

Michael Vs. Paramara Group Devaswom

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Court : Kerala

Decided On : Mar-23-2005

Reported in : 2006(1)KLT979

Judge : R. Bhaskaran and ; M.N. Krishnan, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act - Sections 1(3), 11(2), 11(3), 11(4) and 11(7); Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 - Sections 2

Appeal No. : RCR Nos. 44, 49 and 50 of 2005

Appellant : Michael

Respondent : Paramara Group Devaswom

Advocate for Def. : G. Rajagopal, Adv.

Advocate for Pet/Ap. : A.X. Varghese, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

R. Bhaskaran, J.

1. All these Rent Control Revisions are filed by the same tenant. He was the respondent in R.C.P.No. 23/2001 and R.C.P.No. 24/2001 on the file of the Additional Munsiff and Rent Control Court, Ernakulam. In R.C.P.No. 123 of 2001 he was not a party. The petitions under the Kerala Buildings (Lease and Rent Control) Act were filed by the Paramara Group Devaswom represented by its Administrator.

2. R.C.P.No. 23/2001 was filed under Sections 1(3), 11 (4) (ii) and 11 (7) of the Kerala Buildings (Lease and Rent Control) Act. The contentions of the landlord in the Rent Control Petition were as follows:

3. The petitioner is a religious institution. The building bearing No. 41/2260 owned by the petitioner was let out to the respondent on a monthly rent of Rs. 150 in the year 1979. The petitioner obtained title to the property as per final decree in O.S. 134/ 70 and O.S. 28/74 on the file of the Sub Court, Emakulam. Though the building let out to the respondent was having a carpet area of 180 sq.ft. only, the respondent made various unauthorised and illegal additions and alterations to the structure without the consent of the landlord. He also removed a portion of the existing ceiling and constructed a staircase. The carpet area of the building is increased to 250 sq.ft. The alterations made by the tenant to the building has destroyed and reduced its value and utility materially and permanently. The building was earlier used as a Bhajana Madom of Paramara Devi Temple. Now the number of worshippers have increased. For performing Bhajana the devotees have to stay in the temple premises. The petitioner does not have any facilities to provide accommodation to the devotees. During festival time additional Priests, performers of Panchavadyam, cooks, manual labourers and others have to be employed whose presence is required round the clock in the temple premises. Petitioner has to provide accommodation to the Priests and other persons who are employed during special Poojas and occasions in the temple. Many family members expressed their desire to participate in the ceremonies. For giving Annadanam to the devotees during the festival time there is no proper kitchen to prepare food or hall to serve it to the devotees. Therefore the petition schedule building is bonafide required by the petitioner.

4. In the objection it is stated that the building was let out by Dr. R.K. Kartha, the earlier Administrator of the Devaswom Group. There was no period fixed for the tenancy. The respondent had not made any structural alterations which have materially affected the value or utility of the building. The petitioner has sold a number of rooms and building sites on the front side and western side of the temple recently. The petition schedule room is not fit for being used as a Bhajana Madom. Nobody perform Bhajana by staying in the temple compound. There is open vacant area in the temple compound where any number of rooms can be constructed. The respondent had earlier vacated two rooms near the stage of the temple for the purpose of accommodation of the Bhajana Madam as requested by the earlier landlord Dr. R.K. Kartha. There are other rooms in the possession of the petitioner for the need alleged. The respondent also claimed benefit of second proviso to Section 11 (3) of the Rent Control Act.

5. The allegations in R.C.P.No.24/2001 and objections filed by the respondent is also similar to the one in R.C.P.No. 23/2001. R.C. P. No. 24/2001 relates to building No.41/2258.

6. In R.C.P.No. 123/2001 the landlord invoked Sections 11(2)(b), 11 (3), 11 (4)(i), 11 (4) (ii) and 11 (7) of the Rent Control Act. That petition related to building No. 41/2259. In that case also there are allegations about unauthorised and illegal additions and alterations to the existing structure without the knowledge and consent of the landlord. It is also stated that alterations have reduced the value and utility of the building materially and permanently. The rent from September, 1999 is kept in arrears without any reasonable cause. He has sublet the petition schedule building to strangers without the consent of the landlord. The allegations regarding bona fide need are the same as in the other cases. The respondent filed objection as in the other cases.

7. The Rent Control Court found that though the Paramara Temple is a private temple, Section 11(7) of the Rent Control Act is applicable since the temple is open to the general public and several members of the public are visiting the temple to worship. It was also found that the need put forward was not bonafide. The rooms were earlier used as Bhajana Madam of the temple. The revision

petitioner was examined as R.W.I. He could not dispute that several Priests, performers of Panchavadyam, Cooks, manual labourers and others are employed round the clock during festival time. It was also not disputed that the festival is conducted for six days. There was also Annadanam to the public in these days. The landlord also took out an Advocate Commission and he has reported about the necessity of space for the above purposes. The Rent Control Court found that the need set up by the landlord was established. The Rent Control Court also found that the tenant is not entitled for the benefit of second proviso to Section 11 (3) of the Rent Control Act.

