

Davis

Vs

Sebastian

Civil Appeal No. 14072 of 1996

(V. N. Khare, S. M. Quadri JJ)

19.08.1999

JUDGMENT

SYED SHAH MOHAMMED QUADRI, J. –

1. This appeal is from the judgment and order of the Division Bench of the High Court of Kerala at Ernakulam in CRP No. 1778 of 1991-C dated 28-7-1994. The polemic centres round interpretation of the expression "personal use" in sub-section (8) of Section 11 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short "the Kerala Act").

2. A brief narration of the facts giving rise to this appeal is necessary to appreciate the question involved in this case. The question of bona fide requirement of additional accommodation under Section 11(8) of the Act alone is canvassed before us so we are confining the facts relevant to that ground. The appellant is the landlord and the respondent is the tenant of a shop room which is a portion of the main building of Irinjalakkuda Village, Mukundapuram Taluk (hereinafter referred to as "the premises"). In the main building the appellant was running the business of hotel-cum-bar. On the plea that he had made all preparations for starting a jewellery shop and a textile shop and bona fide requires additional accommodation for the proposed business, he filed RCP No. 31 of 1983 seeking eviction of the respondent from the premises. The ground of bona fide requirement of the appellant for additional accommodation was opposed by the respondent. He averred that he was running a provision shop in the premises which was his sole source of income for his livelihood and the appellant was having other vacant accommodation which he let out to others. 'The learned Rent Controller recorded the finding that the appellant was not in need of additional accommodation. It was also found that if the respondent was evicted from the premises he would be put to more hardship than the benefit that would be fetched to the appellant. In that view of the matter, the Rent Controller dismissed the eviction petition on 7-6-1986. The landlord unsuccessfully assailed the said order before the appellate authority in RCA No. 39 of 1990. Both on the question of bona fide requirement of the landlord and on the question of comparative hardship, the appellate authority held against the appellant landlord. Aggrieved thereby, the appellant filed CRP No. 1778 of 1991-C before the High Court of Kerala. The Division Bench of the High Court dismissed the revision on 28-7-1994. It is against that order of the High Court, the appellant is in appeal by special leave.

3. Mr. K. Sukumaran, learned Senior Counsel appearing for the appellant invited our attention to sub-section (8) of Section 11 of the Kerala Act and argued that it enabled a landlord to claim additional accommodation for his bona fide personal use and that the High Court committed grave error of law in confining the personal use of the landlord to expansion of the existing business only.

4. Mr. Ramesh Babu, learned counsel appearing for the respondent has contended that for purposes

of starting any business the provisions of Section 11(3) will have to be invoked and that Section 11(8) applies only when the landlord's need for additional accommodation relates to expansion of his existing business; if Section 11(8) is interpreted as contended by the appellant, then the rigour of Section 11(3) will be diluted and it will be circumvented by having recourse to sub-section (8).

5. To appreciate the contentions of the learned counsel, it will be appropriate to refer to sub-section (8) of Section 11 of the Kerala Act which reads as under :

"11. (8) A landlord who is occupying only a part of a building, may apply to the Rent Control Court for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for his personal use."

6. A plain reading of the provision, extracted above, shows that the requirements of sub-section (8) under which the claim is made by the landlord are :

(i) a landlord is occupying only a part of a building;

(ii) the tenant is occupying the whole or any portion of the remaining part of the building; and

(iii) the landlord requires additional accommodation for his personal use.

We may notice here that sub-section (10) is in the nature of a proviso to sub-sections (3), (4) and (8). It mandates that if the Rent Controller is satisfied that the claim of the landlord under sub-sections (3), (4), (7) and (8) is bona fide, he shall make an order thereunder but if he is not so satisfied he shall make an order rejecting the application. The first proviso to sub-section (10) provides an additional ground for rejection of the application under sub-section (8) and, that is, if the Controller is satisfied that the hardship which may be caused to the tenant by ordering his eviction, will outweigh the advantage to the landlord. In the event of granting the application the second proviso comes into operation and empowers the Rent Controller to grant reasonable time to the tenant for putting the landlord in possession of the building which may be extended from time to time up to three months. While providing a ground to a landlord to claim additional accommodation for his personal use, possible care has been taken to safeguard the interest of a tenant.

7. There is no controversy in regard to compliance with the requirements of (i) and (ii) of sub-section (8) noted above. In hoc requirement (iii), the landlord has to show that he bona fide requires additional accommodation for his personal use. The High Court held that the requirement of the landlord should relate to the same purpose, namely, for expansion of his existing business of hotel-cum-bar and that as the appellant intended to start a different business, namely, jewellery and textile business in the additional accommodation, the case did not fall under Section 11(8) of the Kerala Act.

8. Now, what is the meaning of the expression "personal use" in sub-section (8) ? It is a well-settled principle of interpretation that words in a statute shall be given their natural, ordinary meaning; nothing should be added to them nor should any word be treated as otiose. Two comprehensive expressions "additional accommodation" and "personal use" are employed in sub-section (8). The expression "additional accommodation" takes in both residential as well as non-residential buildings. "Personal use" is also an expression of wide amplitude. There is nothing in the sub-section which restricts the import of that expression. The said requirement of sub-section (8) will be complied with

on the satisfaction of the Controller about bona fide need of the additional accommodation for personal use of the landlord. To what use the additional accommodation should be put, is the choice of the landlord. In the case of a non-residential building whether a new business should be set up in the additional accommodation or whether it should be used for expansion of the existing business, is left entirely to the option of the landlord. This, being the intendment of the legislature, the court cannot impose any restriction with regard to the use of the additional accommodation from which the eviction of the tenant is sought.

