

**Beera Koya Vs. Ali Koya**

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**SooperKanoon Citation :** [sooperkanoon.com/720665](http://sooperkanoon.com/720665)

**Court :** Kerala

**Decided On :** Dec-16-1971

**Reported in :** AIR1972Ker254

**Judge :** K. Sadasivan, J.

**Acts :** Kerala Buildings (Lease and Rent Control) Act, 1959 - Sections 3(1)

**Appeal No. :** Civil Revn. Petn. No. 827 of 1971

**Appellant :** Beera Koya

**Respondent :** Ali Koya

**Advocate for Def. :** S.N. Poti, Adv.

**Advocate for Pet/Ap. :** K.P.K. Menon, Adv.

**Disposition :** Revision dismissed

**Judgement :**

ORDER

**K. Sadasivan, J.**

1. The tenants, defeated in all the courts below, have come up in revision. Against them the landlord filed R. C. O. P No. 304/66 under Section 11 (2), (3) and (4) (i) of the Kerala Buildings (Lease and Rent Control) Act (shortly stated the Act) for

eviction. Eviction was ordered by the Rent Controller on the ground of sub-letting; the other grounds were all found in favour of the tenants. This order of the Rent Controller stands confirmed by the Appellate Authority as well as the District Judge in revision. The learned counsel has pressed before this Court a new ground which was never taken by him in any of the courts below. The ground is that the Addl. Munsiff who dealt with the matter was not competent to deal with the case, as under the relevant notification creating the Court of the Rent Controller, Addl. Munsiffs are excluded in stations where there are more Munsiffs than one. According to the learned counsel, the Principal Munsiff at the station alone can assume jurisdiction of the Rent Controller in such a situation. This lack of jurisdiction, according to the learned counsel, has vitiated the whole proceeding. The other question, viz., the question regarding sub-letting, having concurrently been found by all the courts against the revision petitioner, I do not think can be considered again by this Court in revision; as a matter of fact the question of jurisdiction alone was seriously pressed before me.

2. Stated briefly, the argument of the learned counsel is that 'although the person appointed to function as the Rent Control Court is a Munsiff. his appointment to such post under the Act is as persona designata and he will be functioning only as such and not as a Court while exercising jurisdiction as Rent Control Court'. The same is the position with the Appellate Authority also; but the position is different when we come to Section 20 of the Act. because there the remedy by way of revision is to be sought from the District Court or the High Court. In other words, in exercising the revisional power under the section, the Revisional Authority functions as a Court and not as a persona designata, while both the Rent Controller and the Appellate Authority functions as persona designata, For this position the learned counsel relied on the Full Bench decisions of this Court in *Balarama Iyer v. Krishnan*, 1908 Ker LT 8 = (AIR 1968 Ker 240) (FB) and *Ouseph Vareed v. Mary*, 1968 Ker LT 583 = (AIR 1969 Ker 103) (FB). Against this position the other side would argue that a persona designata is a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character. *Personae designatae* are persons selected to act in their private capacity and not in their capacity as Judges. Instead of merely describing the designation of the post held by the officer, the argument is

that the person who is to fill the post should be mentioned by name. For this position reliance is placed in *Central Talkies, Kanpur v. Dwarka Prasad*, AIR 1961 SC 606, which was followed in *Surindra Mohan v. D. C. Abrol*, AIR 1971 J & K 76 (FB) and other decisions. The Supreme Court in the aforesaid decision observed:--

'The argument that the District Magistrate was a *persona designata* cannot be accepted, Under the definition of 'District Magistrate', the special authorisation by the District Magistrate had the effect of creating officers exercising the powers of a District Magistrate under the Eviction Act. To that extent, those officers would, on authorisation, be equated to the District Magistrate. A *persona designata* is 'a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character'. (See *Osborn's Concise Law Dictionary*, 4th Edn. p. 253). In the words of Schwabe, C J., in *Parthasaradhi Naidu v. Koteswara Rao*, AIR 1924 Mad 561 (FB), *personae designatae* are 'persons selected to act in their private capacity and not in their capacity as judges'. The same consideration applies also to a wellknown officer like the District Magistrate named by virtue of his office, and whose powers the Addl. District Magistrate can also exercise and who can create other officers equal to himself for the purposes of the Eviction Act. The decision of Sapru, J., in the Allahabad Case, with respect, was erroneous'.