8. In R.C.P.No. 123/2001 one of the grounds raised is sublease by the respondent. In that case K.M. Johny, the original tenant was the respondent. He contended that he was an unnecessary party. The case of partnership setup by Johny, the tenant and the revision petitioner was found against. The Rent Control Court also took into account the admission by the revision petitioner that it was he who gave rent in the name of Johny by cheque. The Rent Control Court found that on a comparison of the hardship 'caused to the parties the hardship caused to the tenant will outweigh the advantage obtained by the landlord if eviction order was passed. The Rent Control Court found against the existence of any partnership between Johny and Michael. The Rent Control Court however found that the earlier landlord Dr. R.K. Kartha had recognised Micheal as the tenant by accepting rent from him and therefore the case of subletting was found against.

9. The Rent Control Court also found that the case set up by the landlord with regard to the tenant using the building in such a way as to materially and permanently reduce its value was correct. The carpet area was increased by the tenant by making additional constructions. All the additions were made without the consent of the landlord. It was also found that the tenant is liable to be evicted as the ceiling has been tampered with. Dismantling of ceiling will reduce the utility of the building and lowering of the floor of the room will amount to material alteration. Thus the Rent Control Court granted an order of eviction under Sections 11(3), 11(7) and 11(4)(ii) of the Rent Control Act. The prayer for eviction under Section 11(4)(i) in R.C.P.No. 123/2001 was denied.

10. Against the order disallowing the prayer under Section 11(4)(i) of the Act in R.C.P.No. 123 of 2001, the landlord filed R.C.A.No. 125 of 2003. The revision petitioner also filed R.C.A.No. 122 of 2003 challenging the order in R.C.P.No. 123 of 2001. He also filed R.C.A.No. 120 of 2003 against the order of eviction in R.C.R.No. 23 of 2001 and R.C.A.No. 121 of 2003 against the order of eviction in R.C.P.No. 24 of 2001. The Rent Control Appellate Authority considered all the appeals together and disposed of the same by a common Judgment. The appellate authority dismissed the appeals filed by the tenants as well as the subtenants. The appeal filed by the landlord against the order in R.C.P. No. 123 of 2001 in so far as the eviction under Section 11(4)(i) was disallowed by the Rent Control Court was allowed. Challenging the Judgments in appeals in R.C.A.Nos. 120, 121 and 125 of 2003, these revision are filed. The same revision petitioner challenged the order of eviction in R.C.P.No. 123 of 2001 by filing R.C.A.No. 122 of 2003 and the same was dismissed by the appellate authority. No revision is filed against that Judgment.

11. In these revisions, the learned Counsel for the revision petitioner contended that being a private temple, the landlord cannot invoke Section 11(7) of the Kerala Buildings (Lease and Rent Control) Act. He also contended that the ingredients of Section 11(4)(ii) are not satisfied to enable the landlord to get an order of eviction in R.C.P.Nos. 23 & 24 of 2001. It is also contended that the need alleged is not genuine and there are sufficient rooms available with the landlord to accommodate the persons during the festival season. It is also contended that there is enough place in the temple compound for constructing new rooms for such purpose.

12. The Rent Control Court as well as the Appellate Authority have taken the view that though the temple is a private temple, the public come in large numbers for worship in the temple. That fact is not seriously in dispute. Under Section 2(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965, 'place of public worship' means a place, by whatever name known to whomsoever belonging, which is dedicated to, or for the benefit of, or is used generally by, Hindus or any section or class thereof, for the performance of any religious service or for the offering prayers therein. It is not in dispute that Paramara Temple is not a place where the family members of the trustees alone come for worship.

Therefore, though the temple is a private temple, it is open to the Hindu public in general and Section 11(7) of the Act is attracted where such a landlord needs the building for the purpose of the institution. Therefore, the contention of the learned Counsel for the revision petitioner that Section 11(7) is not attracted cannot be accepted.

13. When the landlord has given evidence to the effect that one of the rooms was already a bhajanamadam and later it was let out to the tenant and the temple now requires it again for the purpose of the temple, there is no reason to doubt the genuineness or the bona fides of that claim. It is found both by the Rent Control Court as well as by the Appellate Authority that these rooms are required for the bonafide purpose of the landlord for various uses in connection with temple. It is needed not only during the festival time but even for other occasions where special poojas are conducted and members of the public wants the room for doing bhajans in the temple, the contention that the open space can be used for constructing new buildings also is unsustainable as all the open spaces in the temple cannot be used for constructing building only as open space is required for the devotees to attend to various public functions in the temple.

