

K.G. Gopalakrishnan Nair Vs. the Tahsildar and Accommodation Controller

K.G. Gopalakrishnan Nair Vs. the Tahsildar and Accommodation Controller

SooperKanoon Citation : sooperkanoon.com/718423

Court : Kerala

Decided On : Sep-16-1987

Reported in : AIR1988Ker150

Judge : K. Sreedharan, J.

Acts : Kerala Buildings (Lease and Rent Control) (President's) Act, 1965 - Sections 13

Appeal No. : O.P. No. 8643 of 1984

Appellant : K.G. Gopalakrishnan Nair

Respondent : The Tahsildar and Accommodation Controller

Advocate for Def. : Govt. Pleader,; K.K. Chandran Pillai and; Jacob George

Advocate for Pet/Ap. : A. Antony,; Mathew Sharia and; K. Sasidharan, Advs.

Disposition : Petition allowed

Judgement :

ORDER

K. Sreedharan, J.

1. In exercise of the powers under Section 13 of the Kerala Buildings (Lease and Rent Control) Act the first respondent, the Tahsildar and Accommodation

Controller by Ext.P3 order dated 17-6-1983 directed the petitioner to restore the amenities enjoyed by respondents 3 to 7. Petitioner questioned the correctness of Ext.P3 order before the second respondent, Collector. The appeal was dismissed by Ext. P4 order dated 11-9-1984. These orders are under challenge.

2. The petitioner is the owner of an old two storied building situated in Ward No. XII of Muvattupuzha Municipality. Respondents 3 to 7 are the tenants occupying the rooms in that building. In front of the building there were steps for entry into it from the road. Since those steps were constructed encroaching into the poramboke land, proceedings under the Land Conservancy Act were initiated against the petitioner by the Tahsildar, Muvattupuzha. In pursuance to the orders passed by the Tahsildar under the said Act petitioner was compelled to remove the steps. This removal of steps according to respondents 3 to 7 amounted to cutting off or withholding the amenity enjoyed by them. Consequently they approached the second respondent to take action under Section 13 of the Kerala Building (Lease and Rent Control) Act. Thereupon the Tahsildar passed Ext.P3 order. It was confirmed by the first respondent in Ext.P4.

3. The short question that arises for consideration is whether the second respondent was justified in initiating proceedings under Section 13 of the Kerala Buildings (Lease and Rent Control) Act. Clause (1) of Section 13 provides that no landlord should without just or sufficient cause cut off or withhold any of the amenities enjoyed by the tenant. As per Clause (2) of that Section if the landlord violates the above mandate, the tenant can approach the Accommodation Controller and the Accommodation Controller in his turn will be justified in taking action as provided by the remaining clauses of the said Section. In other words, the Accommodation Controller can exercise jurisdiction under Section 13 of the Act only if the landlord cuts off or withholds any of the amenities enjoyed by the tenant without just or sufficient cause. On reading the Section it appears that if the landlord cuts off or withholds any of the amenities enjoyed by the tenant, with just or sufficient cause the Accommodation Controller cannot give any direction to the landlord in exercise of the powers under Section 13 of the Act.

4 The building occupied by respondents 3 to 7 had a flight of steps for entry into it from the main road. The steps were constructed on Government road poramboke. To remove the encroachment the Tahsildar Muvattupuzha initiated proceedings under the Land Conservancy Act. The Tahsildar directed the landlord, the petitioner here in to remove those steps. In obedience of that order the petitioner removed those steps. That removal cannot by any stretch of imagination be taken as one without just or sufficient cause. In such a situation the removal of the steps effected by the petitioner even if it cut off or withheld some of the amenities enjoyed by the tenant, it will not authorise the Accommodation Controller to take action under Section 13 of the Kerala Buildings (Lease and Rent Control) Act because steps were removed for just and sufficient cause. In this view of the matter, the order Ext.P3 passed by the second respondent and Ext.P4 passed by the first respondent in appeal confirming Ext.P3 are without jurisdiction. I set aside those orders.

The result, therefore, is the original petition is allowed. Exts.P3 and P4 orders are quashed. I make no order as to costs.

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