

John Vs. Abraham Varghese

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Court : Kerala

Decided On : Sep-12-2012

Reported in : 2012(4)KLT274

Judge : K.T. Sankaran & M.L. Joseph Francis

Appeal No. : R.C.R. Nos. 316 to 318 of 2012

Appellant : John

Respondent : Abraham Varghese

Judgement :

K.T. Sankaran, J.

1. The respondent filed RCP Nos. 75/2007, 76/2007 and 77/2007 on the file of the Rent Control Court, Ernakulam under Section 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act. The tenants occupy rooms in an old line building. The tenants in RCP No.75/2007 are in occupation of two rooms while the tenants in other two cases occupy one room each. There are three other rooms in the line building, two of which were occupied by the Rubber Marketing Co-operative Society. The landlord got vacant possession of the two rooms which were occupied by the Rubber Marketing Co-operative Society. The other room is also in the possession of the landlord. Thus out of total number of seven rooms, the landlord has got vacant possession of three rooms.

2. The landlord did not press the contention under Section 11(2)(b) and therefore the only point that was considered by the courts below was under Section 11(3) of the Act. The Rent Control Court and the appellate authority found that the bonafide need put forward by the landlord is genuine. The authorities below also held that the tenants failed to prove the ingredients of the second proviso to Section 11(3) of the Act.

3. The landlord contended that the petition scheduled buildings are bonafide required for commencing a business in hardwares. He contended that all the seven rooms in the line building can be utilised for his proposed business. He also stated that the rear side of the petition scheduled buildings can be used for stacking the hardwares.

4. The tenants contended that the landlord is a very affluent man and he and his wife are running other business. It was also contended by the tenants that the landlord is having other buildings.

5. Before the Rent Control Court, Exts. A1 to A9, B1 to B4 and C1 series were marked. The landlord was examined as PW1 and RW1 to RW4 were examined on the side of the tenants.

6. The landlord stated that he is engaged in banking business under the name and style 'Amma Bankers'. He also stated that he owns an extent of six acres of rubber plantation and paddy field. The wife of the landlord is also engaged in banking business.

7. The building was constructed about seventy five years ago. The tenancy was created in favour of the predecessors of the tenants. It is submitted that the tenants are in possession of the building for the last more than forty years.

8. The court below held that all the rooms can be put together as a single unit and it is feasible to conduct a hardware business in the building. It was also held that the landlord bonafide needs to start a hardware business notwithstanding that he is engaged in other business activities as well. As held in *Abdul Nazar Vs. Mammad Koya* in [2011 (2) KLT 914], a rent control petition cannot be dismissed

on the ground that the landlord was doing some other business.

9. The tenants put forward a case that the landlord approached them on an earlier occasion with an offer to reconstruct the building and to provide the tenants sufficient accommodation in the reconstructed building. According to the tenants, they agreed for such a proposal. But the landlord did not pursue that proposal. The court below held that there is no evidence to show that such a proposal was made by the landlord as alleged by the tenants.

10. A contention was put forward by the tenants that the building being more than seventy five years old, the business proposed to be conducted by the landlord cannot be conducted. It was noticed that two rooms are occupied by the tenants for conducting hardware business and the other tenants are also doing business in agricultural implements and cycle repairing. It was also held by the authorities below that the rear side of the building can be conveniently used for stacking hardware, if the landlord were to commence business in hardware in the entire building.

11. The authorities below held that the tenants only made a vague statement that they are depending for their livelihood mainly on the income derived from the business conducted in the petition scheduled building. It was noticed that the tenants did not produce any accounts, nor did they state the details regarding the income derived by them from the business. Relying on the Commissioner's report, it was held by the authorities below that other vacant buildings are available in the locality for accommodating the business run by the tenants. It was held that the tenants having failed to prove both the limbs of the second proviso to Section 11(3) of the Act, they cannot successfully resist an order of eviction under Section 11(3) of the Act.

12. Learned counsel for the tenants submitted that admittedly the building is very old and that it would be desirable to reconstruct the building. If the building is reconstructed by the landlord, the tenants would have the first option to occupy in the reconstructed building similar space as occupied by them, as provided in the third proviso to Section 11(4)(iv) of the Act. It is contended that the landlord cannot be allowed to defeat the statutory rights of the tenants by putting forward a

bonafide need which would negate the legitimate rights of the tenants. The counsel submitted that in the light of the admitted facts, the court below should have rejected the bonafide need put forward by the landlord, since the need as put forward by the landlord if accepted, it would have the effect of denying the legitimate rights of the tenants to occupy rooms in the reconstructed building.

13. We are not inclined to accept the above contentions put forward by the tenants. It is well settled that the landlord has a right to choose the business which he has to conduct. His right to conduct a business cannot be denied on the ground that the building is an old one. Even if the building is old, the landlord cannot be compelled to reconstruct the building only for the purpose of providing accommodation to the tenants as provided under the third proviso to Section 11(4)(iv) of the Act. The right of the tenants to have the first option under Section 11(4)(iv) cannot be disputed. That right would be available to the tenants only when the building is reconstructed by the landlord as provided under Section 11(4)(iv). The tenants have no right to compel the landlord to reconstruct the building. We are of the view that an otherwise bonafide need, which could be recognized under Section 11(3) of the Act, cannot be denied only on the ground that the building is old and in the course of time the landlord would have to reconstruct the building. The present state of affairs alone is relevant to test the bonafide need put forward by the landlord. Future contingencies in respect of the condition of the building, the possibility of a reconstruction, the possibility of the tenants continuing in possession till the landlord decides to reconstruct and the possibility of the tenants opting to occupy the reconstructed building are all outside the scope of enquiry in a petition under Section 11(3) of the Act. Rights are conferred on the landlord as well as the tenant under the Act. The rights of the tenant cannot be over emphasised so as to defeat the legitimate rights of the landlord as provided under the Act. Interpretation which is farfetched and which would have the effect of defeating the rights of either the landlord or the tenant, cannot be made taking into account the possibilities in a distant future.

14. The authorities below concurrently found that the bonafide need is genuine and that the tenants are not entitled to the protection under the second proviso to Section 11(3) of the Act. The findings were rendered on the basis of facts and

evidence. We do not find any ground to interfere with the concurrent findings of the courts below, invoking our jurisdiction under Section 20 of the Act. Accordingly, the Rent Control Revisions are dismissed.

15. The learned counsel appearing for the tenants submitted that a reasonable time may be granted to the tenants to vacate the building. Considering the facts and circumstances of the case, we are inclined to grant six months' time to the tenants to vacate the premises on condition that the tenants shall file unconditional undertaking within a period of six weeks from today before the Rent Control Court, undertaking to vacate the premises before the expiry of six months and also on condition that the tenants shall pay to the landlord the arrears of rent, if any, within two months and pay the monthly rent till they vacate.

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