

ikkorakutty Vs. E.M. Hariharan

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Court : Kerala

Decided On : Sep-13-1972

Reported in : AIR1973Ker31

Judge : K. Bhaskaran, J.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(3)

Appeal No. : Civil Revn. Petn. No. 735 of 1972

Appellant : ikkorakutty

Respondent : E.M. Hariharan

Advocate for Def. : M.K. Narayana Menon, Adv.

Advocate for Pet/Ap. : T.L. Ananthasivan and; P.K. Jose, Adv.

Judgement :

ORDER

K. Bhaskaran, J.

1. The landlord, a retired District Edu. Officer (retired, but not tired), now in his sixties, worth in terms of material assets Rupees Seven lakhs on his estimate, having started, in his pursuit to better his lot, a tutorial college, conducting the classes mostly at his house, and sometimes in his cinema hall, filed R. C. O. P.

No. 14 of 1967 on the file of the Rent Controller (Munsiff) of Irin-jalakuda, purported to be an application under Section 11(4)(iv) of the Kerala Buildings (Lease and Rent Control) Act (2 of 1965), in an attempt to recover possession of the petition schedule building, wherein the tenant had been carrying on a coffee-stall-cum-hotel for over a decade in a bid to earn a sum of Rs. 8/- per day to keep life going for himself and the members of his family.

2. Though the petition is purported to be one under Section 11(4) (iv) only, from the averment in the petition and the manner in which the parties have understood the matter, I have no hesitation in holding that the petition is one under Section 11 (4) (iv) as well as Section 11 (3). I therefore, repel the contention of the learned counsel appearing for the revision petitioner that the courts below have gone wrong in treating the petition as one under Sections 11 (3) and 11 (4) (iv) of the Act.

3. Treating the petition as one for recovery of possession under Section 11 (4) (iv) (need for bona fide reconstruction) and under Section 11 (3) (bona fide need for own occupation) the Rent Controller entered finding that both the grounds urged have not been made out and dismissed the petition. The landlord took up the matter in appeal, A. S. No. 77 of 1969 on the file of the appellate authority (Subordinate Judge of Irinjalakuda) who reversed the finding of the Rent Controller with respect to both the grounds, allowed the appeal, and directed the tenant to surrender possession of the building. The defeated tenant took up the matter in revision in R. C. R. P. No. 16 of 1971 on the file of the District Court, Trichur. The District Court while holding the decision of the appellate authority that the landlord required recovery of the building for bona fide reconstruction to be untenable, nevertheless, ordered eviction on the ground that the landlord had the bona fide need for his own occupation. It is the correctness of this order of the District Court that is under challenge in this revision petition.

4. The contention of the revision petitioner is that the District Court has committed an error of jurisdiction as well as a material irregularity affecting the exercise of jurisdiction vested in that court under Section 20 of Act 2 of 1965.

5. The arguments addressed before me by the learned counsel for the revision petitioner are mainly two-fold; (1) the appellate Authority and the revisional court set aside the finding of the Rent Controller on the question of landlord's bona fide need for own occupation without considering the evidence on record, apart from proceeding on a wrong assumption as to what was contained in the evidence tendered by the parties; and (2) the interpretation given by the appellate authority and the revisional court to the proviso to Section 11 (3) is totally incorrect and this has resulted in the appellate authority and the revisional court exercising a jurisdiction which is not really vested in them.

6. The learned counsel appearing for the respondent has at the very outset pointed out that in the memorandum of the civil revision petition the revision petitioner has not taken specific objection to the finding of the revisional court with respect to the bona fide need for own occupation of the landlord. The contention of the counsel for the revision petitioner is that in ground No. 3 it has been stated that-

'The orders of both the appellate Court and revisional Court are vitiated with material irregularity. Both Courts ought to have seen that the interpretation given by the learned Rent Control Court is correct and that the finding of facts arrived at by the the learned Rent Control Court is perfect. Both the Courts went wrong in disturbing the finding of facts arrived at by the trial Court without any reason at all', and that this will be sufficient to indicate that the finding on the question of landlord's bona fide need for occupation also is under attack in this revision. It would have been more appropriate for the revision petitioner to express his contentions explicitly without resorting to this mysticism. However, inasmuch as it cannot be categorically said that a -particular finding of the revisional court or the appellate authority is not under challenge, taking a broad view, I hold that the finding on the question of landlord's bona fide need for own occupation also is under attack in this revision petition.

