

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

RCRev..No. 192 of 2012 ()

AGAINST THE ORDER/JUDGMENT IN RCOP 26/2007 of ADDL.DISTRICT
COURT,KOTTAYAM DATED 29-05-2009

AGAINST THE ORDER/JUDGMENT IN RCA 19/2009 of ADDL.M.C.,KOTTAYAM DATED
27-10-2011

REVISION PETITIONERS/APPELLANTS:

1. JOSE STEPHEN
AGED 72, S/O.M.U.STEPHEN, MATHERAVIDATH
VALIYANGADI, KOTTAYAM.
2. SCARIA STEPHEN
AGED 58, S/O.M.U.STEPHEN, MATHERAVIDATH
VALIYANGADI, KOTTAYAM.
3. ANNAMMA STEPHEN
AGED 67, D/O.M.U.STEPHEN, THOMPANAKUNNEL HOUSE
KADUTHURUTHY.
4. MARIYAMMA STEPHEN
AGED 62, D/O.M.U.STEPHEN, PUTHIYAPARAMBIL
KOTHANALLUR, ETTUMANUR.
5. ACHAMMA PHILIP
AGED 56, D/O.M.U.STEPHEN, KADUTHODIL HOUSE
SOUTH KONGANDUR.
6. PIAMMA STEPHEN
AGED 54, D/O.M.U.STEPHEN, VATTUKULAM HOUSE
CHUNGAM, THODUPUZZHA

BY ADVS.SRI.KRISHNA PRASAD. S
SRI.K.A.VINOD ANTONY

RESPONDENT (S) /RESPONDENT/RESPONDENT:

LEELAMMA THOMAS
AGED 53, W/O.LATE P.C.THOMAS, (DOOR NO.1349/12
VELLAPPALLY LANE, KOTTAYAM) PUTHENPRAYIL HOUSE
KUZHIPURAYIDOM, MANARCADU P.O., MANARCADU-686019.

R1 BY ADV. SRI.SURIN GEORGE IPE
R1 BY ADV. SRI.V.G.ARUN

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
19-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JJ

K. SURENDRA MOHAN & MARY JOSEPH,JJ.

R.C.R NO.192 OF 2012

Dated this the 19th June, 2015.

O R D E R

Surendra Mohan, J.

The defeated landlords in RCP 26/2007 of the Rent Control Court, Kottayam are the revision petitioners. The petitioners had sought eviction of the tenant on the grounds under Section 11(2)(b), Section 11(3), Section 11(4)(ii) and Section 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (the 'Act' for short). The ground under Section 11(2)(b) does not survive, the tenant having deposited the entire arrears of rent. The need put forward under Section 11(3) as well as Section 11(4)(iii) were disputed by the tenant. The tenant also contended that, there was no material

alteration of the building of such a nature as to attract Section 11(4)(ii) of the Act. The parties went to trial on the above pleadings. The Rent Control Court after an appreciation of the evidence on record found that the landlords had not succeeded in establishing any of the grounds alleged. Therefore, the Rent Control Petition was dismissed. The aggrieved landlords challenged the order of the Rent Control Court in RCA 19/2009 before the Rent Control Appellate Authority, Kottayam. The Appellate Authority reappreciated the evidence and found that the order of the Rent Control Court was justified. Accordingly, the appeal filed by the landlords was dismissed.

2. According to Adv.S.Krishnaprasad who appears for the landlords, the building in question is 90 years old. It is located in the heart of Kottayam town opposite the District Hospital by the side of a National Highway. The locality is full of modern buildings with various amenities. This is the only building that is remaining as a tiled single storied structure,

with wooden rafters. The need of the landlords to reconstruct the building and to put the same to the most beneficial use possible cannot be found fault with by any authority. According to the learned counsel, the building was originally a residential one. After the death of the grandmother, the title thereof had devolved upon the father of the petitioners and on his death, upon the petitioners. The property was given on rent to the tenant in the year 1978. It is contended that, building does not have any proper convenience for a commercial enterprise to flourish. It is for the said reason that, eviction was sought.

3. It is contended by the learned counsel for the petitioners that the courts below have not considered the issues that arise for consideration in the proper perspective. Originally the landlords had filed four Rent Control Petitions, RCP 22,23,24 & 26/2007. Two of the tenants have already vacated the portions of the building occupied by them. Only the respondent in this case as well as another tenant have

contested. It is contended by the learned counsel for the petitioners that on an over all appreciation of the facts and circumstances under which the proceedings had been initiated, it is clear that the landlords needed the building for their bonafide own occupation. Therefore, both the authorities below seriously erred in disallowing eviction.

