Subramanian Vs. Radhakrishnan

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Court : Kerala

Decided On : Nov-12-2004

Reported in : 2004(3)KLT1104

Judge : M. Ramachandran and; M. Sasidharan Nambiar, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(3) and 11(7)

Appeal No. : C.R.P. No. 1588 of 2002

Appellant : Subramanian

Respondent : Radhakrishnan

Advocate for Def. : V. Chitambaresh, Adv.

Advocate for Pet/Ap. : D. Krishna Prasad,; D. Narendranath,; Joji Varghese,

Disposition : Revision dismissed

Judgement :
ORDER

M. Ramachandran, J.

1. R.C.P. No. 6 of 1996 had been filed before the Rent Control Court, Palakkad and an order has been passed therein on 31.1.1997, whereunder it had been held

that the claim put in by the landlord for eviction under Sections 11(2)(b), 11(3) and 11(7) of the Kerala Buildings (Lease and Rent Control) Act was not sustainable. The Court had found that there were no arrears of rent payable and there was no bona fide need substantiated by the landlord as coming under Section 1 1(3) of the Act. It was also held that the invocation of Section 11 (7) was not warranted. On appeal, the Additional District Judge, Palakkad (the Appellate Authority) in R.C.A. No. 36 of 1997, held that the findings entered by the Rent Control Court were not sustainable and had found that on all the three grounds the landlord was entitled to get the eviction, as prayed for. The revision had come to be filed in the aforesaid context. We may briefly refer to the essential facts.

2. The landlord had come across possession of certain properties, including the scheduled properties, as inherited from his father and from 1.12.1993. He was also recognised as the Manager of an aided school, which was being housed there. The scheduled properties were situated in the compound. It is the admitted case that the same had been in the occupation of the tenant at least from about 1964. The tenant was conducting a tea shop business on a monthly rent of Rs. 13/-. After the assumption of office as Manager, the landlord had addressed the tenant by Ext. Al notice on 24.8.1995 requiring him to give vacant possession of the building. The reason pointed out was that the tea shop was causing problems to the inmates of the school by discharging filthy water; that there were arrears of rent payable from 1.1.1994 and also that the building was required for providing accommodation to the teachers of the school as a rest room.

3. Since by Ext.A2 reply notice, the tenant had refuted the allegations and expressed his disinclination to vacate the premises, the Rent Control Petition came to be filed. Evidence adduced consisted of Ext. A1 to A5, and the testimony of the landlord and the Headmaster of the school, on the side of the landlord, Exts. B1 to B2 as also the evidence of the tenant and RW2, a broker, who had dealings in real estates came from the counter-petitioner. The Advocate Commissioner Sri. Mathew C. Thomas also had tendered evidence.

4. The Rent Control Court held that it was a case where the tenant was always prepared to tender the rent and there was refusal on the part of the landlord to

accept the rent, which constrained him to send the rent by Money Order, and therefore there was no arrears of rent justifying eviction. It was further held that the need pointed out under Section 11(3) for accommodating the teachers in a proper resting room could not amount to 'own occupation' as coming under Section 11(3) of the Act and therefore the demand was not sustainable. It was further held that since the educational institution was not shown as the owner of the properties concerned, application under Section 11 (7) of the Act would not have been sustainable, it being a special provision to be applied only in given circumstances.

5. The learned counsel for the petitioner Mr. D. Krishna Prasad submits that the Appellate Court had erred in entering into such findings on all the three points. Perhaps he may be correct when he submits that the decision could not have been supportable on the plea that there were arrears of rent. Likewise, the finding of the Appellate Authority that Section 11(7) was to be applied in favour of the landlord also appears to be incorrect, on the face of the records.

