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Narayanan Vs. Shalima

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Court : Kerala

Decided On : Jan-31-2003

Reported in : 2003(2)KLT317

Judge : Jawahar Lal Gupta, C.J.,; J.B. Koshy and; R. Basant, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(3) and 11(17)

Appeal No. : C.R.P. No. 234 of 1997

Appellant : Narayanan

Respondent : Shalima

Advocate for Def. : A. Mohammed Mustaque, Adv.

Advocate for Pet/Ap. : T.A. Ramadasan and; A.K. Alex, Advs.

Disposition : Civil revision petition dismissed

Judgement :
ORDER

R. Basant, J.

1. Are the legal heirs of a deceased tenant entitled to the protection of Section 11(17) of the Kerala Buildings (Lease and Rent Control) Act? This is the short

question referred to us by the Division Bench.

2. The crucial facts on the relevant aspect are all admitted. The landlord claimed eviction of the tenant under Section 11(2), 11(3) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, hereinafter referred to as the Act. The learned Rent Control Court rejected the claim in tola. In appeal the Rent Control Appellate Authority directed eviction under Section 11(2), 11(3)and 11(4)(iii). In the revision petition the direction for eviction under all these Sections is assailed.

3. To defend the claim under Section 11(3), the tenant had claimed the protection of Section 11 (17) of the Act. Admittedly the petitioner herein was not the original tenant. The then landlord had entrusted the building in dispute to the father of the present tenant as per a registered lease deed executed in 1919. The original tenant expired in 1941. The tenant was carrying on a business in the building. That business was continued by his legal heirs including the tenant herein. The legal heirs/sons entered into a partnership in 1951. Ext.B4 renewal deed was executed by the tenant herein. In these circumstances it was contended before the Rent Control Court and the Rent Control Appellate Authority that the tenant is entitled to the protection of Section 11(17) of the Act.

4. While the learned counsel for the landlord contends that the protection under Section 11(17) can be claimed only by the original tenant and not by his legal heirs, the learned counsel for the petitioner contends that the expression 'tenant' includes the legal heirs of the deceased tenant and consequently the legal heirs are also entitled to claim the protection of Section 11(17).

5. While the learned counsel for the landlord relies on an unreported decision of a Division Bench of this Court in C.R.P. Nos. 2107 and 2108 of 1992, the learned counsel for the petitioner relies on the decision reported in Viswanathan v. Abdul Hameed (2000 (3) KLT 712). A Division Bench of which one of us was a member (J.B. Koshy, J.) has referred the question to the Full Bench for resolution of the apparent conflict between the two decisions as referred to above.

6. The relevant provision deserves to be noticed Section 11(17) of the Act reads as follows:-

'17. Notwithstanding anything contained in this section a tenant who has been in continuous occupation of a building from 1st April, 1940 as a tenant, shall not be liable to be evicted for bona fide occupation of the landlord or of the occupation by any member of his family dependent on him, provided that a landlord of a residential building shall beentitled to evict such a tenant of that building if the landlord has been living in a place outside the city, town or village in which the building is situated for a period of not less than five years before he makes an application to the Rent Control Court for being put in possession of the building, and requires the building bonafide for his own permanent residence or for the permanent residence of any member of his family or the landlord is in dire need of a place for residence and has none of his own.

Explanation:- In computing the period of continuous occupation from 1st April, 1940, the period, if any, during which the landlord was residing outside the city, town or village in which the building is situated shall be excluded.'

7. It is necessary to understand the nature of the protection afforded by Section 11(17) to decide the question whether it is available exclusively to the tenant who was originally inducted or to his legal heirs who come within the sweep of the inclusive definition in Section 2(6) of the Act which we extract below:-

'(6) 'tenant' means any person by whom or on whose account rent is payable for abuilding 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,but does not include a Kudikidappukaran as defined in the Kerala Land Reforms Act,1963 (Kerala Act 1 of 1964), or a person placed in occupation of a building by its tenant,or a person to whom the collection of rents or fees in a public market, cart-stand orslaughter house or of rents for shops has been farmed out or leased by a MunicipalCouncil, Municipal Corporation, Township Committee or Panchayat'.

