Parthakumar Vs. Ajith Viswanathan

Parthakumar Vs. Ajith Viswanathan

SooperKanoon Citation : sooperkanoon.com/721325

Court : Kerala

Decided On : Mar-24-2006

Reported in : 2006(4)CTC353; 2006(2)KLT250

Judge : P.R. Raman,; R. Basant and; M.N. Krishnan, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 2, 2(1), 2(3), 2(6), 11, 11(1), 11(2) to 11(8), 13(2) and 21; Transfer of Property Act; Evidence Act - Sections 116; Kerala Buildings (Lease and Rent Control) Rules - Rule 16(2); Code of Civil Procedure (CPC) Order 41, Rule 27

Appeal No. : C.R.P. Nos. 673 and 681 of 2001

Appellant : Parthakumar

Respondent : Ajith Viswanathan

Advocate for Def. : R. Ramdas, Adv.

Advocate for Pet/Ap. : S.V. Balakrishna Iyer and; P.B. Krishnan, Advs.

Disposition : Petition dismissed

Judgement :
ORDER

R. Basant, J.

1. Can a bonafide denial of title be raised under the second proviso to Section 11(1) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act') by a person against whom eviction proceedings is initiated, even when he disputes the assertion of the landlord that he is a tenant? In order to raise such a contention, is it essential and invariable that he must first admit that he is a tenant? Does the decision of the Division Bench in Charulatha v. Manju 2004 (1) KLT 290 deserve reconsideration? These are the interesting questions that arise for consideration in these revision petitions referred to us by a Division Bench of this Court comprising of Justice R. Bhaskaran and Justice K.R. Udayabhanu.

2. An attempt shall first be made to summarise the relevant skeletal facts in which the question referred arises for determination. For the sake of easy reference, the parties shall be referred to as the tenant and the landlords.

3. The tenant herein - one P.M. Parthakumar, and one Sivananthan are brothers. They along with their father and siblings were partners of a firm by name 'R.M. Kutty & Sons'. The partnership was carrying on various items of business. The partnership was dissolved. Such items of business of the firm were allotted to various partners. Ext.A2 is the deed of dissolution dated 31/3/88. The partners who were close relatives, allegedly entered into a family arrangement also. The same is described to be a composite agreement and is produced and marked as Ext.A3. The business of 'Victory Automobiles and Service Station' was allotted to the tenant herein P.M. Parthakumar. That business was run in a premises (including buildings which are the petition schedule buildings in these cases) which was purchased in the name of Sivananthan - one of the partners. The purchase was made by late P.M. Kutty (the father of Sivananthan and Parthakumar) when the said Sivananthan was only a minor. Long after the dissolution, allotment of business to Sivananthan and the family arrangement, Sivananthan executed an assignment deed conveying his rights over a portion of the property to one Veriugopalan. He shall be referred to hereafter as the original landlord. From him, the other landlords (they shall be referred to as transferee landlords) acquired rights over such portion under Ext.A7. Rights over the remaining portions of the property were acquired directly by the transferee landlords under Ext.Al 1.

4. Venugopalan - the original landlord claimed eviction against the tenant - Sivananthan under Section 11(2) of the Act in R.C.P. No. 67/95. Later, the transferee landlords got themselves impleaded as supplemental landlords 2 to 4 in that R.C.P. The transferee landlords also, in turn, filed R.C.P. No. 156/96 subsequently, claiming eviction, inter alia, under Section 11(3) of the Act.

5. The sole respondent in these two proceedings is Parthakumar, the so-called tenant. He resisted the claims for eviction. Inter alia, he contended that he is not a tenant. Allotment of the premises of the business to him, on dissolution of the firm and in the light of the family arrangement, was not as a tenant. The original partnership was never a tenant under Sivananthan. The allotment of business under the deed of dissolution and family arrangement was of the running business along with all its properties including the immovable properties in which such business was run. He hence contended that he or the partnership was not a tenant even under Sivananthan. He therefore denied the status of Sivananthan as a landlord as also the rights of the original landlord and transferee landlords. To put it in a nutshell, his contention is that he has title over the; buildings in question. Sivananthan, after Exts.A2 and A3 had no title in him over the petition schedule buildings. Consequently, the original landlord and the transferee landlords who all claimed derivative title from Sivananthan have no title at all. They are not the landlords. The partnership was never a tenant under Sivananthan arid consequently Parthakumar contended that he is not a tenant at all. He is the absolute owner. The Rent Control Petitions are not maintainable. There is no landlord - tenant relationship between the petitioners in the R.G.Ps. and the respondent, the alleged tenant. The denial of title by him is bonafide. Under the second proviso to Section 11(1), a finding has to be recorded that there is a bonafide denial of title of the landlords. The landlords must be directed to sue for eviction before the civil court. The Rent Control Court cannot proceed further with the proceedings in the R.C.Ps. it was contended.

6. The landlords, in turn, contended that there is no bonafide denial of title. There is only an apology of a denial of title. They relied on Ext.A4 an undertaking allegedly executed by the tenant. The materials produced must lead the court to the conclusion that there is no bonafide denial of title at all. The Rent Control Court

must record a finding that there is no bona fide denial of title at all and must proceed to dispose of the R.C.Ps. on merits under the Act, they contended.

7. The Rent Control Court by a common order held the denial of title to be bona fide. Against that order, appeals were preferred before the Rent Control Appellate Authority. Additional documents were produced before the Appellate Authority. The Appellate Authority by the impugned common judgment chose to receive some additional documents produced before it and remand the matter to the Rent Control Court for fresh decision of the question - as to whether there is bonafide denial of title under the second proviso to Section 11(1) of the Act. It was, accordingly, that the impugned common judgment was passed.

