

PETITIONER:
S.J. EBENEZER

Vs.

RESPONDENT:
VELAYUDHAN & ORS.

DATE OF JUDGMENT: 11/12/1997

BENCH:
A.S. ANAND, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

K.Venkataswami, J.

This appeal by special leave is preferred against the judgment of the Kerala High Court dated 3.10.1997 in O.P. NO. 1486/87-B. The first respondent herein (landlord) filed R.C.P. No. 170/79 under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter called the 'Act') seeking eviction of the appellant herein from the premises in questions on the grounds that the appellant wilfully defaulted in payment of rents and the premises was required bona fide for use by the said respondent-Landlord. It was alleged in the petition that another premises under the occupation of the landlord, namely, T.C. 13/1412, was under immediate threat of acquisition for implementing the Palayam Town Planning Scheme.

The appellant-tenant resisted the petition for eviction alleging, inter alia, that the application was mala fide one and there was no default in payment of rents. It was also stated by the appellant-tenant that the landlord (first respondent herein), on an earlier occasion, had moved a similar application against his elder brother knowing fully well that the appellant was the tenant. After a full trial, accepting the case of the appellant's brother, the application for eviction was dismissed and the appeal and further revision filed by the landlord were dismissed. Thereafter, the present application for eviction was filed. It was also stated by the tenant that the pleadings in the petition were vague and the premises already in the possession of the landlord was sufficient and that there was no need to seek eviction of the appellant from the suit premises. It was further stated in the counter statement that there are other buildings owned by the landlord for occupation. The appellant seriously disputed the main reason given for own occupation stating that the alleged acquisition proceedings had not taken off and there was no threat at all. Even otherwise if the acquisition is for improvement of Palayam Town Planning Scheme, the owners will not be dispossessed until alternative accommodation was provided until alternative accommodation was provided to the owner to be displaced.

On the above pleadings, the parties proceeded with the trial by leading oral and documentary evidence. The learned Rent Controller by his Order dated 13.10.1980 found that the ground of willful default in payment of rents was not established and that there was no bona fide need of the building question for the occupation of the landlord as the landlord has not faced a situation requiring immediate eviction from the building in his occupation.

The landlord aggrieved by the dismissal of R.C.P. for eviction preferred an appeal to the Appellate Authority, Trivandrum, which considered the case and by its judgment dated March 29.1982 allowed the appeal ordering eviction of the appellant holding that the need of the landlord was bona fide especially when the house in his occupation was under immediate threat of acquisition by the Town Planning Authority. The appellant aggrieved by the judgment of the Appellate Authority preferred a statutory revision to the District Court, Trivandrum, which by an order dated January 24, 1983 reversed the judgment of the Appellate Authority and restored the order of the Rent controller dismissing the petition for eviction. Against the order of the District Court, the landlord preferred a revision to the High Court which was dismissed on the ground that no second revision lies to the High Court. Thereafter, the landlord preferred a revision under Article 227 of the Constitution of India and the High Court by its judgment dated October 3, 1991 allowed the revision and upset the order of the District Court resulting in the order of eviction of the appellant-tenant. It is under these circumstances that the present appeal by special leave has been preferred by the appellant-tenant.

Mr. T.L. Vishwanatha Iyer, Learned senior counsel appearing for the appellant, took us through the orders of the authorities and of the High Court. According to the learned counsel, the High Court failed to bear in mind that while exercising the jurisdiction under Article 227 it cannot reappreciate the evidence and substitute its own judgment in place of the judgment of the statutory authorities.. He pointed out that on the question of 'bona fides' the view taken by the Rent Controller and the Revisional Authority on the facts of this case was the correct one and the contrary view taken by the First Appellate Authority and accepted by the High Court is not in accordance with the provision of the Act and also contrary to the pleadings and evidence produced before the Rent Controller.

On the other hand, Mr. K. John Mathew, learned senior counsel appearing for the first respondent-landlord, submitted that the High Court was well within its jurisdiction in reversing the judgment of the Revisional Authority on the facts of this case and the view taken by it on the questions of bona fides is quite in accordance with the pleadings and evidence given before the Rent Controller. We have gone through the orders of the statutory authorities and that of the High Court.

It is common fact that the principal ground on which the landlord sought eviction was that the building in his occupation was under immediate threat of acquisition by the Town Planning Authority under the provisions of the Land Acquisition Act. It is again an undisputed fact that in the pleadings the first respondent required the premises in question for his residence and to conduct his 'affairs'. He has not disclosed in the application what those 'affairs' are. However, at the time of giving evidence he has submitted that he required the building for running his

business which he is presently running in the premises in his occupation. The business mentioned by the first respondent was that of Travel agency, It is also an admitted fact that the first respondent was running his business in a room in Mascot Hotel. The Rent Controller, who had the opportunity of observing the demeanour of the witness, has stated as follows:-

