

Abdul Rub Vs. Jobby Tharian

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Court : Kerala

Decided On : Aug-13-2002

Reported in : 2003(3)KLT733

Judge : J.B. Koshy and; K.K. Denesan, JJ.

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

Appeal No. : C.R.P. No. 1769 of 1997

Appellant : Abdul Rub

Respondent : Jobby Tharian

Advocate for Def. : V.M. Kurian, Adv.

Advocate for Pet/Ap. : V. Giri, Adv.

Disposition : Civil revision petition dismissed

Judgement :

ORDER

K.K. Denesan, J.

1. The respondent-landlord filed R.C.P. No. 13 of 1992 before the Rent Control Court, Aluva, for eviction of the tenant under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, for short the 'Act'. The Rent Control Court

dismissed the petition for eviction. Aggrieved thereby, the landlord filed R.C.A. No. 2 of 1994 before the Rent Control Appellate Authority. By the judgment impugned in this Revision Petition, the Appellate Authority ordered eviction under Section 11(3) of the Act. Hence this Revision Petition at the instance of the tenant.

2. There is no dispute about the fact that the respondent is the owner of the petition schedule building and that the building was let out to the revision petitioner on a monthly rental basis. The revision petitioner is running a department store in the building. The respondent wanted the revision petitioner to hand over vacant possession of the petition schedule building. Need pleaded is that he wanted to do business in rubber. The revision petitioner resisted the claim of the respondent. He contended that the need set up is not genuine but actuated by the oblique motive of extracting higher rent from the tenant.

3. The evidence consists of the depositions of P.Ws. 1 to 3 and R.Ws. 1 and 2 and documents marked as Exts.A1 to A4(a), B1 to B5 and Exts.XI and XI(a).

4. The question that arises for consideration is whether the eviction ordered by the Appellate Authority on the ground that the respondent-landlord has established the requirements under Section 11(3) is so perverse and illegal as to call for interference under Section 20 of the Act.

5. The landlord examined himself as P.W.1. He is aged 36. Being a married person having his own family, he has got the responsibility to maintain his wife and three children. He has no independent avocation nor any business of his own. He wants to do the business in rubber in the petition schedule building. His father (P.W.2) has promised to provide necessary finance for that purpose. Their family members are conducting rubber business in partnership basis in which the respondent and his wife are also partners. The respondent is residing very near to the petition schedule building.

6. Revision petitioner stated that the scheduled premises is the ground floor of a two storied building and the first floor is let out by the respondents to an Insurance Company 'for a monthly rent of Rs. 1,500/- and that the need put forward by the respondent is not bonafide. It is his contention that if the respondent was

genuinely in need of premises for conducting the rubber business, he could have utilised the first floor for his own business purposes instead of letting it out to the Insurance Company. It is pointed out that the first floor of the building was lying vacant till the year 1989-90, but no business was started by the respondent-landlord therein. For two reasons the above contention is liable to be rejected. Firstly, that the nature of the business intended to be conducted by the respondent cannot be conveniently done in the first floor and secondly the first floor was let out to the Insurance Company at a time when the respondent had not thought of doing any business of his own in the building. The revision petitioner has no case that at the time of issuing Ext.A3 lawyer notice on 15.4.1992 asking the revision petitioner to vacate the premises, any part of the building was lying vacant. The allegation that the first floor of the building was lying vacant till 1989-90 cannot be a good ground to resist the need put forward by the landlord on 1.4.1992 and subsequently in June, 1992 when the rent control petition was filed. Supreme Court has held in several decisions that the crucial date for deciding as to bona fides of the request of the landlord is the date of his application for eviction. (See *Gaya Prasad v. Pradeep Srivastava* ((2001) 2 SCC 604)). The revision petitioner would suggest that the respondent can utilise a part of his residential house lying adjacent to the petition schedule building for the purpose of stocking the rubber sheets and other business materials. This suggestion made by the tenant is ex facie unacceptable. It would be too much for the tenant to think that the landlord should use a portion of his residential house for running the business rather than applying to the Rent Control Court for getting vacant possession of the building in the possession of the tenant,

7. Revision petitioner contended that lorry parking is not allowed in front of the petition schedule building and therefore the respondent-landlord will not be in a position to load and unload rubber even if he uses the said building for storing rubber. The respondent has given evidence that there is a side road nearby the petition schedule building which road leads to his residential building as well, and the said road has got sufficient space to allow parking of lorry and other vehicles.

