

K.A. Anthappai

Vs

C. Ahammed

Civil Appeal No. 1945 of 1992

(Dr. T. K. Thommen, S. C. Agrawal JJ)

05.05.1992

JUDGEMENT

S.C. AGRAWAL, J.

1. Special leave granted.

2. This appeal filed by the landlord arises out of a petition filed under Ss. 11(3) and 11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act) for the eviction of the respondent from the building situate in the city of Cochin.

3. The building in question was let out to the respondent by the father of the appellant on May 1, 1972 and he has been carry' ing on hotel business on the same. The said buildina stands on a portion of 13 cents of land owne by the appellant. The appellant was employed with Bharat Gold Mines Ltd. and was due to retire on September 30, 1981. Prior to his retirement, the appellant filed the eviction petition before the Rent Controller, Ernakulam on January 15, 1981 wherein the appellant pleaded that after his retirement from service, he wanted to settle down in Cochin and except the building in question, he has no other house to reside and'that the said building was required by him bona fide for his occupation. It was also pleaded by the appellant that the respondent was using the property in such a manner as to materially and permanently reduce its value, utility and purpose. The said petition was contested by the respondent on the ground that the building is not suitable for residential purposes inasmuch as it consists of two adjoining sheds and there is no toilet facility in the same and that it is not possible to reside therein. It was further pleaded that the appellant has a house and plot in the name of his wife within the municipal limits of Cochin Corporation and the same is suitable for the residence of the appellant and his family members and further there is a lot of vacant land on the back of the building and the same is suitable for constructing a house. The respondent denied that the property was being used in such a way as to reduce its utility. By his order dated February 20, 1989, the Rent Controller dismissed the said petition of the appellant and found that the appellant had failed in proving his bona fide need of the building and he was not entitled to an order of eviction under S.11 (3) of the Act and that he has also failed to adduce adequate evidence to prove that the respondent was indulging in an activity which has destroyed the value and utility of the property materially and permanently and he could not seek eviction under Section 11 (4)(ii) of the Act. The said order of the Rent Controller was reversed in appeal by the Appellate Authority by its judgment dated July 18, 1990. The Appellate Authority agreed with the finding recorded by the Rent Controller that the appellant could not seek the eviction of the respondent under S. 11 (4)(ii) of the Act but it disagreed with the finding of the Rent Controller that the respondent was not liable to be evicted under S. 11 (3) of the Act. The Appellate Authority held that the appellant had succeeded in establishing the bona fide need set up by him. On revision under

S. 20 of the Act, the High Court, by its judgment dated January 4, 1991, set aside the finding recorded by the Appellate Authority regarding the bona fide need of the building for his occupation and agreed with the view of the Rent Controller that the appellant had failed to establish that he was entitled to evict the respondent on the ground of bona fide need under S. 11(3) of the Act. Feeling aggrieved by the said decision of the High Court, the appellant has filed this appeal.

4. As indicated earlier, although the appellant had sought eviction of the respondent under S. 11(3) as well as S. 11 (4)(ii), but the Rent Controller and the Appellate Authority have both found against him on S. 11 (4)(ii). The scope of the present appeal is confined to the question whether the respondent is liable to be evicted on the ground of bona fide need of the appellant for his personal occupation under S. 11(3) of the Act. Sub-section (3) of S. 11 of the Act and the second proviso thereto provide as follows:

(3) A landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building if he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him:

xxx xxx xxx

Provided further that the Rent Control Court shall not give any direction to a tenant to put the landlord in possession, if such tenant is depending for his livelihood mainly on the income derived from any trade or business carried on in such building and there is no other suitable building available in the locality for such person to carry on such trade or business:

xxx xxx xxx

5. At this stage, it may also be mentioned that in exercise of its revisional jurisdiction under S. 20 of the Act, the High Court can "call for and examine the records relating to any order passed or proceedings taken under this Act by such authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings and may pass such order in reference thereto as it thinks fit". It is no doubt true that the scope of the revisional jurisdiction conferred under S.20 is wider than that conferred under S.115, C.P.C. But at the same time, a revision under S. 20 cannot be equated with an appeal. Moreover, the revisional power conferred under S. 20 also embraces an order passed by the Appellate Authority. While considering the provisions conferring revisional power couched in a language similar to that contained in section 20 of the Act, this Court has laid down that the power conferred on the High Court is essentially a power of superintendence and despite the wide language employed, the High Court should not interfere with the findings of fact of the subordinate authority merely because it does not agree with the said findings. [See *Dattopant Gopalvarao Devakate v. Vithalrao Maruthirao Jangaval*, 1975 Supp SCR 67: (AIR 1975 SC 1111); *M/s. Sri Raja Lakshmi Dying Works v. Rangaswamy Chettiar*, AIR 1980 SC 12531. The revisional Court must be reluctant to embark upon an independent reassessment of the evidence and to supplant a conclusion of its own, so long as the evidence on record admitted of and supported the one reached by the court below. [See *Rajbir v. S. Chokesiri & Co.*, 1089(1) SCC 19, at p. 37 : (AIR 1988 SC 1845 at p. 1854)].

