

Beeyathu Vs. Gopalan

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Court : Kerala

Decided On : Nov-18-2003

Reported in : 2005(1)KLT313

Judge : Jawahar Lal Gupta, C.J.,; S. Sankarasubban and; K. Padmanabhan Nair, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(4)

Appeal No. : O.P. No. 11297 of 1991

Appellant : Beeyathu

Respondent : Gopalan

Advocate for Def. : Grashious Kuriakose, Adv.

Advocate for Pet/Ap. : T.A. Ramadasan and; A.K. Alex, Advs.

Disposition : Petition allowed

Judgement :

Jawahar Lal Gupta, C.J.

1. Is the landlord, who seeks eviction of the tenant Under Section 11(4)(iv) of the Kerala Buildings (Lease and Rent Control) Act, 1965 on the ground of need to reconstruct the building bound to produce the plan along with the petition or during

the proceedings? Is the failure to do so fatal to the petition? This is the question before the Full Bench. The relevant facts may be briefly noticed.

2. On March 6, 1964, the demised premises were given on lease to respondent Nos. 1 and 2 for a period of ten months. The monthly rate of rent was fixed at Rs. 9/-. After the lapse of more than 15 years, the petitioner sent a notice dated September 22, 1979 to the respondents. By this notice, the tenancy was terminated. They were asked to vacate the premises. On October 10, 1979 the first respondent had sent a reply. Mediation followed. The building was got repaired. The monthly rent was raised to Rs. 15/-. The rent at the revised rate was paid upto April 1980. Thereafter no payment was made. It was further alleged that the second respondent had transferred his rights to the third respondent without the knowledge or consent of the petitioner. Lastly, the petitioner stated that the building is old. It is in a dilapidated state. Buildings with modern facilities had come up in the vicinity. The building required reconstruction. She has the financial capacity to 'reconstruct the building with all modern amenities and in a new pattern'. On these grounds, the petitioners sought the eviction of the respondents. She presented a petition before the Rent Controller (Principal Munsiff), Thalassery. The petitioner claimed that she was entitled to the eviction of the respondents on the grounds available to her Under Sections 11(2), 11(4)(i) and 11(4)(iv) of the Act.

3. The claim was contested by the respondents.

4. On a consideration of the matter, the Rent Controller allowed the petition on the ground of failure to pay the rent. Aggrieved by the order, the landlady and the tenants filed appeals.

5. The Appellate Authority considered the matter. It found that 'the building itself is in a ruined condition. Even the doors and windows fitted on the walls are in a ruined condition.....'. The 'building is in a dilapidated condition requiring reconstruction'. The finding of the Trial Court was reversed. On the question of rate of rent, it was held that the petitioner had 'not succeeded in proving that the rent was enhanced from Rs. 9A to Rs. 15/-.....' On these findings, the Appellate Authority allowed the appeal filed by the petitioner and directed the tenants to put

the landlady in possession. The right to claim possession under the proviso to Section 11(4)(iv) was protected. The appeal filed by the tenants was allowed to the extent that the rate of rent was Rs. 9/- and not Rs. 15/- per mensem as claimed by the petitioner.

6. Aggrieved by this Judgment, the tenants and the landlady filed Revision Petitions. The District Judge affirmed the finding with regard to the rate of rent. On the need for reconstruction also, the finding was affirmed. However, it was held that 'the legal requirement and the condition precedent for grant of an order Under Section 11(4)(iv) have not been satisfied inasmuch as the plan had not been produced'. Reliance for this conclusion was placed on the decision of a learned Single Judge of this Court in *Kesava Pillai v. Paulose*, 1989 (2) KLT416. On these findings, the Revision Petition filed by the tenants was allowed and the judgment of the Appellate Authority was reversed.

7. Aggrieved by the order of the District Judge, the petitioner has approached this Court through this petition under Articles 226 and 227 of the Constitution.

8. The matter was placed before a learned Single Judge. It was noticed that there was difference of opinion within the Court. Divergent views had been expressed in *Kesava Pillai's case* (supra) and *Nizzar Rawther v. Varghese Mathew*, 1991 (2) KLT 223. Thus, the case was referred to a Division Bench. On a consideration of the matter, the Division Bench referred the case to a Full Bench. This is how the matter has been placed before this Bench.

9. Mr. Alex, learned counsel for the petitioner contended that the view taken by the learned District Judge cannot be sustained. He submitted that a plain reading of the provision shows that the landlord does not have to produce a copy of the plan with the petition. On the other hand, Mr. Kuriakose, learned counsel for the respondents maintained that the decision of the District Judge conforms to the rule enunciated in *Kesava Pillai's case*.

