

# KERALA HIGH COURT

Lelitha

Vs

Ayissumma

Civil Revision Petition No. 2246 of 1976

(Gopalan Nambiyar, Acting C.J., George Vadakkal and Chandrashekhra Menon, JJ.)

06.04.1977

## JUDGMENT

### **George Vadakkal, J.**

1. The reference order reads :

"The question of law of general importance raised in this appeal relates to notice under Section 106 of the Transfer of Property Act. What is required to be decided is whether a notice under Section 106 of the Transfer of Property Act is necessary pre-requisite for eviction under the Buildings (Lease and Rent Control) Act. In view of the apparent conflict between the decision of the Supreme Court in *Rattan Lal v. Verdesh Chander*<sup>1</sup>, on the one hand and *Puwado Venkateswara Rao v. Chilamana Venketa Ramana*<sup>2</sup>, on the other hand considering the great importance of the question, we consider it desirable to have authoritative pronouncement on the question of law and for this purpose we adjourn the hearing and direct it to be placed before the Chief Justice for passing appropriate order for placing it before a Full Bench.

We are told that CRP No. 1707 of 1975 also raised the same question. This CRP also may be posted along with it."

2. Sustaining the decision of the learned Subordinate Judge reversing the order of the Rent Control Court dismissing an application for eviction filed under sub-sections (2) and (4)(i) of Section 11 of the Kerala Buildings (Lease and Rent Control) Act 1965, the learned District Judge, on revision by the 2nd respondent before the Rent Control Court (and also before the learned Subordinate Judge) held that the landlord has made out a case of transfer by the tenant of his right under the lease evidenced by Ext. A1 in favour of the 2nd respondent, though not one of subletting as held by the learned Subordinate Judge. On the question of notice to quit, differing from the learned Subordinate Judge according to whom proof of sending notice by registered post was sufficient to presume receipt thereof (there is such proof in this case) the learned District

Judge held that there was a contract to the contrary as contemplated by

<sup>1</sup>1975 RCR 650 : 1975 RCJ 443

<sup>2</sup>1975 RCR 439 : AIR 1976 SC 869

Section 106 of the Transfer of Property Act, 1882, in so far as Ext. A-1 lease deed provides for surrender of possession of the building on demand, and that therefore, no notice to quit was required. The Civil Revision Petition is by the legal representatives of the tenant who was a co-respondent before the District Court and by the petitioner before that Court, who, that Court held to be a transferee from the tenant of his rights under Ext. A-1 lease. The correctness of this last mentioned finding is not canvassed before us. Eviction is opposed before us solely on the ground of want of quit notice. According to the learned counsel for the Civil Revision Petitions, Ext. A-1 leased deed does not evidence a contract to the contrary as held by the learned District Judge. Therefore, it is submitted, without proper and sufficient notice determining the lease, neither the tenant nor his transferee can be evicted from the building in question. On these submissions two points alone arise for consideration, and they are :- (i) does Ext. A-1 lease deed contain a contract to the contrary as envisaged by Section 106 of the Transfer of Property Act, 1882; (ii) if it does not, is Section 106 of the said Act attracted to statutory tenancies governed by the Kerala Buildings (Lease and Rent Control) Act 1965.

3. Provision in the lease deed for surrender of possession of the leasehold without demur on demand made after the expiry of the term fixed is not according to the decisions of this Court in *Moothorakutty v. Ayissa Bi and others*<sup>3</sup>, and *Abdul Hameed Rawther v. Balakrishna Pillai*<sup>4</sup>, a contract to the contrary dispensing with quit notice. The correctness of these decisions is not canvassed before us, though it was brought to our notice that in *Philip v. State Bank of Travancore*<sup>5</sup>, two of the learned Judges on the Full Bench which decided the case expressed some doubt about the correctness of the principle laid down as above said. In that view the first point mentioned above has to be answered in the negative, and we do so.

4. Construing the Madras Buildings (Lease and Rent Control) Act XV of 1946 Rajamannar, Offg. C.J. on behalf of a Division Bench of the Madras High Court in *Rangaswami Naidu v. Bangara Chetty*<sup>6</sup>, said that in doing so the principles of the Transfer of Property Act, 1882 cannot be imported. Without notice this decision in a subsequent decision reported in the same volume, *Prathasarthy v. Krishnamurthy*<sup>7</sup>, Subba Rao, J. took the view that the provisions of the aforesaid Act do not supersede the contractual terms between the parties but only put certain fetters on the landlord's pre-existing right of eviction and right to immediate possession which had accrued or would accrue to him on determination of the lease as provided for by law. Reversing this decision, Horwill, J. on behalf of the Division Bench in *Krishnamurthy v. Parthasarthy*<sup>8</sup>, said:

"18. We are, therefore, of opinion that Section 7 must be given its plain meaning. If so, no question of attempting to reconcile Act XV (15) of 1946 with the Transfer of Property Act arises. We are satisfied that Section 111(h) Transfer of Property Act has no place in the scheme of procedure laid down in Section 7 of the Act. That is the answer to the first question that we have formulated."

