

IN THE COURT OF THE ADDL.DISTRICT JUDGE-III, ALAPPUZHA

Present: Sri. Roy Varghese, Additional District Judge-III,
Thursday 29th day of February, 2024/ 10th day of Magh, 1945

RCA. 11/2023

(Filed on.31.03.2023)

(Appeal against Order in RCP.No.15/2016 of Rent Control Court, Alappuzha)

Appellants :-

1. Saji.K.B., aged 53 years,
S/o. Benjamin, Kodiveettil,
Kattoor, Kattoor.P.O.,
Kalavoor Village, Alappuzha.
2. Sabu.K.B, aged 56 years,
S/o. Benjamin. Kodiveettil,
Kattor, Kattoor.P.O.,
Kalavoor Village, Alappuzha.

(By Adv. B.Somanathakurup)

Respondent:-

1. Sir John, aged 69 years,
Palluruthy (H), Kattoor,
Mararikulam South Panchyath,
Kalavoor Village, Alappuzha.
2. George Sir John, aged 43 years,
Palluruthy(H), Kattoor,
Mararikulam South Panchyath,
Kalavoor Village, Alappuzha.
3. John Soyas Sir John, aged 41 years,
Palluruthy (H), Kattoor,
Mararikulam South Panchyath,
Kalavoor Village, Alappuzha.

(By Adv.C.Parameswaran)

This petition having been finally heard on 17.02.2024 and the court on 29.02.2024 delivered the following:-

J U D G M E N T

This Rent Control Appeal has been preferred against the Order dated 30.01.2023 in the RCP No.15/2016 in the files of the Rent Control Court, Alappuzha, ordering eviction of the tenant on the grounds u/Ss.11 (2) (b), 11 (3) & 11(4) (i) of the Kerala Buildings (Lease and Rent Control) Act. The appellants are the respondents 1 & 2 and the respondents 1 to 3 herein are the petitioners 1 to 3 respectively in the court below.

2). The facts of the case can be summarised as follows. The respondents are the legal heirs of deceased Philomina Sir John, who was the landlord of the petition schedule building bearing door No. 282 of Mararikulam South Grama Panchayath. As the appellants/tenants committed willful default in the remittance of monthly rent, sublet the demised premises and while the petitioners bonafide required the petition schedule shop room for their own occupation, they sought for eviction of the tenants after statutory notice.

3). The appellants filed objection disputing the tenancy and that there is no arrears of rent. According to them, the landlord is late Reynold, who had received ₹.3,00,000/- from them as a deposit and the interest towards this deposit has been duly accounted towards the monthly rent. The petitioners are strangers and not the landlords and hence, no locus standi to file the above petition.

4). The evidence in the case consists of the oral testimonies of PW-1 & PW-2 and documentary evidences as Exts. A-1 to A-10 on the side of the respondents / petitioners. The defence evidence consists of oral evidence of DW-1 and Exts. B-1 to B-4 series. The records of the Mararikulam South Grama Panchayat marked as Exts. X-1 to X-3. After evidence, the learned Rent Control Munsiff allowed the petition for eviction as above, challenging which this appeal.

5). Upon hearing the respective counsels on either side and on perusing the records of the case, the points that arise for consideration in this appeal are as follows:-

- (i) *Whether the denial of landlord-tenant relationship is bonafide or not?*
- (ii) *Whether the claim of 'own occupation' projected by the respondent / landlady is bonafide or not?*
- (iii) *Whether there is arrears of rent?*
- (iv) *Whether the appellants sublet the demised premises?*
- (v) *Whether the Order dated 30.01.2023 in the RCP No.15/2016 in the files of the Rent Control Court, Alappuzha, is to be set aside ?; If so, Reliefs and costs.*

6). Point No. (i):- According to the respondents/petitioners, the petition schedule building bearing door No.282 of Mararikulam South Grama Panchayat originally belonged to Philomina Sir John and after her death, this property devolved upon her legal heirs, who are the respondents/petitioners 1 to 3. The petition schedule building leased out to the 1st appellant on a monthly rent of ₹.600/-, which he sublet to the 2nd appellant, who is his brother.