8. The tenant has come up with these revision petitions. The tenant, first of all, contends that the reception of additional documents by the Appellate Authority is not proper. No circumstances exist to justify the prayer for reception of additional documents. With or without the additional documents, it has to be held that the denial of title of the landlords by the tenant is bonafide. The Appellate Authority must have decided the issue on the materials available. At any rate, the remand is not justified, he contends.

9. The landlords with the help of Charulatha (supra) now contend that the whole exercise is no more relevant. The tenant does not admit that he is a tenant. In these circumstances, he cannot deny the title of the landlords. The option under the second proviso to Section 11(1) of the Act to deny the title of the landlord is available only to a tenant. Where a person like the revision petitioner herein who does not admit the fact that he is a tenant chooses to deny the title of the landlord, such denial cannot be reckoned as relevant under the second proviso to Section 11(1) of the Act. It is only a person, who admits himself to be a tenant, who can deny the title of the landlord. Only he can by such plea insist on a decision of the claim for eviction by a civil court. Inasmuch as the revision petitioner herein does, not admit the fact that he is a tenant, the denial of title of the landlord by him is no denial in the eye of law and therefore the second proviso can have no application at all. Placing reliance on Charulatha (supra) and the dictum in Janaki Amma v. S.V. Vidya Samajam 1992 (2) KLT 826, the landlords contend that the Rent

Control Court may be directed straightaway to proceed to consider the claims for eviction and dispose them of on merits ignoring the denial of title raised by the revision petitioner who does not admit himself to be a tenant.

10. The dictum in Charulatha (supra) was laid down in : 2004(1)KLT290 after the filing of these C.R.Ps in 2001. The revision petitioner, in these circumstances, contended that the dictum in Charulatha (supra) is not correct. The Division Bench before which these revision petitions came up for hearing felt that the decision in Charulatha (supra) deserves reconsideration. It is, accordingly, that the matter has come up before us.

11. Before adverting to the precedents specifically, we think it apposite that we must consider the scheme of the Act to ascertain the context in which the disputed question arises and deserves to be considered.

12. The Kerala Buildings (Lease and Rent Control) Act is, as the title shows, 'an Act to regulate the leasing of buildings and to control the rent of such buildings in the State of Kerala'. The preamble makes it clear that the statutory instrument is enacted as 'it is expedient to regulate the leasing of buildings and to control the rent of such buildings in the State of Kerala'. Section 2 of the Act is the definition clause and it declares that in this case 'unless the context otherwise requires', the seven expressions referred to in Section 2 of the Act shall have the meanings assigned thereunder. The crucial expressions relevantfor our purpose are Sections 2(1) - 'building', 2(3) 'landlord' and 2(6) - 'tenant'. We shall extract Sections 2(3) and 2(6) below in so far as it is relevant for our purpose.

2(3) 'landlord' includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant.

Explanation: - A tenant who sub-lets shall be deemed to be a landlord within the meaning of this Act in relation to the subtenant'.

'2(6) 'tenant' means any person by whom or on whose account rent is payable for a building and includes:--

(i) the heir or heirs of a deceased tenant, and

(ii) a person continuing in possession after the termination of the tenancy in his favour....

13. Section 11(1) and its second proviso are the next crucial provisions in the Act to be taken note of. Sans irrelevant details, for our purpose, Section 11(1) is extracted below:

11. Eviction of tenants:--

(1) Notwithstanding anything to the contrary contained in any other law or contract a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Act:

xxx xxx xxx

Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Rent Control Court shall decide whether the denial or claim is bonafide and if it records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and such Court may pass a decree for eviction on any of the grounds mentioned in this section, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.

(emphasis supplied)

14. The Statute declares that notwithstanding anything to the contrary contained in any other law or contract, no tenant shall be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this Act. If a person is a tenant he is entitled to the protection of Section 11(1) of the Act. He cannot be thrown out of possession of a building except in accordance with the provisions of the Act. The vital and crucial protection to a tenant is thus declared in Section 11(1). The body of Section 11(1) does not specifically say that the landlord

is not entitled to sue for eviction of the tenant in a civil court. It is declared that the decree obtained in such suit cannot be executed and it was hence not necessary to say that the suit will not be maintainable. But the second proviso makes it clear that notwithstanding Section 11 (1) the landlord will be entitled to sue for eviction before a civil court and get such decree executed. That can be done only if the second proviso comes into play and not otherwise. Thus, for a civil court to pass an executable decree for eviction of a tenant from any building in his possession within the area to which the Act applies, a finding has to be recorded by the Rent Control Court that the denial of title of the landlord or the claim of the right of permanent tenancy is bonafide. Only such a decree can be executed against the tenant.

15. The Statute protects the tenant of a building within the notified area from eviction except under an order passed by the Rent Control Court in accordance with the provisions of the Act. The pristine law relating to the landlord and tenant is superceded by the provisions of the Act. A tenant can be evicted only on the specified grounds enumerated under Sections 11(2) to 11(8) of the Act. Unless these grounds are satisfied, a landlord cannot claim eviction. Notwithstanding the provisions of the T.P. Act or the terms of the contract between the parties or any decree passed by any civil court, the tenant is entitled to continue as a tenant until and unless an order of eviction is passed under Section 11 of the Act.

16. While this is the crucial benefit relating to liability for eviction conferred on the tenant, the Statute does confer certain benefits on the landlords also. A landlord can claim eviction before the Rent Control Court by filing a petition. It is not necessary for him to go before a civil court and sue for eviction. Statutory Tribunals -Rent Control Court and Appellate Authorities, are constituted so that the claims for eviction on specified ground shall be considered summarily and expeditiously, The most important right, which a landlord gets under the Act is his right to claim expeditious and inexpensive eviction on specified grounds before the Special Tribunals constituted under the Act. The Act itself specifies the limits of time within which a claim for eviction must be disposed of. The Act takes within its fold only certain classes of cases relating to eviction. The Special Tribunals are constituted only to resolve the limited disputes relating to eviction falling under

Section 11 of the Act. Existence of landlord -tenant relationship between the contestants is sine qua non for Sections 11(2) to 11(8) to operate and for the Special Tribunals to have jurisdiction. Only when the landlord - tenant relationship in respect of the building exists, does and can the Special Tribunal have jurisdiction to consider a claim for eviction. Summary and expeditious procedure is prescribed for eviction only in cases where the landlord - tenant relationship exists and the dispute regarding eviction is between the landlord and the tenant. Existence of landlord -tenant relationship between the claimant/landlord and respondent/tenant is thus essential, to confer jurisdiction on the Rent Control Authorities.