6. In the instant case, the Appellate Authority, after considering the evidence on record, has found that the appellant had retired from service and he has no building of his own in the city. The Appellate Authority has further found that before the building was let out to the respondent the

same was being used for residential purposes and the mere fact that it lacks in certain facilities for being used for residential purposes by itself will not indicate that the claim of the appellant is false and from the evidence on record, it would appear that after some modifications and repairs it can be used as a residential building. In view of the decision of the High Court in *Devaky v. Krishnakutty*, (1987) 1 Ker LT 67 1, the Appellate Authority held that the appellant could claim eviction of the building under S. 11(3) even if the building in question requires some modifications or alterations provided that he is able to establish the bona fide need set up by him. The Appellate Authority also held that merely because the appellant was residing comfortably in a building owned by his son would not disentitle him from seeking eviction on the ground that he wants to set up his residence under a roof of his own and that such a desire was quite natural. The Appellate Authority also observed that the testimony of appellant, as P.W. 1, with regard to his bona fide requirement of the building for his residence could be believed and the mere bald assertion of the respondent, as R.W. 1, that there was no bona fide need on the part of the appellant, by itself, was not a sufficient ground to disbelieve the testimony of the appellant. In the light of the aforesaid findings, the Appellate Authority held that the appellant had succeeded in establishing the bona fide need set up by him.

7. The High Court, in exercise of its revisional power, has set aside the aforesaid findings recorded by the Appellate Authority for the following reasons:

- (1) The Appellate Authority had erroneously proceeded on the basis that there is no pleading by the respondent that the bona fide requirement set up by the appellant is false;
- (2) Instead of examining severally the circumstances relied upon by the Rent Controller and to see whether they were sufficient to support the finding of the Rent Controller, the Appellate Authority should have considered the cumulative effect of all the facts and circumstances established in the case on the question of bona fides of the claim made in the petition; and
- (3) The Appellate Authority had totally omitted to consider whether the respondent-tenant was entitled to the benefit of the second proviso to sub-section (3) of S. 11 of the Act.

8. On a consideration of the pleadings and evidence the High Court found that the appellant is the owner of 13 cents of land and only a small portion of the said land is occupied by the buildings and the remaining land is lying vacant behind the buildings and structures sought to be recorded and the appellant can construct a house over it. The High Court has also found that the appellant is living in reasonably spacious residential accommodation with modern amenities with his son and it is difficult to believe that the claim as put forward by the appellant in the petition is honest in the circumstances of the case. The High Court further held that the building sought to be recovered is admittedly used for commercial purposes from 1971 onwards and it is a 'L' shaped structure consisting of two halls and a temporary shed which is being used as the kitchen of the hotel and there is no latrine or bathroom in the building and that in view of the nature, location and structural peculiarities of the buildings, absence of essential amenities like latrine, bathroom and privacy, the very limited space available for occupation and the status of the respondent as a person who retired after a period of 30 years of service as well placed employee of a well known company, the assertion of the appellant that he is ready to live in any condition could not be accepted as true and genuine. The High Court was of the view that the principle laid down in the decision in *Devaky v. Krishnakutty* (1987) 1 Ker LT 67 1 (supra) would not help the appellant in this case.

9. The question whether the building is required bona fide by the appellant for his own residence is primarily one of fact and the finding recorded by the Appellate Authority after considering the evidence on record could not be interfered with by the High Court in exercise of the revisional jurisdiction under Section 20 of the Act because it could not be said that the said finding recorded by the Appellate Authority was not supported by the evidence on record. The said finding was reversed by the High Court on the basis of a reassessment of the said evidence. We find it difficult to agree with the reasons given by the High Court for embarking on this reassessment of evidence. Although the Appellate Authority has observed that there is no specific pleading by the respondent in the counter that the bona fide requirement set up by the appellant is false but in spite of the said observation the Appellate Authority has examined whether the said claim of the appellant is false and after considering the evidence adduced by both the parties, the Appellate Authority has found that the claim of the appellant is not false. Similarly, the High Court is not right in holding that in its approach to the question of bona fides of the claim made in the petition the Appellate Authority has not considered the cumulative effect of all the facts and circumstances bished in the case. On a consideration of various circumstances the Appellate Authority chose to accept the testimony of the appellant, as P.W. 1 as against that of the respondent, as R.W. 1 and on that basis found that the appellant had succeeded in establishing the bona fide need set up by him.

