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

Abdul Kader Vs. Mohammed Basheer

Abdul Kader Vs. Mohammed Basheer

SooperKanoon Citation : sooperkanoon.com/48328

Court : Kerala

Decided On : Mar-03-2015

Judge : Honourable Mr.Justice Antony Dominic

Appellant : Abdul Kader

Respondent : Mohammed Basheer

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS TUESDAY, THE3D DAY OF MARCH201512TH PHALGUNA, 1936 RCRev..No. 365 of 2013 () ---------- AGAINST THE

ORDER
/

JUDGMENT
IN RCA12011 of RENT CONTROL APPELLATE AUTHORITY/ ADDL. DISTRICT COURT, TIRUR DATED3107-2013 AGAINST THE

ORDER
/

JUDGMENT

IN RCP212009 of RENT CONTROL COURT / MUNSIFF COURT, TIRUR DATED3011-2010 REVISION PETITIONERS/APPELLANTS/LRS OF RESPONDENT IN RCP: ---------- 1. ABDUL KADER S/O LATE MOHAMMED @ BAPPUTTY THALAKKAD AMSOM & DESOM, PO B.P.ANGADI, TIRUR TALUK MALAPPURAM DISTRICT.

2. JAMEELA D/O LATE MOHAMMED @ BAPUTTY,DO.DO.

3. ABDUL MAJEED S/O LATE MOHAMMED @ BAPUTTY,DO.DO.

4. KADEEJA D/O LATE MOHAMMED @ BAPUTTY,DO.DO. BY ADVS.SRI.K.RAMACHANDRAN SMT.M.C.BINDUMOL RESPONDENT(S)/RESPONDENT/PETITIONER: ---------- MOHAMMED BASHEER, AGED40YEARS S/O KUNHALIKUTTY, THALAKKAD AMSOM, THEVALAPPURAM DESOM P.O. B.P.ANGADI, MALAPPURAM DISTRICT-676 306. BY ADV. SRI.JAMSHEED HAFIZ CAVEATOR THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON61.2015, THE COURT ON0303-2015 PASSED THE FOLLOWING: ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

========== R.C.Rev.No. 365 of 2013 ========== Dated this the 3rd day of March, 2015

ORDER

ALEXANDER THOMAS , J.: This Revision filed under Sec.20 of the Kerala Buildings (Lease and Rent Control) Act, 1965, is directed against the order dated 31.7.2013 of the Rent Control Appellate Authority, Tirur, in Rent Control Appeal No.1/2011 arising out of the order dated 30.11.2010 of the Rent Control Court, Tirur, in Rent Control Petition No.21/2009. The revision petitioners herein are the legal representatives of the tenant and the respondent herein is the landlord. The landlord sought eviction under Secs.11(2), 11(3) and 11(4)(ii) and 11(4)(v) of the aforementioned Act. The Rent Control Court ordered eviction only under the

grounds under Sec.11(2)(b) for arrears of rent and Sec.11(3) for bonafide own occupation. Aggrieved by the order of the Rent Control Court, the tenant had preferred the aforementioned Rent Control Appeal. The only ground that survived for consideration before the Rent Control Appellate Authority was one under Sec.11(3) and both the courts below as per the impugned R.C.R.365/13 - :

2. :- orders have upheld the claim of the landlord for eviction under Sec.11(3) of the Act.

2. The case of the landlord is that he bona fide requires the whole of the building where the petition scheduled room is built for the purpose of running his proposed business in stationery, footwear, fancy items, coffee-bar, etc. for reconstructing a new building therein with modern facilities, after demolishing the present building. It has come out in evidence that the respondent herein had evicted other tenants in the building and had obtained Ext.A-2 series of permit, plan and licence from the Panchayat concerned for the construction of the proposed new building in the land in question after effecting demolition of the existing building, which is very old.

