

Bindu K vs Maimoona

Bindu K vs Maimoona

SooperKanoon Citation : sooperkanoon.com/1462083

Court : Kerala

Decided On : Feb-28-2022

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

Appeal No. : RCRev./64/2021

Appellant : Bindu K

Respondent : Maimoona

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR MONDAY, THE 28TH DAY OF FEBRUARY 2022/9TH PHALGUNA, 1943 AGAINST THE JUDGMENT DATED 30/07/2019 IN R.C.A.NO.87 OF 2017 OF THE RENT CONTROL APPELLATE AUTHORITY (DISTRICT COURT), THALASSERY ARISING OUT OF THE ORDER DATED COURT (ADDITIONAL MUNSIFF), KANNUR

REVISION PETITIONER/APPELLANT/RESPONDENT: BINDU K AGED 37 YEARS D/O. VIJAYAN, MAIMU COTTAGE, PURATHI, VALIYANNUR AMSOM DESOM P.O VARAM, KANNUR 670 594 BY

ADV.SMT.C.LEENA RESPONDENT/RESPONDENT/PETITIONER:
MAIMOONA AGED 76 YEARS D/O. ABDUL KHADER, MAIMU
COTTAGE, PURATHI, VALIYANNUR AMSOM DESOM P.O, VARAM,
KANNUR 670 594 R BY ADV SRI.P.K.RAVISANKAR THIS RENT
CONTROL REVISION HAVING COME UP FOR ADMISSION ON
28.02.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: -2-

ORDER

Anil K. Narendran, J.

The petitioner is the respondent-tenant in R.C.P.No.24 of

2016 on the file of the Rent Control Court (Additional Munsiff), Kannur, a petition filed by the respondent herein-landlady under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, seeking eviction of the tenant from the petition schedule building. The need projected in the Rent Control Petition for seeking eviction is that the landlady is presently living with her sister Kadeeja and she bona fide requires the petition schedule building for her own occupation. Before the Rent Control Court, the tenant filed counter opposing the order of eviction sought for. The landlady was examined as PW1 and the tenant was examined as RW1. A copy of the Building Tax Assessment Register was marked as Ext.B1 on the side of the tenant. After considering the pleadings and evidence on record, the Rent Control Court arrived at a conclusion that the need projected in the Rent Control Petition, for seeking an order of eviction under Section 11(3) of the Act, is bona fide and the first proviso to Section

-3-

11(3) of the Act has no application. Since the tenanted premises is a residential building, the second proviso to Section 11(3) of the Act also has no application. Accordingly, the Rent Control Court, by the order dated 10.07.2017, granted order of eviction under Section 11(3) of the Act and the tenant was directed to give vacant possession of the petition schedule building to the landlady within a period

of one month, failing which, the landlady is at liberty to execute the order of eviction through process of court.

2. Challenging the order of eviction granted by the

Rent Control Court in R.C.P.No.24 of 2016, the tenant filed R.C.A.No.87 of 2017 before the Rent Control Appellate Authority (District Judge), Thalassery, invoking the provisions under Section 18(1)(b) of the Act. That appeal ended in dismissal by the judgment dated 30.07.2019, thereby confirming the order of eviction granted by the Rent Control Court.

3. Challenging the order dated 10.07.2017 of the Rent Control Court in R.C.P.No.24 of 2016 and the judgment dated 30.07.2019 of the Rent Control Appellate Authority in -4- R.C.A.No.87 of 2017, the tenant is before this Court in this Rent Control Revision, invoking the provisions under Section 20 of the Act.

4. On 24.03.2021, when this Rent Control Revision

came up for admission, this Court issued notice on admission to the respondent. In I.A.No.2 of 2021, this Court granted an interim order staying the execution of the judgment dated 30.07.2019 in R.C.A.No.87 of 2017 of the Rent Control Appellate Authority, Thalassery, arising out of R.C.P.No.24 of 2016 on the file of the Rent Control Court, Kannur, including E.P.No.369 of 2019 before the Principal Munsiff Court, Kannur, for a period of three months.

5. Heard the learned counsel for the petitioner-tenant and also the learned counsel for the respondent-landlady.

6. The issue that arises for consideration in this Rent

Control Revision is as to whether any interference is warranted on the concurrent findings of the authorities below granting order of eviction under Section 11(3) of the Act, whereby the petitioner-tenant is directed to give vacant possession of the petition schedule building to the landlady, -5- within the time limit stipulated therein.

7. The learned counsel for the petitioner-tenant would

contend that the order of eviction granted by the Rent Control Court, which now stands confirmed by the Appellate Authority, is patently illegal, which warrants interference in exercise of the revisional jurisdiction of this Court under Section 20 of the Act. The Rent Control Court as well as the Appellate Authority have not properly appreciated the contentions raised by the tenant placing reliance on Ext.B1 Building Tax Assessment Register.

