

Madhavan Vs. Leelamma

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Court : Kerala

Decided On : Apr-05-1991

Reported in : AIR1992Ker245

Judge : Varghese Kalliath and; L. Manoharan, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 20

Appeal No. : C.R.P. No. 1341 of 1990

Appellant : Madhavan

Respondent : Leelamma

Advocate for Def. : C. Pius Kuriakose, Adv.

Advocate for Pet/Ap. : B. Gopakumar, Adv.

Disposition : Revision dismissed

Judgement :

Varghese Kalliath, J.

1. The tenant against whom an order of eviction under Section 11(4) (iv) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as 'the Act') was passed by the Rent Control Court which has been confirmed by the appellate authority is the revision petitioner. The landlady purchased two shop rooms in a

big building having 9 shop rooms. In one of the shop rooms, the landlady was also doing some business. She purchased 3 shop rooms including the 2 rooms occupied by the revision petitioners in this case and C.R.P. No. 446/91.

2. The landlady filed an application under Section 112(4)(iv) of the Act. Section 11(4) (iv) of the Act provides thus :-

'if the building is in such a condition that it needs reconstruction and if the landlord requires bona fide to reconstruct the same and if he satisfies the Court that he has the plan and licence, if any required, and the ability to rebuild and if the proposal is not made as a pretext for eviction'.

The landlady in the eviction petition only said that the building needs reconstruction. The revision petitioner herein objected the petition stating that the landlady does not require the building for the purpose of reconstruction and the ground alleged is only a ruse for getting eviction of the petitioner. Of course, the tenant submitted that he was in occupation of the building from 1937 onwards, paying a rent of Rs. 10/- per month.

3. It is not disputed that the building is in a very commercially important locality in Tripunithura Municipality. The case of the landlady is that the locality has improved very much and there are modern buildings and the building in question is an old building and if the building is reconstructed, it will be economically profitable to the landlady. The Rent Control Court considered the evidence in the case and held that the landlady has established the case under Section 11(4) (iv) of the Act. The tenant filed an appeal before the appellate authority. The appellate authority confirmed the order of the Rent Control Court. Now the tenant has come up in revision before this Court.

4. Before considering the evidence in this case, we must note the fact that the jurisdiction we are exercising in this Civil Revision Petition is a jurisdiction granted by the statute under Section 20 of the Act. Section 20 of the Act of course allows this Court to examine the evidence to satisfy whether the orders passed by the lower authorities did not suffer from the vice of illegality, irregularity and impropriety. In considering this aspect of the matter, this Court had occasion to

say that the revisional court has got the power to examine the evidence. But the examination should not be a re-appraisal of the evidence for the purpose of recording an independent finding, but the re-appraisal of the evidence should be for the purpose of testing whether the order and judgment of the Rent Control Court and the appellate authority are not vitiated by any of the vices stated in Section 20 of the Act.

5. Counsel for the petitioner submitted that the landlady has not filed a proper application for eviction on the ground of reconstruction under Section 11(4)(iv) of the Act. He submitted that the necessary averments attracting the ground under Section 11(4)(iv) of the Act have not been made in the pleadings. He emphasised that it is not a defective pleading, but it is a case of lack of pleading. Of course, the landlady has said that the building needs reconstruction and the eviction is sought under Section 11(4) (iv) of the Act. Section 11(4)(iv) of the Act makes it clear that the building should be in such a condition that it needs reconstruction. Counsel submitted that the statement in the petition that the building needs reconstruction alone without stating that the building is in such a condition that it needs reconstruction is not adequate for the purpose of eviction on the ground of reconstruction under Section 11(4)(iv) of the Act. Certainly, the pleading would have given more details, But it cannot be said that there is no pleading at all. At the worst, it can be said that the pleading is lacking in precision. In the matter of pleadings a liberal view has to be taken and that is the trend of the decisions.

6. Counsel for the respondent invited our attention to a recent Division Bench decision of this Court reported in (1991) 1 Ker LJ 311 (Narayani v. District Judge) and reiterated the view that meticulous analysis of pleadings should not be adopted, which will lead to failure of justice. It does not mean that proper pleadings are not necessary in proceedings under the Act. If taking the entire circumstances emerged in the case, if the court feels that no prejudice has been caused to the counter petitioner/tenant on account of the pleadings of the petitioner, it is not proper to deny the relief to the petitioner on the ground that there is no pleading.

