Francis Vs. Davis

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Court : Kerala

Decided On : Aug-01-2005

Reported in : 2005(3)KLT815

Judge : R. Bhaskaran and; K.T. Sankaran, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act - Sections 11(2), 11(4) and 20; Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Sections 10(2); Uttar Pradesh Cantonment Rent Control Act, 1952 - Sections 14; Uttar Pradesh (Temporary) Control of Rent and Eviction Act - Sections 3(1); East Punjab Urban Rent Restriction Act - Sections 13(2); Transfer of Property Act - Sections 108

Appeal No. : R.C.R. Nos. 465 and 466 of 2004

Appellant : Francis

Respondent : Davis

Advocate for Def. : Jommy Tharian, Adv.

Advocate for Pet/Ap. : Jijo Paul, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

K.T. Sankaran, J.

1. These Rent Control Revisions, namely, R.C.R. Nos. 465 of 2004 and 466 of 2004, are filed by the tenant in R.C.P. No. 40 of 2000 and R.C.P. No. 41 of 2000 respectively, on the file of the Rent Control Court, Irinjalakuda. The Rent Control Petitions were filed by the respondent landlord under Sections 11(2)(b) and 11(4)(ii) of the Kerala Buildings (Lease & Rent Control) Act (hereinafter referred to as 'the Act'). The Rent Control Court allowed the petitions under Section 11(4)(ii). The ground for eviction under Section 11(2)(b) was found against the landlord. The tenants filed R.C.A. Nos. 11 of 2002 and 12 of 2002, on the file of the Rent Control Appellate Authority, Thrissur challenging the orders of the Rent Control Court. The appeals were dismissed. The Rent Control Revisions are filed challenging the common judgment of the Appellate Authority.

2. The case of the landlord is that the shop rooms in question were leased out to the tenants on monthly rent. There are ten rooms in the main building, out of which five rooms belong to the respondent landlord and the other five rooms belong to his brother. The southernmost room is in the occupation of the tenant in R.C.P. No. 40 of 2000 and the next room on its northern side is in the occupation of the tenant in R.C.P. No. 41 of 2000. There is a stipulation in the rent deed that the tenants shall not cause damage or alterations to the building. On 12th and 13th February, 2000, which were holidays, the tenants demolished portion of the verandah on the front side of the rooms and constructed walls and put up asbestos sheets. Originally the verandah was having tiled roof. The tenants cut and removed a beam supporting the rafters and reapers. Since the beams and rafters were removed, damage was caused to the walls. Material alteration was caused to the front elevation and structure of the building due to the illegal acts of the tenants. Attempt was made to construct walls on the front side and to place shutters. The landlord filed O.S. No. 317 of 2000 before the Munsiff's Court, Irinjalakuda against the tenants for an injunction restraining them from making any further construction. The landlord contended that the tenants used the building in such a manner as to destroy and reduce its value and utility materially and permanently.

3. The tenants did not dispute the case of the landlord that there is stipulation in the rent deed that the tenants shall not cause alterations to the building. They contended that the landlord was not conducting periodical maintenance and repairs to the building. The verandah of the shop rooms was in a dilapidated condition. Tenants demanded the landlord to carry out maintenance of the roof of the verandah. The landlord allowed the tenants to effect alterations to the verandah including replacing of the tiles with asbestos sheets. The alterations were effected as agreed to by the landlord. By such alterations, the utility or value of the building is not affected and in fact, it is enhanced. No damage is caused to the building as a result of the alterations. The front elevation of the building has become more attractive and the utility of the building has been enhanced considerably.

4. The Commissioner appointed in O.S. No. 317 of 2000 had submitted a report before the Civil Court and the same was marked as Ext. A8 in the present proceedings. The Commissioner was examined as PW.2. The Commissioner reported that the level of the roof was altered and that a wall was constructed in the verandah in front of the two rooms occupied by the tenants separating the verandah into two portions. The Commissioner also reported that height of the front wall was also raised. For the purpose of the work, certain rafters fixed on the eastern wall of the rooms were also displaced. The Commissioner reported that damage was caused to the walls.

