

Cherian Vs. Jessy Was

Cherian Vs. Jessy Was

SooperKanoon Citation : sooperkanoon.com/719775

Court : Kerala

Decided On : Mar-19-2004

Reported in : 2004(2)KLT415

Judge : K.S. Radhakrishnan and; Pius C. Kuriakose, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(4)

Appeal No. : C.R.P. No. 391 of 1998

Appellant : Cherian

Respondent : Jessy Was

Advocate for Def. : A.S.P. Kurup,; K.N.V. Panicker and; Sadchith Kurup,

Advocate for Pet/Ap. : V. Giri, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Pius C. Kuriakose, J.

1. Can an application for appropriate directions regarding reconstruction or re-allotment under the second and third provisos to Section 11(4)(iv) of the Kerala Buildings (Lease and Rent Control) Act, 1965 be maintained by a tenant who has

not been completely evicted from the building which was subject-matter of the R.C.P. or continues to retain possession of a portion of the said building is one of the question arising for consideration in this Civil Revision Petition.

2. The landlord is no more and his son has got himself impleaded as additional revision petitioner. After a prolonged litigation which commenced wayback in 1973, the landlord could obtain an order of eviction against the respondents-tenants (legal heirs of the deceased original tenant) under Section 11(4)(iv). The delay was mainly due to a plea of kudikidappu raised by the tenant which was ultimately repelled by the Land Tribunal upon a reference case initiated in that context. The landlord could obtain possession in execution of the Rent Control Court's order only on 23.6.1993. Eviction order in favour of the landlord directed reconstruction within six months in accordance with municipal building permit Ext. A6 marked in the case. But the long delay in the matter of culmination of the proceedings before the Rent Control Court has had its impact on the validity of Ext.A6. The Alappuzha Development Authority was in the meanwhile constituted and a new scheme and new rules governing building developments within the limits of the Alappuzha Municipality came to be introduced. The Alappuzha Development Authority issued letter to the landlord stating that the area in respect of which Ext.A6 was issued had been ear-marked for residential purposes only under the new Town Planning Scheme and therefore the landlord's application for re validation of Ext.A6 and for permission to reconstruct the old building in accordance with Ext.A6 so that there will be strict compliance with the directions issued by the Rent Control Court regarding reconstruction and reallocation was turned down. The tenants filed I.A.No. 173 of 1994 under the second and third provisos to Section 11(4)(iv) seeking imposition of fine upon the landlord for not having carried out the reconstruction in terms of the eviction order passed under Section 11(4)(iv) and also for grant of permission to the tenants to reconstruct their portion of the building themselves. The Rent Control Court upheld the various contentions raised by the landlord including the contention that the directions issued by the Rent Control Court had become incapable of compliance on account of supervening statutory reforms.

3. The Rent Control Appellate Authority however on an appeal by the tenants relied on the decision of this Court in *George v. Thressia*, 1992 (1) KLT 65 = 1992 (1) KLJ 79 to hold that the powers of the court are not restricted and any expediency can be resorted to. Noticing that the complaint of the tenants is that the landlord is not taking appropriate steps for reconstruction, the Appellate Authority ruled that the power for taking appropriate steps for reconstructions can be given to the tenants and accordingly allowed the appeal permitting the tenants to carry out the reconstruction of the entire schedule premises according to the plan on the basis of which the eviction order was passed. Nevertheless the Appellate Authority also ordered that 'If such full reconstruction is not possible due to the non-eviction of tenants, they are permitted to reconstruct only their rooms and the costs of reconstruction they can recover from the landlord'. That Authority went to the extent of directing the Municipality, Alappuzha and the Development Authority, Alappuzha 'to consider the question of approval of plan for the full building or part building as the tenants want, on merits'.