7. Counsel for the respondent submitted that in this case, the petitioner herein (counter petitioner) has not suffered any prejudice, since the counter petitioner has

very clearly understood the scope of the petition and the ground alleged for seeking eviction of the counter petitioner. This fact is evident from the objection filed by the counter petitioner (revision petitioner herein). We do not think that there is any merit in the submission that there is no pleading in this case to attract Section 11 (4)(iv) of the Act.

8. Counsel for the petitioner submitted that there is no case proved in this case as regards the structural condition of the building. Even in the evidence, the petitioner only stated that the building is very old and that the locality has been improved and so the building needs reconstruction. According to him, this evidence is insufficient. Counsel for the petitioner submitted that in considering a question under Section 11(4)(iv) of the Act the primary consideration of the court should be directed as to the condition of the building, particularly the physical condition of the building.

9. Importance, in considering the question under Section 11(4)(iv) of the Act, to the structural condition of the building was given in the decision reported in 1981 Ker LT 502 : (AIR 1981 Kerala 261)(Thanka v. Narayani). M. P. Menon, J. said in unequivocal terms that 'what is fundamental is the physical condition of the building'. His Lordship explained the idea by saying that 'When the legislature wants you to look at the condition of a building for deciding whether it needs reconstruction, the word 'condition' has to be understood in its ordinary sense i.e., circumstances essential to a thing's existence. At any rate, you cannot look at it like a town-planner or an investor. Conditions surrounding the building are not the same as the condition of the building, the nature of the locality, the size of the - landlord's bank balance and the attractive features of the new edifice proposed may have some relevance to the question of the landlord's bona fides; but these cannot be decisive in assessing the need to reconstruct the existing building'. Plainly and clearly this view is inconsistent with the view taken by Justice Krishna Iyer in 1970 Ker LT 257 (Kalliani v. Madhavi). His Lordship said 'Here, it is argued that the stress is upon the physical condition of the building. I do not agree. If eviction can be had only on the Court being satisfied that the physical condition of the building is on the verge of collapse, there is no doubt that few buildings could be evicted before they have actually collapsed. Knowing the length of time taken in

rent control litigation in Kerala, -- not unusual to find the period between the institution of an application and its ultimate disposal in the revisional court lengthening into several years -- if a building perilously close to sinking alone can justify a petition under Section 11(4)(iv) in a State with heavy monsoons, I do not know what purpose would be served by such a course except to endanger the lives of tenants. It is obvious, therefore, that a wider and more realistic meaning must be given to the expression 'condition of the building'.

10. From the above, it is clear that Justice Krishna Iyer has understood the condition of the building stated in Section 11(4)(iv) of the Act in a totally different manner. Of course, in spite of this decision, Justice M.P. Menon expressed His Lordship's view in 1981 Ker LT 502 : (AIR 1981 Kerala 261). This leads to a reference to a Division Bench for a proper understanding of the content and scope of the condition of the building stated in Section 11(4)(iv) of the Act. A Division Bench of this Court held in 1984 Ker LT 845 (Balagangadhara Menon v. T.V. Peter) that what Justice M.P. Menon held is not the correct law the Division Bench said thus:--

'This is far from eliminating these factors out of consideration as sought to be made out by counsel for the tenants. To make a brief reference to the earlier decision, in 1967 Ker LT 841 K.K. Mathew, J. held following a still earlier decision, ILR (1964) 1 Ker 254 that the court can have regard to the area where the building is situated, the nature of the developments that are taking place in the area etc. Substantially the same view was taken by V.R. Krishna Iyer J. in 1970 Ker LT 257. One of the latest decisions where the same view is reported is 1979 Ker LT 397 where Vadakkal J. referred to the relevant earlier cases of this Court on this aspect. 1981 Ker LT 502 : (AIR 1981 Kerala 261) is silent about the earlier case law. We find it unable to agree with the narrow view laid down in 1981 Ker LT 502 : (AIR 1981 Kerala 261) on this aspect'.

