

George Vs. Oommen

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Court : Kerala

Decided On : Feb-07-2005

Reported in : 2005(2)KLT92

Judge : R. Bhaskaran and; K.T. Sankaran, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act - Sections 11(3) and 20;
State Financial Corporations Act - Sections 29; Kerala Land Reforms Act

Appeal No. : R.C.R. No. 43 of 2005

Appellant : George

Respondent : Oommen

Advocate for Pet/Ap. : K.P. Dandapani, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

K.T. Sankaran, J.

1. The tenant is the revision petitioner. Respondent/landlord filed R.C.P. No. 3 of 1997 before the Rent Control Court, Chengannur under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as 'the Rent

Control Act') against the petitioner herein. The Rent Control Court held that the bona fide need is not established. With regard to the benefit of the second proviso to Section 11(3) of the Act, the Rent Control Court held against the tenant. The landlord filed R.C.A. No. 7 of 2000 before the Additional Rent Control Appellate Authority I, Mavelikkara, challenging the order of the Rent Control Court. The tenant filed a Memorandum of Cross Objection challenging the finding of the Rent Control Court that the tenant is not entitled to the benefit of the second proviso to Section 11 (3). The Appellate Authority allowed the appeal and ordered eviction under Section 11 (3) of the Act. The Memorandum of Cross Objection filed by the tenant was dismissed. The Rent Control Revision is filed by the tenant challenging the judgment of the Appellate Authority.

2. The petition schedule building belonged to Sri. Chacko, the father of the landlord. Sri. Chacko died in 1960. His rights devolved on his widow Sosamma and children including the petitioner in the Rent Control Petition. The properties left behind by Sri. Chacko were partitioned as per partition deed dated 25.11.1978, As per the partition deed, the petition schedule building was allotted to the petitioner in the Rent Control Petition. It was contended by the landlord that the petition schedule building was entrusted to the tenant in the year 1970 by Sosamma, the mother of the landlord, Sosamma having life interest as per the partition deed of 1978. Sosamma died in the year 1995. The landlord contended that after the death of his mother Sosamma, he became the absolute owner of the petition schedule building. The rent originally fixed was Rs. 500/- and it was being enhanced periodically. The present rent is Rs. 1,200/- per month.

3. The landlord and his son Cherian were conducting business under the name and style 'Jaycee Advertisers' in a building complex called Mullassery Estate as per Ext.A1 licence granted by the owner of the building. The owner of that building had taken loan from the Kerala Financial Corporation. As default was committed in repayment of the loan, the Kerala Financial Corporation took over the building under Section 29 of the State Financial Corporations Act. Ext.A2 notice was issued by the Kerala Financial Corporation to the present landlord directing him to vacate the room in Mullassery Estate. Obeying the notice, the landlord and his son Cherian vacated that premises. Another son of the landlord, viz. Jacob, had taken

room No. 120 in Ward No. 13 of Chengannur Municipality for the purpose of running a book stall. The landlord contended that he started running his business, viz. 'Jaycee Advertisers' in the building taken on rent by his son Jacob on a temporary basis.

4. The landlord further contended that on receipt of Ext.A2 notice issued by the Kerala Financial Corporation, a notice was issued to the tenant requesting him to vacate the petition schedule building. Bona fide need for own occupation of the landlord was put forward in the Rent Control Petition as the ground for eviction, the purpose being for re-commencement of the business of 'Jaycee Advertisers'.

5. The tenant contended that the petition schedule building was taken on rent in 1969 by him and his partner Bavunni from the mother of the landlord. The business was being conducted by the tenant and Bavunni on partnership basis. Later, in the same year, Bavunni retired from the partnership and started another business. The partnership was dissolved and the tenant continued the business independently. However, the tenant admitted attornment to the landlord after the partition among the landlord and the other co-owners in the year 1978. The present rate of rent is also admitted. The bona fide need alleged by the landlord was denied by the tenant. It was contended that the landlord voluntarily surrendered the building in Mullassery Estate and he was not legally bound to surrender that building. The tenant contended that the landlord could have continued his business in Mullassery Estate itself and the surrender was made only as a ruse for evicting the tenant from the petition schedule building. According to the tenant, he is mainly depending on the income derived from the business conducted in the petition schedule building and there is no other suitable building available in the locality for shifting his business.

6. The Rent Control Court found that the bona fide need is not established, on the ground that the landlord was not legally bound to vacate the room in his possession in Mullassery Estate and that he could have continued the business there. Another ground on which the bona fide need is negatived is that the business of 'Jaycee Advertisers' is not being run now. The contention raised by the tenant that on Ext.A2 notice being issued by the Kerala Financial Corporation, the

landlord was not bound to vacate the room in Mullassery Estate was apparently accepted by the Rent Control Court.

