

John Vs. Manuel

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Court : Kerala

Decided On : Aug-20-2004

Reported in : 2004(3)KLT318

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

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 2(1) and 11(8)

Appeal No. : C.R.P. No. 2268 of 2002

Appellant : John

Respondent : Manuel

Advocate for Def. : K.C. Charles,; A. Balagopalan,; Basil Mathew and;

Advocate for Pet/Ap. : Varghse C. Kuriakose, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K.S. Radhakrishnan, J.

1. Tenant is the revision petitioner. Eviction was sought for under Sections 11(3) and 11(8) of Act 2 of 1965. Rent Control Court treated the petition as one under

Section 11(8) of the Act and ordered eviction, which was confirmed by the Appellate Authority. We are therefore concerned in this case only with the question as to whether eviction ordered under Section 11(8) of the Act is legal or not.

2. The petition schedule building is the southern most room in the ground floor of a two storeyed building known as 'Anjiparambil buildings'. There are seven shop rooms in the ground floor of the said building. On the southern side of the building there lies the road to south railway station. Petition schedule building faces to south railway station road. Three rooms on the northern side of the petition schedule building are occupied by a firm and they are conducting leather business. Landlord is in possession of the room which situates immediately north of those three rooms. Landlord is conducting business in electrical goods under the name and style 'Anjiparambil Electricals'. The room on the northern side of the landlord's room is occupied by Karithala Chits and Financiers Private Ltd. Among the seven rooms, petition schedule room has got the advantage of the main road frontage. Rest of the rooms do not have direct access to the main road but to the side road. Landlord submitted that he wanted the tenanted premises for the expansion of his business. He has stated that he would get the advantage of the main road frontage if he gets the tenanted premises. Further he has got a case that he could exhibit his electrical goods in that room and the present room occupied by him could be used as godown.

3. Tenant resisted the petition contending that even if the need urged by the landlord is bonafide that would fall only under Section 11(3) of the Act and not under Section 11(8) of the Act in the event of which counsel appearing for the tenant submitted, tenant would get the benefit of the second proviso to Section 11(3) and could also raise a plea under the first proviso as well. Further tenant also took up the contention that Section 11(8) of the Act would not apply since the tenanted premises is not part of a single building. Counsel laid considerable stress on the decision of the Apex Court in *Gangaram v. N. Shankar Reddy*, (1988) 4 SCC 648. Counsel further submitted that there is no bonafide in the plea of the landlord since landlord has got other vacant rooms and those rooms could be utilised for the purpose of expansion of his business. Further he has got a case that the landlord could seek eviction of the room which is adjacent to the premises

which is in the possession of the landlord and the tenanted premises is not the adjacent room but separated by three rooms. Consequently, it is not part of the same building.

4. Landlord got himself examined as PW.1 and the managing partner of the business conducted in the adjacent room was examined as PW.2. Landlord produced Exts.A1 to A7 documents. Tenant got himself examined as R.W.1 and the Accommodation Controller was examined as R.W.2. Ext.B1 document was produced on the side of the tenant.

5. Counsel for the landlord contended that the plea under Section 11(3) also could be considered even though the landlord has not filed any revision petition. We are of the view, even if the landlord has not filed a revision petition or an appeal he could still attack the finding which is adverse to him. This point has been already answered by us in the order passed by us in R.C.R. No. 221 of 2003 following the decision in Nalakath Sainuddin v. Koorikadan Sulaiman, (2002) 6 SCC 1. But once we hold that the landlord is entitled to get the benefit of Section 11(8) of the Act, we need not examine the question Whether landlord is entitled to raise the claim under Section 11(3) of the Act.

6. We may first examine whether landlord, is entitled to get an order of eviction under Section 11(8) of the Act and whether there is any reason for upsetting the concurrent finding of the Rent Control Court and the Appellate Authority. Before we examine the rival contentions, we may extract the provision for easy reference.