3. According to the landlord, he is unmarried and he wants to settle in life after starting the above said proposed business in his building and that his present income is mainly from the agricultural produces and that he has raised some money for the proposed new construction and that he will be able to raise necessary funds for completion of the proposed construction, for which he has secured all necessary permission, etc. The area where R.C.R.365/13 - :

3. :- the old building is now situated, would be mostly required for the passage to the proposed new building and that the space for parking and loading and unloading etc. are to be provided for the reconstructed complex. The location of the building is ideal for his proposed business. That the tenant is not depending on the income derived from the business conducted in the tenanted premises and that there are many other rooms available in the locality for the tenant to shift his business. That the landlord is entitled to get an order of eviction under Sec.11(3) of the Act.

4. Both the courts below held that the need put forward by the landlord for requirement of the space where the present building is situated, for effecting the proposed reconstruction, would fall within the purview of Sec.11(3) of the Act. The courts below have relied on the reported decisions of this Court on that crucial aspect of the matter, wherein this Court has held that even if the requirement of the landlord is not for the building as such, but the space occupied by the building, in order to construct a new building after demolishing the existing structure, the same would fall within the four corners of Sec.11(3) of the Act, so long as it is for the own occupation of the landlord. R.C.R.365/13 - :

4. :- 5. The courts below have also held that the tenant is not entitled for the protection of either the first proviso or the second proviso of Sec.11(3) of the Act. It is in this view of the matter that the courts below have concurrently found that the landlord is entitled for an order of eviction under Sec.11(3) of the Act for the above said purpose and that the tenant has been ordered to surrender vacant possession of the petition scheduled room to the landlord within the time stipulated therein.

6. We have heard the learned counsel appearing for the Revision Petitioners (tenant) and the learned counsel appearing for the respondent herein (landlord).

7. In the instant case, the specific case of the landlord is that he bona fide requires the space in which the present building is situated, for the purpose of reconstructing a new building therein, after demolishing the existing structure, for the purpose of his occupying the whole of the new building for starting his proposed new business in stationery goods, footwear, fancy items, coffee and cool bar, etc. This Court, in the case in P.A.Mohammed Kanhu v. H.A.Asanar Kunju, reported in (1965) 1 KLR323 it was held as follows: "If the petitioner bona fide needed the building for his own occupation and the finding of the Rent Control Court is that he so needed it, the R.C.R.365/13 - :

5. :- petitioner was entitled to recover possession of the building, notwithstanding the fact that he has to demolish the present building and reconstruct it for the purpose of his occupation. The fact that the building requires reconstruction for the purpose of occupation does not mean that the petitioner does not require it for his

own occupation. In other words the purpose of the occupation may be such that the building may have to be demolished and reconstructed; that does not mean that the landlord's claim is not under S.11(3)".

8. In the case Saradha v. M.K.Kumaran reported in 1969 KLT133 it was held by this Court that the bona fide need for own occupation under Sec.11(3) of the Act would take in if the need is to provide a passage through the site on which the original structure stood after its demolition and in this regard the word, 'occupation' was interpreted to mean as "the word 'occupation' does not necessarily refer to the occupation as residence. An owner can occupy a place by making use of its in any manner. The fact that the pathway is intended to him does not mean that the landlord will not be in occupation of the same." 9. Sec.2(1) of the Buildings (Lease and Rent Control) Act, 1965 defines, 'building' as to mean any building or hut or part of a building or hut, let or to be let separately for residential or non- residential purposes and includes:- (a) the garden, grounds, wells, tanks and structures, if any, appurtenant to such building, hut, or part of such building or hut, and let or to be let along with such building or hut; R.C.R.365/13 - :

6. :- (b) any furniture supplied by the landlord for use in such building or hut or part of a building or hut, but does not include a room in a hotel or boarding-house. affixed(c) orany fittings or machinery belonging to the landlord, to installed in such building, or part of such building, and intended to be used by the tenant for or in connection with the purpose for which such building or part of such building is let or to be let." 10. This Court in Saradas's case cited supra held that the term 'building' generally, though not always, implies the idea of a habitation for the permanent use of man, or an erection connected with his permanent use and it imports tangibility, and may include the land on which it stands, as well as adjacent land and that the definition of the term, 'building' as per the above Act is not precise and an exhaustive definition of the term is also not possible and that the meaning of the word 'building' in ordinary language, comprises not only the fabric of the building, but also the land upon which it stands, etc.