8. Per contra, the learned counsel for the respondent-

landlady would point out that, on a proper appreciation of the pleadings and evidence on record, the authorities below have granted order of eviction, concurrently, under Section 11(3) of the Act. In exercise of the revisional jurisdiction under Section 20 of the Act, no interference is warranted, since the findings of the authorities below are neither perverse nor patently illegal. On the contention advanced by the petitioner-tenant relying on Ext.B1 Building Assessment Register, the learned counsel for the respondent-landlady would place reliance on

-6- the judgment of a Full Bench of this Court in Panoli Alikutty and Another v. Suresh Babu [2018 (5) KHC 621].

9. 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(3) 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 he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him. As per the first proviso to Section 11(3), the Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons, in any particular case it will be just and proper to do so. As per the second proviso to Section 11(3), the Rent Control Court shall not give any direction to a tenant to put the landlord in

possession, if such tenant is depending for his

-7- livelihood mainly on the income derived from any trade or business carried on in such building and there is no other suitable building available in the locality for such person to carry on such trade or business.

10. In *Adil Jamshed Frenchman v. Sardur Dastur*

Schools Trust [(2005) 2 SCC 476] the Apex Court reiterated that, as laid down in *Shiv Samp Gupta v. Dr. Mahesh Chand Gupta* [(1999) 6 SCC 222] a bona fide requirement must be an outcome of a sincere and honest desire in contradistinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the premises for himself or for any member of the family which would entitle the landlord to seek ejectment of the tenant. The question to be asked by a judge of facts by placing himself in the place of the landlord is whether in the given

facts proved by the material on record the need to occupy the

premises can be said to be natural, real, sincere and honest. The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. As reiterated in *Deena Nath v. Pooran Lal* [(2001) 5 SCC -8- 705] bona fide requirement has to be distinguished from a mere whim or fanciful desire. The bona fide requirement is in praesenti and must be manifested in actual need so as to convince the court that it is not a mere fanciful or whimsical desire.

11. In *Ammu v. Nafeesa* [2015 (5) KHC 718] a

Division Bench of this Court held that, it is a settled proposition of law that the need put forward by the landlord has to be examined on the presumption that the same is a genuine one, in the absence of any materials to the contra.

12. In the instant case, the landlady filed R.C.P.No.24

of 2016 before the Rent Control Court seeking eviction of the tenant from the petition schedule building, under Section 11(3) of the Act. The case of the landlady

before the Rent Control Court was that she, who is presently aged 76 years, is residing along with her sister Kadeeja. She requires the petition schedule building for residential purpose. The bona fide need projected in the Rent Control Petition is supported by the oral testimony of the landlady as PW1. Nothing could be brought out during cross-examination of PW1 to discredit

-9- her version in support of the claim for eviction under Section 11(3) of the Act. After considering the pleadings and evidence on record, the Rent Control Court arrived at a conclusion that the need projected in the Rent Control Petition for seeking an

order of eviction under Section 11(3) of the Act is bona fide.

The said finding of the Rent Control Court now stands confirmed in the judgment of the Appellate Authority in R.C.A.No.87 of 2017. The reasoning of the authorities below in the aforesaid order/judgment is neither perverse nor patently illegal. It cannot also be said that while arriving at such a conclusion, the authorities below have committed any material irregularity.

13. Insofar as the applicability of the first proviso to Section 11(3) of the Act is concerned, the tenant relied on Ext.B1. In the order dated 10.07.2017 and also in the

judgment dated 30.07.2019, the authorities below have

stated valid reasons to appreciate the contentions raised by the tenant relying on the aforesaid document.

14. In Panoli Alikutty and another v. Suresh Babu [2018 (5) KHC 621] the question that came up for -10-

consideration before a Full Bench of this Court was as to whether an entry in a property tax or house tax assessment book maintained by a local authority relating to the occupancy or vacancy of a building could be received as evidence of the said fact in the light of Section 26 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (the Act) in a proceedings for eviction under the Act. The Full Bench

noticed that, Section 26 of the Act is only a provision which enables the parties to a proceedings under Section 5(1) of the Act to let in evidence as to the rental value of the buildings as fixed by the local authority for the relevant period for the purpose of levying property tax or house tax, as the case may be, by producing certified copies of the extracts from the property tax or house tax assessment books of the local authority. The scheme of the Act does not indicate that the legislature intended the parties to a proceeding for eviction under the Act to prove the vacancy or occupancy of a building by producing certified extracts of the property tax or the building tax assessment books of the local authority. The said certified extracts can at best be a piece of evidence and the occupancy