11. Counsel for the petitioner was emphasising his point that there is no evidence in this case that the condition of the building, particularly the structural or physical condition of the building is such that it requires reconstruction. Counsel also referred us to the recent decision of the Supreme Court reported in (1991) 1 SCC

301 (P. Orr And Sons (P) Ltd. v Associated Publishers (Madras) Ltd.). This was a case under Tamil Nadu Rent Control and Eviction Act. The court was considering the scope and content of the provisions contained in Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act. The said provision reads thus:--

'14. Recovery of possession by landlord for repairs or for reconstruction :-- (1) Notwithstanding anything contained in this Act, but subject to the provisions of Sections 12 and 13, on an application made by a landlord, the Controller shall, if he is satisfied-

(a).....

(b) that the building is bona fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, pass an order directing the tenant to deliver possession of the building to the landlord before a specified date'.

The Supreme Court, construing the provision, particularly the word 'immediate purpose of demolishing', said that 'what Section 14 speaks of is a requirement emanating from the condition of the building, and the bona fide character of the requirement is decided with reference to that condition as well as other factors germane to that requirement, such as the ability of the landlord to carry out the repairs or reconstruction, the location of the building, and other conditions indicating the reasonableness of the demand for recovery of possession for further investment; but the overriding consideration, whether it is a case of repair or reconstruction, is the condition of the building itself. When the court has said 'is the condition of the building itself', it is reasonably possible to understand that the condition mentioned there is the physical condition of the building, the case itself in paragraph 15, perhaps knowing the peculiar provisions in the Kerala Buildings (Lease and Rent Control) Act, Justice Kochu Thommen said that 'The absence of any provision to compel reinduction of the tenant after reconstruction or to compel reconstruction after demolition and the non-applicability of the Act for a period of five years after reconstruction makes imperative that the reasonableness of the landlord's requirement should be considered with care and caution, bearing in

mind the fundamental legislative object to protect the tenant from unreasonable eviction'.

12. From the above quote, it is very clear that the correct provision allowing reinduction of the tenant has got very significant and important role to construe the provisions contained, in Section 11(4)(iv) of the Act. This aspect of the matter has been considered in AIR 1979 SC 1559 (Metalware & Co. v. Bansilal). Considering the same Act, Justice Tulzapurkar said that 'It is not possible to accept this contention for the simple reason that though the words employed in two enactments may be the same or identical their construction may not be the same and would vary depending upon other cognate provisions of and the scheme of each enactment'. As far as the provisions contained in the Kerala Act, there are sufficient safeguards for the tenant who has been evicted on the ground of reconstruction. The tenant should be assured of reinduction in the new building constructed by the landlord. If this is not done, there are other penal provisions contained in the enactment. In this view, we feel that the decision reported in (1991) 1 SCC 301 would not be of much assistance to the petitioner in this case.

13. Now, we shall advert to some facts of this case in regard to the condition of the building. A commission was appointed to examine the condition of the building and the Commissioner has reported that the building is in a state of damaged condition. Several damages have been pointed out in the commission report. Of course, it has to be remembered that it is a tiled building, which is aged 50 years. The Commissioner and other witnesses have said that the locality has improved very much and several new buildings have come up in that area.

14. Counsel for the petitioner submitted that the building proposed to be constructed is after demolition of a part of the big building having several shop rooms and that the neighbouring owners may object to the construction of the building and so the authorities ought to have taken into account this aspect of the matter also. This question is really a salient question in regard to examination of the fact whether the landlady has established her case under Section 11(4)(iv) of the Act. It is possible to envisage oppositions for reconstruction of a building from the neighbouring owners on some grounds or other. Same, is the position in this

case also. Anticipating that the landlady cannot construct the proposed building on the basis of a possibility of some objections by the neighbouring owners, it is difficult for the Rent . Control Court to refuse eviction under Section 11(4)(iv) of the Act, if what is required under Section 11(4)(iv) is established by the landlady.

15. As we said earlier, in this case, the landlady has established the ground under Section 11(4)(iv) of the Act. The thrust of the argument before the authorities below was that the condition of the building does not require a reconstruction and that though the building is 50 years' old, it is a strong building, the foundation of this argument is also not very strong, if we examine the Commissioner's report.

16. In these circumstances, we do not think that the order passed by the Rent Control Court, which was confirmed by the appellate authority is in any way illegal, irregular or improper within the meaning of Section 20 of the Act and so we cannot interfere with the orders challenged in this Civil Revision Petition. We see no merit in this Civil Revision Petition and it is only to be dismissed. We do so.

17. We direct that the landlady has to reconstruct the building within six months from the date of obtaining possession of the building.