8. The Act is intended to regulate the leasing of buildings and to control the rent of such buildings in the State, as explained in the preamble. It may not be proper to reckon the Act as one conferring benefits on the tenants alone. It has provisions to regulate arbitrary eviction of the tenants. At the same time it concedes to the landlords the advantage of a summary and expeditious procedure for the eviction of tenants on specified grounds. The landlords cannot claim any unfettered right to evict their tenants. The right of eviction is now available only on the specified grounds enumerated in Section 11. The bona fide need of the landlord or a dependent relative for his own occupation is a ground for eviction recognised under Section 11(3). Section 11 (3) with its provisos lays down the circumstances under which eviction can be claimed on the ground of bona fide need of the landlord for his own occupation or the occupation of any member of his family dependent on him. We extract Section 11(3) below:-

'(3) A landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building if he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him:

Provided that the Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons, if any particular case it will be just and proper to do so:

Provided further that the Rent Control Court shall not give any direction to a tenant to put the landlord in possession, if such tenant is depending for his livelihood mainly on the income derived from any trade or business carried on in such building and there is no other suitable building available in the locality for such person to carry on such trade or business:

Provided further that no landlord whose right to recover possession arises under an instrument of transfer inter vivas shall be entitled to apply to be put in possession until the expiry of one year from the date of the instrument:

Provided further that if a landlord after obtaining an order to be put in possession transfers his rights in respect of the building to another person, the transferee shall not be entitled to be put in possession unless, he proves that he bonafide needs the building for his own occupation or for the occupation by any member of his family dependent on him.'

9. Section 11(17) carves out an exception to the rule under Section 11(3). It lays down that a tenant who has been in continuous occupation of a building from 1st April, 1940 as a tenant shall not be liable to be evicted under Section 11(3). An exception to this exception is also engrafted in Section 11(17). In respect of a residential building, eviction can still be claimed under Section 11(3) subject to the more rigorous conditions imposed in Section 11(17). The first and the crucial ingredient to be proved in order to entitle a tenant to the protection under Section 11 (17) is that such tenant has been in continuous occupation of the building from 1st April, 1940.

10. The relevance of 1 st April, 1940 has not been explained to us very specifically. We are unable to identify the crucial significance of that date. It may be mentioned that no challenge is raised before us against the constitutional validity of Section 11(17) of the Act on the ground of arbitrariness or inequality. The Act came into force in 1965. A tenant in occupation continuously from 1.4.1940 must have remained in possession for a period of about 25 years on the date when the Act came into force. Section 11(17) would thus apply only to tenants who are in occupation from 1st April, 1940. It is crucial to note that such a protection is not afforded to all persons in possession for a continuous period of 25 years. A perceptible rationale is, thus, not ascertainable from Section 11(17) other than the occupation of the tenanted building by the tenant for a long period of about 25 years from 1st April, 1940.

11. 8.11(17) if read and understood in the manner canvassed by the learned counsel for the tenant would virtually amount to a perpetual clog on the right of the landlord to claim eviction under Section 11(3) from a tenant from a non-residential building. In respect of a residential building also such a clog or fetter would remain for all time subject of course to the exception that on proof of the rigorous

conditions enumerated in Section 11(17) an order of eviction can still be claimed. Dire need will have to be established in order to secure eviction of such tenant.

12. Such a clog or fetter has got to be understood fairly and reasonably without offending the provisions of the Constitution which mandate freedom from inequality and arbitrariness. It would be irrational arid unreasonable to assume that a landlord, his successors or assignees would, Tor all time, be unable to have recourse to the ground for eviction under Section 11(3). It would be unreasonable to construe the provisions of the Act in that manner. This is especially so as the protection under Section 11(17) is not afforded to tenants, who are in continuous occupation for a period of twenty five years or more after the Act came into force. These are indications according to us which would suggest that Section 11(17) confers only a personal privilege and protection to the tenants who were in possession on 1st April, 1940 and not to their legal heirs. Extending such benefit to legal heirs would amount to placing a fetter and clog in perpetuity against the claim for eviction under Section 11(3). There is nothing in the language of Section 11(17) or the scheme of the Act which suggests that the Legislature wanted to place such an unreasonable fetter on the rights of the landlords. Section 11(3), we must note, is a provision which confers a very just and reasonable remedy for the landlord of the building to claim eviction of the tenant if such landlord or his dependent relative needs it bona fide for his own occupation, subject to the rigors of the proviso. A provision which restrict or abrogates even such a right, we are satisfied, must be construed very strictly. The right of a landlord to claim eviction is one of the crucial incidents of the statutory right to hold property.