10. It is apt to notice the relevant provisions.

'Section 11:-- Eviction of tenants

xxx xxx xxx (4) A landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building.

xxx xxx xxx(iv) if the building is in such a condition that it needs reconstruction and if the landlord requires bonafide to reconstruct the same and if he satisfies the Court that he has the plan and licence, if any required, and the ability to rebuild and if the proposal is not made as a pretext for eviction:

Provided that the landlord who evicts a tenant and does not reconstruct completely the building within a time which may be fixed or extended by the Rent Control Court, shall, on a petition before that Court, be liable to a fine of rupees five hundred, if it is proved that he has willfully neglected to reconstruct completely the building within such time;

Provided further that the Court shall have power at any time to issue directions regarding the reconstruction of the building and on failure of compliance by the landlord, to give effect to the order in any manner the Court deems fit and in appropriate cases to put the tenant back in possession or award to the evicted tenant damages equal to the excess rent he has to pay for another building that he is occupying in consequence of such eviction;

Provided further that the tenant who was evicted shall have the first option to have the reconstructed building allotted to him with liability to pay its fair rent; or

(v) if the tenant ceases to occupy the building continuously for six months without reasonable cause'.

A perusal of Sub-clause (iv) shows that the landlord can seek eviction of the tenant, if the building is in such a condition that it needs reconstruction. The need of the landlord to reconstruct the building should be bonafide. He should have the ability to rebuild. The proposal should not be a pretext for eviction. Still more, the provision postulates that he must have 'the plan and licence, if any required'.

11. The controversy in the present case hinges on the issue of the production of a plan. Is the landlord bound to produce it? Has he to do so despite the fact that there is no rule or law requiring him to submit a plan to any authority and obtain a

licence for construction? Would the failure to produce the plan defeat the claim of the landlord despite the fact that there is overwhelming evidence to show that the building is in a dilapidated condition and that the landlord's claim was bonafide?

12. A plain reading of the provision shows that the Legislature has made it incumbent upon the landlord to satisfy the Court with regard to the plan and licence only if these are required under any law governing the construction of buildings. Not otherwise. In this context, it deserves mention that it is a settled principle of interpretation of Statutes that when the language of a provision is clear and unambiguous, the Courts have to give effect to the words as used by the Legislature. The Legislative intent has to be gathered from the words of the Act. In doing so, the Courts avoid a construction, which would lead to absurdity. The effort of the Court is to ascertain and effectuate the real intention.

13. In the present case, the provision requires the landlord to prove that the building needs reconstruction. He has a bonafide need to do so. He has the ability to re-build. The proposal should not be a pretext for eviction. It is only on proving these facts that he can seek the eviction of the tenant. If the Legislature had intended that the plan and licence should be produced along with the petition, it would not have used the words 'if any required'. Still more, the provision does not require that the plan has to be produced even if not required. The Legislature has not specifically prescribed such a condition. If the plea as raised by the respondents is accepted, the words used in the Statute would be rendered wholly meaningless and some more shall have to be added. The Courts normally avoid such a course.

14. Mr. Kuriakose contended that no building can be constructed without a plan. Thus, the landlord must produce the plan along with the petition. This would be necessary to satisfy the Court with regard to the need to reconstruct the building.

15. This contention cannot be accepted. It is the admitted position that the provisions of the Act are applicable not only in the urban but also to the rural areas. It is also not in dispute that at the relevant time, in areas under the control of various Panchayats, no building bye-laws or rules requiring permission for construction had been promulgated. Thus, the Legislature has specifically

provided that the plan should be produced 'if required'. Still further, it is not difficult to imagine that the premises in a particular case may consist of a simple hall or a room. It may only have windows and doors. For such a building in a rural area, it may not be even necessary for a person to engage an architect and get a plan prepared. He may only draw a rough sketch or mark the area at the spot and the masons etc. may arise the building. It is in view of this position that the Legislature has added the words 'if any required' in the provision. These words, in our opinion, clearly qualify the expression 'the plan and licence'. The landlord has to satisfy the Court with regard to the existence of a plan and licence only if it is shown that these are required. In the absence of a positive requirement, it is not necessary for the landlord to produce the plan or the licence with the petition. Of course, if a plea regarding the plan is raised, the landlord may have to prove the relevant facts. Then the Court shall have to consider and decide the matter in the light of the evidence that may be adduced by the parties. Otherwise, the failure to produce the plan with the petition, in a case where the law does not require a prior permission from any authority, cannot be fatal to the claim of the landlord.

16. The matter can be looked at from another angle. A perusal of the provision shows that it contains adequate safeguards for the tenant. Firstly, it places a burden on the landlord to prove the bona fide need and capacity to rebuild the premises. Secondly, a failure to do so within the time fixed by the Court carries with it a penalty. The first proviso to Sub-clause (iv) empowers the Rent Control Court to impose a fine when it finds that the landlord has willfully neglected to completely reconstruct the building within the prescribed time. It can also give such other directions as may be considered appropriate. The tenant can even be awarded damages 'equal to the excess rent that he may have to pay for another building that he is occupying in consequences of such eviction'. Reading the Sub-clause with the three provisos clearly shows that the Legislative intent was not to merely provide a remedy to the landlord but also to duly protect the rights of the tenant. Due protection having been given to the tenant in the three provisos to the Sub-clause, the language of the substantive provision has not to be strained and stretched. The plain words must be given their natural meaning.

