

Jamal Vs. Nafeesu

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Court : Kerala

Decided On : Jan-19-2005

Reported in : 2005(2)KLT53

Judge : K.S. Radhakrishnan,; A.K. Basheer and; M.N. Krishnan, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 1 and 11(4); General Clauses Act - Sections 1(4) and 3(13)

Appeal No. : C.R.P. No. 2326 of 1998

Appellant : Jamal

Respondent : Nafeesu

Advocate for Def. : A.P. Chandrasekharan,; Kodoth Pushparajan and; M. Krishn

Advocate for Pet/Ap. : A.V.M. Salahuddin, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

K.S. Radhakrishnan, J.

1. Right to seek an order of eviction under Section 11(4)(i) would be available to a landlord from the date of commencement of Act 2 of 1965 or from the date when

the Act has been made applicable to the area notified by the Government under Section 1(3) of the Act is the question that arises for consideration in this case.

2. A Division Bench of this Court in *Kumaran v. Jose*, 2001 (2) KLT 464, took the view that a landlord would be entitled to an order of eviction under Section 11(4)(i) of the Act only if he establishes that there was an unauthorised subletting of the tenanted premises without his consent after the publication of the notification making the Act applicable to the said area in question. Division Bench placed reliance on the decisions of the Supreme Court in *Gurcharan Singh v. V.K. Kaushal*, (1980) 4 SCC 244 and *Tirath Ram Gupta v. Gumbachan Singh*, (1987) 1 SCC 712. A Division Bench consisting of K.S. Radhakrishnan, J. and Pius C. Kuriakose, J. doubted the correctness of the decision in *Kumaran* 's case in the context of various provisions of the Kerala Rent Act and referred the matter to a Larger Bench for an authoritative pronouncement. In the reference order the Bench opined as follows:

'Section 1(3) also enables the Government by notification in the Gazette, apply all or any of the provisions of the Act to any other area in the State with effect from such date as may be specified in the notification. The date 1.4.1965, i.e., date of commencement of the Act, is a crucial date in the matter of application of Section 11(4)(i) and not the date by which the Government issues the notification extending the provisions of the Act to various areas. If the Legislature wanted the date by which the Government issues the notification as a crucial date that would have been so provided under Section 11(4)(i). Section 11(4)(i) uses the expression 'commencement of this Act', a date which is certain. If the date of extension of the provision of the Act to other areas is reckoned there will be different dates for the commencement of the Act. The date of commencement of the Act is 1.4.1965 and not on the dates of the notifications extending the Act to various areas in the State of Kerala'.

The Division Bench in *Kumaran*'s case held as follows:

'On the wordings of Section 11(4)(i) of the Act, it is clear that the subletting must be after the commencement of the Act. The question, with reference to a legislation in *pari materia* has been considered by the Supreme Court in

Gurucharan Singh v. V.K. Kaushal, (1980) 4 SCC 244. There under Section 13(2) of the East Punjab Urban Rent Restriction Act, a subletting after the commencement of that Act furnished a ground for eviction. The Supreme Court held, on a consideration of the relevant provisions that, since the relevant subsection confines its scope to sub-leases granted after the commencement of the Act, even though such subletting continues to subsist, since the subletting took place prior to the date on which the Act was brought into operation in the area in question by a notification, the subletting would not furnish the landlord with a cause of action for eviction. This view was reiterated by the Supreme Court in Tirath Ram Gupta v. Gurubachan Singh, 1987 (1) SCC 712. There in also it was held that a subletting before the extension of the Act to the area in question would not entitle a landlord to claim an order for eviction on the ground of subletting under the East Punjab Urban Rent Restriction Act, 1949'.