7. The relevant facts emerging from the evidence of parties are as follows: The landlord is a retired District Educational Officer, now aged about 66. Since his retirement from service he has been conducting 'Mangalam Tutorial College'. The

petition schedule building, having cemented floor, basement in granite, walls built of stones, and tiled roof (mostly if not wholly), was, at the time of the filing of the petition, about 11 years old. All along, the tenant had been in occupation of the building, and for the maintenance of himself and his family he had been depending principally on the income derived from the business carried on there. The rent originally fixed was Rs. 15/- per month; but subsequently it was raised to Rs. 25/-, the increase having been made in two instalments. The compound in which the landlord resides is 97 cents in extent. Its boundary in the west is road. Adjacent to that compound the landlord has another compound having an extent of 60 cents. In that compound also there is a building which was originally used as a shop building, but now used as a house. The landlord had after the filing of the petition sold away 30 cents of land with a building thereon. A little earlier he had sold away 17 cents of land with a building thereon. The landlord has also another item of property, half a furlong away from the petition schedule building. Besides these, within the same municipality, on the northern side of St. Joseph's College, the landlord has 55 cents of land. The requirements of the tutorial college will be 30 cents, the building itself requiring only 3 or 4 cents. The estimated cost of the proposed building is Rs. 3,000/-. So far as the knowledge of the landlord goes there are no vacant buildings within a radius of one furlong from the petition schedule building. There are trees like coconut trees, jack trees, mango trees etc., in the properties belonging to the landlord.

8. The evidence in this case consists of the oral evidence of Pws. 1 and 2 and DW. 1 and the documentary evidence available in Exts. P-1 to P-5 and Ext. D-1. The finding that the petition schedule building does not require reconstruction entered by the Rent Controller as confirmed by the revisional court cannot be assailed though a feeble attempt in that behalf was made by the counsel appearing for the respondent before me. At the time of institution of the eviction proceedings the building, built of stone and granite, and mostly tiled, was just 11 years old; neither its physical condition nor its attending circumstances would warrant a finding that the landlord had bona fide need to recover possession for reconstruction.

9. The question relating to the bona fide need for own occupation of the landlord alone need engage the attention of this Court in this revision. It is not in dispute that the landlord is having a tutorial college. He has been carrying on it for the last 11 years now. The real question, therefore, is whether he has bona fide need to recover the petition schedule building which, it is stated, stands on 18 cents of land, to demolish it, and to construct a new building in the nature of one shown in Ext. P-2 plan. To attract Section 11 (3) there should be bona fide need for own occupation. An irrational desire or wish of the landlord cannot be a ground for eviction. The Kerala Buildings (Lease and Rent Control) Act, 1965 has been enacted with the object of giving protection to the weaker section who are not possessed of their own buildings either for their residence, or for carrying on their vocation, as the case may be. This is based on the concept of social justice, and has to be given effect to, as far as possible, without allowing the landlord to circumvent the provisions conferring security of tenancy on the tenant. Therefore, instead of being hypertechnical, the courts, in their approach, have to be realistic, and a just decision has to be arrived at, considering all aspects of the matter and having in mind an overall picture of the situation, also giving due consideration to the comparative hardship that may result to the respective parties from the order that may be passed. I am highlighting these aspects because I feel that the courts below particularly the appellate authority and the revisional Court, do not appear to have borne in mind these aspects of the matter.

10. The dominant ground urged by the landlord for recovery of the building was that it required reconstruction; and this is evident from the fact that the petition is one filed under Section 11 (4) (iv), though on the basis of the allegations contained in the petition it could be considered that it is under Section 11 (3) also. The finding now is that the petition schedule building does not require reconstruction. It follows that the residuary prayer in effect is one for the recovery of the site of the building, as it is not the landlord's case that a tutorial college is to be carried on in the existing building. On the landlord's own showing the building fetches an income of Rs. 300/- per annum by way of rent. The courts below have not considered whether the alleged need of the landlord is bona fide inasmuch as he is possessed of vast extent of land in the vicinity. The appellate court and the revisional court held that there may be trees in the items of land possessed by the

landlord though they are extensive. It has not been examined whether in the ordinary course of human conduct a person would demolish an existing building fetching Rs. 300/- annually and that too for putting up a building which would require only 3 or 4 cents. The total extent of the property on which the petition schedule building stands is, I am told, 18 cents. The landlord would say that he requires about 30 cents of land for the purpose of his tutorial college. If that be so, would it be sufficient for the landlord to secure possession of the petition schedule building and the site on which the building is situated to meet his needs? Recovery of a site which is only 18 cents of land will not meet the need of the landlord who requires 30 cents of land for the purpose for which he wants recovery of the site. This aspect of the matter has not been considered at all by the courts below. Therefore, it requires investigation as to whether the landlord is possessed of another site wherein he could construct the proposed tutorial college and whether, in view of the need expressed by him in his evidence, the site where the present building stands would be sufficient to meet his bona fide need. Where virtually the petition amounts to one for recovery of the site on which the building is situated, inasmuch as the landlord's case is that he wants to demolish the existing building and put up a new building for a specific use, the bona fide need of the landlord has to be tested from an angle different from that of the case in which recovery of possession sought for is that of the building itself. The section in terms contemplates only recovery of the building for his own occupation. Without entering into the merit of the contention that recovery of the building means and includes recovery of the site, the effect of the first proviso to Sub-section (3) of Section 11 has also to be construed when the petition in essence amounts to one for recovery of the site alone. The first proviso states that the Rent Control Court shall not give any such direction (for eviction) 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. Here when the prayer is virtually for recovery of the site, by the analogy of the provisions contained in the first proviso to Sub-section (3) of Sec. 11 the Court should necessarily go into the question whether the landlord is possessed of other site where he could construct the building. If he is possessed of another site, he cannot claim recovery of the building in order to

secure the site thereof for the purpose of erecting another building. The reasoning given in paragraph 5 of the order by the District Court that 'when a landlord wants to shift the tutorial institute to a more convenient premises, I do not think he can be directed to put up at a place of the tenant's choice' overlooks the social and economic purpose of the legislation. The assumption that the landlord has any such unfettered choice in the matter will defeat the very object of the protection measure.

