

Kunhaleema Vs. Musthafa

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Court : Kerala

Decided On : Dec-15-2004

Reported in : 2005(1)KLT261

Judge : M. Ramachandran and; V. Ramkumar, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(2), 11(3), 11(4), 11(5), 11(7), 11(8) and 15

Appeal No. : R.C.R. No. 425 of 2004

Appellant : Kunhaleema

Respondent : Musthafa

Advocate for Pet/Ap. : M.C. Sen,; A. Mohamed Mustaque,; M.P. Sreekrishnan a

Disposition : Revision dismissed

Judgement :
ORDER

M. Ramachandran, J.

1. The decision of the Rent Control Court, Kannur in R.C.P. No. 223 of 1995 dated 21.8.1997 had been challenged by the tenant by way of R.C.A. No. 195 of 1997 before the Appellate Authority, Thalassery. Additional respondents 2 to 12,

representatives had been brought in the array of parties in view of the demise of the first respondent. The deceased tenant was conducting a hotel business in the schedule premises and a petition had been submitted claiming eviction Under Section 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as 'the Act').

2. Rent Control Authority had held that the claim had been established and it was a case where the tenant had in his possession buildings reasonably sufficient for his requirement in the same town. The Appellate Authority also had accepted the findings and directions as tenable.

3. We had opportunity to hear Mr. M.C. Sen who appeared for the revision petitioners, when the matter was listed for admission.

4. The principal submission of the learned counsel was with reference to the maintainability of the petition in view of the bar prescribed by Section 15 of the Act. Counsel points out that attempts were repeatedly made by the landlord to get eviction. Advertence had been made to such petitions filed as R.C.P. Nos. 193/1989, 148/1994 as also 196/1993. It is submitted that at least in one case, an attempt had been made to show that there was invocation of Section 11(4)(iii) of the Act, but that was unsuccessful. Therefore, it should not have been permissible for the landlord to have successive experiments, which were prohibited by the statute itself.

5. For two reasons, we are not inclined to accept this contention. First is that such an objection is not seen to have been taken up before the Rent Control Court. The second and the more substantial reason is that acceptance of the argument, it likely to defeat the genuine claims of the landlord here. Taking notice of the worth and content of the provision in the statute, the issue has to be approached. It may be that a tenant might have in his possession buildings, the details of which might not have been disclosed to third parties. He may acquire possession of buildings, which also might not be known to third parties, including the landlord. Such matters are within the exclusive knowledge of the tenant. Therefore, although a specific contention is raised in respect of a building that it could have served the use of the tenant, at that point of time, and got rejected, to consider it as a general

bar, and a disabling circumstance for him to agitate the issue for ever thereafter, would not be an acceptable proposition, as it goes against public interest. Even in respect of the self same building, cause of action may repeatedly arise, and therefore the principles akin to *res judicata* embodied in the section cannot be understood with reference to these situations. The cause of action, can arise at repeated points of time, whenever the tenant happens to come into possession a building or the landlord comes to know of such a thing. In fact, that appears to be the case here.

6. Even in the written statement, the tenant had admitted of possession of as much as 29 buildings, and there was nothing to indicate that the previous proceedings referred to by Mr. Sen, were in respect of all such buildings or in respect of any of them, specifically in mind.

7. The Appellate Authority has noticed that at least more than half a dozen buildings, had been in vacant possession of the tenant. For this reason also, it will be illogical and uncharitable to reject the application on the technical plea.

8. Section 15 of the Act refers to an embargo where decisions which have become final are not to be reopened. The content of the provision is that when claims have been finally decided or are purported to have been finally decided in former proceedings, such claims, substantially subjected to agitation, are not to be brought in afresh. This applies to claims Under Sections 11(2), (3), (4), (5), (7) or (8), viz., all the circumstances where the landlord is entitled to claim vacant possession. In *Govindan v. Subaida Beevi*, 1997 (1) KLT 910, this Court had occasion to examine as to whether the general principles of *res judicata*, constructive *res judicata* or Section 11 of the C.P.C. could be relevant in an adjudication under the Act. It was held that Section 15 of the Act alone can have application, as the provisions were specific. A cursory reading of the provisions would indicate that a landlord always would be at the receiving end alone, if the provision is invoked. The course advised is peremptory, i.e., the classified application deserves to be summarily rejected. We feel that the circumstances above require that the section needs a very strict interpretation. A change in the circumstances justifying the application, however, has to be substantiated by the

landlord and that could be by pleadings or evidence.

9. Even if a plea of bona fide need does not get acceptance, at one point of time, fresh needs in the same lines are likely to occur. Likewise, rejection of an application holding that there was no destruction of utility of the building on one occasion, may not tie the hands of the Authority to examine the matter, when fresh cases of destructions or misuse are alleged. Perhaps, in respect of every one of the situations postulated Under Section 11 of the Act, there might occur fresh cause of action, and such possibilities cannot be ruled out. 'Courts cannot adopt a doctrinaire or pedantic approach, and it should adopt a contention which would subserve and carry out the purpose and object of the Act, rather than defeat it'. (National Textile Corporation Ltd. v. Sitaram Mills Ltd., AIR 1986 SC 1234.

10. If that be the case, we do not find anything worthwhile in the Revision Petition so as to warrant interference. When the landlord was able to notice and present a case that buildings were in the possession of the tenant, the initial burden stands discharged. It shifts to the tenant and it is for him to show that they were not sufficient for his requirements. It has come out that the tenant was engaged in hotel business and the court below has made specific contents about the availability of sufficient space in his possession which could have been used for the purpose. In so far as the tenant had not discharged his burden, we do not think that interference in the Revision Petition is required or necessary. The Rent Control Revision is therefore dismissed in limine.

11. However, we direct that if the petitioner files an undertaking before the Rent Control Authority within a period of three weeks from today undertaking to give vacant possession of the scheduled items to the landlord on or before 31st of March, 2005 and also pays the arrears of rent, he is to be permitted to occupy the premises, as above for such period. The tenant is to serve a copy of the order on the first respondent, for information.