5. The Rent Control Court, on analysing the oral and documentary evidence in the case found that by the alterations in question, the front elevation of the building was changed. The verandah is a common one for all the ten rooms. By the alterations the height of the verandah and the nature of the roof of the verandah in the front portion of the two rooms in question have been changed. The construction of walls separating the common verandah and raising the height of the roof of the common front elevation of the building have caused much change to the building. The main building consists of ten identical rooms and now the front elevation of the two rooms has been considerably changed. The Rent Control Court took note of the admission made by RW.1 , one of the tenants, that the alterations are permanent in nature. The Rent Control Court held that by the

alterations, the value and utility of the building have been materially and permanently reduced. The Appellate Authority confirmed the findings of the Rent Control Court. The authorities below did not believe the evidence of RW.2, who is a tailor conducting his business in the front portion of the shop room in the occupation of the tenant in R.C.P. No. 40 of 2000. The authorities below held that the evidence of RW. 1 would indicate that permission granted by the landlord was only to remove the tiles, even according to the tenants. It was held that the evidence on the side of the tenants, even if it is believed, would only indicate that the landlord permitted them to remove the tiles and replace them with new ones.

6. The learned counsel for the petitioner contended that the prohibition in the rent deed against making construction or alteration to the building is not relevant while considering the petition under Section 11(4)(ii) of the Act. He contended that Section 11(4)(ii) is to be read independently and eviction can be ordered only if the ingredients thereof are satisfied. The stipulation in the rent deed would have no impact in considering whether the value or utility of the building has been materially and permanently destroyed or reduced.

7. Section 11(4)(ii) of the Act reads thus:

'(4) A landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building,-

(i) ... ...

(ii) if the tenant uses the building in such a manner as to destroy or reduce its value or utility materially and permanently;'

8. In Gurumoorthy Gopalakrishnan v. Lakshmi Bai, : 2005(1)KLT256 , this Court considered the question whether construction effected by the tenant in the land appurtenant to the tenanted building, in contravention of restriction in the rent deed against construction, would amount to user of the building 'in such a manner as to destroy or reduce its value or utility materially and permanently' and held that it would.

9. In Shanmugham v. Rao Saheb, 1988(1) KLT 86, Justice K.T. Thomas (as His Lordship then was) considered the question whether removal of the wall separating two rooms, construction of a common verandah for the tenanted premises and another room in the possession of the tenant and removal of the boundary wall and putting up a door in that place would attract Section 11(4)(ii). It was held that there can be no hard and fast rule that removal of a wall or construction of a door or providing a common yerandah would necessarily lead to an inference that there was either destruction or reduction of value or utility and that it has to be adjudged on the facts of each case. It was also held thus:

'...The expression 'materially and permanently' in Clause (ii) of Sub-rule (4) of the Act would certainly indicate that a landlord cannot get an order of eviction on that ground by mere proof of minor destruction, or alteration, even if it results in marginal reduction of value or utility. As the expression was used conjunctively the Legislature has indicated that even material alterations of a temporary nature would not help the landlord in getting an order of eviction. The destruction or reduction of utility or value of the building must be of a reasonably substantial magnitude.'

10. In Ayissa Beevi v. Aboobacker, 1971 KLT 273, this Court held that obliteration of the boundary and construction of a roofed corridor connecting the tenanted premises with the godown in the possession of the tenant belonging to another landlord would attract Section 11(4)(ii) of the Act. It was held that the tenant in putting up such a structure has abused his privileges as a tenant.

11. In Ahammad Kanna v. Muhammed Haneef, 1967 KLT 841, the question considered was whether removal of glass shutters by the tenant and demolition of the separating wall between two rooms to facilitate the trade carried by the tenant would materially and permanently impair the value or utility of the building. It was held in the negative, on the finding that there is no evidence to show that there was any damage to the building by the removal of the wall and that it was easy to replace the glass shutters.

12. In G. Arunachalam and Anr. v. Thondarperienambi and Anr., : AIR 1992 SC977 , dealing with a case under Section 10(2)(iii) of the Tamil Nadu Buildings

(Lease and Rent Control) Act, 1960, it was held that replacement of wooden door with rolling shutters, which on inspection by the Commissioner was found to have caused no damage to the structure, would not amount to 'acts of waste as are likely to impair materially the value or utility of the building'.

13. In Seethalakshmi Ammal v. Nabeesath Beevi, : 2003(1)KLT391 , this Court considered whether the acts of the tenant in dismantling of the original tiled roof of the building and substitution of the same with a new asbestos roof, replacing old walls with new ones and constructing new flooring would attract Section 11(4)(ii) of the Act and held in the affirmative.