13. It is contended that Section 2(6) of the Act defines a tenant and such definition includes the heir or heirs of a deceased tenant. It is contended that the expression 'tenant' in Section 11(17) also must be read and understood in the light of the definition of the expression 'tenant' in Section 2(6). When so construed, the protection under Section 11(17) will be available to all tenants including the legal heirs of the deceased tenant.

14. In this context it deserves notice that in Section 2 the definition is to apply only 'unless the context otherwise requires'. The text and the context have to be kept in

view. Thus, it cannot be said that the expression 'tenant' must be understood as in Section 2(6) in all circumstances and situations while interpreting the Act. We are of the opinion that Section 11(17), considering the purpose, purport and scheme of the Act must be understood to afford protection only to tenants who are in continuous occupation from 1st April, 1940 and not to their successors. Keeping in view the nature of the benefit/ and the protection conferred on the tenant under Section 11(17), such a conclusion appears to be inevitable. So understood, the protection under Section 11(17) will be available only to a vanishing tribe of tenants who are in occupation continuously from 1.4.1940 so that there will be no permanent and perpetual clog on the right of the landlord to claim eviction under Section 11(3).

15. The decision reported in Viswanathan v. Abdul Hameed (2000 (3) KIT 712) does not obviously refer to the earlier decision of another Division Bench dated 11.1.1994 in C.R.P. Nos. 2107 and 2108 of 1992. That apart, a reading of the decision in Viswanathan's case shows that this specific question was not considered in detail by that Division Bench. From paragraph 7, it is evident that the Hon'ble Judges proceeded on the assumption that such benefit under Section 11(17) is available to the legal heirs also. We extract below the relevant passage:-

'.....Two things therefore are clear. One is that Appu was entitled to the protection of Section 11 (17) of the Act on the day the Kerala Buildings (Lease and Rent Control) Act, 1965 (Act 2 of 1965) came into force anduntil he diedin the year 1987. Two, that the tenant could have been entitled to the same protection on the death of Appu since he was an heir of the tenant and along the other heirs of Appu, the tenant had the same protection that was available to Appu.....'

The question whether legal heirs of the tenants are entitled for such protection was not forensically examined in detail or conclusions reached. Obviously the said contention does not appeal to have been raised or canvassed specifically before the Bench. There was no occasion for the court to consider that question in detail in Viswanathan's case as it was assumed that such protection is available to the legal heirs/tenants. The dispute in Viswanathan's case was primarily whether renewal of the lease would point to implied surrender of the earlier tenancy and

that would constitute interruption in the 'continuous occupation'. In the case in hand the learned counsel for the landlord fairly concedes that notwithstanding the execution of the renewal deed by the tenant herein, there is continuous occupation from 1.4.1940 by the original tenant initially and the present tenant thereafter without any interruption.

16. An earlier Division Bench was called upon to consider this question very specifically. The said Division Bench referred to an earlier decision of a Single Judge of this Court rendered by Justice P. Govindan Nair in O.P. No. 1045 of 1962. In paragraph Nos. 13 to 18 of the said decision (Sarojini and Ors. v. Sofia and Ors., C.R.P. Nos. 2107 and 2108 of 1992) the Division Bench consisting of Justice Varghese Kalliah and Justice Mohan Kumar dealt with this question in detail. In paragraph 18 the Division Bench expressed their final conclusion in the following words:-

'..... We are of the view that the benefit of the protection under Section 11(17) is available only to the tenant who was inducted into possession prior to the date and continued to be in possession on the date of proceedings for eviction and his legal representatives, who came into the category of tenants by virtue of the inclusive definition in Section 2(6) of the Act cannot claim the protection. In the instant case, the present occupants admittedly are the legal representatives of deceased Raghavan the original tenant and they came into possession after his death. They therefore cannot claim the benefit of Section 11(17).'