14. The next point to be considered is whether the order of eviction under Section 11 (4)(ii) in R.C.P.Nos. 23/01, 24/01 and 123/01 is justified. The area that was let out to the tenants in R.C.P.No. 23 and 24 of 2001 was 108 sq. feet each whereas now they are in possession of 250 sq.ft each. Similarly, in R.C.P.No. 123/01 the area let out to the tenant was 268 sq. ft. where as he was in occupation of 500 sq.ft. The tenants have encroached into open places and made unauthorised constructions covering the open area while making alterations and additions to the structure. Though it was contended that by the additions the value of the building has increased; so far as the landlord is concerned, it has been deprived of the vacant space outside the original building. As held by the Supreme Court in *Vipin Kumar v. Roshan Lal Anand* : [1993]2SCR640 , the impairment should be viewed from the point of View of the landlord and not of the tenant. Construction of a wall and putting up of a door were found by the Supreme Court to be sufficient to infer that the value or utility of the building has been materially affected. The same view has been taken by a Division Bench of this Court in *Seethalakshmi Ammal v.*

Nabeesath Beevi : 2003(1)KLT391 . Both the Rent Control Court as well as the Appellate Authority relied on the report of the Commissioner which showed that the revision petitioner has lowered the floor level. The Commissioner also reported that an opening was made in the false ceiling of the building in R.C.P.No. 123 of 2001. A wooden staircase with wooden handrails was constructed leading to the attic of the petition schedule building in R.C.P. Nos. 123/01 and 24/01. These were done unauthorisedly by the tenant. The Commissioner has also noted that a wall of 2 1/2 feet was constructed and upto the ceiling there is an iron wire mesh in R.C.P.No. 124 of 2001. That construction was also done by the tenant without the permission of the landlord. The finding of the authorities below that the landlord has established the ingredients of Section 11(4)(ii) cannot be said to be wrong.

15. With regard to R.C.P.No. 123 of 2001, though the sublessee filed R.C.A.No. 122 of 2003, the same was dismissed by the Rent Control Appellate Authority. That appeal, no doubt, related to the other grounds since Section 11(4)(i) was found against by the Rent Control Court. R.C.R.No. 50 of 2005 is filed challenging the finding in R.C.A. No. 125 of 2003 which was an appeal filed by the landlord against the tenant K.M. Johny. That appeal was allowed by the Appellate Authority finding that the sublease was established. In appeal, the Appellate Authority found that the landlord has made out the ground of sublease also and allowed the appeal. R.C.A.No. 125 of 2003 was in respect of building No. 41/2259. The case of the revision petitioner is that himself and the main tenant were in possession of the room near the stage of the temple earlier and at the request of the former owner that was surrendered and the present room was given on rent. Therefore, according to the revision petitioner, it was a joint lease for himself and Johny and it was constructed by him. The Appellate Authority found that there was nothing on record to substantiate the plea of the revision petitioner that there was a joint lease or any construction made by him. The further case of the revision petitioner that there was a partnership of himself and Johny which was dissolved and he alone became the tenant of the building was found against by the Appellate Authority. The Rent Control Court denied the order of eviction under Section 11(4)(i) only for the reason that the former owner accepted rent from the revision petitioner. The case of joint lease or a partnership between the original tenant and the revision petitioner is not at all substantiated by any evidence. Though Ext. P-7 partnership

deed was produced, it was found to be not binding on the landlord. On an analysis of the documentary evidence available in the case, the Appellate Authority found that the landlord has never recognised the subtenant as the main tenant. It was found that receipts were issued to two different persons on the very same date and that will show that the landlord continued to recognise Mr. K.M. Johny as the tenant. Nothing was brought out to our notice to hold that the sublease found by the Appellate Authority was in any way wrong. The fact that the revision petitioner has come into possession of the petition schedule building in R.C.A. No. 123 of 2001 at present is not in dispute. The arrangement between the tenant and the subtenant is known to them only. Unless the revision petitioner succeeds in showing that he was the main tenant or he was recognised as the tenant by the landlord, the finding regarding Section 11(4)(i) cannot be assailed so long as he has no case that he is not in possession of the building.

16. The finding of the Rent Control Court as well as the Appellate Authority under Sections 11(7) and 11(4)(ii) are concurrent. The finding in R.C.A.No. 125/03 by the Appellate Authority with regard to the case of sublease is based on relevant and material documents. Since nothing was brought out to our notice to hold that the finding was perverse or illegal, we are not in a position to set aside that finding. Therefore, all the Rent Control Revisions are to be dismissed and we do so.

17. The learned Counsel for the revision petitioner contended that since the buildings are needed only during festival season and this year's festival season is over, the tenants may be granted one year time to vacate the building. He also pointed out that 15 employees are working in the premises and the revision petitioner has to find out an alternate accommodation. It is not correct to say that the necessity put forward by the petitioner in these revisions is only with respect to the festival season. There are other occasions also where the landlord requires the building. Therefore, we are not in a position to grant one year's time as requested by the learned Counsel for the revision petitioner. Taking into account the fact that the petitioner is doing business and he has to find out an alternate accommodation, we grant four months' time from today on condition that he deposits the entire arrears of rent for all the rooms in question within one month and files an undertaking before the Rent Control Court within one month to vacate

the premises on or before the expiry of four months from today.

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