9. In *Joseph v. Francis* (1965 Ker LT 1113) a learned Single Judge of the Kerala High Court correctly construed Section 11(8) of the Kerala Act when he held that it was the landlord's choice to decide what business he would carry on and that a court would not be justified in saying that he required the building bona fide for his own use only if he required it for expanding his existing trade.

10. Thus, it follows that the phrase "additional accommodation or personal use of the landlord" may relate to residential purpose as well as to non-residential purpose. Where it relates to non-residential purpose there is no reason to restrict personal use of the landlord for the purpose of only expansion of the existing business. He can put the additional accommodation, so long as he bona fide needs it, to any business or purpose of his choice.

11. Here, it may be useful to refer to in pari materia enactments of other States. In the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960, Section 10(3)(c) deals with granting order of eviction on the plea of additional accommodation. It provides that in the case of a non-residential building the landlord has to show that he requires the additional accommodation for the purpose of a business which he is carrying on; thus under the Andhra Act additional accommodation can be sought for purposes of the business which the landlord is carrying on. So also under Section 10(3)(c) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, the additional accommodation for non-residential purposes can be claimed for purposes of the business which the landlord is carrying on.

12. In *Shri Balaganesan Metals v. M. N. Shanmugham Chetty* ((1987) 2 SCC 707 : (1987) RCR 586) while construing Section (10)(3)(c) of the Tamil Nadu Act, this Court held that once a landlord has satisfied the Controller that he was bona fide in need of additional accommodation for residential or non-residential purposes and that the advantage derived by him by an order of eviction will outweigh the hardship caused to the tenant, then the landlord is entitled to an order of eviction irrespective of any other consideration.

13. It may be pointed out here in contradistinction to the other enactments that under Section 11(8) of the Kerala Act claim for additional accommodation is not confined to expansion of the business which the landlord is carrying on. As pointed above, the landlord has a wider choice under Section 11(8) of the Act. He can use it at his option in case of non-residential accommodation, either for expansion of existing business or for a new business.

14. The contention that if the expression "personal use" under sub-section (8) is interpreted to include "use for any business", it will dilute the rigour of Section 11(3), is devoid of merit. We shall notice sub-section (3) of Section 11 of the Act here to examine the contention of the learned counsel :

"11.(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 :

Provided that the Rent Control Court shall not give any such direction if a 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 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 :"( Provisos 3 and 4 are not relevant for our purposes.)

15. To secure the eviction of a tenant under sub-section (3), a landlord has to show that :

(i) he bona fide needs the building for his own occupation or for the occupation of any member of his family dependent on him;

(ii) the building of which eviction is sought, is in the occupation of a tenant; and

(iii) he does not have another building of his own in his possession in the same city, town or village or if he has such a building in his possession, the Rent Controller will have to be satisfied for special reasons that it will be just and proper to order eviction of the tenant from the building in occupation of the tenant.

The legislative mandate to the Rent Controller is not to pass an order directing the 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 if there is no other suitable building available in the locality for such person to carry on such trade or business. Thus, it is seen that whereas before passing an order under sub-section (8), the requirement of comparative hardship is to be considered by the Rent Controller and it is only when the hardship that may be caused to the tenant by granting an order in favour of the landlord will outweigh the advantage to the landlord that the Rent Controller has to reject the application. But under sub-section (3) no order of eviction against the tenant can be passed if he is dependent 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. There is yet another feature which distinguishes sub-section (3) from sub-section (8). Whereas possession of another building in the same city, town or village except when the Rent Controller is satisfied for special reasons, is a bar for passing an order of eviction under sub-section (3) but the basis of claiming such an order under sub-section (8) is that the landlord is in occupation of a part of the building and he needs the remaining part of the building or a portion thereof in occupation of the tenant as additional accommodation for his personal use. Thus it is seen that the requirements of sub-section (3) and sub-section (8) are different. There is no scope for a case falling under sub-section (3) to have recourse to sub-section (8) and thus diluting sub-section (3).

16. Now, the germane aspect which remains to be adverted to is the requirement of the first proviso

to sub-section (10) of Section 11, namely, comparative hardship to the tenant. The learned Rent Controller as well as the appellate authority held against the appellant on this aspect. The High Court did not consider this aspect in the view it had taken of Section 11(8) of the Act.

17. For all the above reasons, we are of the opinion that even after holding that bona fide requirement of the landlord for additional accommodation for personal use is established, the relief under sub-section (8) of Section 11 cannot be granted to him without recording a finding under the first proviso to sub-section (10) of Section 11 of the Act in favour of the landlord. Since, the High Court did not consider this aspect, we are of the opinion that the matter has to go back to the High Court for fresh consideration in the light of this judgment. The judgment and order of the Division Bench under appeal is, therefore, set aside and the case is remitted to the High Court for fresh disposal in accordance with law.

18. The appeal is allowed as indicated above. No costs.