<sup>3</sup>1961 KLT 556

<sup>5</sup>1972 KLT 914

<sup>7</sup> AIR 1949 Mad 387

<sup>4</sup>1968 KLT 865

<sup>6</sup> AIR 1949 Mad 139

<sup>8</sup> AIR 1949 Mad 780 at 782

The first question formulated by the Appellate Bench in that case was : "whether notice to quit

was necessary". The Madras High Court has consistently taken this view in respect of Madras Rent Control Acts, namely, that these Acts interfered with the contractual tenancies as regards the fixation of fair rent as regards the right of the landlord to evict his tenants and the grounds for eviction. However, in view of the construction placed on certain other Acts by the Supreme Court, a Full Bench of the Madras High Court considered the question in detail again in *Raval and Co. v. Ramachandra*<sup>9</sup>, Ananthanarayanan, Offg. C.J. for the Full Bench said :-

"Thus the Madras Act has to be interpreted as a special Act which does abrogate the Transfer of Property Act, with reference to several of its provisions; of course, it goes further and applies, in its terms, not merely to contractual tenancies, during their subsistence, but also to statutory tenancies after the determination of a contractual tenancy. Under the terms of this Act, therefore, a landlord can evict a tenant on the special grounds available notwithstanding the subsistence of a contractual tenancy and even though it has been determined. But equally, the tenant has the protection of the Act, even after the determination of the contractual tenancy, so long as he does not do anything which removes the bar of eviction and provides no grounds for eviction in terms of the Act. Both during the subsistence of the contractual tenancy, and therefore, the parties have the right to get the fair rent determined. This seems to be the only interpretation which does justice to the specific provisions of this statute, the legislative competence for such an enactment not being in question."

By this time the Madras Buildings (Lease and Rent Control) Act 18 of 1960 had replaced the earlier Act, and it was this Act that was considered. This decision was affirmed by a Constitution Bench of the Supreme Court in *Raval and Co. v. K.G. Ramachandran*<sup>10</sup>, Alagiriswamy, J. speaking for the majority (himself, Ray, C.J. and Khanna, J.) pointed out at p. 283 as follows :-

"It is clear, therefore, that the fair rent under the present Act is payable during the contract period as well as after the expiry of the contract period."

"18. The provisions of the Act under consideration show that they are to take effect notwithstanding any contract even during the subsistence of the contract. We have already referred to the definition of the terms 'landlord' and 'tenant' which applies both to subsisting tenancies as well as tenancies which might have come to an end. We may also refer to the provisions in Section 7(2) which lays down that where the fair rent of a building has not been fixed the landlord shall not claim anything in addition to the agreed rent, thus showing that the fair rent can be fixed even where there is an agreed rent. That is why we have earlier pointed out that the various English decisions which provide for fixation of rent only where the contractual tenancy has come to an end do not apply here. We may also refer to sub-section (3) of Section 10 which deals with cases when a landlord requires a residential or non-residential building for his own use Clause (d) of that sub-section provides that

<sup>9</sup> AIR 1967 Mad 57

<sup>10</sup>1974 RCR 170 : 1975 RCJ 180

where the tenancy is for a term the landlord cannot get possession before the expiry of the term thus showing that in other cases of eviction covered by Section 10 eviction is permissible even during the continuance of the contractual tenancy if the conditions laid down in Section 10 are satisfied."

5. The criticism made about *Krishnamurthy v. Parthasarathy* (supra), in *Manujendra v. Purnedu*<sup>11</sup>, was stated by the Constitution Bench to be 'not justified'. This last mentioned decision was on 22nd September, 1967 after the Full Bench of the Madras High Court decided the Raval and Company case on 20th January, 1966. However, this Full Bench decision appears to have not been placed before the Supreme Court when it decided *Manujendra Dutt's* case. In that case while examining the provisions of the Calcutta Thika Tenancy Act VI of 1953 Shelat, J. who delivered the judgment on his own behalf and Subba Rao, C.J. observed that the decisions in *Krishnamurthy v. Parthasarathy* (supra), was 'clearly contrary to the decisions of the Supreme Court in *Abasbhai's* case and *Mangilai's* case. Relying on the pronouncement of law by the Constitution Bench in *Raval and Company* case the Supreme Court in *Puwada Venkateswara v. C.V. Ramana*, (one of the two decisions mentioned in the reference order) upheld the contention that the Andhra Pradesh Buildings (Lease and Rent Control) Act 15 of 1960 provided a procedure for eviction of tenants which was self-contained so that no recourse to the provisions of Section 106 Transfer of Property Act, 1882 was necessary. Beg, J. as he then was, said :-

