

K.N.Karthikeyan (dead)

Vs

M.N.Sreenivasan

(G. T. Nanavati, S. S. Mohammed Quadri JJ)

20.02.1998

JUDGMENT

NANAVATI J

1.Delay condoned.

2.Substitution allowed.

3.Leave granted.Heard learned counsel.

4.The appellant is questioning the correctness of the order passed by the High Court of Kerala in O.P.No.14665 of 1995-U.He is the landlord and in the suit filed by him for eviction a decree was passed in his favour.The appeal filed by the tenant was dismissed by the Appellate authority and the Revision Petition filed in the High Court also met with the same fate.The appellant thereafter applied for execution of the decree.At that stage the respondent tenant raised an objection that the landlord did not have valid permit and permission to reconstruct the suit premises.The objection was overruled by the executing court So the tenant filed a revision application before the Appellate Authority It held that the building plans submitted by the landlord were not consistent with the provisions of the Kerala Building Rules and, therefore, the landlord cannot be said to be in possession of valid permit and permission from the concerned authorities Aggrieved by that order the appellant filed O.P No 14665 of 1995-U in the High Court The tenant also filed O.P No 14213/95 for obtaining a direction that the Municipality should give a hearing to him before sanctioning the building plans of the landlord. The High Court allowed the petition filed by the tenant and dismissed the petition of the landlord.

5.The learned counsel for the appellant submitted that whether Municipality had given the required permission and licence to the landlord and whether the Area Development Authority had granted the necessary permit was already considered while deciding the Eviction Petition and, therefore, it was not open to the tenant in execution proceedings to raise those objections.The Appellate Authority, therefore, went beyond its jurisdiction in holding that the landlord did not have validly approved plan and permission to reconstruct the building.He also submitted that the direction given by the High Court, by its earlier order dated 29.6.1994, that the executing court should satisfy itself before putting the landlord in possession, that he possessee valid permit and licence from the Municipality was not correctly construed by the Appellate Authority and the High Court According to the learned counsel what the executing court was required to do under that order was to verify whether the landlord was in possession of a valid permit and permission for reconstruction It could not have been the intention of the High Court that the executing court should scrutinise the plans and decide

legality of the permit and permission.

6. It is not in dispute that the question of bonafide requirement of the landlord to reconstruct the building was decided in his favour. It is also not in dispute that the Rent Controller had considered whether the landlord was in possession of the requisite permission from the Municipality before passing the eviction order. Obviously, the executing court could not have, therefore, gone behind those findings. What the High Court, while dismissing the earlier revision application against the order of eviction, had directed was to verify whether in fact the landlord possessed the requisite permit/permission or not. The High Court had not directed the executing court to consider if the Municipality had validly granted the permission to reconstruct. Merely because, the landlord in order to prove that he possessed such permission had produced documents Exhibits A.1 to A.4 that did not entitle the Appellate Authority to go into that question. The fact that a permit for development was granted by the Area Development Authority and permission to construct was granted by the Municipality was proved by those documents.

7. The contention that was raised on behalf of the tenant was that as the permit granted by the Area Development Authority was not submitted to the Municipal Authority for its approval, the landlord did not have a valid permit. This contention was accepted in view of the evidence of the officer of the Area Development Authority that after granting permit and approving the plan they are sent to the Municipal Authority and the Municipality grants approval thereafter. No such approval was obtained in case of the appellant. What was overlooked by the Appellate Authority and the High Court was that the landlord had already obtained permission of the Municipality to reconstruct his building on 14.8.1990 and this time he had applied for renewal of that permission. It was, therefore, not required to submit fresh plans to the Area Development Authority for getting a fresh permit. The landlord did possess a permit granted by the Area Development Authority and it was not required to be approved again by the Municipality. He possessed sanctioned plans and the required permission of the Municipality. It was, therefore, not proper to hold that landlord was not in possession of a valid permit and permission as required by law.

8. It was contended by the learned counsel for the respondent that as the High Court has directed the executing court to go into the question of validity of permit and licence/permission it was open to it to find out whether the permit and permission granted by the respective authorities were lawful or not. As stated earlier what the High Court had really intended was that the executing court should verify before handing over possession of the suit premises whether the landlord was in possession of valid permit and permission or not. The High Court had not directed that validity of the permit and permission should be examined in the light of the building rules and regulations of the bye-laws of the Area Development Authority and the Municipality.

9. The Appellate Authority, therefore, committed a grave error in dismissing the execution application and the High Court has also committed the same error by dismissing the writ application. We, therefore, allow this appeal, set aside the order passed by the High Court in O.P No 14665 of 1995-U and restore the order passed by the executing court. In view of the facts and circumstances of the case there shall be no order as to costs.