4. The contentions of the counsel for the petitioners are seriously opposed by Adv.V.G.Arun who appears for the tenant. According to the learned counsel both the Rent Control Court as well as the Appellate Authority have considered the issues that arise for consideration, in the proper perspective. This is not a case in which the landlords have sought for a reconstruction of the building for the reason that it had become old and dilapidated. Our attention has been drawn to the pleadings in the Rent Control Petition to point out that the need alleged in the present case is not for reconstruction simplicitor that would have entitled to the tenant to a right of occupation of the reconstructed premises.

On the other hand, here the proposed reconstruction is for satisfying the requirements of the landlords for own occupation of the reconstructed building. Therefore, according to the learned counsel in the present case the need for reconstruction would also have to be tested in the light of the bonafides pleaded under Section 11(3) of the Act. We have been taken through the order of the Rent Control Court as well as the judgment of the Appellate Authority to point out that, the matter has been approached in the correct perspective. According to the learned counsel there are absolutely no grounds made out for an interference with the proceedings of the authorities below in exercise of the revisional jurisdiction of this Court under Section 20 of the Act.

5. With respect to the ground under Section 11(4)(ii) of the Act it is the case of the tenant that the said provision is attracted only in cases where the tenant uses the building in such a manner as to reduce its value or utility materially or

permanently. Absolutely no material or evidence is available in the present case to show that the tenant had made any construction that would destroy or reduce the value or utility of the building materially and permanently. The evidence adduced has been appreciated, according to the counsel properly and legally and the conclusions drawn are all justified in the facts and circumstances of the present case. For the above reasons, the counsel seeks dismissal of the revision.

6. Heard. In so far as the ground under Section 11(4)(ii) of the Act is concerned the case of the landlords is that, the tenant has enclosed a verandah that was attached to the tenanted premises, by fixing a grill. It is true that the evidence shows the grill to be a metallic one. However, evidence is grossly insufficient to support the contention of the landlords that, fixing of the said grill has the effect of destroying or reducing the value or utility of the building materially and permanently. Both the Rent Control Court as well as the Appellate Authority have taken the view that, the

act of fixing the grill cannot be held to satisfy the requirements of Section 11(4)(ii) of the Act. We have been taken through the reasoning of the authorities below. We are not satisfied that the findings on this aspect require to be interfered with in revision.

7. The plea regarding reconstruction is made also on the basis of the bonafide need that has been put forward. Paragraph 9 of the Rent Control Petition is extracted hereunder for convenience of reference:-

“Petitioners 3 and 6 do not have any employment or any income for their subsistence. The children of petitioners 3 and 6 have completed their studies and they do not have any employment or occupation now. The children of petitioners 3 and 6 are their dependents. Petitioners 3 and 6 have decided to start tailoring shops and their dependents children have decided to open shops for sale of stationary articles, medicines and Distribution Agencies etc. to earn income for their livelihood. Petitioners have sufficient experience and means to conduct the shops proposed to be

opened by them. The petitioners pleads that they have decided to demolish the Matheravidathu building owned by them and to construct a building at the place and that they require the new building decided to be constructed by them for their own use are bonafide.”

The Rent Control Petition has also set out in paragraphs 6 to 8, the educational qualifications of the other petitioners who are all post graduates and well qualified to project a case that, after their retirement they are desirous of starting separate avocations of their own. The first petitioner wants to start a consultancy business while his wife an M.Sc degree holder wants to conduct a tuition centre. She is a dependent of the petitioner though there is no such specific pleading. The second petitioner is a pharmacist working in USA who wants to return and start a business. It is stated that the children of the petitioners are also desirous of starting various businesses. The need to reconstruct the building that is put forward, as clear from the statements made in paragraph 9 of

the Rent Control Petition extracted above, is for the purpose of satisfying the personal needs of the petitioners or their dependents as stated therein. In support of the above contentions, there is only the oral testimony of the first petitioner as P.W.1, available in the case. According to him he is the power of attorney holder of the other petitioners. However, none of the other petitioners or the children for whose benefit the reconstructed building is proposed to be used, have been examined. Therefore, there is an absolute lack of evidence in proof of the need that has been put forward as well as the bonafides thereof. The counsel for the petitioners has placed reliance on the decision of this Court in *Subramaniyan Pillai v. Shamsar Jihan* [2009(1)KLT 425] to contend that, it was not necessary for the landlord to plead and prove the minute details of the business that was proposed to be started by him. The learned counsel has also placed reliance on the decision of this Court in *Thanuja Sunderdas T. and others v. Suryamkandi Sisirkumar Raj and*