We are of the view the Division Bench has not correctly understood the scope of the above mentioned decisions of the Apex Court in Gurucharan Singh's case and Tirath Ram Gupta's case which are distinguishable on facts and on law. The Apex Court was dealing with the provisions of the Punjab Urban Rent Restriction Act, 1949 and the Cantonments (Extension of Rent Control Laws) Act, 1957. In that case landlord applied under Section 13(2)(ii)(a) of the East Punjab Urban Rent Restriction Act, 1949 for eviction on the ground of subletting. Landlord claimed that the shop had been let out to the first appellant, Gurcharan Singh, but that he had without the written consent of the landlord, sublet the shop to his father, Gurdayal Singh and his brothers, Anoop Singh and Jagjit Singh. Rent Control Court found in favour of the landlord and ordered eviction which was subsequently affirmed by the Appellate Authority. Order was later confirmed by the High Court. Contention was raised that East Punjab Urban Rent Restriction Act, 1949 was not available to the landlord because on the date when the subletting took place that Act was not in force in the Ambala Cantonment. Section 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957, empowered the Central Government to extend, by notification, to any cantonment relating to the control of rent and regulation of house accommodation which was in force on the date of the notification in the State in which the cantonment was situated. In exercise of that power, the Central Government issued notification No. SRO-7 dated November 21, 1969 extending

the East Punjab Urban Rent Restriction Act, 1949 to cantonments in the States of Haryana and Punjab. Consequently, with effect from November 21, 1969 the East Punjab Urban Rent Restriction Act became a law operating in the cantonment. Section 3(2) of the Cantonments (Extension of Rent Control Laws) Act, 1957 speaks of 'the commencement of this Act'. Apex Court in paragraph 13 of the judgment states that the words 'this Act' refer to the principal Act in which Section 3(2) is inserted by virtue of the amendment, and that Act, by virtue of Section 2(2) as amended, must be deemed to have come into force on January, 26, 1950. Section 3(2) was added in the principal Act and it provided:

The extension of any enactment under Sub-section (1) may be made from such earlier or future date as the Central Government may think fit:

Provided that no such extension shall be made from a date earlier than--

- (a) the commencement of such enactment, or
- (b) the establishment of the cantonment, or
- (c) the commencement of this Act,

whichever is later.

The expression 'the commencement of this Act' as held in paragraph 13 of the judgment, refer to the principal Act in which Section 3(2) is inserted by virtue of the amendment. Principal Act is the Cantonment (Extension of Rent Control Laws) Act, 1957 and not the Punjab Urban Rent Restriction Act. The Apex Court ultimately ruled in favour of the landlord and upheld the order of eviction on the ground of subletting. In Gurucharan Singh's case as well as in Tirath Ram Gupta's case the words 'commencement of this Act' are used in a different context, unlike the Kerala Rent Act.

3. There is no parallel legislation like Cantonments (Extension of Rent Control Laws) Act, 1957 in the State of Kerala. The Kerala Buildings (Lease & Rent Control) Act, 1965 was enacted to regulate the leasing of buildings and to control rent of such buildings in the State of Kerala. Section 1 of the Kerala Act deals with

short title, extent, application and commencement. Section 1(2) states that the Act extends to the whole of the State of Kerala and Section 1 (3) deals with application of the Act to different areas and Section 1(4) deals with commencement. So far as Act 2 of 1965 is concerned Legislature used the expressions 'extent' 'application' and 'commencement'. Section 11(4)(i) has used the expression commencement of this Act and not the expression 'application'. Application of the Act to any area and commencement of the Act have different meaning and import so far as Act 2 of 1965 is concerned. Kerala Rent Act came into force on 1.4.1965. The application of the Act to the area in question in the instant case is from 7.8.1990. In this connection we may refer to Section 1 which reads as follows:

1. Short title, extent, application and commencement-- (1) This Act may be called the Kerala Buildings (Lease & Rent Control) Act, 1965.

(2) It extends to the whole of the State of Kerala.

(3) It applies to the areas mentioned in the Schedule and the Government may by notification in the Gazette, apply all or any of the provisions of this Act to any other area in the State with effect from such date as may be specified in the notification, and may, by like notification, cancel or modify such notification or withdraw the application of all or any of the provisions of this Act from any area mentioned in the Schedule.

Provided that no such notification shall be issued unless it is supported by a resolution passed by the local authority or authorities, if any, of the areas affected by the notification.

(4) It shall be deemed to have come into force on the first day of April, 1965.

