

**Bhaskaran Vs. Balan**

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**Court :** Kerala

**Decided On :** Aug-27-2003

**Reported in :** 2003(3)KLT1165

**Judge :** K.S. Radhakrishnan and; Pius C. Kuriakose, JJ.

**Acts :** Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 17(2)

**Appeal No. :** W.P. (C) No. 22050 of 2003

**Appellant :** Bhaskaran

**Respondent :** Balan

**Advocate for Def. :** P.K. Vijayan and; C.D. Binish, Advs.

**Advocate for Pet/Ap. :** V. Rajagopal and; K.N. Chathukutty, Advs.

**Judgement :**

**K.S. Radhakrishnan, J.**

1. Landlord is the writ petitioner. First respondent tenant filed an application under Section 17(2) of the Kerala Buildings (Lease and Rent Control) Act complaining that the landlord is not carrying out the periodical repairs and maintenance to the building though the same was requested by the tenant. Accommodation Controller referred the matter to the Village Officer, Edakkad for verification and report.

Village Officer pointed out that the tenant is conducting business in the petition schedule building E.P.XII/195, 196 of Edakkad Panchayat and that the building requires urgent repairs especially due to ensuing monsoon season. Accommodation Controller directed the landlord to carry out the repair and maintenance to the building within 15 days from the receipt of the said order. It was further ordered that on failure to carry out the said work within the stipulated time the tenant could repair the building at his own cost and the same could be adjusted towards rent of future months payable to the landlord.

2. Landlord aggrieved by the order of the Accommodation Controller filed a Review Petition under Section 23(1)(k) of the Kerala Buildings (Lease and Rent Control) Act. It was pointed out that though the Village Officer had filed his report on 26.2.2002 no opportunity was given to file objection to the said report and without hearing him the impugned order was passed. Further it was also stated in the Review Petition that the tenant had not complied with the mandatory condition of giving notice to the landlord before filing petition before the Accommodation Controller. Accommodation Controller without perusing any of the objections raised by the petitioner dismissed the Review Petition by order dated 3.7.2002. Aggrieved by the same this Writ Petition has been filed.

3. Counsel appearing for the petitioner Sri. V. Rajagopal submitted that the tenant had not complied with the statutory requirement of issuing notice under Section 17(2) of the Act before filing of the petition before the Accommodation Controller. Counsel further submitted that the Accommodation Controller has also not fixed the quantum of cost of the repair, which is also essential before passing orders on the application. Counsel appearing for the tenant respondent submitted that though he had not issued any written notice he had requested the landlord orally to carry out the periodical maintenance and necessary repairs to the building. Further counsel also submitted no written notice is contemplated under Section 17(2) of the Act. We may examine the rival contentions raised by counsel on either side. First we may examine whether notice has to be issued before moving the Accommodation Controller. Relevant provision which is germane for consideration in this case is Section 17(2) which we extract below for easy reference.

'17(2) Notwithstanding any law, custom, usage or contract to the contrary the landlord shall be bound to attend to the periodical maintenance and necessary repairs of the building. If landlord fails to attend to such maintenance or repairs to the buildings and amenities thereto within a reasonable time after notice is given by the tenant, it shall be competent for the Accommodation Controller to direct on application by the tenant that such maintenance and repairs may be attended to by the tenant and that the charges and cost thereof may be deducted with interest at six per cent per annum from the rent which is payable by him.'

The provision obliges the landlord to attend to the periodical maintenance and necessary repairs of the building notwithstanding any law, custom, usage or contract to the contrary. Therefore once the building has been rented out it is the duty of the landlord to carry out maintenance and necessary repairs to the building. On failure to do so tenant is required to issue a statutory notice to the landlord to carry out such maintenance and repairs within a reasonable time. What is reasonable time is a question of fact. No time limit is fixed under Section 17(2), but notice is a mandatory requirement. The section also stipulates notice. There is no indication regarding the mode of issuance of notice. Counsel appearing for the tenant submitted that oral notice is sufficient while counsel appearing for the landlord maintained the stand that written notice is necessary.

