

Dr. Jess Raphael

Vs

K. L. Regina Joseph (Mrs.)

Civil Appeal No. 1066 of 1987

(S. Mohan, M.K. Mukharjee JJ)

18.01.1994

ORDER

1. The appellant took on rent the property covered by this appeal (double storeyed building) on a monthly rent of Rs 800 for running a Nursing Home. The respondent-landlady filed an eviction petition on the ground of bona fide requirement and certain other grounds like default in payment of arrears of rent. We may state that we are not concerned with any ground other than bona fide need. The Rent Controller dismissed the eviction petition holding that though the bona fides of the landlady had been established eviction could not be ordered in view of second proviso to Section 11 (3) of the Kerala Buildings (Lease and rent Control) Act, 1965, hereinafter referred to as the Act. This decision was arrived at since the tenant was dependent on his livelihood mainly on the income derived from business of Nursing Home run in the disputed premises. The appellate court dismissed the appeal of the landlady. A revision was preferred to the learned District Judge. He held that the Nursing Home run by the doctor does not fall within the meaning of the term "business". Therefore, irrespective of the fact whether he depends on this income for his livelihood inasmuch as it is not "business" he was liable to be evicted since the bona fide need of the landlady was beyond dispute. A revision preferred by the tenant to High Court was dismissed as not maintainable.

2. Before us, the only question that arises for determination is as to the scope of Section 11(3) of the Act. The contention on behalf of the tenant is the word "business" does not mean commercial activity. So long as a systematic activity is carried on it would be enough to call it "business". This is a case in which the tenant-doctor and seven members of the staff are running a Nursing Home as a business. As a matter of fact on a similar point under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereinafter referred to as the Control Act), this Court in S. Mohan Lal v. R. Kondiah held that the profession carried on by an advocate is a business. The attempt of the court below to distinguish that ruling is incorrect. Hence, the tenant-appellant is entitled to succeed.

3. per contra the argument on behalf of the respondent-landlady is that it is not a business since no commercial activities are carried on while running a Nursing Home. The judgment of the learned District Judge is correct.

4. In order to appreciate the scope for the controversy we will extract Section 11(3) of the Act which is as follows :

"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 :

Provided that the Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons, in any particular case it will be just and proper to do so :

Provided further that the Rent Control Court shall no give any direction in possession, if such tenant is depending for

(1) his livelihood mainly on the income derived from any trade or business carried on in such building; and

(2) there is no other suitable building available in the locality for such person to carry on such trade or business.'

5. For the application of second proviso the following two conditions are required to satisfied in order to defeat the bona fide need of the landlord :

(1) The tenant is dependent for his livelihood mainly on the income derived from any trade or business carried on in such a building.

(2) There is no other suitable building available in the locality to carry on such trade or business.

6. In this case the evidence is clear that there is no other suitable building Equally, it is established that the tenant-doctor is mainly dependent upon the income derived from the Nursing Home.

7. Then, the only question is whether the running of a Nursing Home with seven members of the staff could amount to business. In Black's Law Dictionary, 6th Edn., at p. 198 the tern "business" is defined as under :

"Business. - Employment, occupation, or commercial activity engaged in for gain or livelihood. Activity or enterprise for gain, benefit, advantage or livelihood. Union League Club v. Johnson<sup>2</sup>. Enterprise in which person engaged shows willingness to invest time and capital on future outcome. Doggett v. Burnet<sup>3</sup>. That which habitually busies or occupies or engages the time, attention, labour, and effort of persons as a principal serious concern or interest or for livelihood or profit.

See also Association; Company; Corporation; Doing business; Joint enterprise; Partnership; Place of business. Trade."

8. In S. Mohan Lal a case which arose under the Control Act, it was held that the practice carried on by an advocate in relation to his profession can be said to be business. It was observed thus : (SCR pp. 14-15; SCC pp. 618-19, para 3)

"It is a common expression which is sometimes used by itself and sometimes in a collocation of words as in 'business, trade or profession'. It is a word of large and wide import, capable of a variety of meanings. It is needless to refer to the meanings given to that term in the various dictionaries except to say that everyone of them notices a large number of meanings

of the word. In a broad sense it is taken to mean 'everything that occupies the time, attention and labour of men for the purpose of livelihood of profit'. In a narrow sense it is taken to mean 'everything that occupies the time, attention and labour of men for the purpose of livelihood of profit.' In a narrow sense it is confined to commercial activity. It is obvious that the meaning of the word must be gleaned from the context in which it is used. Reference to the provisions of the Constitution or other statutes where the expression is used cannot be of any assistance in determining its meaning in Section 10(3) (a) (ii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. It is not a sound principle of construction to interpret the expressions used in one Act with reference to their use in another Act; more so if the two Acts in which the same word is used term in once statute affords a guide to the construction of the same term in another statutes does not necessarily throw any light on the manner in which the term should be understood generally. On the other hand it is a sound, and indeed, a well-known principle of construction that meaning of words and expressions used in an Act must take their colour from the context in which they appear."

9. If this is the law with reference to an advocate the case on hand is a fortiori. Therefore, we set aside the judgments of the learned District Judge and the High Court. The civil appeal will stand allowed. No. costs.

10. However, if there is any other cause or any other ground on which the landlord wants to file action for eviction, this judgment will not be a bar.

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