

**Vasu Vs. Kallianikutty**

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**Court :** Kerala

**Decided On :** Dec-03-1981

**Reported in :** AIR1982Ker111

**Judge :** M.P. Menon, J.

**Acts :** Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 2, 2(6) and 11(15)

**Appeal No. :** C.R.P. No. 2599 of 1981

**Appellant :** Vasu

**Respondent :** Kallianikutty

**Advocate for Def. :** P.V. Ayyappan and; N.P. Samuel, Advs.

**Advocate for Pet/Ap. :** S. Easwara Iyer and; E. Subramai, Advs.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**M.P. Menon, J.**

1. The landlord sought eviction of the tenant in O. P. 57/62 and got an order in his favour but his petition for execution was dismissed as time-barred. In 1976 another

petition for eviction was filed. The Rent Control Court allowed it. But the appellate authority thought that after the decree in the 1982 petition, there was no landlord-tenant relationship between the parties: and on that basis, it dismissed the eviction petition. The District Court took a different view, in proceedings under Section 20. Hence this revision by the tenant.

2. The main point raised by counsel is this. The parties were landlord and tenant under a contract, prior to 1962. This contractual tenancy was terminated at the time O. P. 57/62 was filed. After such termination and during the pendency of the proceedings there was only what is called a statutory tenancy. This too came to an end when the O. P. was allowed. Thereafter, there was no tenancy of any kind, no landlord-tenant relationship. The Rent Control Court had therefore no jurisdiction to entertain and allow the 1976 petition.

3. The expression 'statutory tenancy' is something coined by the courts to explain the position of a tenant who continues to be in possession of the building during the pendency of Rent Control proceedings. Tenancy is strictly a matter of contract. If it is for a term, it expires at the end of the term. If there is no agreed term, it can be terminated by due notice. When the tenancy is terminated either by efflux of time or by notice, the landlord-tenant relationship ceases to be there. But still the tenant cannot be turned out of the building except under the provisions of the Rent Control Act where that applies. Section 2 (6) of Act 2 of 1965 defines a tenant so as to include a person continuing in possession after the termination of his tenancy. That is, even after the termination of the contractual tenancy he continues to be a tenant for the purposes of the Act. He will have all the rights and obligations of a tenant as defined in the Act, in spite of the termination of his tenancy. It is this peculiar position of his under the provisions of the statute that is denoted by the expression 'statutory tenancy'.

4. What then are the terms or incidents of this peculiar tenancy? Dealing with a similar situation arising under Section 2 (1) of the A. P. Accommodation Control Act, the Supreme Court said that the incidents of such a tenancy and a contractual tenancy 'must be the same', unless any provisions of the Act conveyed a contrary intention (see *Damadilal v. Parashram*. AIR 1976 SC 2229). Therefore, in the

absence of other provisions in Act 2 of 1965 conveying a contrary intention, the position of a statutory tenant is more or less the same as a contractual tenant. The tenancy continues, notwithstanding its termination, with its old incidents.

5. The question then is whether there is anything in Article 2 of 1965 which must lead to a different position. Section 11 (15) is relevant in this context. It provides that where an eviction petition filed by the landlord is dismissed, 'the tenancy shall be deemed to continue on the same terms and conditions as before'. As we have seen, a petition for eviction is normally filed after termination of the contractual tenancy, and the person continuing in possession thereafter during the pendency of the eviction proceedings is a statutory tenant. But when the petition is dismissed, Section 11 (15) provides that he will revert back to the old position. 'The tenancy shall be deemed to continue' on the old terms and conditions. The contractual tenancy is thus resurrected. The statutory tenancy stands converted into the old contractual tenancy, when the eviction petition is dismissed, by virtue of Section 11 (15).