7. It cannot be said that the Rent Control Act prohibits the tenant from vacating the premises taken on rent by him on a request made by the landlord. When such surrender is made by a tenant, it is not illegal. Such surrender would not be against public policy. A tenant coming within the purview of the Rent Control Act does not have any fixity of tenure. Under the Kerala Land Reforms Act, certain categories of tenants have fixity of tenure and they are not liable to be evicted. They are entitled to purchase the right, title and interest of the landlord and intermediaries. When such a protected tenant surrenders the tenanted premises to the landlord, certain restrictions are stipulated in the Land Reforms Act for the same. No such restrictions are provided in the Rent Control Act. Under the Rent Control Act, there is no vested right in the tenant to hold the tenanted building for ever. There is no right vested in him to get title in respect of the tenanted building. Therefore, even if the landlord in the present case had surrendered the tenanted premises in Mullassery Estate, it cannot be said that it was an illegal or improper act or that it was against the provisions of the Rent Control Act. Surrender of the building by the tenant at the request of the landlord, would only promote healthy business relations. Once a building is let, it is lost for the landlord forever; once a building is taken on rent, it need not be surrendered - Such a trend would not promote a healthy business atmosphere. Any interpretation which would have a catalytic effect to such a trend, would be far from satisfactory. Therefore, it cannot be said that the surrender of the building by the landlord in Mullassery Estate was a ruse for evicting the tenant from the petition schedule building.

8. The Kerala Buildings (Lease and Rent Control) Act is enacted 'to regulate the leasing of buildings and to control the rent of such buildings in the State of Kerala'. The Act is not intended to confer permanent rights to the tenant. It does not give unfettered rights to the landlords to evict their tenants indiscriminately. The Act, however, provides protection to the tenants from the threat of eviction on unreasonable grounds. The scheme of the Act is such that specific grounds are provided for getting an order of eviction; bona fide need of the landlord being one such ground. A genuine-need put * forward by the landlord cannot be defeated on

unreasonable grounds. The tenant is always entitled to surrender the tenanted premises, subject of course, to the contract between the parties. In the case on hand, the respondent herein had to take a building on license to conduct his business, while the Revision Petitioner was enjoying the tenancy rights in respect of the petition schedule building. The respondent-landlord had to vacate the building in his occupation when the Kerala Financial Corporation took over that building. Thereafter, the landlord approached the Rent Control Court to get an order of eviction in respect of the petition schedule building. To hold that this need is not bona fide (as did by the Rent Control Court) would be putting an unreasonable restriction on the rights of the landlord under Section 11(3) of the Act.

9. It is true that the landlord had to discontinue his business of 'Jaycee Advertisers' since he had surrendered the building in Mullassery Estate. Though he continued the business for some time in the premises taken on rent by his son Jacob, that was discontinued due to lack of sufficient space and other circumstances as spoken to by the landlord in his evidence. Therefore, it cannot be said that mere discontinuance of the business for a temporary period by the landlord is a ground for denying the benefit of Section 11(3) in his favour. Even if a fresh business is to be started in the petition schedule building, such need cannot be denied on the ground that the business run by the landlord earlier was discontinued. The contention raised by the tenant in this regard is absolutely unsustainable. The Rent Control Court should not have denied relief to the landlord on conclusions which are founded on a negative approach to the questions involved. Rent Control Act is not intended to give protection only to the tenants. It is enacted to protect the rights of landlords as well.

10. The finding arrived at by the Rent Control Court is wrong and the denial of the relief under Section 11(3) was not justified. The Appellate Authority was justified in reversing the order of the Rent Control Court and in allowing the R.C.P. under Section 11(3) of the Act. There is no infirmity in the judgment of the Appellate Authority warranting interference under Section 20 of the Rent Control Act.

11. The finding arrived at by the Rent Control Court that the tenant is not entitled to the benefit of the second proviso to Section 11(3) of the Rent Control Act was rightly , confirmed by the Appellate Authority by dismissing the memorandum of cross objection. No interference is called for in that regard as well.

12. There is no merit in the Rent Control Revision and the same is accordingly dismissed. However, considering the fact that the tenant is running a stationary business in the tenanted building for the last several years and that periodical increase in rent was made by the landlord, it is only just and reasonable to grant a reasonable time to the tenant to vacate the petition schedule building. The revision petitioner/tenant is granted time to vacate the building on or before 31.5.2005. The revision petitioner will be entitled to this benefit only if he deposits the arrears of rent, if any, before the Rent Control Court within a period of one month from today and continues to deposit the monthly rent without fail. The revision petitioner/tenant shall also file an undertaking before the Rent Control Court within a period of three weeks from today unconditionally undertaking to vacate the building on or before 31.5.2005. If the undertaking is not filed or if the tenant fails to deposit the arrears of rent as mentioned above, the order of eviction shall be executable forthwith.