14. In Om Prakash v. Amar Singh and Anr., : [1987]1SCR968 , the Supreme Court considered whether construction of a partition wall in a hall converting the same into two portions, without digging the foundation of the floor and without touching the ceiling would amount to material alteration of the building. The eviction sought was under Section 14(c) of the U.P. Cantonment Rent Control Act, 1952, whereunder eviction could be sought on the ground that 'the tenant has without the permission of the landlord, made or permitted to be made any such construction as in the opinion of the Court has materially altered the accommodation or is likely substantially to diminish its value'. The Supreme Court held:

'In determining the question the Court must address itself to the nature, character of the constructions and the extent to which they make changes in the front and structure of the accommodation, having regard to the purpose for which the accommodation may have been let out to the tenant. The Legislature intended that only those constructions which bring about substantial change in the front and structure of the building should provide a ground for tenants' eviction, it took care to use the word 'materially altered the accommodation'. The material alterations contemplate change of substantial nature affecting the form and character of the building. Many a time tenants make minor constructions and alterations for the convenient use of the tenanted accommodation. The Legislature does not provide for their eviction instead the construction so made would furnish ground for eviction only when they bring about substantial change in the front and structure of the building. Construction of a Chabitra, Almirah, opening a window or closing a

verandah by temporary structure or replacing of a damaged roof which may be leaking or placing partition in a room or making similar minor alterations for the convenient use of the accommodation do not materially alter the building as in spite of such constructions the front and structure of the building may remain unaffected. The essential element which needs consideration is as to whether the constructions are substantial in nature and they alter the form, front and structure of the accommodation. It is not possible to give exhaustive list of constructions which do not constitute material alterations, as the determination of this question depends on the facts of each case....'

It was also held that the nature of constructions, whether they are permanent or temporary, is a relevant consideration in determining the question of 'material alteration'. A permanent construction tends to make changes in the accommodation on a permanent basis, while a temporary construction is on temporary basis which do not ordinarily affect the form or structure of the building, as it can be easily removed without causing any damage to the building.

15. In Manmohan Das Shah and Ors. v. Bishun Das, : [1967]1SCR836 , the Supreme Court held:

'The expression 'material alterations' in its ordinary meaning would mean important alterations, such as those which materially or substantially change the front or the structure of the premises. It may be that such alterations in a given case might not cause damage to the premises or its value or might not amount to unreasonable use of the leased premises or constitute a change in the purpose of the lease.'

The Supreme Court was dealing with a case under Section 3(1)(c) of the U.P. (Temporary) Control of Rent and Eviction Act which is similarly worded as Section 14(c) of the U.P. Cantonment Rent Control Act, 1952, referred to above.

16. Gurbachan Singh and Anr. v. Shivalak Rubber Industries and Ors., : [1996]2SCR997 is a case coming under Section 13(2)(iii) of the East Punjab Urban Rent Restriction Act, which reads:

'13(2)(iii) - The tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land.'

The Supreme Court held thus:

'A plain reading will go to show that it contemplates that a tenant is liable to eviction who has committed such acts as are likely to impair materially the value or utility of the building or rented land. The meaning of the expression 'to impair materially' in common parlance would mean to diminish in quality strength or value substantially. In other words to make a thing or substance worse and deteriorate. The word 'impair' cannot be said to have a fixed meaning. It is a relative term affording different meaning in different context and situations. Here in the context the term 'impair materially' has been used to mean, considerable decrease in quality which may be measured with reference to the antecedent state of things as it existed earlier in point of time as compared to a later stage after the alleged change is made or affected suggesting impairment. Further the use of the word 'value' means intrinsic worth of a thing. In other words utility of an object satisfying, directly or indirectly, the needs or desires of a person. Thus, the ground for eviction of a tenant would be available to a landlord against the tenant under Section 13(2)(iii) of the Act, if it is established that the tenant has committed such acts as are likely to diminish the quality, strength or value of the building or rented land to such an extent that the intrinsic worth or fitness of the building or the rented land has considerably affected its use for some desirable practical purpose.'