4. We may examine the context in which the expression 'notice' has been used in Section 17(2). Counsel for the tenant submitted wherever written notice is required the statute has provided so. Reference was made to proviso to Section 11(2)(b) and also proviso to Section 11(4)(i). Counsel submitted since Section 17(2) does not contemplate written notice but only used the expression 'notice' no written notice is contemplated. We are of the view every word has to be understood in its context in which it is used. Legislature has not stated that notice should be either oral or written. In Legal Thesaurus, Deluxe Edition by Willian C. Burton the meaning of the word notice is bulletin, circular, memorandum, notification, report, communication etc. Word 'notice' itself would reveal a circular, a report, statement etc. In other words, in certain context the word notice can be treated as written or oral. We may examine as far as Section 17(2) of the Act is concerned whether the notice contemplated is either written or oral. An expression in a statute is

controlled by its context, by the scheme of the statute and the object which the enactment seeks to achieve. It is the duty of the court not to confine itself to the mere verbal or literary effect of the provisions, as if applied to an abstract subject. A statutory obligation is cast on the landlord to carry out periodical maintenance and necessary repairs to the building. On failure to discharge his obligation landlord has to be told about the maintenance required and repairs and the amenities thereto be provided. Landlord should be given a reasonable time for attending to the maintenance and carry out necessary repairs. The consequence of not carrying of necessary repairs would enable the tenant to approach the Accommodation Controller for permission to carry out necessary maintenance and repairs. Accommodation Controller therefore could direct the tenant to attend the maintenance and repairs required and pass an order permitting the tenant to deduct the charges and costs thereof with interest at six per cent per annum from the rent payable. We are of the view the word 'notice' has been used in Section 17(2) to mean either written or oral. But it would be more advantageous and advisable that a written notice is given. We find in several cases dispute has been raised by the landlord of non-receipt of notice while tenant maintains the stand that he had given notice orally. Then the burden is on the tenant to show that he has given notice and discharging that burden will not be easy. If the tenant wants to carry out necessary repairs or maintenance he should give a notice and give reasonable time to the landlord, failing which he could make an application before the Accommodation Controller.

5. We find in many cases Accommodation Controllers are passing blanket orders directing the landlord to carry out repairs to the building without making any estimate with regard to the cost of repairs. In the instant case the tenant is occupying two rooms bearing No. E.P.XII/195 and 196. There must be some co-relationship between the amount to be spent by the landlord to carry out the maintenance and repairs and the rent payable. In the instant case the monthly rent of the schedule rooms is Rs.75/-. If the periodical repair and maintenance cost is Rs. 1800/-, then the landlord will have to spend two years rent for the repair and maintenance. Cost of labour and materials have gone up considerably and unless adequate provision is made by the Legislature it would create unrest in the community. Unless there is periodical hike in rent it would not be - possible for a

landlord to meet the cost of maintenance and repair. In other words if a duty is cast on the landlord under Section 17(2) there would be corresponding obligation on the tenant also to effect periodical revision of rent. In many cases the landlords may be eking their livelihood from the rental income received from the tenanted premises. Legislature should bestow their serious attention to these factors. Unless and until the quantum of cost of repair and maintenance is fixed it would not be possible for the Accommodation Controller to pass an order which would not prejudice either side. Reference may be made to the decision of this Court in *Chellammal v. State* (1994 (1) KLJ 630).

6. The Accommodation Controller by his order Ext.P1 dated 3.7.2002 permitted the tenant to carry out the repairs to the building and ordered that the cost could be adjusted towards rent of future months. Section 17(2) of the Act stipulates that the charges and cost of maintenance and repairs to be carried out by tenant may be deducted with interest at 6% per annum from the rent which is payable by him. Fixation of costs of maintenance and repairs will have some bearing with regard to the deduction to be made from the rent payable by the tenant. We find none of those aspects has been considered by the Accommodation Controller. No opportunity was also given to the landlord to file objection to the Village Officer's report.

7. Considering the entire facts and circumstances of the case we feel matter should be reconsidered by the Accommodation Controller afresh giving an opportunity to either side to put forward their objections to the Village Officer's report. Accommodation Controller also would assess the cost which is required for carrying out the maintenance and necessary repairs if the landlord is not carrying out the repairs. We therefore set aside Exts.P1 and P4 orders directing the Accommodation Controller to pass fresh orders within a period of one month from the date of receipt of a copy of this judgment.

Writ Petition is disposed of as above.