17. The philosophy underlying the Act is thus very evident. The existence of the landlord tenant relationship is inevitable for the Special Tribunal to exercise its jurisdiction. The Special Tribunals are thus constituted to resolve the disputes falling within the special, narrow and circumscribed zone i.e., the disputes between the landlords and tenants regarding liability for eviction under Section 11 of the Act. Of course, they have the obligation to fix fair rent also and it is not necessary for us for the purpose of these revisions to consider such jurisdiction. If the landlord - tenant relationship in respect of a building within the notified area exists and the claim for eviction is under Section 11, then and then alone the statutory Special Tribunals shall have jurisdiction. The relevant date to decide jurisdiction is of course the date of the claim ordinarily and the date of the order if any significant and relevant event takes place after the lodging of the claim before the; order.

18. The legislature was conscious of the fact that there could be disputes as to whether there exists landlord - tenant relationship. A person who is proceeded against as a tenant may have to raise a contention that there is no landlord tenant relationship and that he is not: a tenant. The landlord claiming eviction must have title to evict. If he has no title to evict and such a contention is raised, the jurisdiction to decide that dispute rightly vests in civil courts following exhaustive procedure and not in the Special Tribunals constituted to decide a limited category of disputes following summary procedure. Therefore where existence of landlord - tenant relationship, i.e., title of the landlord to claim eviction against the person proceeded against, is itself seriously disputed, certainly the Special Tribunals must

take their hands off the dispute and leave the parties to resolve their disputes before the regular civil courts constituted. The Tribunals following summary procedures cannot usurp the powers and jurisdiction of the civil courts to decide such disputes regarding title. Such substantial disputes regarding title are uplands and out of bounds for the statutory special tribunals. That is the zone or area where the civil court must entertain jurisdiction. Therefore when certain categories of disputes arise between the contestants - about the very title of the landlord to claim eviction against the persons proceeded against under Section 11, such disputes must certainly be decided by the regular civil courts.

19. What could be those disputes relating to title of the landlord? What can be said to be denial of title for the purpose of the second proviso to Section 11(1)? These are the questions that now crop up.

20. We do not intend to be exhaustive. But it can safely be pointed out that there could be several types of disputes which can be raised by a person who is proceeded against. He may contend that he is the paramount title holder himself. He may contend that petitioner - landlord has no title at all. He may claim that not the petitioner but some other person is the title holder. He may admit the paramount title of the landlord; but contend that, the landlord has no title to claim eviction as landlord. He may contend that he is a trespasser and not a tenant amenable to the jurisdiction of the Special Tribunals constituted under the Act. He may contend that he is a licensee and not a tenant. He may contend that he is a mortgagee and not a tenant. Without intending to be exhaustive, it can be pointed out that the title of the landlord to claim eviction under Section 11 can be disputed on many grounds like the ones enumerated above.

21. A Full Bench of the Andhra Pradesh High Court in Changanlal and Ors. v. Narsingh Pershad AIR 1973 A.P. 1 referred to the range of disputes which may fall within the sweep of the expression 'denial of title' under the identical Andhra Pradesh Act. It will be advantageous, we feel, to refer to the following passage in para 9:

9....The proviso deals with only cases of denial of title. The respondent in an eviction petition may deny that there is jural relationship of landlord and tenant

between the petitioner and him either on the ground that the petitioner is not the owner of the building and he is not a tenant or on the ground that though the petitioner is the owner of the building he denies his own status as a tenant and claims himself to be either as a mere trespasser or a licensee in which case also the Rent Controller will have no jurisdiction to deal with the matter and the remedy of the landlord would be only to file a suit against the tenant for possession in a regular Civil Court.

22. What then is the title of the landlord contemplated under the second proviso to Section 11(1) of the Act. Title, it is trite, is the sum total or the bundle of rights in respect of property. The paramount title of the landlord is absolutely irrelevant for the purpose of a claim under Section 11. His title as the landlord alone is relevant in a dispute under Section 11 of the Act. Is he the; landlord of the person proceeded against? If he is, he has the requisite title to sustain the claim for eviction under Section 11. He may be only a mortgagee or a lessee who had leased/sub leased the building. A denial of paramount title is, in these circumstances, irrelevant if the person proceeded against is the tenant and the person making the claim is the landlord. Proprietary title of the person claiming eviction is thus irrelevant and the denial contemplated under Section 11(1) of the Act could never have been the denial of paramount, or proprietory title. The denial of paramount title may in a given case include the denial of title as landlord also. Such title as landlord alone is essential to sustain a claim for eviction under Section 11(1) of the Act. All that we intend to take note is that the denial of paramount or propreitory title is irrelevant and that is not the precise denial of title contemplated under the second proviso to Section 11(1) of the Act. The denial of title as landlord alone is relevant. So wherever there is a denial of the right of the landlord to claim eviction - on the ground that he is not the landlord of the person proceeded against, such denial must certainly be reckoned as denial of title of the landlord as contemplated under Section 11(1) of the Act. In short, we are of opinion that denial of landlord - tenant relationship between the claimant/ landlord so-called and the respondent/tenant so-called is the denial of title which alone is contemplated under the second proviso to Section 11(1). If there is admission of such title, the Rent Control Court certainly has jurisdiction to proceed. If that is in dispute, second proviso to Section 11(1) comes into play. The Supreme Court

referred to the distinction in the concept of ownership in a claim for eviction under the Rent Control legislation in contra distinction to the same in a title suit in the following words in para-10 in Sheela and Ors. v. Firm Prahlad Rai Prem Prakash (2002) 3 SCC 375 are refer to:

10....We may hasten to add that the concept of ownership in a landlord-tenant litigation governed by rent control law has to be distinguished from the one in a title suit. Ownership is a relative term, the import whereof depends on the context in which it is used. In rent control legislation, the landlord can be said to be the owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else, to evict the tenant and then to retain, control, hold and use the premises for himself. What may suffice and hold good as proof of ownership in a landlord-tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit.'