In short the argument is that 'the question whether an authority has been appointed as a *persona designata* or as a Court depends on the nature of the duties which the authority performs and the manner in which its appointment is made, Where the appointment of an authority is made only by name In its individual capacity, the appointment is *persona designata* and not in the capacity of the post held by such authority. Where a Presiding officer of a Civil Court is selected as an authority, the selection is not as a *persona designata* but as a member of the Court because the authority so appointed to fill in a particular character, e.g., a Chief Judicial Magistrate. District Judge, Civil Judge so on and so forth'. See AIR 1971 J & K 76 (FB).

3. Thus the decisions are somewhat at variance with the two Full Bench decisions of our Court referred to above. But, for the purpose of the present case, the question whether the authority who decided the case was a persona designate or not is not the guiding factor. The notification constituting Rent Control Courts in the State is important in this connection. Notification No. 3512/59/PW (CC.2) dated 1st July, 1959 is the relevant notification and it is prefaced thus:--

'In exercise of the powers conferred by Sub-section (1) of Section 3 of the Kerala Buildings (Lease and Rent Control Act 1959 (Act 16 of 1959) and in supersession of all previous notifications on the subject, the Government of Kerala hereby appoint the Munsiffs specified in column (1) of the schedule hereto attached to be the Rent Control Courts for the local areas specified against them in column (2) thereof'.

In centres where there are more courts than one. the notification has taken particular care to specify particular court, viz., 'Principal or Additional'. To cite instances, at Triyandrum the courts specified is the 'Principal Munsiff Court'. So also in other centres like Alleppey, Thiruvalla. Shertalai. Vaikom, Trichur and so on. At Ernakulam the Court specified is that of the 'Additional Munsiff'. When we come to Kozhikode, the Court specified is the 'Munsiff Court, Kozhikode-1'. In 1959 when the notification was first issued, it appears, there was only one Munsiff Court at Kozhikode-I; but at the time when the present matter was decided there was more than one Munsiff Court at the station. The Act of 1959 was amended by Act2/65; but the notification remained as it] was, without modification even though by: that time more than one Munsiff's Court was established at Kozhikode. Following the notification strictly, rent control matters can be dealt with by either of the two Munsiffs at the station, since the Principal as well as the Addl. Munsiff are both Munsiffs, Kozhikode-I. So long as there is no specification in the notification as to the particular authority whether 'principal or additional' the rent control petition can be entertained in either of the two courts. My attention was invited in this connection to Shankar v. Buvanambal, AIR 1971 Mad 368, wherein the learned Judges observed that the power conferred on the District Munsiff to act as Controller cannot be exercised by the Addl. District Munsiff. To quote the learned Judge's own words:--

'Controller is not a court and the Investiture of power under Section 2 (3) (Madras Buildings Act) is persona designata, that is to say- the principal or any other District Munsiff named specifically. and not on the court, as such, of the District Munsiff. Therefore, even if the Addl. District Munsiff has the same powers in other respects as the District Munsiff, the Addl. District Munsiff cannot function as a controller'.

This position is correct on the facts of that case, because there the Addl. District Munsiff functioned without the requisite authority. The person authorised to function as Controller was the Principal Munsiff only. In such a case, by virtue of the fact that the Addl. Munsiff also exercised the same powers as the District Munsiff, no jurisdiction as Controller can be assumed by him. But, in the present case, as already indicated the authority mentioned in the Notification is the Munsiff, Kozhikode-1. No further specification as 'Principal or Additional' is there in the notification; so much so, both the Principal and Additional are in the same position, since both of them are Munsiffs. Kozhikode-1. It is in this background that the powers of the Rent Controller happened to be exercised by the Addl. Munsiff. The party did not demur against this in any of the courts below. I do not say that the party is thereby debarred from putting forth the contention before this court, but the conduct of the party, it must be said, is noteworthy.

4. My own conclusion, therefore, is that the Addl. Munsiff, Kozhikode-1 has acted in the bona fide belief that he had jurisdiction and in view of the notification such a belief entertained by the Munsiff cannot be said to be without basis. I do not think that the decision rendered by the Addl. Munsiff and confirmed both by the Appellate and Revisional Authorities can be rendered null and void on the ground of want of jurisdiction. The revision petition, in the circumstances, is dismissed.