7). On the other hand, the appellants contending that there is no landlord-tenancy relationship between themselves and the respondents. They are in possession of the scheduled shop room from 1996 onwards as leased out by Reynold, who was the original owner. Reynold had availed ₹.3,00,000/- from the 2nd appellant as deposit and have been paying interest for this deposit after adjusting towards the monthly rent. After the demise of Reynold, his widow and children are the landlords and they also continued this. They also promised to sell the shop room to the 2nd appellant in consideration of the deposit due. The respondents/petitioners having no locus standi to file the above petition.

8). The *proviso* to Sec.11(i) of the Kerala Buildings (Lease and Rent Control) Act is extracted hereunder:

“Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Rent Control Court shall decide whether the denial or claim is bonafide and if it records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and such Court may pass a decree for

eviction on any of the grounds mentioned in this section, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.”

9). The Rent Control Court can pass an order for eviction only if it is satisfied that the landlord is entitled to get order of eviction. In deciding the question whether the landlord is entitled to get an order of eviction, it has to find out whether the landlord has got title and hence, the question of title arises. The proviso to S. 11(i) states that if a tenant denies title of the landlord or claims right of permanent tenancy, then the Rent Control Court will have to find out whether the claim or denial is bonafide and if it finds that it is bonafide, then the landlord will be entitled to sue for eviction in a civil court. The Rent Control Court is not having the power to decide the question of title, instead it can only find whether this denial of title is bonafide or not.

10). Thus, the twin conditions to satisfy whether the denial of title is bonafide or not are that there shall be denial of title of the petitioner in the eviction petition and that there is no landlord – tenant relationship among them. It is so held in the decision of the Hon'ble High Court in *Khadeeja & Ors. Vs. Haris Haji. V. (2019 (3) KHC 527)*.

In fact, it is a case in which the respondent in that case took a contention that he conducted business in the tenanted building as a partner only and there is no lease transaction between the petitioner and the first respondent with respect to the tenanted premises. Para 10 of this judgment is re-produced hereunder:

“The language of the second proviso to Section 11(1) of the Act is very clear that the rent control court shall decide the question whether the denial of title or claim of permanent tenancy is bonafide. If only the tenant denies the title of the landlord or claims right of permanent tenancy, and if the denial of title or claims of permanent tenancy is bonafide the rent control court shall record the finding and the landlord shall be entitled to sue for eviction of the tenant in a civil court and such court may pass a decree for eviction on any of the grounds mentioned in the section. It follows that mere denial of landlord-tenant relationship in all circumstances would not oust the rent control petition from the rent control court. There are various circumstances in which the tenant may deny the landlord-tenant relationship. He may be a licensee or a mortgagee or a trespasser or a partner and in such circumstances he

may deny the landlord-tenant relationship. We are of the opinion that the denial of landlord-tenant relationship would oust the rent control petition from the jurisdiction of the rent control court under Section 11(4)(c) of the Act, if only the denial of the landlord-tenant relationship arises out of denial of title or claim of permanent tenancy. In the absence of denial of title or claim of permanent tenancy, the mere denial of landlord-tenant relationship only would not, under any other circumstance, oust the rent control petition from the jurisdiction of the rent control court and such rent control petition shall not be considered under the second proviso to Section 11(1) of the Act. In short, denial of landlord-tenant relationship that arises out of denial of title of the landlord or claim of permanent tenancy alone would fall under Section 11(1) of the Act. The rent control court has jurisdiction and power to consider the question, whether there is any landlord-tenant relationship, in all circumstances, where there is no denial of title or claim of permanent tenancy”.