23. The second proviso to Section 11(1) of the Act contemplates two contentions on the part of the person proceeded against. One is the denial of title of the landlord to which we have already referred. The other is the right to claim permanent tenancy. In the latter case, the title of the landlord as landlord is admitted; but what is claimed is only a right to permanent tenancy. It will be apposite in this context to note that what is really contemplated under the second proviso to Section 11(3) of the Act is a dispute relating to title of the applicant/landlord to claim eviction.

24. The legislature obviously wanted such disputes relating to title of the landlord to be taken outside the sweep of the powers of the Special Tribunals (the Rent Control Court/ the Appellate Authority). This is the rationale underlying to the second proviso to Section 11(1) of the Act. The legislature wanted such disputes regarding title/claim of permanent tenancy to be considered only by the regular civil courts which follow exhaustive procedure and not by statutory Tribunals invested with limited jurisdiction to decide the dispute between the landlords and tenants relating to eviction on specified grounds. If the dispute does not fall within the circumscribed zone such dispute must be decided by the regular civil courts following exhaustive procedure. The Special Tribunals cannot be expected to

decide such disputes.

25. Having said so, the legislature was alertly cognizant of the possibility of the tenant (the person proceeded against as tenant) raising frivolous disputes regarding the title of the landlord and raising claim for permanent tenancy only for the purpose of denying the landlords the advantage of the expeditious and inexpensive procedure for eviction prescribed under Section 11. In every case where eviction is claimed, the recalcitrant tenants may raise a frivolous non-serious contention of denial of title or raise a claim for permanent tenancy. Unless safeguards were provided, the mere raising of the contention would have deprived the landlord of the advantage of expeditious and inexpensive procedure to claim eviction on specified grounds guaranteed to him under Section 11 of the Act. The legislature did not want that to happen. It was therefore stipulated that it is only a bona fide denial of title or a bona fide claim for permanent tenancy which alone would oblige the landlord to claim eviction before the civil court. Otherwise, his right to claim eviction before the Special Tribunal can be frustrated by the mere raising of such plea. This right of the landlord had to be preserved. Otherwise, abuse of the provisions may result, it was perceived by the legislature.

26. This is more so under the Act. In many other State rent control legislations, denial of title of the landlord without bona fides is itself a ground for eviction. This has been dubbed as a relic of the feudal past where the tenant is not expected to have the courage to deny the title of the landlord except at his peril. The Kerala Legislature did not obviously concede such a ground for eviction to the landlords. A denial of title of the landlord even if raised without bona fides does not under the Act give rise to any right/liability to claim/surrender possession.

27. Under the Act, even if it be found by the Rent Control Court that the denial of title of the landlord raised by the tenant is not bona fide or he is ultimately found to be a tenant under the landlord, he can continue to claim all the protections available to a tenant under the Act. In that event the civil court before which the suit for eviction is filed shall proceed to consider the claim for eviction and only if the grounds under Section 11 are proved, then alone a decree for eviction can be granted. In that event a decree for eviction can be granted by the civil court on the

grounds recognised under the Act. Such a decree is an exception to the decree for eviction referred to in the body of Section 11(1). It is to exempt such a decree that the second proviso is enacted.

28. The legislature therefore felt that only bonafide denial of title or a bonafide claim for permanent tenancy should alone divest the Special Tribunals of their jurisdiction under Section 11 of the Act. It is hence stipulated that the denial of title/claim for permanent tenancy must be bonafide. The Tribunal's jurisdiction is only to decide whether the denial of title or claim for permanent tenancy is bonafide. It is not expected to and does not have the jurisdictional competence to enter a finding whether the denial of title is valid or not. It has only jurisdiction to decide whether the denial of title is bona fide or not. If it is bona fide, the landlord can sue for eviction before the civil court. If it is not bonafide, the Special Tribunal can proceed to exercise its jurisdiction after recording a finding that the denial is not bonafide. Whether the denial of title is bona fide or not has to be decided by the Rent Control Court considering the nature of the contentions raised and the materials placed before it. This is a jurisdictional question and if raised must normally be decided by the Tribunal before assuming jurisdiction.

29. Having so understood the statutory provisions, the next question to be decided is whether the plea of denial of title can be raised only by a person who admits himself to be a tenant. We have extracted the second proviso to Section 11(1) of the Act and the language clearly is that the second proviso would come into operation only where 'the tenant' denies the title of the landlord. The contention is that it is only the tenant who can deny the title of the landlord. If it is once admitted that the person proceeded against is the tenant what is the denial of title that survives? We have already adverted to the fact that the Special Tribunals can exercise jurisdiction only if the landlord -tenant relationship exists and the claim is one relating to eviction under Section 11 of the Act. If the tenant admits the title of the landlord, he thereby admits the landlord's right to claim eviction and therefore there could possibly be no denial of title relevant to the second proviso to Section 11(3) of the Act. If the landlord - tenant relationship between the petitioner/claimant and the respondent/opposite party is admitted, there could possibly be no denial of title of the landlord relevant under the second proviso to

Section 11(1) of the Act.