6. There is clear evidence to indicate that the tenant had been paying rent upto date until such time the present landlord had come to possession. He had been paying the Municipal taxes in respect of the building and had also been offering rent deducting such payments. When it was found that the landlord was not prepared to accept the rent, he had even sent the amount by way of Money Order, which was refused and returned. Therefore, there might not have been any circumstance to invoke Section 11(2) of the Act, as could be seen from the conduct of the parties. The Appellate Authority need not have upset the finding of the Rent Control Court, on this count.

7. Like wise, the decision of the Appellate Authority with respect to the claim under 11(7) of the Act also could not have been supportable. Section 11(7) could be extracted as herein below:

'Where the landlord of a building is a religious, charitable, educational or other public institution, it may, if the building is needed for the purposes of the institution, apply to the Rent Control Court, for an order directing the tenant to put the institution in possession of the building'.

So as to come within the protection of the provision, the landlord of the building has to be a religious, charitable, educational or other public institution. This is a primary requirement for application of the provision. It is not as if the above stipulation had escaped notice of the Appellate Authority, but taking strain the finding has come to be recorded. It is stated that the school is recognised by the Government. If that be so, according to the Appellate Authority, the word 'institution' incorporated in S, 11(7) of the Act is wide enough to cover the private school functioning in the adjacent property owned by the petitioner, even though the school is a private one. Although a decision reported in 1964 KLT 1092 (Rev. Mother General v. Philip), is shown as the authority for the observations, we find that the express terms of the section, that the landlord of the building has to be a public institution, have to be strictly construed. The claim of the landlord was that he was the owner of the building, in which the school was functioning. The two positions are distinct and different. The landlord has not transferred his proprietary rights over to the Institution, which is altogether a different entity. It is not the educational agency that owns the buildings or the properties. As such, we may not be able to support the decision of the Appellate Authority on this score as well.

8. But, however we find that essentially the claim under Section 11(3) has been appropriately understood by the Appellate Authority and we are in agreement with the conclusion that had been arrived at, which ultimately leads to the position that an order of eviction is warranted; the eggs had not been placed in a single basket. On this issue, we may examine the legal contentions that had been raised by the parties with reference to the authorities that may be available on the subject.

9. under Section 11(3) of the Act, 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 dependant on him. The question is how far the need of a school manager for additional space, to be earmarked as a rest room for the teachers of his school, could be understood as a circumstance coming within the term 'his own occupation'.

10. The landlord and tenant had examined themselves, and sought sustenance from the witnesses examined. But independent reliable evidence from the Commissioner perhaps is the most reliable piece. The report by the Commissioner indicates that there is no sufficient space for being allotted to the staff for the facilities of a rest room. For the last over about 40 years, in spite of the additions that had been made by the management, the staff had been constrained to use a portion of the hall as rest room, in spite of the stipulations in the Kerala Education Rules, that sufficient accommodation to them has to be there. It has not been possible for the tenant to establish that there was vacant space available in the building, which could be utilised for the purpose. The Headmaster of the school, as PW2, has also supported the case of the landlord that such facility was absent and was required to be extended to the staff of the school. Therefore, we have to proceed on the assumption that the requirement was bona fide.

11. The essential point is as to whether this requirement could be considered as a circumstance spoken to by the section, which uses the expression 'own occupation'.

Mr. Krishna Prasad submits that perhaps the necessity for additional space might be there, but such need cannot be brought under Section 11(3) or 11(7) on the facts of the case. He submits that :the Legislature was careful in the use of its expressions while prescribing such restrictions. There can be bona fide need by a landlord for his own occupation. There can also be bona fide need by a landlord for the occupation by any member of his family dependant on him. These two alone are the contingencies/ circumstances, which entitle him to seek for eviction, but they are absent here. It cannot be stated that the teachers were members of the family dependent on the manager. There is also no case for the manager that the room is required for his own occupation. From the very inception, the plea is that the proposed occupation is for strangers, which the statute does not recognise. This Court may not be justified in incorporating conditions to the detriment of the tenants, as authorising eviction.

