

KERALA HIGH COURT

M.P. Sethurama Menon

Vs

Thaiparambath Kunhukutty

Writ Appeal No. 80 of 1966, in O. P. No. 1472 of 1965

(M.S. Menon, C.J. and P. Govindan Nair, J.)

22.07.1966

JUDGMENT

M. S. Menon, C.J.

1. The appellant, an advocate practising at Calicut, challenges the correctness of the dismissal of his petition, O. P. No. 1472 of 1965. By that petition he challenged, without success, the correctness of an order of eviction from a house of the first respondent of which he was the tenant.

2. The eviction directed by the District Judge, the Revisional Authority, was under Section 11 of the Kerala Buildings (Lease and Rent Control) Act, 1965. The appellant's contention which has been negated in the judgment under appeal was that he came within the second proviso to sub-section (3) of that section.

3. Sub-section (3) says that 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. There are four provisos to the sub-section. We are concerned only with the second of those four provisos which reads as follows:

"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."

4. The question for determination is whether an advocate can be considered to carry on a "trade or business" within the meaning of that expression as used in the proviso. The judgment under appeal holds that he cannot be so considered. The same is our view.

5. The expression "trade or business", as we understand it, connotes a commercial activity. The expression "profession" does not, and is virtually at the other end of the scale.

6. The expression "profession" used to be confined to the practice of theology, law and medicine. With the extension of the applications of science and learning, however, the expression has come to cover other vocations as well. But the dividing line between what is a profession and what is a trade or business still subsists and is of material consequence. The distinction is indicated when Article 19 (1) (g) of the Constitution says that all citizens shall have the right to practice any profession, or to carry on any occupation, trade or business. The distinction is emphasized when R. 40 of the rules made by the Bar Council of India under Section 49 of the Advocates Act, 1961, says:

"An Advocate shall not personally engage in any business; but he may be a sleeping partner in a firm doing business provided that, in the opinion of the appropriate State Bar Council, the nature of the business is not inconsistent with the dignity of the profession."

7. What is important in deciding whether a person is carrying on a profession or not is whether he is a member of an organized body with a recognized standard of ability enforced before he can enter it and a recognized standard of conduct enforced while he is practicing it (Iyengar on Income-tax, 5th Edition, Volume 2, Page 832). This is certainly not the test in deciding whether a person is carrying on a trade or business.

8. Ballentine's definition of the expression "profession" is:

"A vocation in which a professed knowledge of some department, of science or learning is used by its practical application to the affairs of others, either in advising, guiding, or teaching them, or in serving their interests or welfare in the practice of an art founded on it."

He goes on to say:

"The word implies professed attainments in special knowledge as distinguished from mere skill. A practical dealing with affairs as distinguished from mere study or investigation; and an application of such knowledge to uses for others as a vocation, as distinguished from its pursuit for its own purposes."

9. Of the various cases cited before us the nearest is *L. M. Chitale v. Labour Commissioner*¹. In that case the Madras High Court had to consider whether the practice of his profession by a chartered architect will come within the meaning of the expression "trade or business" in the Madras Shops and Establishments Act, 1947. Shrinivasan, J. came to the conclusion that the office of a chartered architect cannot be considered as premises where any trade or business is carried on. The learned Judge said:

"At the outset, I may mention that there is certainly a fundamental difference between a profession and a trade or business. That seems to be implicit in the reference to 'profession, occupation, trade or business' found in Article 19 of

¹ AIR 1964 Mad 131

the Constitution. It is normally understood that trade or business is carried on with a profit motive. I do not think it is necessary to cite any authority for that view. But when we come to the question of a profession or an occupation, though they are carried on for the purpose of earning a livelihood, it would certainly be far from correct to say that a profit motive underlies the carrying on of these activities."

10. It is not contended that an advocate's profession will be covered by the word "trade". The only contention is that it will be covered by the word "business". Even assuming that the word "business" is a word of ambiguous import and that it takes its content from its context, we do not think it can be said that the word "business" in the expression "trade or business" occurring in the proviso will include the profession of an advocate.

11. Sub-section (3) of Section 1 provides that the Act applies to the areas mentioned in the Schedule to the Act and that the Government may, by notification in the Gazette, apply all or any of the provisions of the Act to any other area in the State with effect from such date as may be specified in the notification. The area in which the building is situate is the area of the Calicut Corporation. The proviso does not speak of any "area". The wording is not "and there is no other suitable building available in the area for such person to carry on such trade or business"; but "and there is no other suitable building available in the locality for such person to carry on such trade or business".

12. The expression "locality" denotes something very much smaller than the expression "area", and the emphasis on the locality in which the trade or business is carried on apparently indicates that the expression "trade or business" relates to activities dependent for their success and continued existence on the locality of their operation. As far as a commercial activity is concerned the place where it is being carried on is of significance and may well prove the foundation of its goodwill. Such is not the case with a profession like that of an advocate. The place where an advocate has his chambers is not what is important. It is his equipment and personality, his performance in Court, and all those imponderables that ensure forensic success that are of significance. In this view also we think the expression "trade or business" should be interpreted as the carrying on of a commercial activity and not the practice of a profession.

13. Before concluding his submissions counsel for the appellant submitted that there has been no valid notice to quit in this case and that as a result no eviction should have been directed as has been done by the Revisional Authority. Paragraphs 14 and 15 of the judgment under appeal deal with this matter and we are in agreement with what has been stated in those paragraphs.

14. Paragraph 14 says:

"The petitioner's counsel filed C. M. P. No. 580 of 1966 on 25-1-1966, to urge an additional ground namely that the petitioner's tenancy had not been terminated by the issue of a notice to quit under the Transfer of Property Act. The contention was sought to be sustained by reference to the decision of the Supreme Court in *Mangilal v. Sujan Chand Rathi*², The point that there had been no termination of the tenancy was not raised

at any of the earlier stages. It involves investigation of facts and I am not disposed to entertain it for the first time at this stage. I have therefore dismissed C. M. P. No. 580 of 1966."

And paragraph 15:

"The petitioner's counsel at the stage of the arguments contended that there was no scope at any of the earlier stages to plead the want of a notice to quit, as the 1st respondent's petition proceeded on the footing that the petitioner was a sub-tenant. As pointed out by the counsel for the respondent although this was the allegation in the petition, the question of sub-lease as a ground for eviction was not pressed before the Rent Control Court and did not arise for consideration. (See paragraph 6 of Ext. P-1). Before the Appellate Authority, it was not denied that the present petitioner was occupying the building as a tenant under the 1st respondent (vide paragraph 2 of Ext. P-2). In these circumstances, the petitioner cannot claim that he was misled by the pleading and therefore did not raise the plea of want of a notice to quit."

15. In the light of what is stated above this appeal should fail and has to be dismissed. We do so; but in the circumstances of the case without any order as to costs.

Appeal dismissed.

² AIR 1965 SC 101