Rajan Vs. Dileep Kumar

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Court : Kerala

Decided On : Apr-27-2010

Reported in : 2010(2)KLJ668

Judge : Pius C. Kuriakose and; K. Surendra Mohan, JJ.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 2(1) and 11(3)

Appeal No. : R.C.R. No. 439 of 2005

Appellant : Rajan

Respondent : Dileep Kumar

Advocate for Def. : G. Mohan,; A. Mohammed Mustaque,; M.K. Sumood,;

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

Disposition : Petition dismissed

Judgement :
ORDER

K. Surendra Mohan, J.

1. The common question that arises for consideration in these revisions is:

Whether the availability of another vacant plot of land in the ownership and possession of the landlord would attract the prohibition or the bar contained in the first proviso to Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965

2. R.C.R. Nos. 439/05, 440/05 & 441/2005 arises from a common order of the Rent Control Appellate Authority, Thalassery while R.C.R. No. 206/2009 is filed against the judgment of the Rent Control Appellate Authority, Thalassery in rent control proceedings that relate to a totally different premises where the parties are also different. However, all the revisions are considered together for the reason that, the question of law that has been raised for consideration is common to all the revisions. For the sake of convenience, the parties are referred to as the landlord and tenant.

3. R.C.R. No. 439/2005, 440/2005 & 441/2005 are three revisions filed by the landlord against concurrent orders passed by the Rent Control Court and confirmed by the Rent Control Appellate Authority declining orders of eviction under Section 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965, hereinafter referred to as the 'Act' for short. The landlord filed three Rent Control Petitions R.C.P. Nos. 63/96, 65/96 and 67/96 against three different tenants seeking eviction on the ground of bona fide need under Section 11(3) of the Act. The buildings are adjacent to each other and are located in the same plot of land, where the tenants are engaged in different businesses. According to the landlord, the building originally belonged to Vinodhini, who is no more. During her life time itself, she had issued a notice to the tenant in R.C.P. No. 63/96 alleging that she wanted to demolish the building for the purpose of conducting repairs of a lorry and autorickshaw that belonged to the petitioner. After her death the title to the property devolved on the petitioner. The tenants attorned to him and thus, he became landlord in respect of the building. It is the case of the petitioner that his wife had passed away following a heart operation at Delhi for which he had to incur considerable expenses. The petitioner had to sell his lorry and also had to incur other liabilities. According to the landlord, he wants to start a spare parts shop in the building and also wants to provide a space for parking and for repairing autorickshaws. Therefore, he wants to demolish the tenanted premises and to put

up a building suitable for his own bona fide need.

4. The tenants disputed the need that was put forward by the landlord, contending that he had not acquired title to the building since the partition arrangement to which he traced his title, had been set aside. However, the main contention of the tenants have been that the landlord could very well make the proposed construction in the land that was remaining vacant and appurtenant to the tenanted premises. The said vacant land according to the tenants was sufficient for making any construction that was necessary for the proposed business of the landlord.

5. The Rent Control Court tried all the three petitions on the above pleadings, treating R.C.P. No. 63/96 as the leading case. The evidence in the case consists of Exts.A1 to A17 documents and the oral evidence of the landlord as RW. 1 on the side of the petitioner and Exts.B1 to B7 documents and the oral testimonies of R.Ws. 1 to 3 on the side of the respondents-tenants. R.Ws. 1 to 3 are the tenants in the Rent Control Petitions.

6. The Trial Court on an evaluation of the evidence found that the property had roads on its northern and eastern sides. According to the Trial Court, it was not necessary for the spare parts shop and the garage to be under the same roof. If the landlord wanted, he could locate the buildings that were necessary for satisfying his need, on the southern side of the existing building. It was therefore, found that the need alleged by the landlord was only an irrational desire. In the above view of the matter, all the three Rent Control Petitions were dismissed.

7. The landlord challenged the order of the Rent Control Court before the Rent Control Appellate Authority, Thalasserry by filing R.C.A. Nos. 48/97, 49/97 and 50/97 respectively. On a reappraisal of the evidence on record, in the light of the rival contentions, the Appellate Authority concurred with the view of the Rent Control Court. According to the Appellate Authority, the need of the landlord could be satisfied by utilising the vacant space that was not occupied by the tenanted premises. Therefore, if the landlord's need were bona fide, he could have satisfied his need by utilising the said vacant land. In view of the above, his claim that he wanted to demolish the tenanted premises lacked bona fide and was therefore,

liable to be rejected. The landlord has filed the above three revisions challenging the concurrent findings of the authorities below.