30. Human ingenuity knows no bounds and it is contended that the person proceeded against who denies the title of the landlord must admit at least that he is in possession as a tenant under some other person before he can deny the title of the claimant. If that be so, the second proviso to Section 11(1) of the Act, will necessarily have to be limited to that rare and weird cases where a person would admit that he is in possession as a tenant; but not under the petitioner who 'claims to be the landlord but under some other. If such a narrow and limited interpretation were accepted, a person who asserts that he is the title holder or that he is a trespasser in possession or a licensee or a mortgagee in possession cannot claim the advantage of the second proviso to Section 11(1) of the Act. This argument would be self-defeating as the disputes regarding the paramount title of the landlord and rival claim of the tenant for paramount title will then have to be decided by the Rent Control Court which, while considering the scheme of the Act we have already held could not have been the legislative intention. The legislature could never have wanted the rival claims for proprietory or paramount title between the claimant/petitioner and the respondent/counter petitioner when the respondent does not admit himself to be a tenant, to be decided by a Rent Control Court merely because one of the contestants described the other to be the tenant and claimed eviction under Section 11 of the Act. That argument does not rhyme well with reason and logic. It defeats the statutory purpose and scheme. To so limit the application of the second proviso to Section 11(1) of the Act by an interpretational exercise only to those counter petitioners who admit their status as tenants and then deny the title of the landlord is to bring in a restriction which runs counter to the scheme of the Act and the purpose of the second proviso to Section 11(1) of the Act as we have understood earlier. It would be puerile to assume that the legislature wanted the person proceeded against to admit the title of some others as landlord (whose title is irrelevant in a claim under Section 11(1) before he can insist on a decision of the disputed title between him and the claimant by the civil court before he suffers an order of eviction under Section 11 of the Act.

31. This argument proceeds solely on the basis of the use of the word 'the tenant' in the second proviso-to Section 11(1) of the Act. No other logical basis or rational

foundation on principle is urged before us. Nor can we invent any. It is contended that the expression 'the tenant' has been defined under Section 2(6) of the Act and therefore 'the tenant' referred to in the second proviso to Section 11(1) must answer the definition of 'tenant' in Section 2(6) of the Act. Otherwise, such person cannot raise such a plea, it is urged. It is by now well settled that the definition clause in any statute can be pressed into service only if the context does not otherwise require. An assumption that the context does not require the acceptance of the statutory definition cannot, of course, be lightly made. The totality of circumstances has to be taken into account. The expression 'the tenant' used in the second proviso to Section 11(1) of the Act, according to us, must necessarily include the person against whom the claim petition is filed describing him to be a tenant. Otherwise, the very purpose and the scheme of Section 11(1) of the Act would be set at naught. Authorities galore in support of the proposition that the definition clause cannot be blindly imported to understand the same expression used in the statute without relevance to the context and purpose. The decisions of the Supreme Court Printers (Mysore) Ltd. v. Asst. Commercial Tax Officer : [1994]1SCR682 and Hind Plastics v. Collector of Customs : 1994ECR336(SC) are, in these circumstances, relevant in Printers (Mysore) Ltd. v. Asst. Commercial Tax Officer : [1994]1SCR682 , the Supreme Court held as follows:

It should also be remembered that Section 2 which defines certain expressions occurring in the Act opens with the words: 'In this Act, unless the context otherwise requires'. This shows that wherever the word 'goods' occur in the enactment, it is not mandatory that one should mechanically attribute to the said expression the meaning assigned to it in Clause (d). Ordinarily, that is so. But where the context does not permit or where the context does not permit, or whether the context requires otherwise, the meaning assigned to it in the said definition need not be applied.

Similarly, in Hind Plastics v. Collector of Customs : 1994ECR336(SC) , the Supreme Court held as follows:

17. In this connection, it is well to remind ourselves that every instrument, statutory or otherwise has to be so interpreted as to accord with the intention of its maker

having regard to the language used. True one cannot ignore the actual words used and go after the supposed intention of the maker- as pointed out in Hansraj Gordhandas v. H.H. Dave Assistant Collector of Central Excise and Customs : [1969]2SCR253 - since that would amount to entering the arena of speculation but all the same the principle is unexceptionable that whether it is statute, statutory instrument or an ordinary instrument, the interpretation placed has to accord with the intention of the maker as evidenced by the words/language used. This decision in Hansraj Gordhandas does not lay down any contrary proposition.

32. Another Full Bench of this Court in Narayanan v. Shalima : 2003(2)KLT317 has already taken the view that the definition of the expression 'tenant' in Section 2(6) of the Act: cannot apply when the said expression used in Section 11(17) is considered. It cannot be lost sight of that the statute has given such tenant a right to deny the title of the landlord and this must inevitably convey that the person entitled to raise the plea is not an admitted tenant under the landlord.

33. Unless one renders himself a prisoner to the expression 'the tenant' in the second proviso and insist that the definition of that expression in Section 2(6) must be imported while understanding the meaning of the said expression in the second proviso to Section 11(1), this contention cannot find acceptance.

34. The expressions 'landlord' and 'tenant' are interrelated expressions and one cannot survive without the other. A person is landlord of another who is called the 'tenant'. A person is tenant of another who is called the 'landlord'. The concept of landlord and tenant are thus interrelated and interdependent and cannot normally survive independently. Denial of the title of the landlord, if permissible, will and must certainly include at least incidentally the denial of status as a tenant under him. If the contra logic and reason were extended further the legislature while it used the expression 'denial of title of the landlord' must have used the expression 'the denial of title of the person claiming eviction as landlord'. The mere omission to use the expression 'the person proceeded against as tenant' instead of the present expression 'the tenant' before the words 'denies the title of the landlord' in the second proviso cannot lead any prudent and reasonable mind to the conclusion that the person proceeded against must admit that he is a tenant

before he claims the benefit of the second proviso. Second proviso to Section 11(1) of the Act, we must assume is not concerned (and the same we must find is irrelevant) with the existence of landlord tenant relationship between the tenant so-called and any other person (other than the landlord/claimant).