17. Even otherwise, the matter is not res Integra. The issue as arising in this case has been considered by the Court more than once. In Remadevi v. Janakiamma, 1996 (1) KLT 427, a Division Bench of this Court held that: -

'As per the Section quoted above, the Rent Control Court must find on the basis of the pleadings and the evidence that the building is in such a condition that it needs reconstruction and that the landlord bonafide requires to reconstruct the same. Other satisfactions that are to be fulfilled by the landlord are that he has the ability to rebuild and that the proposal is not made as a pretext for eviction. Forgetting satisfaction on the bonafide requirement, Court must be shown that he has the plan and licence, if required for reconstruction. Plan and licence need be shown for such satisfaction only if they are legally required for reconstruction. The words 'if any required' should, according to us. qualify both plan and licence. In a case, where licence is not required for reconstruction, neither plan nor licence is to be produced before Court for establishing the bona fides of the landlord before the Rent Control Court. The production of a plan where no licence is required can only be an empty formality, because neither the Rent Control Court can insist on construction in terms of the plan: nor can it take any action if construction is carried on in variance of the details given in the plan'.

18. Again in Manhantevida Mahamood v. Chakkarath Kulangara Prema, 1998(1) KLT 403, it was observed:--

'In support of his contentions, the learned counsel for the tenant relied on the decision reported in K.N. Kesava Pillai v. K.C. Poulose, 1989 (2) KLT 181, and the decision reported in Nizzpr Rawther v. Varghese Mathew, 1991 (2) KLT 223=1991 (2) KLJ 178, taking a contra view. According to the learned counsel, the view by this Court in Nizzar Rather's case (supra) requires reconsideration. In our opinion, the view taken in the decision in Nizzar Rather's case does not require reconsideration since the said view was confirmed by a Division Bench of this Court in the decision reported in Rema Devi v. Janaki Amma, 1996 (1) KLJ 427, wherein the Division Bench held that the requirement of plan and licence can only be under the Kerala Building Rules or any other statute governing the matter and that when the building is sought to be put up in a place to which Building Rules are

not extended, no licence is required, and in such a situation, no plan is contemplated. We agree with the opinion expressed by the Division Bench in the above decision. In view of the above decision, the contention of the learned counsel for the tenant regarding plan and licence fails'.

19. Thus, on the plain language of the Statute as well as on precedent, it is clear that the landlord is not required to produce the plan and/or licence unless it is so required by law. In a case where the law does not require the licence or plan etc., the failure to produce it cannot be a ground to deny the relief.

20. Mr. Kuriakose referred to the decision in Kesava Pillai's case (supra). In particular, reference was made to the observations in paragraph 4 wherein it was observed that:--

'A contention has been raised that the need for a plan arises only if such a plan is required. In support of the said contention emphasis is made to the following words in the Sub-clause: 'The plan and licence, if any required'. The parenthetical clause has obviously reference to the word 'licence' which precedes the clause, which means that the Rent Control Court need be satisfied of the licence only if a licence is required by law. 'It cannot be understood that the necessity for a plan also would depend upon any legal obligation to have such plan for the landlord to reconstruct the building. Unless the Rent Control Court is satisfied that the landlord has a plan, an order of eviction cannot be granted. But if the Rent Control Court does not say in so many words that he is satisfied of the existence of a plan it does not necessarily mean that no satisfaction has been arrived at. In this case the landlord, when examined as PW.1 has said that he had an estimate prepared for reconstruction of the building. That is not challenged by the tenant. In other words, the parties proceeded on the assumption that the landlord has a plan. That may be the reason why the tenant has not taken up a ground of want of plan either when the appeal was filed before the Appellate Authority or when the revision was filed before the revisional authority. I think it is too late in the day for the tenant to take up that point that the landlord does not have a plan for reconstruction'.

It is undoubtedly true that the Court had taken the view that the words 'if any required' referred to the licenced. However, it deserves mention that despite this

observation, it - was observed that the Rent Control Court could be satisfied about the existence of a plan even on the basis of evidence and despite the fact that a copy had not been produced. In the present case, the tenant had not even raised a plea in the written statement that the landlord did not have a plan. Still more, the learned Judge deciding the case has not said in so many words that it was incumbent upon the landlord to produce the plan along with the petition. Moreover, this decision has already been considered by the Division Bench in the case noticed above. Thus, the respondents can derive no advantage from this decision.

21. In view of the above, it is held that on precedent as well as on the plain language of the Statute, it is not incumbent upon the landlord to produce the plan along with the petition. The view taken by the learned District Judge in this behalf was wholly wrong.

22. No other point has been raised.

In view of the above, the Writ Petition is allowed. The decision of the learned District Judge is set aside., As a result, the order passed by the Appellate, Authority is restored. In the circumstances, the parties are left to bear their own costs.