17. A particular construction may destroy or reduce the value or utility of the building materially and permanently in the point of view of the landlord; while in the point of view of the tenant, it may enhance the value or utility of the building. The tenants in the present cases contended so. However, it was admitted by RW.1 that the alteration is of a permanent nature. The question is whether the point of view of the landlord or that of the tenant is decisive while considering a case under Section 11(4)(ii) of the Act. The Supreme Court in Vipinkumar v. Roshan Lal Anand, : [1993]2SCR640 considered this question and held thus:

'The impairment of the value or utility of the building is from the point of the landlord and not of the tenant.'

In Gurbachan Singh's case, : [1996]2SCR997 , the Supreme Court referred to and relied on the above dictum in Vipinkumar's case and held thus:

'The decrease or deterioration, in other words the impairment of the worth and usefulness or the value and utility of the building or rented land has to be judged and determined from the point of view of the landlord and not of the tenant or anyone else.'

18. The contention of the tenant that by the construction in question, the value and utility of the building have increased is not liable to be accepted. The question to be enquired under Section 11(4)(ii) is not whether the value or utility is increased. The impairment of the value or utility of the building is to be considered in the point of the view of the landlord. A similar contention raised by a tenant was negatived by this Court in : 2003(1)KLT391 .

19. The contention raised by the counsel for the tenants that the prohibition in the lease deed against the tenant making any construction is not relevant in dealing with a case under Section 11(4)(ii), in our view, is unsustainable. The said stipulation in the rent deed has relevance while considering what is the point of view of the landlord with respect to the utility of the building. The views of the landlord on this aspect are manifested by such a stipulation in the rent deed. The views of different landlords may be different. A particular landlord may not consider it a material alteration of the building if the tenant makes some additions or alterations to the tenanted building, while another landlord may have a different view. Lease, whether of land or of building, is a contract between the lessor and lessee. The parties to the contract may agree on the terms of lease and any term which is not unlawful and not against public policy can be incorporated in the lease deed. If a stipulation is made in the lease deed that the tenant shall not make any additional construction or any alteration to the tenanted building, it is binding on the tenant. It is true, a construction or alteration of the building which does not attract the ingredients of Section 11(4)(ii) would not render the tenant liable to be evicted under the Act, even if there is violation of the said term in the lease deed. At the same time, in considering whether in the point of view of the landlord the offending acts would destroy or reduce the value or utility of the building, the

stipulations in the lease deed are relevant.

20. Under the U.P. Cantonments (Control of Rent and Eviction) Act and in the U.P. (Temporary) Control of Rent and Eviction Act (referred to in : [1987]1SCR968 and : [1967]1SCR836 respectively), a tenant is liable to be evicted when he has without the permission of the landlord, made any construction as in the opinion of the Court has materially altered the accommodation or is likely substantially to diminish its value. In Section 11(4)(ii) of the Kerala Act, the word 'construction' or the expression 'materially altered' does not occur. The expression used in Section 11(4)(ii) is 'the tenant uses the building'. This expression, in our view, covers any user and includes construction, demolition, alteration, renovation and even neglect in the user of the building which an ordinary prudent man would not do. But such user, to attract the rigour of Section 11(4)(ii) must be 'in such a manner as to destroy or reduce its value or utility materially and permanently'. In our view, Section 11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act is wider in its scope and ambit than the provisions in the U.P. Acts referred to above, in view of the expression 'the tenant uses the building' in Section 11(4)(ii) of the Act. The prohibition in the lease deed against the tenant in making construction has certainly relevance while considering the question how the 'use' of the building by the tenant was Section 108(p) of the Transfer of Property Act provides that the lessee 'must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes'. The stipulation in the lease deed that the tenant shall not construct is valid in view of Section 108(p) of the Transfer of Property Act and it is relevant while considering the case under Section 11(4)(ii) of the Act.

21. We have considered the facts of the case in the light of the principles mentioned above and we are of the view that the authorities below were right in holding that the constructions made by the tenants would render them liable to eviction under Section 11(4)(ii) of the Act. No grounds are made out for interference under Section 20 of the Act. The Rent Control Revisions are liable to be dismissed and we do so.

However, taking into account the facts and circumstances of the case, the tenants are granted three months' time to vacate, on condition that they shall file separate affidavits before the Rent Control Court within one month undertaking to vacate the respective building in their possession on or before the expiry of the aforesaid period of three months and pay the arrears of rent, if any, within one month and continue to pay the amounts equivalent to monthly rent before the due dates till they vacate the building. In case of default to comply with any of these conditions, the landlord would be free to initiate execution proceedings.