8. According to the revision petitioner, the respondent-landlord hails from an affluent family and the landlord's statement that he is in need of starting a business

of his own for earning income is not true. It is pointed out by the revision petitioner that the respondent is the President of the Rotary Club and Chairman of Periyar Club, Aluva, and that financially well placed persons alone could enrol as members and become office bearers of those clubs. But the evidence adduced by the respondent-landlord proves that his father was the Municipal Chairman as also the Director and Chairman of the Bank of Cochin and considering the social status the family has got, there is nothing strange or surprising in P.W.1 who belongs to the same family becoming a member of the said clubs and being elected as officer bearer of those clubs. We do not find any substance or merit in the contention of the revision petitioner that the financial position of P.W.2 (the father of P.W. 1) or even that of P.W. 1 himself can be a good ground for rejecting the claim of the landlord for own occupation to start his own independent income earning activity in the building owned by him. The contention raised on the score of Section (10) of the Act does not carry much force. It is settled law that in rent control proceedings meticulous survey of the pleadings is not required to be done and it is sufficient that essential facts in support of the claim are stated in the petition.

9. As already pointed out the revision petitioner has not adduced any evidence to show that the respondent-landlord is having any permanent avocation or other independent business which makes him incapable of starting the business in rubber in the petition schedule building and thereby tapping an independent source of income. It is neither just nor proper to approach the need put forward by the landlord with any amount of distrust or suspicion. We are unable to agree with the learned counsel for the revision petitioner that the claim made by the landlord is a camouflage to evict the tenant from the schedule building.

10. Though the revision petitioner would contend that the landlord did not state in his pleadings that he has got income from other sources, viz., rent from the first floor of the building, we are of the opinion that that will not adversely affect the bona fides of the claim made by the respondent since the bona fide need urged would stand established whether or not the landlord has got income from other sources. Law does not require that an impecunious landlord alone can think of starting an income earning activity in order that the need set up will pass through the test of bona fides. Law does not insist that a landlord having other sources of

income shall not carry on other income earning activity or venture to start a new trade or business. It was contended that it is quite unlikely that the respondent-landlord who is already engaged in a similar business in partnership with others and has failed to earn profit in that business would not venture to start business in the same line. We need only point out that the prospects of a business as also the taste of a person in a particular line of business are not matters for the courts to choose and impose on such persons. What is relevant is only the question whether the need put forward is bona fide. It is neither for the courts nor for the opposite party to examine whether there is proper exercise of wisdom by the landlord in choosing one avocation of life or other, for earning income.

11. Evidence on record would go to show that the wife of the revision petitioner/tenant has got a commercial building of her own in the same town and she and the revision petitioner are doing good business there. The revision petitioner with his family is residing in another building. The revision petitioner has not put forward any claim for the benefit of the second proviso to Section 11(3) of the Act.

12. In our view, the findings of the Appellate Court are just and reasonable and based on the evidence available on record. There is absolutely no reason warranting interference with those findings in exercise of the revisional power under Section 20 of the Act.

13. When the arguments on the merits of the case were over, the learned counsel for the revision petitioner made a prayer that the tenant will be subjected to great hardship if the order of eviction is executed immediately. Taking this submission into consideration, we are inclined to grant some time for the revision petitioner for vacating the petition schedule building. Accordingly, time is granted to the revision petitioner till 31.3.2003 to hand over vacant possession of the petition schedule building to the respondent provided the revision petitioner pays the entire arrears of rent as on 31.7.2002 and continues to pay the monthly rent till he vacates the tenanted premises and files an affidavit before the Rent Control Court undertaking that he will not induct any other person in the tenanted premises or create any new rights in respect of the tenancy and will hand over vacant possession of the building to the respondent on or before 31.3.2003. Subject to the above, the Civil

Revision Petition is dismissed. No costs.

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