

Retnakaran Vs. Rosy

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Court : Kerala

Decided On : Jul-19-2004

Reported in : 2004(3)KLT154

Judge : K.S. Radhakrishnan and; J.M. James, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(8)

Appeal No. : C.L.P. No. 944 of 1999

Appellant : Retnakaran

Respondent : Rosy

Advocate for Def. : Jijo Paul, Adv.

Advocate for Pet/Ap. : T.M. Chandran, Adv.

Judgement :

ORDER

K.S. Radhakrishnan, J.

1. Whether mere possession of a part of a building without occupation would satisfy the ingredients of Section 11(8) of Act 2 of 1965, is the question that has come up for consideration in this case.

2. Rent Control Petition was filed by the respondent-landlord for eviction under Sections 11(2) and 11(3) of Act 2 of 1965. Both the Rent Control Petition and the Appellate Authority have proceeded on the basis that Section 11(3) was misquoted, facts would indicate that the claim is essentially under Section 11(8). For disposal of the case we will proceed as if the claim raised by the landlord is under Section 11(8) of the Act. Rent Control Court dismissed the petition. However, Appellate Authority allowed the appeal and ordered eviction under Section 11(8).

3. Petition schedule building bearing number XXV/446 lies in front of room No XXV/445 on the western side which is in the possession of the original landlord. Petition schedule building has a length of 12 ft. and width of 7 ft. and it was closed on three sides with wooden planks and roofed with asbestos. The whole building which takes in the tenanted premises as well as the portion occupied by the landlord has got road frontage of 13 ft. 8 inches of which portion occupied by the landlord has a width of 7 ft. 4 inches whereas the petition schedule building has a width of 6 ft. 4 inches. After providing cash counter width of the building in the possession of the landlord is only 2ft. 11 inches. Lack of proper road frontage affects the business carried on by the landlord. This is not a case where landlord requires additional space but he wanted the tenant to vacate to get more road frontage. At this juncture, it is relevant to refer to the reasoning of the Appellate Authority, which reads as follows:

'It is very evident that the landlord is not complaining about want of physical space. It is not the plea and the landlord has not complained that the physical space available with him is insufficient to meet his requirement. The only contention is that the petition schedule building which is situated in the front portion of the larger building is affecting his business. According to him, he needs that additional space also for the purpose of running his business properly.

The landlord has no case that the space available in building (B) in his possession is insufficient to run the business.'

Appellate Authority noticed that the specific contention of the landlord is that he must be given possession of the tenanted premises in order to enable him to run

his business better. Tenant took up the contention that such a requirement would not fall under Section 11(8). Tenant submitted that when Section 11(8) uses the expression 'additional accommodation' it must be taken that the need is for physical space for the landlord. Tenant also submitted that landlord who has sufficient area in his possession, cannot claim eviction under Section 11 (8) of the Act.

4. We have gone through the pleading in the Rent Control Petition and also the objection filed by the tenant. Tenant has specifically stated that the landlord is not having any business in the adjacent building though he is in possession of the premises. It is trite that burden is on the landlord to show that the need urged under Section 11(8) is bonafide. Section 11(8) having qualified under Section 11(10) it is imperative for the landlord to show that the requirement is bonafide. The Apex Court in *Kanniammal v. Chellaram* ((2002) 4 SCC 627) examined the scope of Section 10(3) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 and held as follows:

'If a landlord is occupying only a part of a residential building he may seek ejectment of the tenant for his requirement of additional accommodation for residential purpose though the tenancy premises are being used by tenant for non-residential purpose. Similarly, a landlord who is occupying only a part of a building for non-residential purpose may have the tenant evicted if he requires additional accommodation for non-residential purpose, it being immaterial that the tenant is occupying a part of the premises for residential purpose. Since the requirement of additional accommodation by the landlord is with reference to the manner of his user of that part of the building which is in his occupation, it is the nature of that requirement that should prevail over the manner of user of the tenant of the portion leased out to him. In other words, the need for additional accommodation is for extending the user of the building by the landlord to the leased portion for the same purpose for which the portion not leased out is being used.'

We may in this connection extract Section 11(8) for easy reference.

(8) A landlord who is occupying only a part of a building, may apply to the Rent Control Court for an order directing any tenant occupying the whole or any portion

of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for his personal use.

The Section uses the expression 'occupying' in contradistinction to 'possession'. In other words, landlord must be occupying a part of the building of which tenanted premises is also a part. The word occupy means, to take possession of, to hold or have in possession to keep possession of etc. The word occupy also means engage, hold, cohabit etc. Mere possession of the premises by the landlord would not be sufficient to attract Section 11(8). Landlord's occupation may be residential or non-residential. Landlord could retain possession of a building without occupying. The test is that in the case of a residential building he must really occupy the building for his residence and in the case of non-residential building he must occupy for non-residential purposes,

5. Tenant has got a specific contention that landlord is not conducting the hotel business in that part of the building which is in his possession. Petition LA. No.2429/ 95 was filed before the Rent Control Court by the tenant for a direction to the landlord to produce account books, sales tax assessment in respect of the hotel business and also the attendance register of employees. Landlord did not produce any records. Landlord tried to explain stating that he is not conducting the hotel business in a flourishing manner due to lack of space and road frontage and therefore cannot attract sufficient customers and hence he is not keeping any account books or attendance register of the employees. Commissioner however stated that there are two workers in the hotel and that the hotel is being run: No details have been furnished by the landlord to establish that he is conducting any hotel. He has also not produced either municipal licence or licence from any of the statutory authorities to show that he is conducting the hotel business. Landlord is no more, and the legal heirs maintained the stand that they are continuing the hotel business. They have also not produced any document to establish that they are conducting the hotel business. Legal heirs may be in possession of the building but they are not conducting any business warranting additional accommodation. Mere possession would not satisfy the ingredients of Section 11(8) of the Act.

6. Tenant has filed an affidavit before this Court stating that landlord's elder son is working at Varantharappilly Forest Office in Trichur District. Landlord's second son is a Lecturer in Engineering College, Trichur. Youngest son is a Veterinary Doctor in Mannuthi. Legal heirs are otherwise employed in Government service. There is nothing to show that widow is conducting the hotel business. No licence has been produced to show that a hotel is being conducted by the legal heirs of the landlord. Mere possession without occupation would not satisfy the ingredients of Section 11(8);

7. In such circumstances we find it difficult to support the finding of the Appellate Authority since legal heirs could not establish that they are occupying part of the building so as to attract Section 11(8) of the Act. We therefore hold that the order passed by the Appellate Authority cannot be sustained and the same is set aside. The order of the Rent Control Court is restored.

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