8. According to Mr. G. Mohan, counsel for the landlord, the authorities below have gone wrong in disallowing the claim for eviction put forward by the landlord. According to him, the landlord was the best judge of his need. Therefore, it was open to him to decide how best he should utilise the property that was owned by him. The tenants had no right to dictate to the landlord regarding the manner in which he should satisfy his need. According to the counsel, both the authorities below seriously erred in not addressing the proper question that arose for consideration viz., whether the need that was put forward was bona fide or vitiated in any manner. It is contended that there is no evidence or material on record to warrant a conclusion that the need of the landlord lacked bona fides. Though it is true that the plot in question had road frontage on two sides, it was open to the landlord to decide, which one of the frontage of his property was the best suited for his business. Therefore, the authorities below erred in finding fault with him for not having utilised the frontage of the other road that was available to him.

9. Mr. Mohammed Mustaque, counsel for the tenants contended on the other hand that since there was no dispute that the rest of the land remaining unoccupied by the tenanted premises was also having sufficient road frontage, the need of the landlord could be satisfied by utilising the said portion of the land, which was admittedly in his possession. In view of the fact that the said portion of land was also suitable for satisfying the proposed need, this was a case in which the landlord had to explain with the support of special reasons, as to why his need could not be satisfied by utilising the vacant portion in his possession. It is also contended that the first proviso to Section 11(3) of the Act required the landlord to plead and prove such special reasons, before he could claim eviction of the tenant under Section 11(3). More or less identical contentions are advanced by Mr. Cibi Thomas who appears for the tenant in R.C.R. No. 441/2005. On the above contentions, the counsel for the tenants prayed for dismissal of the Rent Control Petitions.

10. Ext.A2 is a building permit issued by the Cannanore Municipality on 5.7.1994. The permit number is B.A. 233/94. An approved plan of the proposed construction also accompanies Ext. A2 building permit. It can be seen from the approved plan that the plot on which the tenanted premises is situate is an irregular shaped plot. The shop enjoys frontage of the jail road on one side and a by-road on the other side. It is by utilising the frontage of the jail road that the proposed construction has been planned. Sanction has been accorded for the construction in accordance with the approved plan on 5.7.1994, as noticed above. The sanction further shows that the same has been issued subject to the condition that the existing building should be demolished before commencement of the proposed construction, as shown in the approved plan. The frontage elevation as well as the other details are also shown in Ext.A2 plan. Ext. A2 series clearly show the nature of the construction that is proposed. The landlord has been examined as P.W. 1. He has denied the suggestion that the proposed building could be constructed without demolishing the existing petition schedule building. He has further deposed that because the property is in a triangular shape, 10 ft. space has to be left from the road both on the eastern and northern sides. He has further deposed that he had tried to get a plan for construction of the building without demolishing the existing building but the Engineer and the local authority had informed him that it was not possible to do so. He has also deposed that it was not possible for him to construct the proposed building without evicting the present tenants.

(Ed. Note: Paras. 11 to 19 omitted being appreciation of evidence)

20. With regard to the common question of law that has been raised in all these revisions, it is argued by Mr. K. Mohammed Mustaque, counsel for the tenants that when eviction is sought under Section 11(3) of the Act for demolition of the tenanted building and utilisation of the site for the need of the landlord, it is necessary for the landlord to plead and prove that no other suitable vacant land was available in his possession to satisfy his need. It is also pointed out that the land remaining vacant as part of the plot in which the tenanted building is situate itself could be utilised for construction of the building by the landlord.

21. The first proviso to Section 11(3) reads as follows:

Provided that the Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons, in any particular case it will be just and proper, to do so.

A reading of the above provision would show that what is enacted by the legislature is a bar against the Rent Control Court giving any direction to the tenant to put the landlord in possession of the building, where the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons, in a particular case it would be just and proper to do so. Therefore, what is contemplated by the said proviso is ownership and possession of the landlord over another building and not the building site or a vacant plot of land. As per Section 2(1) of the Act 'building' includes any building or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes and includes the garden, grounds, wells, tanks and structures, if any, appurtenant to such building, hut etc. Therefore, the expression 'building' used in the Act cannot be said to include a vacant plot of land. The proviso speaks only about the building and nothing else. Just because the proviso refers to appurtenant land, gardens etc. which are normally considered to be part of the building, it cannot be held that even vacant land or building site would come within the definition of building under the Act. We also notice that the Act itself is an Act to regulate the leasing of buildings and to control the rent of such buildings in the State of Kerala as proclaimed by the preamble. To accept the contention of the tenant would amount to supplying an amplitude to the proviso that would extend beyond the scope of even the very enactment. Therefore, we refrain from giving any such extended meaning to the proviso.