17. The contention that the successor/legal heir tenant must in law be held to be entitled to all the rights of his predecessor-tenant, though unexceptionable broadly and generally, cannot be accepted while considering the claim for protection under Section 11(17) of the Act. This is because of the peculiar and special nature of the protection available to a tenant under Section 11(17). This is also because of the nature of the disability which the landlord is made to suffer under Section 11(17). The protection under Section 11(17) according to us must certainly be reckoned as a personal privilege or protection available to the tenant actually in continuous occupation from the relevant date 1.4.1940, and not to his successors.

18. In these circumstances we are in agreement with the conclusions of the Division Bench in Sarojini's case. We are of the opinion that the decision in Viswanathan's case if it is to be reckoned as one extending the benefits under Section 11(17) to the legal heirs/tenants cannot be accepted as laying down the correct law. The reference made by the Division Bench is answered thus.

19. Considering the fact that the proceedings in the present case were initiated about a decade back, we requested the counsel to advance arguments on merits also in this Civil Revision Petition before us. Arguments were heard. The learned counsel for the revision petitioner assailed the impugned judgment of the appellate authority directing eviction under Section 11(3) and 11(4)(iii) only.

20. We have been taken through the evidence in detail. Eviction on the ground of bona fide need under Section 11(3) is claimed for the occupation of PW2, the husband of the landlady. He is a doctor by profession and the landlady had filed the application for eviction for his bonafide need of starting a clinic. He is not shown to have any other suitable building in his possession. His wife, the landlady, on whom he depends for accommodation is also not shown to have any other building in her possession. The alleged need and the claim were found to be bona fide. The test of bona fides under Section 11(3) and Section 11(10) were thus correctly answered in favour of the landlady by the Appellate Authority. We find no reason to interfere with the said findings.

21. The tenant claimed the protection of the second proviso to Section 11(3). According to the tenant the tenant is a partnership firm. One of the partners alone was arrayed as a tenant in his individual capacity. Even if it be assumed for the sake of arguments that the tenant is the firm, it is trite that a partnership by itself cannot claim the protection of the second proviso to Section 11 (3). Such protection is available only to natural persons. It is therefore necessary for the tenant to specify which partner is entitled to claim the protection of the second proviso to Section 11(3). Admittedly no such specification has been made. Nothing was pointed out to show that the revision petitioner or any other partner of the partnership firm is depending mainly on the income earning activity carried on in the disputed building to eke out his livelihood. This crucial former limb of the

second proviso of Section 11 (3) having not been pleaded or proved, we find no merit in the claim for protection of the second proviso to Section 11(3). We further find that except the self serving testimony of the tenant/RW1 there is no evidence whatsoever to prove the non-availability of suitable alternate accommodation. We do not in these circumstances find any infirmity in the direction for eviction under Section 11(3).

22. Coming to the claim under Section 11 (4)(iii), admittedly the tenant is in possession of an adjacent room. It is well settled by now that the burden is oh the tenant to prove that such other building admittedly available with him in his possession on the date of the claim is not reasonably sufficient to satisfy his requirements. Here again except the self serving testimony of RW1 no other evidence was made available before the court. It must in these circumstances be held that the tenant has not succeeded in showing that such other adjacent building admittedly in his possession is not reasonably sufficient to meet his requirements. Reasonable sufficiency, it has repeatedly been held, has to be tested on objective standards and not on subjective assertions of the interested tenant. No commission was taken out. No satisfactory independent evidence was made available before the court. It follows that the order directing eviction under Section 11(4)(iii) does not also warrant interference.

23. We must also keep in view the nature of the revisional jurisdiction under Section 20 of the Act. We find absolutely no infirmity, impropriety or incorrectness which can persuade us to invoke the revisional jurisdiction of superintendence and correction against the direction for eviction issued by the Appellate Authority.

24. Finally, the learned counsel for the revision petitioner prays that six months' time may be granted to him to surrender possession. Though the petitioner was directed to file an affidavit of undertaking agreeing to surrender possession unconditionally, no such affidavit has been tiled. In these circumstances we are of the opinion that the petitioner is not entitled to any such indulgence.

In the result the Civil Revision Petition is dismissed.

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