6. Is the position different when the eviction petition is allowed? In fact, that is the argument of counsel Under Section 2 (i) of the M. P. Accommodation Control Act noticed earlier a tenant includes a person continuing in possession after the termination of his tenancy, but does not include one against whom an order for eviction has been made. This latter exclusion is not there in Section 2 (6) of our enactment. Under the Madhya Pradesh Act, the person in occupation of the building ceases to be a tenant under it when an order for eviction is passed against him, but not so under Kerala Act 2/65. The inference is therefore irresistible that under the scheme of our enactment, the person in occupation continues to be a tenant as defined therein even when the eviction petition is allowed. In other words, his statutory tenancy continues; it is not determined by an order of eviction. If the principle laid down in *Damadilal v. Parashram* (AIR 1976 SC 2229) is imported into the context, the position will be that he continues to hold the building under the same old terms and conditions. If it is a case of dismissal of the eviction petition, the contractual tenancy is restored under Section 11 (15): and if it is a case of allowing the eviction petition the tenancy again continues under the old terms and conditions, whatever name you give it, in view of Section 2 (6) (ii). No doubt, there is the distinction that when the eviction petition is allowed, the tenant has to go out; but until that happens he

continues as a tenant at least as defined in the Act. When Section 2 (6) (ii) speaks of termination of tenancy, the reference can only be to the contractual tenancy, 'statutory tenancy' is only a concept evolved by courts to define the relation that subsists after termination of the contractual tenancy. The legislature knows only of one kind of tenancy and one termination; it should have been far from its mind to conceive of the termination of one kind of tenancy and the continuation of another kind.

7. It is now well settled that the provisions of the Rent Control Act have to be construed without importing the technicalities of the Transfer of property Act. There are many provisions in Act 2/65 which legal minds trained in the traditions of the T. P. Act could not digest. Where a landlord seeking eviction for reconstruction succeeds and pulls down the old building, there is no further tenancy to think of, if we go by the time-honoured notions. But the third proviso to Section 11 (4) (iv) provides that the 'tenant' shall have a right to get back into the newly constructed building, with liability to pay fair rent. A fresh tenancy is thus created by the legislature. Similarly, when a landlord gets possession of the building for self-occupation in proceedings under Section 11 (3), the tenant is given a right of re-entry by Section 11 (12) under the circumstances enumerated therein. These are all cases where the old tenancy has ceased to exist, where both the contractual and statutory tenancies are fully terminated. 'Once a tenant always a tenant', one could still say, in the context of these provisions. In these regions, as in others the statute makes little distinction between a contractual tenancy and a statutory tenancy. Section 11 (2) (b) empowers the Rent Control Court to pass an order directing the tenant to put the landlord in possession of the building, if the rent is in arrears. Since Section 11 (2) (a) uses the term 'evict', there can be no doubt that the order passed under Section 11 (2) (b) is an order for eviction. That means that the so-called statutory tenancy is also terminated. Still, the tenancy continues if the arrears are deposited in time under Clause (c). It cannot be said that this provision is peculiar to eviction for arrears of rent only; as already noticed, there are provisions for re-entry in cases governed by Section 11 (3) and Section 11 (4) (iv) also. The object of Act 2/65 is to regulate letting of buildings and to control payment of rent: it is not intended to impose different obligations or confer different rights on a tenant ordered to be evicted compared to one found not liable to be

evicted.

8. Assume for a moment that the petitioner's contentions are valid, that the statutory tenancy also stands terminated with the passing of an order of eviction and that thereafter the person in occupation is no tenant at all, but only a trespasser. The landlord could then sue for recovery of the building in a civil court and the tenant will have no answer to such an action. He will be thrown out. To so construe the provisions of Act 2/65 will be to deprive a tenant of the protection the Act affords. Such a construction will not be in the interests of the class of people the legislature wants to protect, though in a given case like the present, the person concerned would be able to postpone the evil day. If the object and the aim of the enactment is to be kept in mind, a construction which will place more and more people outside the benevolence of the Act has to be avoided.

9. This leads to the second and last contention of the petitioner that instead of allowing eviction, the Rent Control Court should have recorded a finding under the 2nd proviso to Section 11 (1) and relegated the parties to a civil suit. The proviso reads :--

'Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Rent Control Court shall decide whether the denial or claim is bona fide and if it records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and such Court may pass a decree for eviction on any of the grounds mentioned in the section, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.'

The proviso applies to cases where the tenant denies the landlord's title or claims permanent tenancy. The tenant here had no case that the applicant before the Rent Control was not the person entitled to receive rent, if rent was payable. It was not his case that someone else was the landlord. Again, he had no claim to permanent tenancy his case was that he was in the position of a trespasser, and a trespasser cannot have any claim to tenancy, permanent or otherwise. The proviso was therefore not attracted at all.

10. In the light of the above discussion, I have to hold that this revision petition is without merit. It is accordingly dismissed, but without any order as to costs.

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