word propriety it cannot mean that there could be a re-appreciation of evidence. Of course, the revisional court can come to a different conclusion but not on a re-appreciation of evidence; on the contrary, by confining

itself to legality, regularity and propriety of the order

impugned before it. -22-

22. In T. Sivasubramaniam v. Kasinath Pujari

[(1999) 7 SCC 275] the Apex Court held that, the words to satisfy itself employed in Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 no doubt is a power of superintendence, and the High Court is not required to interfere with the finding of fact merely because the High Court is not in agreement with the findings of the courts below. It is also true that the power exercisable by the High Court under Section 25 of the Act is not an appellate power to reappraise or reassess the evidence for coming to a different finding contrary to the finding recorded by the courts below. But where a finding arrived at by the courts below is based on no evidence, the High Court would be justified in interfering with such a finding recorded by the courts below.

23. In *Ubaiba v. Damodaran* [(1999) 5 SCC 645]

the Apex Court considered the exercise of revisional power by the High Court, under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965, in the context of an issue as to whether the relationship of landlord-tenant existed or not. It was urged that whether such relationship existed would -23- be a jurisdictional fact. Relying on the decision in *Rukmini Amma Saradamma* it was contended that, however wide the jurisdiction of the revisional court under Section 20 of the Act may be, it cannot have jurisdiction to re-appreciate the evidence and substitute its own finding upsetting the finding

arrived at by the appellate authority. The Apex Court held

that, though the revisional power under Section 20 of the Act may be wider than Section 115 of the Code of Civil Procedure, 1908 it cannot be equated even with the second appellate power conferred on the civil court under the Code. Therefore, notwithstanding the use of the expression propriety in Section 20 of the Act, the revisional court will not be entitled

to re-appreciate the evidence and substitute its own

conclusion in place of the conclusion of the appellate

authority. On examining the impugned judgment of the High

Court, in the light of the aforesaid ratio, the Apex Court held

that the High Court exceeded its jurisdiction by re-

appreciating the evidence and in coming to the conclusion

that the relationship of landlord-tenant did not exist.

24. In *Hindustan Petroleum Corporation Limited v. -24-*

Dilbahar Singh [(2014) 9 SCC 78] a Five-Judge Bench of the Apex Court considered the revisional powers of the High Court under Rent Acts operating in

different States. After

referring to the law laid down in *Rukmini Amma Saradamma* the Apex Court reiterated that even the wider language of Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 does not enable the High Court to act as a first or a second court of appeal. The Constitution Bench agreed with the view of the Three-Judge Bench in *Rukmini Amma Saradamma* that the word propriety does not confer power upon the High Court to re-appreciate evidence to come to a different conclusion, but its consideration of evidence is confined to find out legality, regularity and propriety of the

order impugned before it.

25. In *Thankamony Amma v. Omana Amma* [AIR

2019 SC 3803 : 2019 (4) KHC 412] considering the matter in the backdrop of law laid down in *Rukmini Amma Saradamma*, *Ubaiba* and *Dilbahar Singh* the Apex Court held that the findings rendered by the courts below were well supported by evidence on record and could not even -25- be said to be perverse in any way. The High Court could not have re-appreciated the evidence and the concurrent findings rendered by the courts below ought not to have been interfered with by the High Court while exercising revisional jurisdiction.

26. Viewed in the light of the law laid down in the

decisions referred to supra, it cannot be said that the order of eviction passed by the Rent Control Court under Section 11(4)(v) of the Act, which now stands confirmed by the Appellate Authority, is either perverse or patently illegal or it suffers from any legal infirmity warranting interference under Section 20 of the Act. Therefore, we find no reason to interfere with the order of eviction concurrently passed by the authorities below.

In the result, this Rent Control Revision fails and the same is accordingly dismissed. No order as to costs. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE AV/25/7