11. In the case Krishna Menon v. District Judge reported in 1988 (1) KLT131 this Court was considering the case of a landlord, who wanted demolition of the

building occupied by the tenant for the purpose of providing car parking area for the multi-storied building constructed in the rear portion of the building in question R.C.R.365/13 - :

7. :- and it was contended that the need contemplated under Sec.11(3) of the Act will not encompass any other need for which the building is used and it does not envisage the demolition of the building and using the space occupied by the building. This Court rejected the said objection and held that the Legislature while framing Sec.11(3) did not insist that the occupation must be of the building as such and though the need is of the building, the occupation is not confined to the building as such and the definition of "building" contained in Sec.2(1) of the Act includes the garden, grounds etc., which are appurtenant to the building and includes any building also besides part of the building. That the controlling words in Sec.2 direct that the definition is not meant to be exhaustive nor restrictive because even the items enumerated and included therein are subject to variations, if "the context otherwise requires" and the definition provides sufficient play at the joints while fixing the parameters of the scope of the expression 'building' in different situations. That it enables the Rent Control Authorities to mould the reliefs in accordance with the exigency in each case and the contextual flexibility permitted in Sec.2(1) is meant to be used according to the particular need in different situations. If Sec.11(3) R.C.R.365/13 - :

8. :- of the Act is to be given a narrow interpretation that it could be applied only if the building is kept up as such even after the eviction, such an interpretation is likely to bring about unjust consequences and that the crux of the matter is 'bona fide need' of the landlord. Accordingly, this Court in Krishna Menon's case cited supra upheld the plea for eviction under Sec.11(3) of the Act. This Court in the case George Varghese v. Ammini Cherian reported in 1995 (2) KLJ413 held in para 5 thereof as follows: "5. ..... Here what the landlady wants is eviction of the tenant for demolishing the building to put up a new building on the site for accommodating her son who is dependent on her. That precisely forms the ground covered by Sec. 11 (3) of the Act i.e., the landlord bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him. Merely because the landlady said that a new building has to be put up in

the place of the existing structure does not transpose the ground to Sec. 11 (4)(iv) of the Act....." 12. In the case Sasi v. Pyspsy Victor reported in 2003 (2) KLT665 this Court held that the term, 'building' as per the Act includes land on which the building stands and hence recovery of the site of the building for the purpose of new construction cannot be said to be not coming within the meaning of Sec.11(3) of the Act.

13. The tenant had put forward a contention that the other rooms in the building, which were got evicted by the landlord, without stating the need for reconstruction of the building, were not R.C.R.365/13 - :

9. :- occupied by the landlord after securing eviction orders for such rooms. But the Rent Control Court on the basis of Exts.A6 to A-14 and B-1 to B-3 held that it can be seen that such a need was urged by the landlord in the year 2000-2001 and further that the plea that it was not occupied after getting possession has been rebutted by the landlord. That PW-1 (landlord) has deposed that he occupied the evicted rooms and conducted business therein for some time and Ext.B-3 order would show that the claim of the tenant in R.C.P.No. 36/2000 for restoration of the possession on the ground under Sec.11(12) of the Act was rejected by the court by finding that the case of non-occupation is not proved. The other evicted tenant has never opted to invoke the provision of Sec.11(12) of the Act and therefore it would be safely concluded that the said tenant has no case that the landlord after securing eviction had not occupied that room, etc. Therefore, these objections of the tenant have been rightly held to be untenable by the courts below. Moreover, RW-1 (tenant) has admitted in his evidence that those evicted rooms are almost dilapidated due to age and that the present building is more than 60 years old. In Exts.C-1 and C-2, the Advocate Commissioner has clearly reported that the building is an outdated one and vacant R.C.R.365/13 - :

10. :- possession of the other rooms in the building also was reported by the Commissioner.