10. The considerations which weighed with the High Court in taking a view contrary to that taken by the Appellate Authority do not, in our opinion, justify interference in exercise of revisional jurisdiction. That the appellant has been living with his son in the house belonging to him (son) cannot lead to the inference that the claim of the appellant that he wants to live in a house of his own is false and not bona fide. The same is true about the building in question not having the requisite facilities and being not in a fit condition for residence because the appellant can make suitable repairs and alterations in the same to make it fit for residential purposes. The claim of the landlord that he needs the building bona fide for his personal occupation cannot be negated on the ground that the building require repairs and alterations before the landlord can occupy the same. In *Devaky v. Krishnakutty*, (1987 (1) Ker LT 671) (supra), it has been observed.

.... once the landlord establishes that he bona fide requires the building for his occupation or the occupation of any member of his family, he can recover possession of the building from the tenant irrespective of the fact whether he would occupy the same with or without making any alterations". (p. 673)

11. We are in agreement with this view which is in consonance with the decision of this Court in *Ramniklal Pitambardas Mehta v. Indradaman Amratlal Sheth*, (1964) 8 SCR 1 : (AIR 1964 SC 1676). In that case, it has been laid down:

"..... The mere fact that he intends to make alterations in the house either on account of his sweet will or on account of absolute necessity in view of the condition of the house, does not affect the question of his requiring the house bona fide and reasonably for his occupation, when he has proved his need for occupying the house. There is no such prohibition either in the language of Cl. (g) or in any other provision of the Act to the effect that the landlord must occupy the house for residence without making any alterations in it. There could not be any logical reason for such a prohibition" (p. 5) (of SCR) : (at p.1678 of AIR).

Similarly in sub-section (3) of Section 11 there is no prohibition that a landlord must occupy the house for residence without making any alterations in it. The finding recorded by the Appellate

Authority, after considering the pleadings and evidence on record, that the appellant has succeeded in establishing that he needs the building bona fide for his own occupation must, therefore, be restored.

12. The High Court was, however, right in taking the view that before passing a decree for eviction on the ground of bona fide need of the landlord under Section 11 (3) of the Act, it was necessary for the Appellate Authority to consider whether the tenant was entitled to the benefit of the second proviso to sub-section (3) of Section 11 of the Act and that the Appellate Authority has omitted to consider the matter from this angle. The said proviso precludes the passing of an order for eviction of a tenant who is depending for his livelihood mainly from the trade or business carried on in such building and there is no other suitable building available in the locality for him to carry on such trade or business. After adverting to the second proviso to sub-section (3) of Section 11, the Rent Controller has observed:

"..... The respondent has proved that he is depending upon the income from the business conducted in the petition schedule building for his livelihood. The petitioner attempted to prove that the respondent is having other hotels elsewhere in the city, but without any success. Though the respondent has not taken any steps to prove the non-availability of other suitable buildings in the locality by summoning the Accommodation Controller, I do not think that was a fatal lapse on the part of the respondent because he has adduced evidence in that regard through his witnesses".

13. The learned Rent Controller has, however, not recorded any definite finding on this question because he had come to the conclusion that the appellant had failed to prove the bona fide need of the buildings. Since the Appellate Authority had reversed the finding recorded by the Rent Controller on bona fide need of the appellant for the building, it was necessary for the Appellate Authority to have considered the matter in the light of the second proviso to sub-section (3) of Section 11 and it should have recorded a finding on the question whether the respondent could invoke the protection of the said proviso. In the circumstances, we are of the view that the matter should be remanded to the Appellate Authority for considering the question whether the respondent can invoke the protection of the second proviso to Section 11 (3) of the Act.

14. In the result, the appeal is allowed. The judgment and order of the Kerala High Court dated January 4, 1991 is set aside. The order of the Appellate Authority dated July 18, 1990 to the extent it directs the eviction of the respondent under Section 11 (3) of the Act is also set aside and the matter is remanded to the Appellate Authority for considering the matter in the light of the second proviso to Section 11 (3) of the Act. It is, however, made clear that we are not upsetting the finding recorded by the Appellate Authority that the building is required bona fide by the appellant for his own occupation. The parties are left to bear their own costs. Appeal allowed.

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