

Thomas Vs. Kuriakose

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SooperKanoon Citation : sooperkanoon.com/8544

Court : Kerala

Decided On : Dec-11-2014

Judge : Honourable Mr.Justice K.T.Sankaran

Appellant : Thomas

Respondent : Kuriakose

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.T.SANKARAN THE HONOURABLE MR. JUSTICE&A.K.JAYASANKARAN NAMBIAR THURSDAY, THE11H DAY OF DECEMBER201420TH AGRAHAYANA, 1936 RCRRev..No. 272 of 2014 ()
----- Against the Order in RCA NO. 11 of 2010 of the Rent Control Appellate Authority, (Addl.District Judge- I), Kalpetta, Wayanad Against the order of the Rent controller (Munisff-Magistrate) Sulthanbathery dated 8th November, 2010 REVISION PETITIONER(S)/PETITIONER/APPELLANT/RESPONDENT:
----- THOMAS, AGED63YEARS
KASAMKUTTIYIL HOUSE, PULPALLY AMSOM DESOM SULTHAN BATHERY TALUK, WAYANAD BY ADV. SRI.S.M.PRASANTH
RESPONDENT(S)/RESPONDENTS: ----- KURIAKOSE, AGED44YEARS S/O.LATE PAILY, MUTTATH HOUSE, Residing At KALAMOOZHI PULPALLY POST, PULPALLY AMSOM DESOM SULTHANBATHERY TALUK, WAYANAD-670141 R. BY ADV. SRI.JOHN VARGHESE THIS RENT CONTROL REVISION HAVING COME UP FOR

ADMISSION ON 11-12-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K.T. SANKARAN, J.

& A.K. JAYASANKARAN NAMBIAR, J.

..... R.C.R. No. 272 of 2014 - A
..... Dated this the 11th day of December,
2014

ORDER

Jayasankaran Nambiar, J.

The respondent tenant in R.C.P.No.5/2009 before the Rent Control Court, Sulthan Bathery, is the revision petitioner before us. The Rent Control Petition was filed by the landlord seeking eviction of the petitioner tenant under Sections 11(2)(b), 11(3) and 11(4)(iii) of the Kerala Building (Lease and Rent Control) Act, 1965, (hereinafter referred to as "the Rent Control Act"). Before the Rent Control Court, the case put up by the landlord was that he required the space occupied by the tenanted premises for the purposes of providing access to his property, situated behind the tenanted premises, where he proposed to put up a new building for his own use. The Rent Control Court relied on a report furnished by the Advocate Commissioner appointed by it, to satisfy itself of the fact that the need projected by the landlord was a bonafide one. It was also found that the tenant owned another shop room in the same locality, and there was R.C.R. No. 272 of 2014 - A :-2:- nothing on record to show that the said building was not reasonably sufficient for his business purposes. In fact, the Rent Control Court, on an analysis of the evidence that was adduced in the case, found that the shop room that was owned by the tenant was reasonably sufficient for his business purposes. In the light of the said evidence, therefore, the Rent Control Court found that the tenant was liable to surrender vacant possession of the petition scheduled shop room within one month of the order, on the ground of arrears of rent under Section 11(2)(b), bonafide need of the petitioner under Section 11 (3) and also under Section 11 (4) (iii).

2. Aggrieved by the order of the Rent Control Court, the petitioner preferred an appeal before the Rent Control Appellate Court which proceeded to confirm the findings of the court below. It is against the order of the Rent Control Appellate Court, that the present Revision has been filed by the petitioner tenant.

3. We heard Adv. Sri.S.M.Prasanth, the learned counsel for the petitioner and Adv. Sri. John Varghese, the learned R.C.R. No. 272 of 2014 - A :-3-: counsel appearing on behalf of the respondent.

4. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, we find that, dealing with the contentions of the petitioner with regard to Section 11 (2)(b) of the Rent Control Act, both the courts below have concurrently found that the petitioner had kept the rent in arrears. It was in the backdrop of the said finding that the order under Section 11 (2)(b) of the Rent Control Act was passed by the Rent Control Court and confirmed by the appellate court. This being a concurrent finding of fact, we see no reason to interfere with the said findings in the present Revision petition.