14. The tenant had also taken objections that the claim of the landlord is not allowable due to his lack of experience in conducting the proposed business and his alleged lack of funds to conduct the business and to construct the building in

question. The Rent Control Court held that RW-1 (tenant) himself has admitted that the landlord belongs to a family of businessmen and is able to make money by conducting business. Moreover, it is well settled that previous experience in the proposed new business is not a pre- requisite to be satisfied to seek eviction under Sec.11(3) of the Act for bona fide own occupation. As regards the alleged lack of funds to construct the building, PW-1 has deposed that he has got rupees one lakh ready in his possession and that he proposes to avail loan for the balance amounts. RW-1 (tenant) had admitted that PW-1 is able to raise funds by availing loans. In these circumstances, these objections of the tenant are also untenable.

15. On an examination of the pleadings and evidence in this case and the aforesasid legal position, this Court is of the considered opinion that the concurrent finding arrived at by both R.C.R.365/13 - :

11. :- the courts below that the landlord in this case has made out plea for eviction under Sec.11(3) of the Act is perfectly in accordance with law.

16. The next issue to be examined is as to the claim of the tenant for the benefit of the first proviso and the second proviso to Sec.11(3) of the Act. Sec. 11(3) first proviso and second proviso reads as follows: "Sec.11(3).... Provided that 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: Provided further that 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 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:" As regards the first proviso, the PW-1 landlord has categorically deposed before the court that he has no other rooms in his possession for the proposed purpose and this has been uncontroverted. It is trite that it is the burden of the tenant to prove the entitlement under the first and second proviso to Sec.11(3) of the Act. RW-1 has admitted that the landlord has no other rooms in his ownership and possession, except the rooms and the building R.C.R.365/13 - :

12. :- from which he was sought to be evicted. Moreover, both the limbs of the ingredients in the second proviso to Sec.11(3) have to be proved by the tenant. On both these aspects, the tenant has not adduced any reliable evidence. The tenant has not produced any accounts to show as to what is the income derived by him from the business conducted in the tenanted premises. RW-1 has not even made a specific assertion before the court that no other vacant rooms are available in the locality for carrying on his personal business. The tenant has not adduced any cogent evidence to discharge his burden to prove both the limbs of the second proviso to Sec.11(3) of the Act. In view of these aspects, the concurrent finding arrived at by both the courts below that the tenant is not entitled for the benefit of the first and second provisos to Sec.11(3) of the Act, is in accordance with law.

17. The revision petitioners (tenant) have a case that the property in which, the building is situated is only having an extent of 2 cents and that it is not sufficient for constructing the building as proposed in the plan and licence secured by the landlord, etc. The tenant has a further case that the validity period of the said plan and licence has expired on 9.7.2009, etc., by placing reliance R.C.R.365/13 - :

13. :- on Annexure-I produced in this Revision Petition. No advantage can be claimed by the tenant merely because the validity period of the building permit has expired, during the pendency of the rent control proceedings. We note that the plea of the landlord is not under Sec.11(4)(iv) of the Act for reconstruction, but is under Sec.11(3) of the Act for 'bonafide own occupation'. Hence, in the circumstances it will be the look out of the landlord to secure a valid building permit and plan.

18. On an overall consideration of the facts and circumstances of this case, we are of the considered opinion that the aforementioned orders of the court below do not suffer from any legal infirmity or error so as to invoke the revisional jurisdiction conferred on this Court as per Sec.20 of the Act and that therefore the Revision Petition is liable to be dismissed.

19. However, we are inclined to grant reasonable time to the tenant to give vacant possession of the petition scheduled room to the landlord. Accordingly, it is ordered that the Revision Petitioners (tenant) are given six months' time from

today to surrender vacant possession of the petition scheduled tenanted premises to the respondent herein (landlord). However, this would be subject to the R.C.R.365/13 - :

14. :- condition that within two weeks from today, the revision petitioners shall file an undertaking before the Rent Control Court/Execution Court concerned unconditionally undertaking therein that they would surrender vacant possession of the above said tenanted premises to the respondent herein on or before the expiry of the above said six months' time limit. This is subject to the further condition that the revision petitioners shall clear off the entire arrears of rent, if any, due to the landlord and shall continue to pay the rent amounts in question. With these observations and directions the Revision Petition stands dismissed. Sd/- ANTONY DOMINIC, JUDGE Sd/- sdk+ ALEXANDER THOMAS, JUDGE ///True copy/// P.S. to Judge

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