We may extract Section 11(4)(i) also for easy reference:

'11(4)(i). If the tenant after the commencement of this Act, without the consent of the landlord, transfers his right under the lease or sub-lets the entire building or any portion thereof if the lease does not confer on him any right to do so:

Provided that an application under this clause shall not be made for the first time in respect of one and the same tenancy unless the landlord has sent a registered notice to the tenant intimating the contravention of the said condition of the lease and the tenant has failed to terminate the transfer or the sub-lease, as the case may be, within thirty days of the receipt of the notice or the refusal thereof.

Explanation:-- Where on the partition of a joint family or of the rights of co-tenants or on the dissolution of a firm, the right of the joint family or the co-tenants or the firm under a lease is vested in a member of the joint family, or a co-tenant or a partner, as the case may be, whether by act of parties or otherwise, no transfer by the tenant of his right under the lease shall be deemed to have taken place within the meaning of this clause'.

Section 11(4)(i) takes in the words 'commencement of this Act' means commencement of the Kerala Rent Control Act and not the application of that Act in the area concerned. Section 3(13) of the General Clauses Act also explains the meaning of the word 'commencement', that word used with reference to an Act or regulation, shall mean the day on which the Act or regulation comes into force. When we read Sub-section (4) of Section (1) with Section 3(13) of the General Clauses Act and Section 11(4)(i) it is clear that the words 'commencement of the Act' used in Section 11(4)(i) is the commencement of the Kerala Rent Act, that is, 1.4.1965 and not the date of application of the Act to the Panchayat in question. Resultantly we are unable to concur with the views expressed by the Division Bench in Kumaran's case and the said decision therefore would stand overruled.

4. In our view, the above interpretation would also advance the cause of justice. Landlady had earlier filed the suit OS .754/88 for eviction of the tenant on the ground of unauthorised subletting, since Rent Act was not made applicable to Puthupadi Panchayat. While the suit was pending Government issued a notification SRO. 1126/90 in exercise of the powers conferred under Sub-section (3) of Section 1 of Act 2 of 1965 applying all the provisions of the said Act to the Puthupadi Panchayat area in the Kozhikode District with effect from the date of publication of the notification in the Gazette, that on 7.8.1990. Consequently, landlady had to withdraw the suit since no suit for eviction would lie due to the

application of Rent Act to Puthupadi Panchayat. She then preferred RCP. 100 of 1991 before the Rent Control Court, Kozhikode for eviction under Section 11(2)(b) and Section 11(4)(i) of the Act. Contention is now raised that subsequent to application of the Rent Act to Puthuppadi Panchayat claim for eviction under Section 11(4)(i) would not lie in view of the ruling in Kumaran's case since subletting was prior to the date of application of the Act to the Puthuppadi Panchayat. Upholding that contention means she would be left with no remedy, she can neither prosecute the civil suit nor she can pursue the claim under the Rent Control Act.

5. *Lex semper dabit remedium* is well accepted principle of law. If a man has a right, he must, it has been observed by Holl C.J. in *Ashby v. White* 'have a means to vindicate and maintain it, and a remedy if he is injured in exercise and enjoyment of it, and indeed, it is a vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal'. She is legally entitled to get her right enforced since rent deed itself says that the tenant shall not sublease the premises without the knowledge of the landlady. We therefore hold that the right to seek an order of eviction is available to the landlady under Section 11(4)(i) from the date of the commencement of Act 2 of 1965 and not the date on which the Act was made applicable to the area in question. Rent Control Court and Appellate Authority have concurrently found that the tenant has sublet the premises without the knowledge and consent of the landlady. Facts would evidently show that second respondent is in exclusive possession of upstairs portion of the building. Neither the tenant nor the second respondent has got any case that there is acquiescence on the part of the landlord. They have also not adduced any evidence to substantiate their contention.

6. Under such circumstance we find no reason to interfere with the concurrent findings rendered by the Rent Control Court and Appellate Authority that the landlord is entitled to get eviction under Sections 11(4)(i) of the Act. We have already answered the question of law in favour of the landlady.

Revision lacks merits and the same would stand dismissed.