"5. We may also refer here to the observations of this Court in *Raval and Co. v. K.G. Ramachandran*. There this Court noticed *Sri Hem Chand v. Smt. Sham Devi* [ILR (1955) Punj. 36] and pointed out that it was held that the Act under consideration in that case provided the whole procedure for obtaining the relief of ejection, and that being so, provisions of Section 106 of the Transfer of Property Act had no relevance. No doubt the decision mentioned with approval by this Court related to another enactment. But the principle indicated by this Court was the same as that applied by the Andhra Pradesh High Court."

6. The other decision mentioned in the reference order in *Rattan Lal v. Vardesh Chander*, was decided prior to the decision in *Puwala Venkateswara v. C.V. Raman*. That decision also, with respect, it appears to us lays down the same principle as enunciated by the Constitution Bench, as is clear from paragraph 7 (at P. 591) of that decision where it is stated as follows :-

"We agree that, if the rent control legislation specifically provides grounds for eviction in supersession, not in supplementation, of what is contained in the Transfer of Property Act, the situation may conceivably be different. But, in the Delhi Rent Act, as in many other like statutes, what is intended to be done is not to supplant but to supplement, not to eliminate the statutory requirements of determination of tenancy but to superimpose a ban on eviction which otherwise may be available in conformity with the Transfer of Property

Act without fulfillment of additional grounds."

<sup>11</sup> AIR 1967 SC 1419

Section 4(1) of the Kerala Buildings (Lease and Rent Control) Act 1965, for brevity, the Act, requires every landlord to give the accommodation controller notice of vacancy whenever a building falls vacant, or is newly constructed for the purpose of letting out. He (the accommodation controller) may thereupon allot it to one of persons mentioned in Section 4(3) of the Act, and intimate the landlord of such allotment within fifteen days of receipt of notice of vacancy. Then a fictional or deemed landlord-tenant relationship comes into existence, (and this, from the date of notice of vacancy by the accommodation controller) between the landlord and the allottee. This is the combined effect of sub-sections (3), (5) and (6)(g) of Section 4. If the landlord does not receive any intimation regarding allotment, he is free to let the building to any one. Under sub-section (2) of Section 4, if a tenant which word as per Section 2(6) means any person by whom or on whose account rent is payable and would, therefore, include [both an allottee-tenant and a non-allottee-tenant] puts another person in occupation of the building and does not re-occupy it within three months the tenancy shall be deemed to have terminated.

7. Both the landlord and the tenant, be he an allottee or not, are entitled under Section 5(1) of the Act to get the fair rent of the building reckoned in the manner provided for in sub-sections (2) and (3) of Section 5 and determined by the Rent Control Court, and thereafter the landlord cannot claim or receive anything in excess of fair rent, Even where fair rent has not been determined by the Rent Control Court the landlord cannot receive as rent any thing more than the maximum rent that may be fixed by the Rent Control Court or the agreed rent whichever is less. This is the effect of Section 8 of the Act. Where fair rent has been determined, receipt of any rent in excess thereof, and where fair rent has not been determined, receipt of 'unconscionable rent' which words as per Section 2(7) mean double the maximum of the fair rent that could be fixed by the Rent Control Court, are offences, punishable with imprisonment and/or fine under Section 29 of the Act so far as the latter mentioned offence is concerned, and with fine so far as the other offence is concerned.

8. The next important provision to be noticed in this connection is Section 11 of the Act. The lengthy Section consisting of 17 sub-sections, many of which have several clauses with provisos and/or explanation added to it to control and/or to explain the scope of the main clause, starts with a *non-obstant* clause as per which a tenant (again, be he an allottee-tenant or non-allottee tenant) cannot be evicted except in accordance with the provisions of the Act. The forum to which the landlord can have recourse to is the Rent Control Court who is a *persona designate* as per Section 3(1) of the Act. We do not think it necessary to enumerate and advert to the several grounds mentioned in Section 11 which would enable the landlord to seek eviction of a tenant. It is sufficient to point out too salient features which would indicate that the legislative intent was to provide by this section a self-contained code which prescribes the grounds on which ejectment may be sought for the procedure in that behalf. Second proviso to Section 11(1) of the Act provides that where the tenant denies the title of the landlord or claims title in himself [this, under Section 111(g)(2) of the Transfer of Property Act, 1882 entails determination of the lease by forfeiture] and on the Rent Control Court regarding a finding that such denial or claim is *bonafide*, the landlord can use for eviction in a civil Court; however, that Court can pass a decree for eviction only on one or the other of the grounds mentioned in Section 11 of the Act, and can