4. Before the Rent Control Court as well as before the Rent Control Appellate Authority the contention that the tenants themselves are responsible for the present situation of the landlord not being able to reconstruct the building in accordance with Ext.A6 plan was only one of the contentions advanced by the landlord. Before us also Shri V. Giri, learned counsel for the revision petitioner pointed out that the tenants did not leave any stone unturned in resisting the application for eviction and that the landlord had to fight out the case at various levels including the Land Tribunal since even a plea of kudikidappu was raised by the tenant unsuccessfully though. On account of the tenant's resistance only even the pre-eviction proceedings took about a decade and but for such delay the Alappuzha Development Authority would not have come into being and the present scheme notifying the area as a residential zone would not have been implemented and the objections now raised by the local authority and the Development Authority in the matter of reconstruction would not have arisen. But the second equally important contention urged by the landlord before the Rent Control Court and also before the Appellate Authority was that the tenants who had suffered an order of eviction in respect of the entire petition schedule building which consisted to two rooms and a charthu even after having unsuccessfully

raised a plea of kudikidappu encroached into vacant land belonging to the landlord covered by Ext.A6 plan by extending the charthu portion of the schedule building into such vacant area. This extension of the charthu was an exercise which began even during the pendency of the R.C.P. in 1989 but completed after the landlord took delivery of the schedule premises which took in the original charthu also. Shri Giri submitted that O.S.No. 10 of 1989 instituted before the local Munsiff's Court seeking prohibitory injunction to restrain the tenants from trespassing into schedule property, landlord's vacant area not subject-matter of the R.C.P., and from putting up constructions thereon was actually decreed. It was in violation of the said decree that the tenants completed the extension of the charthu into the said area after the execution court had effected delivery of the schedule premises. This necessitated institution of yet another suit, O.S.No. 723 of 1993 inter alia for recovery of possession of the trespassed area. Shri Giri submitted that in this suit also the tenants-respondents have raised the plea of kudikidappu. Counsel pointed out that apart from raising the plea of kudikidappu as defences in the R.C.P. and the suit filed by the landlord, the tenants had filed their own separate O.A. under Section 80B of the Kerala Land Reforms Act necessitating the landlord to approach this Court even under Article 227 of the Constitution. In support of these submissions Mr. Giri supplied us with copies of the judgment of this Court in O.P. No. 13958 of 1994, the original eviction order in the R.C.P., copy of O.P. No. 13958 of 1994 containing copies of various relevant documents including those relating to the proceedings before the Land Tribunal and the civil court. Shri Giri submitted that the suit O.S, No. 723 of 1993 is yet to be disposed of by the civil court due to the various contentions raised by the tenants including pendency of kudikidappu claim before the Land Tribunal. According to Shri Giri, his client is all willingness to carry out the reconstruction within a time-frame to be fixed by us on one condition that the tenants will surrender possession of the entire property of the landlord and thereby pave way for carrying out reconstruction in accordance with Ext. A6 plan.

5. Shri Sadchith Kurup, learned counsel for the tenants would submit by way of reply that the Rent Control Appellate Authority was justified in permitting the tenants to carry out reconstruction of that particular portion of the building which was the subject matter of the Rent Control Petition. According to the learned

counsel, it was from that portion only that the tenants were evicted and the authorities under the Rent Control Act need be considered with reconstruction of that portion only. As regards the allegation of trespass and the ongoing other litigations, counsel submitted that a direction to the tenants to vacate from those portions will be beyond our jurisdiction in this revision and that such a direction will cause considerable prejudice to the tenants whose rights regarding the portions allegedly trespassed Upon are being adjudicated in parallel civil proceedings.

6. We cannot disagree with the observations of the Appellate Authority based as the same is on the decision of this Court in *George v. Thressia* (supra), that in a proceeding under Section 11(4)(iv) if it is noticed that the landlord persists in his refusal to carry out the reconstruction of a building from which a tenant was evicted on the ground of reconstruction, the Rent Control authorities will be justified even in directing the tenant to carry out the reconstruction of the cost of the landlord. But the question is whether the Appellate Authority was justified on the facts of the present case in granting the permission presently granted to the tenants. We note that the permission granted is in the alternative, i.e., permission to reconstruct the entire building in strict conformity with Ext.A6 plan or to effect part-reconstruction after obtaining amended permits in that regard from the Alappuzha Development Authority and the Alappuzha Municipality.