22. The very same question had come up for consideration before another Division Bench of this Court, to which one of us (Pius C. Kuriakose, J) was a party. The said decision is Padmanabhan Nair v. Devaki Brahamani Amma 2009 (1) KLT 485. In the said case, an earlier decision of this Court, Ikkorakutty v. Hariharan 1973 KLT 986, which took the view that building sites were also included in the first proviso to Section 11(3) has been overruled. In conclusion this Court has observed as follows at page 490:

As already stated, a plain reading of the proviso will show that the proviso speaks of own buildings possessed by landlords and not building sites. We have, therefore, no doubt in our mind that in order to apply the first proviso to Section 11(3) applies the landlord must be possessed of another building of his own. The intention of the legislature in enacting the first proviso to Section 11(3) is clearly that when the landlord's avowed need under Section 11(3) can be accomplished through a building already possessed by him, the tenant should not be disturbed on the basis of that need.

We find no reason to differ from the above view.

23. The counsel for the tenants has relied upon the decision in Muhammed v. Aravindakshan Nair : 2004 (3) KLT 279. In the said case, the tenanted premises was damaged. The question was whether a suit to recover possession of the site was maintainable when a portion of the tenanted premises was still remaining intact. This Court relying on an earlier decision of the Supreme Court reported in Vannattankandy Ibrayi v. Kunhabdulla Hajee : AIR 2003 SC 4453 held that, since it has been shown that a portion of the tenanted premises was in existence, a petition for eviction under the Rent Control Act would be maintainable. However, the said decisions cannot advance the case of the tenants in the present case for the reason that the question raised herein is totally different, relating to the scope of first proviso to Section 11(3) of the Act.

24. It is the further case of the tenant that the landlord could have utilised other vacant land owned by him to make the proposed construction. In R.C.R. Nos. 439, 440 & 441/2005 it is contended that the rest of the plot lying vacant could be utilised for making the new construction. In R.C.R. No. 206/2009 the contention is that the vacant land behind the tenanted premises could be utilised for constructing a residential house for the landlady. It is fairly well settled that it is not for the tenant to dictate as to how the landlord should satisfy his need. The landlord is the best judge of his need and it is for him to decide how best to satisfy his need. It is not open to the tenant to contend that the landlord should satisfy his need by utilising the vacant land available behind the tenanted premises. Rejecting a similar contention, another Division Bench of this Court has in George

Varghese v. Ammini Cherian 1995 (2) KLT 763 has observed as follows:

A contention that the landlady can choose some other vacant plot in her possession for the said purpose does not merit consideration. It is for the landlady to make the choice between the two and to decide in what fashion the new building shall be constructed. Tenant cannot dictate to the landlord as to the site or the type of the new building which the landlord has in mind.

In view of the above, the contention advanced on behalf of the tenant that the availability of a vacant plot of land in the possession and ownership of the landlord would attract the bar under the first proviso to Section 11(3) of the Act has to fail.

25. We notice that in the three Rent Control Revisions 439, 440 & 441/2005 the authorities below have not considered the question whether the tenants were entitled to the benefit of the second proviso to Section 11(3) of the Act. Therefore, while allowing the revisions, we remit these cases back to the Rent Control Appellate Authority, Thalassery to decide the above question.

26. In the result the above revisions are ordered as follows:

a) R.C.R. No. 439/2005, 440/2005 and 441/2005 are allowed finding that the need put forth by the landlord in all these three cases is bona fide. The revisions are remitted back to the Rent Control Appellate Authority, Thalasserry for deciding the question as to whether the tenants are entitled to the benefit of the second proviso to Section 11(3) of the Act.

b) R.C.R. No. 206/2009 is dismissed, confirming the orders of eviction granted by the authorities below. However, the tenant is granted time up to 30.6.2010 to surrender vacant possession of the premises to the landlady on condition that he files an affidavit before the Rent Control or the Execution Court as the case may be, within a period of three weeks from today, unconditionally undertaking to surrender vacant possession of the premises to the landlady on or before the said date. The tenant shall also pay all arrears of rent due in respect of the premises to the landlord and shall continue to pay rent at the contract rate, regularly till the premises are surrendered to the landlord. In the event of default of any of the

above conditions, the landlady shall be free to execute the order of eviction. In the circumstances of the case there will be no order as to costs.