

Augustine, S/O.Joseph Vs. Albert

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Court : Kerala

Decided On : Nov-11-2010

Judge : Pius C.Kuriakose; P.S.Gopinathan, Jj.

Appeal No. : R.C.R.No. 354 OF 2010

Appellant : Augustine, S/O.Joseph

Respondent : Albert

Advocate for Pet/Ap. : SRI.T.RAJESH, Adv.

Judgement :

PIUS C.KURIAKOSE & P.S.GOPINATHAN, JJ.

R.C.R.No. 354 OF 2010

Dated this the 11th day of November, 2010

ORDER

1. The tenant is the revision petitioner. He was sought to be evicted by the respondent landlord on the ground under sub section (3) of Section 11 of Act 2 of 1965. The need projected by the landlord was that the petition schedule building is required bona fide for the purpose of storage of jaggery by the dependent son of the landlord who is already conducting trade in jaggery. Bona fides of the need was disputed by the tenant who also claimed protection of the second proviso to

sub section (3) of Section 11. In the enquiry conducted by the rent control court, the evidence consisted of Exts.A1 to A5, Exts.B1 to B5, Ext.C1 commission report and the testimonies of witnesses PWs1 & 2 and DWs1 and 2. PW1 was the landlord himself and PW2 was the dependent son for whose purpose the building was sought. DW1 was the revision petitioner and DW2 was the commissioner who submitted Ext.C1 report. The Rent Control Court was inspired by the oral evidence given by PWs1 and 2. In fact DW1 also would concede in his evidence that PW2 is conducting jaggery business in a large scale. His evidence in the context of the second proviso to sub section(3) of Section 11 was to the effect that other buildings are actually available in the locality. On appreciating the evidence, the rent control court concluded that the need is bona fide and that the tenant was unsuccessful in showing that he is entitled to the protection of the second proviso to sub section (3) of section 11.

2. The revision petitioner preferred appeal against the order of the rent control court and the appellate authority considering that appeal, reappraised the entire evidence. The appellate authority would concur with all the conclusions of the rent control court. Accordingly, the appeal was dismissed.

3. In this revision under section 20, various grounds have been raised assailing the judgment of the appellate authority. Sri.T.Rajesh, learned counsel for the revision petitioner addressed strenuous arguments before us on the basis of the grounds raised.

4. We have anxiously considered the submissions of Mr.Rajesh. We have gone through the order of the rent control court and we have scanned the judgment of the appellate authority. We notice that the findings entered by the learned appellate authority, which under the statutory scheme is the final court on facts, that the need projected by the landlord is bona fide and that the tenant is not entitled for the protection of the second proviso to sub section(3) of Section 11 are findings entered on the basis of the evidence which is actually available on record. According to us, those findings are reasonable findings. That being the position, we do not find any way to invoke the revisional jurisdiction under Section 20 as it cannot be said that the findings concurrently entered by the statutory authorities

are illegal, irregular or improper. The revision necessarily has to fail and will stand dismissed.

5. However, considering the last plea of Mr.Rajesh that at least one year's time be granted to the revision petitioner for surrendering the premises, we feel that in this case there is justification for granting 9 months time from today. Accordingly, we are inclined to grant so much of time subject to conditions.

6. The result, therefore, is as follows;

The Revision Petition will stand dismissed. The Execution Court is directed to keep in abeyance proceedings for delivery of the petition schedule building for a period of nine months from today subject to the following conditions;

The revision petitioner shall file an affidavit before the Execution Court or the Rent Control Court as the case may be within three weeks from today undertaking as follows;

a) that he shall surrender the petition schedule building to the respondent landlord on or before the expiry of 9 months from today.

b) that he shall discharge arrears of rent, if any, within one month from today and continue to pay occupational charges at the current rent rate as and when the same falls due till actual surrender of the building is made.

The revision petitioner will get benefit of time granted above only if he files the affidavit and honours all the undertakings in the affidavit.

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