-11- of the building needs to be established by the parties by other corroborative evidence. The Full Bench held that the view taken in *Cheruvathal Krishnadasan v. Addiserry Raghavan* [2017 (4) KHC 894] that the entries in the

property tax assessment register cannot be taken as conclusive proof of the vacancy position of a building conforms to the provisions of the Act and, therefore, in order. In *Nabeesa Abdul Khader v. Suresh Kurian* [2009 (2) KHC 64] this Court did not hold that an entry in a property tax or building tax assessment register can be received as evidence to establish the vacancy position of a building. Instead, this Court has only held that a presumption can be drawn based on an entry in a property tax or building tax assessment register relating to occupancy or vacancy of the building and it is for the opposite party to dislodge the said presumption. Having understood the scope of Section 26 of the Act, as indicated above, there is absolutely no basis for any such presumption. As entries are made in the property tax and building tax assessment registers of the local authorities as part of official acts, even dehors Section 26 of the Act, the

-12- Courts are entitled to presume that such entries have been made in the regular course of business in the light of illustration (e) of Section 114 of the Indian Evidence Act,

1872. But, illustration (e) in the said provision permits only

presumption to be drawn in matters of procedure. It does not permit a presumption to be drawn where the question does not relate to the manner of doing an official act. The decision in Nabeesa Abdul Khader is, therefore, to be clarified to that effect. In Abdul Kader v. George Joseph and another [2009 (1) KHC 296] the Division Bench held that an entry in

the property tax or building tax assessment register maintained by the local authority is evidence of the vacancy position of a building. The said decision cannot be accepted as correct and the Full Bench overruled the same.

15. In view of the law laid down by the Full Bench of

this Court in Panoli Alikutty, relying on Ext.B1 Building Tax Assessment Register issued by the Zonal Officer, Chelora Kannur Municipal Corporation, the tenant cannot contend that the landlady is not entitled for an order of eviction under Section 11(3) of the Act, in view of the provisions under the -13-

first proviso to Section 11(3) of the Act. After considering the pleadings and evidence on record, the Rent Control Court as well as the Appellate Authority arrived at a conclusion that the landlady is entitled for an order of eviction under Section 11(3) of the Act. The findings of the authorities below are neither perverse nor patently illegal and it cannot also be said that while arriving at such a conclusion, the authorities below have committed any material irregularity.

16. Section 20 of the Kerala Buildings (Lease and Rent

Control) Act, 1965 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 -14- proceedings before the High Court or District Court under sub- section (1) shall be in its discretion.

17. 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

-15-

itself to legality, regularity and propriety of the order

impugned before it.

18. 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.

19. 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 -16-

as to whether the relationship of landlord-tenant existed or not. It was urged that whether such relationship existed would 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 -17- the relationship of landlord-tenant did not exist.

20. In *Hindustan Petroleum Corporation Limited v.*

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.

21. 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 -18-

held that the findings rendered by the courts below were well

supported by evidence on record and could not even 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.

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

decisions referred to supra, conclusion is irresistible that the reasoning of the Rent Control Court and the Rent Control Appellate Authority while ordering eviction of the tenant under Section 11(3) of the Act is neither perverse nor patently illegal, warranting interference in exercise of the revisional jurisdiction of this Court under Section 20 of the Act. Therefore, we find no reason to interfere with the order of eviction passed by the Rent Control Court and the Appellate Authority under Section 11(3) of the Act.

23. The learned counsel for the petitioner-tenant would submit that, considering the situation prevailing in the country on account of Covid-19 pandemic, the tenant may be granted -19- time till December, 2022 for vacating the premises.

24. On the above request made by the learned counsel

for the petitioner-tenant, the learned counsel for the respondent-landlady would submit that a reasonable period of three months may be granted to the tenant for giving vacant possession of the building. In such circumstances, this Rent Control Revision is

dismissed declining interference on the order of eviction granted by the courts below under Section 11(3) of the Act; however by granting six months' time to the petitioner-tenant, to surrender vacant possession of the petition schedule building to the respondent-landlady, considering the situation prevailing in the Country on account of Covid19 pandemic, subject to the following conditions;

(i) The respondent-tenant in the Rent Control

Petition shall file an affidavit before the Rent Control Court within two weeks from the date of receipt of a certified copy of this order, expressing an unconditional undertaking that she will surrender vacant possession of the petition schedule building to the petitioner- landlady within six months from the date of -20-

this order and that, she shall not induct third parties into possession of the petition schedule building;

(ii) Needless to say, in the event of the

respondent-tenant in the Rent Control Petition failing to comply with the condition stated above, the time limit granted by this order to surrender vacant possession of the petition schedule building will stand cancelled automatically and the petitioner-landlady will be at liberty to proceed with the execution of the order of eviction. Sd/- ANIL K. NARENDRAN,

JUDGE

Sd/- P.G. AJITHKUMAR, JUDGE AV/3/3

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com