

Valsan Vs. Furtal

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Court : Kerala

Decided On : Nov-08-2004

Reported in : 2004(3)KLT1046

Judge : K.S. Radhakrishnan and; K. Thankappan, JJ.

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

Appeal No. : C.R.P. No. 2212 of 2002

Appellant : Valsan

Respondent : Furtal

Advocate for Def. : Simon Luiz, Adv.

Advocate for Pet/Ap. : T.H. Abdul Azeez and; K.P. Majeed, Advs.

Judgement :

ORDER

K.S. Radhakrishnan, J.

1. Does the landlord's need extinguish merely because he got vacant possession of another premises during the pendency of the rent control proceedings, is the question that has come up for consideration in this case.

2. Original landlord died pending the revision petition. Legal heirs got themselves impleaded and wanted to continue the proceedings for eviction under Section 11(3) of Act 2 of 1965. Original landlord bonafide required the premises for the purpose of starting business of provisions stores and stationary. Building was rented out by the father of the landlord to the father of the tenant in the year 1959. Agreement of lease was later executed on 12.3.1987. Monthly rent was Rs. 100/- which was enhanced to 170/-. Tenant is conducting a printing press viz., Udaya Press in the tenanted premises. Original landlord requested for surrender of the premises since the building was required for own requirement. Rent Control Petition was filed under Sections 11(3) and 11 (8) of Act 2 of 1965. We are in this case concerned only with the ground urged under Section 11 (3). Landlord got himself examined as PW1. Tenant was examined as RW1. On the side of the landlord, Exts. A1 to A4 were marked. On the side of the tenant Ext.B 1 was marked. Ext. C1 is the commission report and Ext. C1 (a) is the plan. Rent Control Court rejected the petition on both the grounds. In appeal the Appellate-Authority allowed eviction under Section 11 (3) of the Act and also found that tenant is not entitled to the benefit of the proviso as well.

3. Counsel appearing for the tenant contended that due to the death of the landlord and also due to subsequent events, bona fide need urged by the landlord no more survives and has ceased to exist. Further it is stated, legal heirs had already come into possession of an area of 500 sq. ft. surrendered by P.A.George and Company, another tenant, in the ground floor of the building 37/1356 situated in the same compound, hardly 8 metres away. Present landlords if they bonafide required the premises for their own purpose of starting provision store and stationary they can very well use the same. Pointing out these subsequent events, an affidavit was filed by the present tenants on 16.6.2004. Counter affidavit has been filed by the landlords refuting the averments contained therein. It is stated in the affidavit that the landlord's widow was a teacher in F. A.C.T. school and that she took voluntary retirement on 31.3.2004. She has a son aged 31 and daughter aged 27. Both of them are unmarried and have no regular income of their own. Therefore, she wanted to start the business in provisions and stationary in the tenanted premises. The portion used as godown by P.A. George and Co. is required for their residence. Special reasons therefore exist, according to the

landlords, for the use of the said premise.

4. The mere fact that a landlord has come into possession of a premises while the rent control proceeding is pending does not mean that he should occupy that premises rather than proceeding with the rent control proceeding initiated against another tenant.

5. Rent Control Petition was filed by the landlord in the year 1998. The Apex Court in *G.C. Kapoor v. Nand Kumar Bhasin and Ors.*, (2002) 1 SCC 610, held that crucial date for determination of bona fides of the need is the date of filing of the eviction petition. The Apex Court in *Ramesh Kumar v. Kesho Ram*, (1992) 2 SCC 623, has pointed out that the normal rule is that in any litigation the rights and obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the court is not precluded from moulding the reliefs appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations. In *Hasmat Rai v. Raghumath Prasad*, (1981) 3 SCC 103, the Apex Court held that where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction is passed. If in the meantime events have cropped up which would show that the landlord's requirement is wholly satisfied then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the Court to take into consideration the subsequent events.

6. Landlord might have rented out several premises to different tenants but he has always the option to seek eviction of a premises which is convenient for him for the purpose for which eviction has been sought for. Option has to be exercised by the landlord exclusively for which tenants have no role. Several factors would go into the mind of the landlord while exercising the option against whom the Rent Control Petition has to be filed when there is more than one tenant. Factors like rent received from the particular tenant, convenience, relationship and so on may influence the landlord while exercising his option. After having decided to file Rent

Control Petition against tenant A, tenant B vacates, it will be for the landlord to decide whether he should occupy the vacant premises. The landlord after having made a preference cannot be forced to occupy the premises B which became available subsequently unless the tenant's need is wholly satisfied which is essentially a question of fact. In a given case the landlord can rent out even the premises which came into his possession during the pendency of the rent control proceedings for a better rent. No duty is cast on the landlord to keep the premises idle and discontinue the rent control proceedings. Landlord can always proceed with the rent control proceedings having taken a decision to proceed against A rather than B. Special reasons may exist not only when he exercised his option but also when he got the vacant possession of a premises. Reference may be made to the decision of the Apex Court in *Savithri Sahay v. Sachidanand Prasad*, (2002) 8 SCC 765. In a recent decision in *Pratap Rai Tanwani v. Uttam Chand*, 2004 (7) SCALE 631, the Apex Court has reiterated that the crucial date for considering the bonafide need is the date of filing of the Rent Control Petition. Only in cases where the Court is satisfied that subsequent events have wholly satisfied the requirement of the landlord it could reject the plea of the landlord under S. 11 (3) of the Act.

7. We may point out, so far as this case is concerned, though the landlord has come into possession of another premises, that is, the ground floor of building No. 37/1356,. facts would indicate that the premises is bonafide required for the purpose of his own residence. Tenanted portion of the building is bonafide required for the requirement of the landlord. Area of the first floor of the residential building is 1,300 sq ft. Ground floor also has an area of 1,000 sq. ft. Landlord has stated that the area is bona fide required for his residential purpose which itself is a special reason. The premises occupied by P.A. George & Co. is on the ground floor of. the landlord's residential house. The landlord requires the entire premises for his residence and hence the need in our view is bona fide.

8. In the above mentioned circumstances, we find no illegality, irregularity or impropriety in the order passed by the Appellate Authority to be interfered with by us in our Revisional Jurisdiction. Revision Petition lacks merits and it is accordingly dismissed. However, considering the facts and circumstances of the case, we are inclined to grant time to the tenant upto 28.2.2005 for vacating the

premises on condition that he should file an undertaking in the form of an affidavit within a period of one month from today stating that he would vacate the premises within the aforesaid period and would pay arrears of rent, if any, and future rent.

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