35. To say that the tenant must admit before invoking the second proviso to Section 11(l) that he is the tenant under the claimant/landlord would be ridiculous because there would then be no denial of title relevant to the claim for eviction. Paramount title is irrelevant and admission (nondenial) that the tenant is a tenant under the claimant/ landlord on the date of the claim would certainly take the case outside the second proviso.

36. The contention that the opposite party (the so-called tenant) must at least admit that he is a tenant under the claimant/landlord at some earlier point of time is also unacceptable. The denial of title of the landlord must necessarily refer to the date of the petition. To contend that the person invoking the second proviso must admit that at some prior point of time he was tenant under the very same landlord would be irrelevant and unacceptable. Such a tenant is estopped from the denying the title of the landlord under Section 116 of the Evidence Act. To assume that the second proviso to Section 11(1) applies only to those who can, despite Section 116 of the Evidence Act, validly deny the title of the landlord would be doing disservice to the purpose and object of Section 11(1). Admission of prior status as tenant under the claimant/landlord also appears to be irrelevant considering the purpose and object of the second proviso to Section 11(1). What is crucial is only denial of title as on the date of the claim for eviction and admission or otherwise of title at any prior point of time has nothing to do with the purpose which the second proviso is designed to achieve.

37. If the admission that the so-called tenant is or was a tenant under the claimant/ landlord cannot be insisted as a condition precedent for invoking the second proviso to Section 11(1), then the only other admission that can be insisted is that the tenant so-called is or was a tenant under some other. Such insistence would be puerile and perverse as that has absolutely no relevance or nexus to the dispute regarding the right of the landlord to claim eviction from the person arrayed

as tenant. Insistence on admission that the person proceeded against is a tenant under some other person not concerned with the dispute is thus again found to be absolutely irrelevant and meaningless considering the purpose which the second proviso has to achieve.

38. Thus, viewed from any angle we do not find any justification for the contention that a person against whom a claim has been made for eviction under Section 11 must first admit that he is or was a tenant under the claimant/landlord or any other stranger landlord. From principle or on a consideration of the purpose, object and scheme of the Act we are unable to reach such a conclusion as contended by the learned Counsel for the landlord before us.

39. How then is the expression of 'the tenant' in the second proviso to Section 11(1) to be understood. Admission or proof that he is a tenant to justify the claim of denial of title of the landlord cannot, as held earlier, be insisted. The provisions of Section 11 speaks of petitions by landlords against tenants. Section 11(2) to (8) are enacted assuming that there exists landlord-tenant relationship. The Section therefore deals with claims by landlords against tenants. Some of the persons filing eviction petitions may not really be landlords. Some of the persons proceeded against may not really be tenants. There may be disputes about their mutual status as landlords and tenants that is about the existence of landlord-tenant relationship between the contestants. The expression the 'landlord' and 'tenant' cannot be assumed to have been used in Section 11(1) (which speaks of the jurisdiction or otherwise of the Rent Control Courts to resolve disputes between landlords and tenants), to refer only to persons who are actually landlords or tenants. Such use of the expressions 'landlord' and 'tenant' in Section 11(1) which deals with jurisdiction of the court to entertain petitions by landlords against tenants cannot be held to apply only to landlords and tenants who are admitted or proved to be landlords and tenants. Persons who claim to be landlords and those who are proceeded against as tenants must also certainly come within the sweep of the expression 'landlord' and 'tenant' in Section 11(1) and its provisos. 'Denial of title of the landlord' can happen only if the expression 'landlord' there does not necessarily insist that the landlord should be a landlord. It must include a person who claims to be a landlord. To give proper meaning, effect and content to Section

11(1) of the Act and its provisos the expression 'the tenant' must include the person sought to be proceeded against as a tenant just as a landlord whose title is validly disputed must be reckoned as landlord for the purpose of those provisions. We are unable to accept the contention that the expression 'the tenant' used in the second proviso to Section 11(1) of the Act must convey that he must be a tenant either admitted or proved. A person proceeded against as tenant who wants to contend that he is not a tenant at all under the claimant/landlord or any other is raising a dispute between him and the claimant and must hence be reckoned as a tenant denying the title of the landlord. If bonafide, the said plea is sufficient to divest the Rent Control Court of its jurisdiction.

40. In Pushpa Devi v. Milkhi Ram : [1990]1SCR278 , the Supreme Court was confronted with a similar, though not identical situation. Can the expression 'the tenant' in a provincial Rent Control legislation include a person who claims to be a tenant and whose status as tenant is disputed by the landlord? This was the question that arose. The question arose in the context of the right of such a disputed tenant to deposit admitted arrears of rent to avoid instant eviction. The statutory provision considered by the Supreme Court was one similar to Section 13(2) of the Kerala Act. The expression 'tenant' must include not only the admitted or proved tenant: but must include the person who claims to be the tenant, it was held. He can also deposit the admitted arrears and avoid instant eviction, opined the Supreme Court. After lucid discussions in paras-13 to 14,, the Supreme Court concluded thus in para 25.

25. It is time for us to be explicit. Taking into account of the intention of the legislature and the purpose for which the proviso was enacted, we are of the opinion that the obligation to tender the rent under the proviso on the first hearing date does not depend upon the existence of admitted jural relationship of landlord and tenant. When an action for eviction is brought by the landlord on the ground of default, the proviso stands attracted. The benefit of the proviso could be availed of by the tenant and also by those who claim to be the tenant.

(emphasis supplied)

41. The benefit of the second proviso to Section 11(1) going by context, purpose, objectives, location and the scheme of the Act must be available not only to the proved or admitted tenant, but also to a person in possession who disputes his status as tenant, but is proceeded against by the claimant alleging that he is a tenant. The insistence that such a person must admit himself to be a tenant before he claims the protection of the second proviso is not, according to us, justified in any View of the matter.