12. The tenant is in occupation of two rooms, in the properties, which are owned by the landlord. The two rooms are loosely connected to other buildings, though it

bears a separate building number. There is access to the building both from the school premises as also from the public road. If such building is put to the possession of the landlord evicting the tenant, it could be used for the purpose highlighted in the petition. The landlord is definite that use of such a building by the staff members, is his own occupation in the eye of law. A restricted interpretation therefore was not called for.

13. Counsel for the petitioner and adverted to a decision reported in MM. Quasim v. Manohar Lal, AIR 1981 SC 1113. The argument was that an inclusive definition, couched in very wide language, could be cut down by the amplitude of the explanation appended to the section. It is pointed out that after using the expression 'for his own occupation' or 'for the occupation by any member of his family dependent on him' automatically the scope of the section has been reduced, so as to mean that this should be individual occupation and nothing more than that. This is the essence of the submission, although the wisdom of the Commissioner, and his impartiality also had been made general subject matter of the attack.

14. However, the facts of the case here are altogether different from the contingencies placed before the Supreme Court. We are not prepared to hold that because of the presence of the explanatory clause, the natural meaning that could be given to the expression, namely 'own occupation' should have been understood as curtailed, in the drastic manner as had been suggested. The counsel for the petitioner/ tenant had adverted to the decision of the Supreme Court in D.N. Sanghavi v. A.T. Das, AIR 1974 SC 1026, as well, and especially paragraphs 3 to 8 thereof. The Supreme Court was considering on the meaning of the expression 'his business' under Section 12(l)(f) of the Madhya Pradesh Accommodation Control Act. It had been explained that the Act restricted the power of the landlord to eject the tenant at will. The direct and immediate object of the Act was to ensure occupation by the tenant, who is in need of it. When broadly viewed, a construction which fulfils the purpose should be preferred, than an understanding which frustrates it.

15. The position cannot be disputed. In paragraph 8, the Supreme Court had observed that the expression 'his own occupation' should be amplified to read as 'his own occupation by way of residence or business'. The Court held that the words 'for the purpose of continuing or starting his business' should be dilated to read as 'for the purpose of his own occupation by way of continuing or starting his business', which was necessarily implied in the section.

16. However, we find that the wordings of the sections in the Madhya Pradesh Accommodation Control Act were substantially different, and there is nothing in the decision to indicate that 'own occupation' was restricted for self use viz., personal occupation. At this juncture, we may refer to two Kerala decisions cited by the learned counsel for the respondent. Sri. Chithambaresh had heavily relied on the decision in Narayanan v. Sudarsan Trading Co. Ltd., 1977 KLT 595. The Court was considering as to the meaning of the above said section, where a claim had been put up by a company for eviction of a house let out to tenant, so as to accommodate the employees of the company, as residential quarters. The learned Judge held that the company may, as a welfare measure, undertake to provide residential accommodation to its employees, and if the eviction sought is for achieving this objective, the need would come within the ambit of 'own occupation'. An employee allotted with such accommodation is a licensee and there is no jural relationship of landlord and tenant as the right to occupy the accommodation is incidental to his employment and would terminate with the cessation of his employment. The guidance provided by the judgment is that the 'own occupation' need not necessarily be for the personal occupation. Although Mr. Krishna Prasad points out that it was only a legal person and the construction by the Court was therefore admissible in the peculiar nature of the context, we are of the opinion that in fact general principles have been laid down to the effect that 'own occupation' need not be confined to a situation which permits personal occupation alone.

17. Sri.Chithambaresh also had referred to a decision in Govinda Pai v. Sarvothama Rao, 1981 KLT 330. The Revision Petitioner there had let out buildings to the respondent. He was constrained to move the Rent Control Court under Section 11(3) of the Act in the circumstance that the firm, which was

carrying out a business, in which he was also a partner, had been forced to vacate the building occupied by them because of acquisition proceedings. He had requested the tenant to give vacant possession for accommodating the firm's business. Although the lower authorities had held that it could not be construed as a circumstance envisaged by Section 11(3) of the Act of 'own occupation', the High Court had held that the circumstances sufficiently were clear to show that request made was very much for own occupation as coming within the prescription of the section. Although he was a partner of a firm, so long as he was not a sleeping partner, the firm was his business as well and therefore there was nothing debilitating him for urging the reason as sufficient for enforcing eviction.