11). In this case, the landlord-tenant relationship as well as title of the respondents over the scheduled premises have been disputed. The respondents produced Ext.A-1 rent agreement dated 28.02.2003 executed by the 1st appellant towards Reynold. Ext.A-6 is the Sale deed No.3101/2010 of SRO., Mararikulam executed by the legal heirs of late Reynold in favour of Philomina Sir John, by which 1.62 Ares (4 cents) comprised in Resurvey No.212/3 in Block No.2 of Kalavoor Village along with two shop rooms have been transferred. The Ext. X-1 is the ownership certificate of the building standing in the name of Philomina Sir John.

12). Now the appellants contending that the Ext. X-1 is not regarding the petition schedule building. However, the Ext. A-8 is another Sale Deed No.2403/2010 of SRO., Mararikulam, by which the legal heirs of late Reynold had previously alienated properties. By the Exts. A-6 & A-8, the legal heirs of Reynold having no right over the petition schedule building. The Ext.X-3 is the certified copy of the relevant page of the Assessment register maintained with the Mararikulam South Grama Panchayat, thereby the building bearing door No.282 is assessed in the names of the respondents / petitioners.

Thus, it is crystal clear that the respondents/ petitioners are the present owners of the petition schedule building bearing Door No.282 of Mararikulam South Grama Panchayat. As such, the 1st appellant is the tenant of these respondents by virtue of Ext.A-1 rent agreement.

13). In the decision *Satheesh Kumar and another v. K. Balasubramanian* [2021 (2) KHC 483], it was held:

"What is contemplated under Section 11(1) of the Rent Control Act is a "bonafide denial of title or claim of right of permanent tenancy" and not a "bonafide denial of landlord-tenant relationship". Even if the landlord-tenant relationship is denied, same will not fall within Section 11(1)."

14). A Full Bench of the Hon'ble High Court laid down the principle in *P. M. Parthakumar Vs. Ajith Viswanathan and Others* [2006 (2) KLT 250]:

"28. The legislature therefore felt that only bonafide denial of title or a bonafide claim for permanent tenancy should alone divest the Special Tribunals of their jurisdiction under Section 11 of the Act. It is hence stipulated that the denial of title/claim for permanent tenancy must be bonafide. The Tribunal's jurisdiction is only to decide whether the denial of title or claim for permanent tenancy is bonafide. It is not expected to and does not have the jurisdictional competence to enter a

finding whether the denial of title is valid or not. It has only jurisdiction to decide whether the denial of title is bonafide or not. If it is bonafide, the landlord can sue for eviction before the civil Court.”

15). Going by the dictum of law laid down in the decisions *supra*, the denial title as well as landlord-tenant relationship by the appellants should be bonafide. Here in this case, the petition schedule building already transferred to Philomina Sir John and mutation effected in her favour in the village records. In the assessment register maintained with the Panchayat also the ownership of the said building transferred to the petitioners. The appellants doing business in this building and obtained licence dated 30.04.2022 bearing No.88/2022-2023 from the Panchayat, which is produced by PW-2 Secretary of Mararikulam South Grama Panchayat and marked as Ext.X-2. This licence issued in the name of the 1st appellant and it is unbelievable that he had no knowledge regarding the assessment of the building in the name of the respondents. Moreover, the appellants could not have produced any document to show that they were paying rent or keeping any landlord relationship with the widow and children of the deceased prior owner Reynold. Hence, it is crystal clear that the denial of title of the

respondents and landlord relationship with them is not bonafide. The findings of the learned Munsiff is in the right perspective. This point found in favour of the respondents.

16). Point No.(ii): The true test u/s.11(3) of the Act is whether the need pleaded by the respondents/ landlords can be said to be natural, real, sincere and honest. The tenant cannot dictate as to how the landlords should adjust their requirements. The basic thing to be gathered from the evidences is as to whether the need projected by the them is bonafide or not. The claim of requirement put forward by them to get vacant possession of the building should not be fanciful or unreasonable. This is the dictum laid down by the Hon'ble Apex Court and followed in *Simon and Others Vs. Rappai (2008 (3) KLT 121)*.