42. Having so understood the expression 'the tenant' in the second proviso to Section 11(1) of the Act on the basis of the first principles and the scheme of the Act we will now consider the precedents that have been cited before us on this aspect which according to the counsel for the landlords support the contra proposition.

43. Charulatha v. Manju : 2004(1)KLT290 and Janaki Amma v. S.V. Vidya Samajam 1992 (2) KLT 826 are the only specific precedents relied on by the counsel for the landlord to contend that the expression 'the tenant' in the second proviso to Section 11(1) must receive a strict and narrow construction to exclude any one proceeded against for an order of eviction under Sections 11(2) to 11(8) who does not admit himself to be a tenant under the claimant landlord or at least under a stranger. Janaki Amma was a case where not the person who was not proceeded against as the tenant, but some other strangers - alleged sub lessees persons who were allegedly in occupation under, the tenant, attempted to deny the title of the landlord. It was in that context that the following observations were made by a learned Single Judge of this Court.

In order to attract the second proviso to Section 11(1) of the Act, the title of the landlord should have been denied by the tenant. Then alone the Rent Control Court would be obliged to decide whether such denial is bonafide. In the instant case initiated by the landlord. he described some body else as the tenant, whereas the present petitioners are treated as only occupants under the tenant. In the rent control proceedings persons other than the tenant are not permitted to deny the title of the landlord. Of course it is open to the petitioners to contend that the person shown as tenant is, in fact, no tenant of the building at all and that

petitioners are the real tenants. If they succeed in establishing the aforesaid fact, the inevitable course open to the Rent Control Court is to dismiss the application.

(emphasis supplied)

44. In that case it was not the tenant or the person who was proceeded against as the tenant who attempted to raise the plea of denial of title of the landlord. The tenant in that case who was proceeded against did not significantly raise any such plea of denial of title. Any dispute about title of the landlord which the tenant (or the person proceeded against as the tenant) does not want to raise and person in occupation under the tenant wants to raise cannot be reckoned as valid denial of title of the landlord to attract the second proviso to Section 11(1). This, according to us, is all that Janaki Amma is authority for. Janaki Amma is not at all authority for the proposition that a person proceeded against as tenant must first admit that he is a tenant before he claims the protection of the second proviso to Section 11(1). That would be an incorrect and improper understanding of Janaki Amma. A sub-tenant or person claiming under the tenant is bound by the order of eviction passed against the tenant whether such person is or is not a parry to the eviction proceedings. This is the unmistakable law declared in Section 21 of the Kerala Buildings (Lease and Rent Control) Act. If a person in occupation/ sub-tenant is bound by the order of eviction passed against the tenant even when he is, not arrayed as a party in the eviction proceedings, he cannot be held to have any right to deny the title of the landlord in the course of such proceedings. It is in that context that the learned Judge in Janaki Amma made the observation extracted above. Janaki Amma can be reckoned only as authority for the proposition that the sub-tenant or other person in occupation claiming rights under the tenant are bound by the order of eviction passed against the tenant whether they are or are riot parties to such proceedings, and such a person who is only claiming rights under the tenant cannot be permitted to deny the title of the landlord under the second proviso to Section 11(1).

45. The Division Bench in Charulatha was primarily led by the dictum in Janaki Amma. It was assumed, incorrectly we say with respect, that Janaki Amma was authority for the proposition that the expression 'the tenant' in the second proviso

to Section 11(1) does not include the person proceeded against as the tenant, though he disputes his status as a tenant. The relevant discussions appear in paras 8,9 and 11 of Charulatha.

Para 8....According to the learned counsel, the revision petitioner is not entitled to deny the landlady' s title since she does not admit her status in the building to be that of a tenant. In this context Sri. Rimachandran relied on Janaki Amma v. S.V. Vidya Samjam 1992 (2) KLT 826.

Para 9.'...We will presently consider the merit of Sri K. Ramachandran's submission that denial of title to warrant an enquiry regarding its bonafides under Section 11(1) is not a plea which can be raised by anybody and everybody. The second proviso to Section 11(1) reads as follows:--

'Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Rent Control Court shall decide whether the denial or claim is bona fide....

Underlining ours)

K.T.Thomas. J. as a Judge of this Court in Janaki Amma (supra) observed as follows:--

In order to attract the second proviso to Section 11(1) of the Act, the title of the landlord should have been denied by the tenant. Then alone the Rent Control Court would be obliged to decide whether such denial is bona fide.... In the rent control proceedings persons other than a tenant are not permitted to deny the title of the landlord.

Janaki Amma (supra) was a case where the landlord had not admitted the status of the person who raised the plea of denial of title to be that of a tenant. In the instant case, the landlady's position is that the revision petitioner is her tenant. But is that enough? The revision petitioner does not admit that she is the landlady's tenant or for that matter anybody else's tenant. To a query put by us Me. Sudheer submitted that according to the revision petitioner her status is not that of a tenant under anybody. It can be noticed from Section 11 and many other provisions of the

Rent Control Act and from many judicial precedents including some cited by Mr. Sudheer that to maintain an R.C.P. landlord-tenant relationship is essential prerequisite. The Rent Control Court is a court exclusively constituted to govern the rights and liabilities of landlords and tenants. We are therefore of the view that to enable a person to raise a plea of denial of title warranting an enquiry under Section 11(1) before the Rent Control Court regarding the bona fides of that plea, the person raising the plea must admit that his status in the building is that of a tenant even when he contends that the petitioner in the R.C.P. is not his' landlord.'