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:

XX XX XX XX

(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 word 'building' has been defined under Section 2(1) of the Act, which reads as follows;

'building' means any building or hut or part of a building or hut, let or to be let separately for residential or non-residential purpose and includes- , .

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From a combined reading of the above mentioned provisions it is clear that the landlord and tenant should occupy portions of the building. If the landlord and tenant are occupying different buildings, even though adjacent and owned by the landlord, those buildings are to be treated as separate buildings and therefore would not fall under Section 11(8) read with Section 2(1) of the Act. The Apex Court in *Gangaram v. N. Shankar Reddy*, (1988) 4 SCC 648, was examining the scope of Section 10(3)(c) and 2(iii) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960. The Court held that the provision envisaged is the oneness of the building and not the oneness of ownership of two different buildings, one occupied by the landlord and the other by the tenant. The Apex Court held that a practical test which can be applied to find out if two adjoining buildings form part of the same building or two different buildings would be to see whether one of the two buildings can be sold by the landlord and the purchaser inducted into possession of the premises sold without the landlord's possession and enjoyment of the premises in his occupation being affected. Considerable stress was laid by the counsel for the tenant on such practical test and contended that so far as this case is concerned, tenanted premises can be sold independently, so also the building in the occupation of the landlord. Counsel therefore submitted that both the rooms are to be treated as separate and independent, consequently Section 11(8) would not apply.

7. We are of the view, the above mentioned decision of the Apex Court cannot be applied to the facts of every case. So far as this case is concerned, seven rooms form as a compact block and the mere fact that landlord has divided the compact block into seven rooms it cannot be said that oneness of the building has been lost. The whole seven rooms form a block and part of the same building within the meaning of Section 11(8) read with Section 2(1) of the Act. The mere fact the

rooms in that compact block could be sold separately does not mean that oneness has been lost. Further the mere fact that tenanted premise is three rooms away from the room occupied by the landlord would not mean that Section 11(8) is not attracted. The question is whether all the rooms form part of one block and therefore part of a building. Under Section 11 (8) it is not necessary that the room should be adjacent, but the test is whether tenanted building forms part of the same building though separated by a few shop rooms. If all the rooms including the rooms occupied by the tenant and the landlord form part of a single building, though separated by two or three rooms, would not lose its oneness and therefore Section 11(8) could be attracted. Under Section 11(8) the nature of additional requirement should have some nexus with the existing need. The Apex Court in *Kanniammal v. Chellaram*, (2002) 4 SCC 627, held that 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. The additional requirement must be supplementary. In the instant case, the landlord wanted the tenanted premises for the show room and sales office of the existing business and the portion in the landlord's possession is proposed to be used as godown for the business. Both the needs are supplementary. Going by the structure of the building, we are of the view tenanted premises as well as the portion in the occupation of the landlord forms part of the same building and the purpose is also supplementary. Section 11(8) therefore would squarely apply.

8. The only question remains to be considered is whether by the eviction of the tenant the hardship that may be caused to the tenant would outweigh the advantage to the landlord. The advantage landlord would gain has been explained by him stating that he would get main road frontage and the present room which is now occupied can be used as godown and no hardship would be caused to the tenant since landlord himself has offered another room in the same building to the tenant. Availability of other building has also been established. In such circumstances, we are of the view Rent Control Court and the Appellate Authority have rightly held that the hardship that may be caused to the tenant by granting eviction would not outweigh the advantage of the landlord. In such circumstances, we find no reason to interfere with the concurrent findings of the courts below. The revision lacks merits and it is accordingly dismissed. However, considering the

facts and circumstances of the case, we are inclined to give time to the tenant upto 31.12.2004 for vacating the premises on condition that he should file an undertaking in the form of an affidavit before the Rent Control Court within one month from today stating that he would vacate the premises within the aforesaid time and would pay arrears of rent, if any, and future rent.

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