11. I think, the approach made by the courts below with respect to the second proviso to Sub-section (3) of Section 11 also is far from correct. The second proviso states that the Rent Controller 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. In this case it is not seriously disputed that the tenant depends for his livelihood mainly on the income derived from the coffee-stall-cum-hotel carried on in the petition schedule building. P. W. 1 in cross-examination has stated that within a radius of one furlong there is no vacant building. It has also to be noted that the tenant's very contention is that he was constrained to agree to occasional increase in rent, in spite of his having effected substantial improvements to the building at his own expense, because no other building was available to him to carry on his trade. The evidence of P. W. 2 is pressed into service to establish that there was one building available. There is no evidence as far as I can see that the building with respect to which P. W. 2 gave evidence is one suitable for conducting a coffee-stall-cum-hotel. The appellate authority and the revisional court appear to have presumed that what is good for a coffee-stall or tea shop is good for a hotel also. The finding entered on such a presumption and on a misreading of the evidence of P. W. 2 cannot be accepted for the obvious reason that the requirements and facilities for a hotel cannot be the same or identical as that for a coffee-stall or tea-stall. Though it may appear to be a question of fact, in the proper analysis it can be found that it is a question on the decision on which would depend the jurisdiction of the Rent Controller to pass an order for eviction. The second proviso requires that where, as in the present case, the tenant depends mainly on the income derived from the trade or business

carried on in the building, and there is no other suitable building available in the locality 'to carry on such trade or business' eviction cannot be ordered. Here there should have been a positive finding that a suitable building for carrying on a hotel-cum-coffee-stall is available in the locality. The only evidence in this regard is that of P. W. 2. It is not his case that the advantage of his building is the same as that of the petition schedule building. It is also not his case that the revision petitioner's trade could be carried on in his building as profitably as in the petition schedule building. The revisional court has disposed of this aspect of the matter observing that this is not a relevant consideration in terms of the proviso to Sub-section (3) of Section 11. In my view, however, it is a relevant consideration. Otherwise there is no meaning in the proviso requiring that there should be a building available to the tenant in the locality where he could carry on such business or trade. What the legislature contemplated, it seems to me, is the availability of a building in the locality where the revision petitioner-tenant could carry on his avocation without sacrificing his business interest or putting him to any undue hardship. Moreover, at the time when the petition came up for consideration P. W. 2's building had not fallen vacant, and even if it falls vacant on a future date, according to P. W. 2, himself, he would not have rented out the building to any particular tenant for more than one year. The tenant should not be penalised for not having searched for and procured another building in anticipation of an eviction order that may be passed against him, and the point of time material for determining the availability of other suitable building, it appears to me, is the time of passing the eviction order. It is not in evidence as to what the expected rent of P. W. 2's building is, what the plinth area is, what the comparative advantages of the two buildings are etc., which are all very material factors for taking a decision on this aspect of the matter. I am clear in my mind that the tenant should not be driven into an unenviable position where, after surrendering the building in his occupation, in his desperate pursuit for procuring another building of equal advantage, he has to place himself at the mercy of a landlord who would not allow him business to take root by requiring him to surrender the building at the end of each year. Judicial conscience and sense of social justice will not allow the courts to shut their eyes to realities of life and countenance the attempts of the landlord to evict the tenant, which, in the ultimate analysis would deprive him of his avocation, and in the results, of his very means

of livelihood. The provisions of the ameliorative legislative measures to be meaningful in practice have to be so given effect to as to render assistance to the tenant to enjoy the benefits and protections granted in his favour in the interest of social security.

12. On an anxious and careful consideration of the matter I have come to the conclusion that this is eminently a fit case for remand to the Rent Controller for a fresh disposal. The finding entered by the Rent Controller with respect to the ground under Section 11 (4) (iv) of the Act (bona fide need for reconstruction) is confirmed. The finding entered by the Courts below with respect to the ground under Section 11 (3) (bona fide need for own occupation) is set aside and the matter is remanded to the Rent Controller for fresh disposal as indicated above. Fresh evidence, if any, the parties may be allowed to adduce, should confine to the question remaining to be disposed of. If necessary, a commission may be issued on a motion by any of the parties, for inspecting the relevant sites or properties and submitting a report and plan(s).

13. The revision is disposed of as above; there will be no order as to costs.