18. Advertence had been also made to two decisions, namely Krishna Menon v. District Judge, 1988 (1) KLT 131, and Raghavan v. Govindan Nambiar, 1995 (1) KLT 596- DB. In Krishna Menon's case, though considerable light had been thrown into certain aspects, namely that the word 'occupation' is not confined to the building as such and the definition of 'building' includes the garden, grounds etc., which are appurtenant to the building, a discussion about the details may not be necessary in this case. The later decision was with reference to the proviso to Section 11(3) of the Act, when it was held that the necessity of special conditions had to be seriously taken notice of while ordering eviction (though it is seen overruled on some other points by the Supreme Court -- See 1998 (2) KLT 786, Govindan Nambiar v. Raghavan.

19. The judgment in Narayanan's case and Govinda Pai's case (cited supra) examined the issue from two different angles. In the earlier case, the issue was the need felt by a Company for giving accommodation to the staff, who were on their employment. Such objective proposed was found to be as coming within the purview of 'own occupation', referred to in Section 11 (3). The need of a person for vacant possession of the premises owned by him for facilitating occupation of a partnership firm, in which he was a partner, also is found as one admissible within the terms of Section 11(3) of the Act.

20. Viewed from this perspective, the need of a school Manager for extra space, which is presently let out to a tenant, for the purpose of utilising the above area for

the need of the staff working in the school can also be considered as one coming within the meaning of 'own occupation' as envisaged under Section 11 (3) of the Act. As pointed out by Justice K. Bhaskaran (as he then was) in Narayanan's case, accommodation does not give any right to the occupants to claim tenancy or any other jural relationship in the property. It amounts to a licence for occupation, so long as they are in service. We have to observe that even such restrictions might not be warranted, as the meaning of the word 'occupation' has many tones than simple physical possession. We may take up the situation where a building belonging to a company has been rented out to a third party. For the beneficial use of the employees as well as the establishment itself, there may be need to get it back. For example, to have close proximity of a Commercial Bank, it may be required. Can it not be a need as envisaged by the section to demand vacant possession to accommodate the Bank? We have no doubt that even this requirement can be considered as a need for occupation by the principal so as to eject a tenant. The Bank could be accommodated on commercial lease basis thereafter.

21. We may take yet another example. Krishna Menon's case (cited supra) is an authority for the proposition that space covered by the tenanted building required, for being used as passage to a new building constructed in the tenanted premises, can be a circumstance for enforcing an eviction under Section 11(3) of the Act. In such cases, the need agitated is not the occupation of the building, which might be in the possession of a tenant. Thus it was a case where the building was sought to be demolished for access to the newly constructed building in the plot. The new building might have been intended to be let out for the benefit of third parties, but nevertheless it has been construed as occupation for the purpose of the section and the need for eviction have been upheld. The position highlighted by the petitioner herein is contract to the principle upheld there. We are in agreement with the submission of the landlord that the term 'occupation' has to be given the meaning taking notice of the context in which the employment of the term may arise.

22. The Appellate Authority has found that alternate sites might be available for the tenant to occupy. When the bona fide need is found and when it could be

considered as a need as envisaged by the section, it may not be possible for the petitioner herein to contend that the order of the Appellate Authority suffers from defects, as far as this issue is concerned.

23. We dismiss this Civil Revision Petition. However, taking notice of the nature of the occupation of the petitioner, it is directed that in case an affidavit is filed before the Rent Control Court by him, undertaking to give vacant possession to the landlord within a period of six months from today, and if such affidavit is filed within a one month's time, the tenant will be entitled to continue in occupation for a period of six months from today. No order as to costs.