Para 11. 'In the instant case, the revision petitioner who does not admit that she is a tenant contends that she is presently having title or that she is in possession or permissive occupation under some other titleholder. This contention does not amount to a plea of denial of title warranting an enquiry by the Rent Control Court under Section 11(1). The revision petitioner very well knew that she should seek remedies from the regular civil court at her own instance and not on the basis of any finding by the Rent Control Court. O.S .No. 1430 of 1990 was filed by her seeking declaration of her title and consequential injunction. That suit was dismissed. May be, a belated appeal has been filed. According to us, the question whether that decree has attained finality need not bother us since we are of the view that the revision petitioner should get her remedies regarding title from the civil court and the authorities under the Rent Control Act could have even avoided the detailed enquiry undertaken by them on the short score that the revision petitioner did not admit her status to be that of a tenant.'

46. The Division Bench, according to us, had not discussed in detail the scheme of the Act and the principles underlying Section 11(1) and the proviso. In construing the observations in para 4 of Janaki Amma the fact situation which was crucially relevant was not specifically adverted to. The Division Bench did not specifically advert to the act that in Janaki Amma the contention regarding denial of title of the landlord was not raised either by an admitted proved tenant or a person against whom the eviction proceedings were initiated describing him to be a tenant. The contention was raised by strangers against whom no order of eviction was claimed and were arrayed as parties only because they were found in actual occupation under the tenant. The tenant the person proceeded against as tenant having not

raised a plea of denial of title of the landlord, it was held that such strangers who claim under the tenant are not entitled to raise a plea of denial of title of the landlord. While extracting para-4 of Janaki Amma, in para-10 of Charulatha, it is vital to note that the Division Bench omitted to extract the following line which according to us led the Division Bench to misdirect itself. That crucial line is

In the instant case initiated by the landlord, he described somebody else as the tenant, whereas the present petitioners are treated as only occupants under the tenant.

It was such occupants, who were held to be not entitled to deny the title of the landlord.

47. We are in agreement with the other observations in Charulatha by the Division Bench. It was held by the learned Judges that the denial of title contemplated under the second proviso to Section 11(1) is not of proprietary title; but only title as landlord with which alone the tenant would ordinarily be concerned. We are also in agreement with the manner in which the decision in Ibrahim v. Treesa Poulose 2003 (2) KLT SN Case No. 64 at p..'50 was construed by the learned Division Bench. But we are unable to agree with the conclusion of the Division Bench that a person proceeded against as tenant must admit that he is a tenant under the landlord or at least under some other person before he can claim protection under the second proviso to Section 11(1). If he admits that he is the tenant under the landlord, no denial of title survives as the Rent Control Court in proceedings for eviction under the Act is concerned only with title as landlord and not proprietary title. If there is admission that the person proceeded against is a tenant under the landlord, no denial of title can survive to warrant attraction of the second proviso. If on the contrary, the person proceeded against as tenant is to be held to be obliged to admit his status as tenant under some other stranger, that would again be unrealistic and puerile as title of such a stranger landlord is absolutely irrelevant for the purpose of deciding a claim for eviction under Sections 11(2) to 11(8) of the Act.

48. We may summarise and answer the reference by unequivocally declaring that the expression 'the tenant' appearing in the words 'where the tenant denies the

title of the landlord' in the second proviso to Section 11(3) must include a person proceeded against as the tenant who denies his status as tenant of the premises under the claimant.

49. Having so answered the reference, the next question to be decided is whether the decision of the Rent Control Appellate Authority that the matter must be sent back to the Rent Control Court is correct and whether it warrants interference. Considering the long pendency of this proceedings before the courts below, we are not persuaded to send the matter to the Division Bench to dispose of the revision in the light of the answer of the reference made by us. Therefore, the counsel were requested to advance arguments against the impugned order also. The learned Counsel for the landlords insists that the order may be upheld and the Rent Control Court may be directed to consider the matter afresh after taking into account the additional documents produced. The learned Counsel for the revision petitioner alleged tenant prays that the additional documents received by the appellate court may be excluded and the Rent Control Appellate Authority may be directed to dispose of the appeal afresh.

50. The Appellate Authority under the Kerala Buildings (Lease and Rent Control) Act is invested with powers to receive additional evidence under Rule 16(2) of the Kerala Buildings (Lease and Rent Control) Rules which reads as follows:

16. (1) xxx xxx xxx

(2) If the Appellate Authority decides to make further enquiry, he may take additional evidence or require such evidence to be taken by the Accommodation Controller or the Rent Control Court, as the case may be.

Though the restrictions which are enumerated under Order 41, Rule 27 of the CPC are not made specifically applicable to the Appellate Authority under the Rent Control Act, it is only reasonable to assume that any Appellate Authority by nature of the appellate powers exercised by it must insist on satisfactory explanation as to why the additional documents sought to be produced before the Appellate Authority were not produced before the original authority. Such a restriction inheres in the appellate powers and no party can insist on production and

reception of evidence as a matter of course before the Appellate Authority in the absence of satisfactory explanation as to why such documents were not produced before the original authority. This is so, notwithstanding the language of Rule 16(2) extracted above.

51. We must take note of the nature of the jurisdiction which we are called upon to exercise in these revision petitions. We are not persuaded to agree that the direction for remand and fresh consideration after remand by the Rent Control Court after giving the parties an opportunity to adduce further evidence including the additional documents produced before the Appellate Authority is one which deserves or warrants invocation of the revisional powers of superintendence and correction. We are carefully restraining ourselves from making any observations on merits, lest it should prejudice the interests of parties when ultimately the question comes up for decision before the Rent Control Court and or the Appellate Authority. We are satisfied that no failure of justice has resulted from the impugned direction for remand. The interest of the tenant, is well protected. Both parties shall be permitted to adduce all such further evidence which they want to adduce including the additional documents produced before the Appellate Authority.

52. We do, in these circumstances, answer the reference as indicated above and hold that these revisions petitions deserve to be dismissed subject to the observations made above. These revision petitions are, accordingly, dismissed. The parties shall appear before the Rent Control Court on 24.5.2006 to continue the proceedings.