5. As regards the findings in terms of Section 11 (3) of the Act, we feel that the contentions of the petitioner have to be analysed with regard to the bonafide need that was projected by the landlord. It is relevant to note that the consistent case of the landlord has been that he requires the tenanted premises for the purposes of providing an access to the property behind the tenanted premises, where he proposes to put up a new building. R.C.R. No. 272 of 2014 - A :-4-: Both the courts below have found that the said requirement projected by the landlord is a bonafide one and that the demolition of the tenanted premises is essential for the purpose of providing access to the property, behind the tenanted premises, that is proposed to be used by the landlord. In particular, the appellate court relied on the decision of the Hon'ble Apex Court in Kunhamma v. Akkali Purushothaman - 2007 (3) KLT599 which had in turn relied on the decisions in Sarada and Others v. M.K. Kumaran - 1969 KLT133 and Krishna Menon v. District Judge - 1988 KLT131 wherein it was held that "use and occupation" envisaged under Section 11 (3) would include a demolition of the demised premises so as to widen a pathway for another building belonging to the landlord and that the word "building" in

Section 2 (1) of the Act includes gardens, grounds etc. which are appurtenant to a building, and that the definition had been kept flexible in order to meet the numerous and varied exigencies which may arise in individual cases. The findings of the courts below, based on the aforesaid decisions of the Supreme Court, cannot be found fault with. We, therefore, uphold the findings R.C.R. No. 272 of 2014 - A :-5-: of the courts below with regard to the bonafide need established by the landlord, in accordance with Section 11 (3) of the Rent Control Act.

6. We must next advert to the contentions of the petitioner with regard to the 2nd proviso to Section 11 (3). As per the said proviso, the Rent Control Court shall not give any direction to a tenant to put the landlord in possession, if such tenant is depending for his livelihood mainly on the income derived from any trade or business carried on in such building, and there is no other suitable building available in the locality for such person to carry on such trade or business. In the case at hand, we note that it has been the consistent case of the landlord that the petitioner tenant had another building, which he was using as a shop for the purpose of storing and selling of fertilizers. On a consideration of the evidence before it, the courts below found, that, in so far as the petitioner tenant already had another shop room for the purposes of his business, the tenanted premises, which was sought to be demolished, was not the premises on which the tenant was dependant for his livelihood. Under these R.C.R. No. 272 of 2014 - A :-6-: circumstances, the courts below found that the first limb of the second proviso to Section 11(3) had not been established by the tenant so as to insulate himself from a claim for eviction by the landlord. It was also found by the courts below, that the shop room owned by the tenant was also such, as was reasonably sufficient for him to carry on his trade or business. In that view of the matter, therefore, the second limb of the second proviso to Section 11 (3) also stood established against the petitioner/tenant in the instant case. Resultantly, inasmuch as the petitioner/tenant had not succeeded in showing that he was entitled to the benefit of the 2nd proviso to Section 11 (3), the findings arrived at against him by the Courts below cannot be said to be illegal or unreasonable. We, therefore, uphold the said findings under Section 11 (3) of the Rent Control Act.

7. Lastly, we must refer to the contentions of the petitioner with regard to Section 11 (4)(iii) of the Rent Control Act. As per the said provision, if a tenant already has in his possession a building or subsequently acquires possession of or puts up a building, reasonably sufficient for his requirements in the same R.C.R. No. 272 of 2014 - A :-7-: city, town or village; then that would be a ground for the landlord to insist on the tenant putting the landlord in possession of the tenanted premises. As already noted in connection with the discussion under Section 11 (3) of the Act, the findings of the courts below are concurrent in holding that the premises owned by the petitioner/tenant in the same locality was reasonably sufficient for carrying on his business. We, therefore, do not find any reason to upset the findings of the courts below under Section 11(4)(iii) of the Rent Control Act. Resultantly, we do not see any grounds warranting interference with the findings of the courts below and, hence, the Rent Control Revision fails and is accordingly dismissed. The learned counsel for the petitioner/tenant prayed for a reasonable time to vacate the petition schedule building. We grant time till 31-5-2015 to the tenant to vacate the petition schedule building on condition that he shall file an affidavit before the Rent Control Court on or before 15-1-2015 unconditionally undertaking to vacate the petition schedule building on or before 31-5-2015 and also on condition that the R.C.R. No. 272 of 2014 - A :-8-: tenant shall deposit the arrears of rent, if any, before the Rent Control Court on or before 15-1-2015 and also on condition that he shall continue to deposit the monthly rent before the Rent control Court on or before the 10th of every succeeding month. If the tenant complies with the aforesaid conditions, the order of eviction shall be kept in abeyance till 31-5-2015. If the tenant fails to comply with any of the conditions mentioned above, the order of eviction can be executed forthwith. Sd/-K.T. SANKARAN JUDGE Sd/-A.K. JAYASANKARAN NAMBIAR JUDGE ani/11/12 /truecopy/ P.S. tojudge