others [2008(3)KHC 722(DB)] to contend that, the tenant on whom the onus to prove both the ingredients under the second proviso to Section 11(3) of the Act has been cast has not adduced any evidence on the said aspect. However, it is necessary to remember that the question of considering the benefit of the second proviso to Section 11(3) would arise only after the bonafides of the need put forth is established under Section 11(3). In the present case, evidence is totally lacking with respect to the bonafides of the need that has been put forward under Section 11(3). Though minute details regarding the business that is proposed by the landlords is unnecessary, it is necessary for the landlords to have deposed regarding the bonafides of the need put forward by him. It is clear from the wording of the statutory provision itself that it is for the landlords to prove the bonafides of the need put forward by him. This Court has in Ratheesh Kumar v. Jithendra Kumar [2005(2)KLT 669] held that the evidence of a power of attorney is insufficient to discharge the burden of

proving that his need was bonafide. Speaking for the Bench, R.Bhaskaran, J, has discussed the position of law with respect to the above aspects in paragraph 12 of the said judgment, as follows:–

“This Court in Shaji v.Reghunandanan, 1999(3) KLT SN Page 82 Case No:85, also took the view that as regards the evidence in a case, the rule is that the best evidence must be let in. If the evidence of the complainant is required for proving any point, the power-of-attorney cannot substitute him as a proxy and give evidence on his behalf or speak to matters which are within his personal knowledge. It will be open for the prosecution to examine the power-of-attorney as a witness, but that does not mean that he is competent to speak to all the facts relating to the case. Another Division Bench of this Court in Thomas John v. Kochammini Amma, 1994(2)KLT 571, also took the view with respect to establishing the bonafide need in a Rent Control Petition for eviction of a tenant. It was held that when the need alleged is that of the landlord himself for his own occupation and he approaches the Rent Control Court with a request for eviction,

it goes without saying that the need has to be established by him by appropriate evidence. Bona fide, means the state of mind. That state can be manifested only by the person who entertains a desire to have the building for his own occupation. None of the persons who need the building has chosen to speak about his need. It was held that it could not therefore be said that either the landlord has established the need for own occupation or that the need alleged was bonafide.”

Thus, it has been held in the above case that, non-examination of the various persons to satisfy whose bonafide need eviction was sought, was fatal.

8. With respect to the nature of proof that is required where a landlord seeks to reconstruct a building to satisfy his personal need, this Court has held in *Sivadasa Panicker v. Travancore Mats & Mattings Co.* [2009(1) KLT 393] as follows:–

“In other words while the bonafides of a need for own occupation under S.11(3) is best established by the oral evidence to be given by the

needy person and by the circumstances attending on the case, the bonafides of the requirement under S.11(4)(iv) is capable of being established by the tangible items of evidence indicated herein above. It is important to note that while S.11(3) speaks about the need of the landlord, in S.11(4)(iv) the word 'need' is used with reference to the building. Of course S.11(4)(iv) also insists that the requirement of the landlord should be bonafide. It is not difficult to hold that the bonafides insisted upon by the statute in the context of the ground under S.11(4)(iv) is with reference to the building's need for reconstruction on account of its condition.”

In the present case, no plan and building permit as required by Section 11(4)(iv) is available with the landlord. The counsel for the petitioner has sought to rely on Exts.A17 and A18 to contend that, the landlords were possessed of a plan and licence. However, we notice that Ext.A18 is only a location plan. Section 11(4)(iv) mandates that the landlord would have to satisfy the court that he has a plan and licence.

Admittedly, in the present case the validity of the plan has expired. Though the counsel for the petitioners contends that the landlords have obtained renewal thereof, there is nothing on record to support the above assertion. Since an order of eviction in the present case is sought to satisfy the bonafide need of the landlords it was absolutely necessary for the petitioners to have proved by cogent evidence that the need put forward by them was bonafide. The evidence of P.W.1 alone is not sufficient to satisfy the requirements of the statute. We are of the view that both the Rent Control Court as well as the Appellate Authority have considered the matter in the proper perspective.

9. As rightly pointed out by the counsel for the respondent in view of the dictum of the five Judges of the Apex Court in *Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh* [2014(4)KLT 182(SC)] the revisional jurisdiction of this Court under Section 20 cannot be used to reappreciate the evidence as in the case of an appellate power

to substitute the findings of the authorities below. The Appellate Authority being the final court on facts the limited enquiry permissible is only for the purpose of satisfying the question as to whether there is any illegality, impropriety or irregularity in the proceedings. As already noticed above, absolutely no grounds have been made out to justify an interference with the proceedings of the authorities below, in the present case.

For the foregoing reasons this revision fails and is accordingly dismissed.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
MARY JOSEPH
Judge

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