7. The tenor of the submissions made before us by Shri Sadchith Kurup makes it abundantly clear that the respondents who are the legal heirs of the deceased original tenant have no idea whatsoever to avail the permission granted by the Appellate Authority as the first alternative. Availing the first alternative means that the entire area covered by Ext. A6 plan which takes in the area which the tenants are presently in possession-the area which is the subject matter of the ongoing parallel civil litigations-will also have to be utilized. It is the second alternative of effecting part-construction, obviously not in terms of Ext. A6 plan but in respect of a portion of the entire building proposed under Ext.A6, which is going to be availed by the tenants.

8. The authorities under the Rent Control Act do have the power in appropriate cases to permit evicted tenants to carry out reconstruction sought for by the

landlord in his case under Section 11(4) (iv) of the statute. But the said power is to be exercised only in exceptional cases where the court is completely satisfied that where has been wilful neglect on the part of the landlord and that the landlord's failure to reconstruct is attributable almost solely to such neglect. We have little doubt in our mind that the Appellate Authority was not justified in invoking such power where reconstruction of the old building under Ext.A6 plan - the one plan relied on by the evicting court-has been rendered impossible mainly on account of the trespass perpetrated by the tenants on the landlord's vacant land as well as into portion of the charthu from which the tenants had already been evicted in execution of the eviction order.

9. We have now to consider an important argument which was addressed before us by Shri V. Giri. Counsel submitted that only a tenant who has been completely evicted from the building which was subject-matter of the eviction case will be entitled to maintain an application under the provisos to Section 11(4)(iv). According to counsel, the tenants' interlocutory application upon which the Appellate Authority passed the impugned judgment was not maintainable in law in view of the obvious position that notwithstanding the delivery effected by the execution court, the tenants-respondent are even now retaining possession of substantial portions of the charthu wherefrom they were evicted and are also in possession of extension of charthu illegally put up by them upon landlord's land. Shri Sadchith Kurup tried to meet this contention by submitting that the portions presently possessed by the tenants are not portions which were subject-matter of the R.C.P. and that the plea of kudikidappu presently raised is a valid one. We have no hesitation to opine that we are not at all impressed by the plea of kudikidappu raised by the tenants in the ongoing parallel proceedings since the records reveal that the very same plea was earlier unsuccessfully raised by the very same tenants at the pre-eviction stage of the rent control proceedings.

10. Answering the question posed by us in the beginning of this order, we have to state that the interlocutory application filed by the tenants under the provisos to Section 11(4) (iv) is not maintainable in view of the apparent position that they are even now retaining possession of at least a portion of the charthu in respect of which the Rent Control Court passed the order of eviction. In other words, the

tenants have not been completely evicted from the premises which was subject-matter of the R.C.P. and to that extent the LA. is not maintainable. Even if Mr. Kurup's argument that the ongoing parallel proceedings are in respect of portions which were not subject-matter of the R.C.P. is accepted, then also principles of justice, equity and good conscience which ought to govern decision-making process in all proceedings under the Rent Control Act (see Sub-rule (8) of Rule 11 of the Kerala Buildings (Lease and Rent Control) Rules) make it obligatory that relief should be denied to the tenants who trespassed into and are retaining possession of the land belonging to the landlord after the landlord has obtained an order of eviction against them under the Rent Control Act. On facts also we have already found that the landlord's inability to carry out the reconstruction in terms of Ext.A6 plan is also due to the reason of the tenants possessing areas covered by the site of the building proposed under Ext.A6 plan.

11. The result of the above discussion is that the revision succeeds, the judgment of the Rent Control Appellate Authority is set aside and I.A.No. 173 of 1994 is dismissed. We make it clear that we have not exonerated the landlord from the obligations cast upon him under the order of eviction passed by the Rent Control Court and confirmed by the Appellate Authority. Having regard to the facts brought to our notice during the course of hearing, there will be a direction to the Munsiff's Court, Alappuzha to dispose of O.S.723 of 1993 within a maximum period of four months from the date of reopening of the civil courts after the coming midsummer vacation. That court will be free to issue appropriate directions to the Land Tribunal regarding expedition of any proceeding pending before the Land Tribunal. The landlord shall carry out the proposed reconstruction within six months of his obtaining possession of the entire site covered by Ext. A6 plan and upon such reconstruction, it is needless to mention, the tenants will be entitled to reallocation as provided under the, third proviso to Section 11(4)(iv).

The revision is allowed as above. No. costs.