pass such a decree 'notwithstanding' that the Court finds that such denial does not involve forfeiture of the lease,' that is to say, even if the tenancy had not been determined by forfeiture under Section 111(g) of the Transfer of Property Act, 1882. The second feature to be noticed is that which is indicated by sub-section (9) of Section 11 of the Act as per which the landlord can seek eviction on grounds mentioned in that section only after the expiry of the period of tenancy, if any, specified and agreed upon between the landlord and tenant, or in other words, only after the efflux of time limited by parties. If the provisions of Transfer of Property Act, 1882 would also govern the landlord-tenant relationship to which the provisions of the Act are attracted, in view of Sections 111(a) and (b) of the former Act, sub-section (9) would be redundant. On reading Section 11 of the Act as a show in the context of the scheme of the Act relating to creation of tenancies and stipulation of rent, both of which are no more matters of bargain between the parties, as shown above, it appears to us that we can borrowing the language employed by Fazl Ali, J., in *Brij Raj Krishna v. Shaw and Bros*<sup>12</sup>, with reference to Section 11 of Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, safely and appositely say :-

"Section 11 begins with the word is 'notwithstanding' anything contained in any agreement or law to the contrary and hence any attempt to import the provisions relating to the law of transfer of property for the interpretation of the Section would seem to be out of place. Section 11 is a self-contained Section and it is wholly unnecessary to go outside the Act for determining whether a tenant is liable to be evicted or not, and under what conditions he can be evicted."

9. In the above view, and applying the test of 'supplant or supplement' the answer to the second point formulated earlier in paragraph 2 of this judgment is also in the negative, that is to say, Section 106 of the Transfer of Property Act, 1882 is not attracted to tenancies which are governed by the provisions of the Kerala Buildings (Lease and Rent Control) Act 1965.

10. Eviction cannot, therefore, be opposed for want of quit notice. We dismiss the Civil Revision Petition. There will be no order as to costs.

**Gopalan Nambiyar, Ag. C.J.**

11. My only justification to add a few words to the Judgment on behalf of the Bench, of my learned brother Vadakkal, J. which I have myself signed, is to say a few words about the state of authorities as we have found them, we are taken through a welter of decisions of the Supreme Court. It is difficult to resist the impression or conclusion that they do not conflict with each other. We have attempted the task of reconciling the apparently irreconcilable decisions, as best as we can AIR 1967 Supreme Court 1419, AIR 1965 Supreme Court 101, AIR 1963 Supreme Court 120, AIR 1976 Supreme Court 588 - all rules that the provisions of the Transfer of Property Act, are supplemental to those of the Rent Control Legislation considered in these decisions, and that a notice to quit under Section 106 of the Transfer of Property Act is necessary in addition to compliance with the requirement for eviction under the Rent Control Statutes. In *Raval and Co. v. K.G. Ramchandra* (supra), a Constitution

<sup>12</sup> AIR 1951 SC 115

Bench of 5 Judges of the Supreme Court explained the prior decisions in AIR 1967 Supreme Court 1489, AIR 1965 Supreme Court 101 and AIR 1963 Supreme Court 120. The earlier cases,

it was said related to eviction by regular suit and not to summary proceeding under the Rent Control Statutes. The general observations in AIR 1967 Supreme Court 1419 were to be confined to the fact of the case. The casual and summary dismissal by that case of the Full Bench decision in Krishnamurthy v. Parthasarathy (supra), was deprecated. It was ruled (AIR 1974 SC 818) that the provisions of the Madras Buildings (Lease and Rent Control) Act were a complete and self-contained code and that there was no scope for superimposing the provisions of the Transfer of Property Act over the provisions of the Rent Control Act. The principle was expounded also by the Full Bench of the Madras High Court in Krishnamurthy's case. That was repeated again in AIR 1976 Supreme Court 869.

12. We have also taken note of the principle in 1974(1) SC Cases 242 that it was against public policy to allow eviction on any ground other than what was contained in the Rent control Act. In addition to these, we have sanned the provisions of the Act. The judgment delivered on behalf of the Bench reflects the working principle which we have evolved and crystallised from the decisions that we have surveyed and the provisions of the Act.

Petition dismissed.