17). Ext.A-2 is the statutory notice issued by the respondents/landlords to the appellants/tenants stating that there is arrears of rent and the demised premises required for their business. So they sought for surrendering vacant possession of the shop room. This notice received by the appellants and issued reply disputing tenancy relationship.

18). The 1st respondent mounted the box and tendered evidence in tune with the petition averments that he require the petition schedule shop room for doing business. Since no other shop room in his possession, he bonafide need the schedule room to do business. The 1st appellant deposed as DW-1 and sworn an affidavit in tune with the averments in the objection. But there is no dispute as to the bonafide need claimed by the landlords.

19). In *Ammu K. and Others Vs. Nafeesa and Others (2015 (5) KHC 718)*, a Division Bench of the Hon'ble High Court of Kerala (in para 7) held that it is a settled preposition of law that the need put forward by the landlord has to be examined on the presumption that the same is a genuine one, in the absence of any materials to the contra.

20). Though the appellant gave evidence as DW-1, there is nothing to discredit the evidences adduced by the respondents/landlords regarding bonafide need. On an evaluation of the materials on record, relying on the principles and guidelines laid down by the Hon'ble High Court as well as Hon'ble Supreme Court, the need projected by the respondents/landlords is found to be bonafide. The tenant not raised contention that he is depending on the income from the business in the

shop room as his lone livelihood. Thus the claim raised by the respondents/landlords for occupying the petition schedule building is found true and acceptable as 'bonafide need' u/s.11(3) of the Act.

21). Point No.(iii): The respondents/landlords had issued Ext.A-2 notice dated 09.01.2016 demanding payment of rent arrears. There is no records of any payment as against the claim of arrears of rent put forward by the landlords. The only contention of the appellants is that the 2nd appellant had paid ₹.3,00,000/- as deposit to the prior landlord Reynold and the periodical interests have been adjusted towards monthly rent. However, the Ext.A-1 rent agreement executed by the 1st appellant towards the prior landlord Reynold revealing only an advance deposit of only ₹.10,000/-. In the absence of any records of payment of deposit of ₹.3,00,000/- as claimed by the appellants, this contention cannot be accepted. Therefore, the order of eviction under S.11(2)(b) of the Act as passed by the Rent Controller is just and proper.

22). Point No. (iv): The occupation of the petition schedule building by the 2nd appellant is admitted by both the appellants in their objection. However, the Ext.A-1 rent agreement executed by the 1st appellant alone and it is specified therein that in the event of

subletting, he could be evicted. The subletting of the petition schedule building by the 1st appellant in favour of the 2nd appellant is quite evident. There is no materials to show that the landlords acknowledged the subletting of this building. In the circumstances, the findings and the order of eviction u/s. 11(4) (i) of the Act is not to be interfered with. These points found in favour of the respondents.

23). Point No. (v):- As found in the points above, there is nothing to interfere with the findings and order of the learned Rent Controller. The appellants are liable to be evicted from the petition schedule building.

In the result, this appeal stands dismissed. The order of the Rent Controller granting eviction of the appellants from the petition schedule building bearing door No.282 of Mararikulam South Grama Panchayat u/Ss.11 (2) (b), 11 (3) & 11(4) (i) of the Kerala Buildings (Lease and Rent Control) Act is hereby confirmed. However, the appellants are to be given a breathing time to vacate the premises. On a consideration of the entire facts and circumstances of the case, they are given six months time from today to surrender vacant possession of the petition schedule building to the respondents/landlords; in default of which, the

respondents/ landlords can evict the appellants through the process of the Court by executing this Judgment.

Both parties shall bear their respective costs.

(Dictated to the C.A, transcribed by her, corrected and pronounced by me in Open Court on this the 29th day of February, 2024).

Sd/-

ROY VARGHESE

ADDL. RENT CONTROL APPELLATE

AUTHORITY-III

APPENDIX- NIL

Id/-

ADDL. RENT CONTROL APPELLATE

AUTHORITY-III