"Even though the applicant would state that he needs the building to conduct his 'affairs' in the application he has not cared to disclose what those 'affairs' are., Nevertheless, at the time of enquiry he has disclosed those 'affairs'. According to him he needs the building for running his business which is now being run in premises No.13/1412. His business by way appears to be some travel agency. it would appear from the allegations that he needs this building since the building bearing door number 13/1412 is about to be acquired for some public purpose., Any how at the time of his cross examination he admitted that the Town Planning Scheme for which T.C. 13/1412 is about to be acquired envisages alternate accommodation to those who will be affected by the Scheme. If that be so there is no need to get the disputed building vacated. Probably due to this difficulty that the applicant was forced to sweat in the course of his cross examination that even if the Town planning Scheme does not materialise he had an idea to shift his business from the existing T.C. 13/1412. His evidence shows that he is very often altering his position to suit his convenience as the situation demands. In the cross examination he states that there are practical difficulties in running his business in T.C. 13/1412 and so he needs the building involved in these proceedings. He has no such case either in his application or in the evidence adduced by him while being examined by his own counsel."

In that background, the Rent Controller appreciated the bona fide need of the landlord and held as follows:-

" The building in question is in a lane. It is an old one, Even before the applicant got right over this building it was being used as a residential building. Even now it is being used as a residential building. The travel agency now being run by the applicant has admittedly a counter in a posh hotel at Trivandrum, If the

intention of the applicant is to attract tourists and to improve his business the building in question can have only the value of an antic and nothing else. If viewed in this angle his idea to shift his business to this building appears to be a ruse to evict the respondent. I have already pointed out that the applicant did not face a situation which required immediate shifting of his business for the last 4 years. His case regarding the need to have this building is not consistent. It changes very often. Apart from the building involved in these proceedings admittedly he is having right over 3 or 4 buildings in the same city. Even though it is only fractional. Now the family business is being run by the members jointly headed by the father. The decision regarding the place where the business is to be shifted. His claim that he needs the building for his residence, in the circumstance, does not appear to be genuine. As a whole I feel that the attempt of the applicant is to evict the respondent under some pretext or other. I therefore find that the bonafide need put forth by the applicant is only a ruse to evict the respondent from the premises. The applicant is therefore not entitled to an order directing the respondent to put him in possession of the building involved in these proceedings on the ground mentioned in Section 11 (3) of Act 2 of 1965."

As against the above appreciation and findings of the Rent Controller, the Appellate Authority proceeded that for an eviction on the ground of bona fide need for own occupation under Section 11 (3) of the Act the only requirement was that the landlord must establish that the premises from which the tenant was to be evicted was the only premises owned by him in the city or town. The appellate Authority held as follows:-

" So the bonafide of the petitioner's requirement has to be tested in the background that the schedule building is the only building belonging exclusively to him."

After coming to that conclusion and finding that the schedule building was the only building exclusively belonging to the landlord, the appellate Authority found that the requirement was Bona fide. The Appellate Authority on the other aspect, namely, the acquisition by the Town Planning Authority took note of the fact that the authorities concerned have issued the declaration under Section 6 of the Land Acquisition Act and thereby expressed their final decision to proceed with the acquisition.

Therefore, there was necessity for the landlord to seek eviction of the appellant from the schedule building. The contention advanced on behalf of the tenant that there was no probability of the authorities proceedings with the acquisition was not accepted by the Appellate Authority. It was also the view of the Appellate Authority that in rent control proceedings the pleadings need not be as elaborate as in normal 'civilt suits. The pleading that he required the schedule premises for his own residence and for other affairs sufficient on the facts of this case, On these findings, the Appellate Authority reversed the order of the Rent Controller and ordered eviction of the tenant. While considering the question of bona fides, what is necessary to bear in mind is that mere desire on the part of the landlord is not enough. The desire must be tested objectively and not subjectively. The burden also lies upon, the landlord to establish that he genuinely required the accommodation for the purpose of starting or continuing his own business (vide *Mattulal Vs. Radhe Lal* - (1974) 2 SCC 365). The Appellate Authority has not followed the above test before giving the finding on the question of bona fide need of the landlord.

The Revisional Authority elaborately considered the issues raised before it and found as follows:-

"It is well evident that the need urged by the landlord in this connection would really be based upon an apprehension that in the event of dispossession of T.C.13/1412 the landlord and rest of the members of his family will be practically in the streets devoid of any accommodation. This extreme apprehension will seem to be belied by the very admission made by the landlord as PW1 when read in conjunction with the last paragraph at page 2 of Ext .A1.

The Revisional Authority also found on the issue of bona fides as follows:-

" It will therefore be seen that for that simple reason the need urged in respect of the business is liable to be found against on the ground of inadequate pleading. It will also be seen that even if it is possible to hold that the said claim is amply supported by necessary particulars as disclosed in the Rent Control Petition, Such a need will seem to be not genuine or bonafide. At the time of trial, the landlord disclosed that the business which he proposes to conduct in the schedule premises is that of a travel agency. It has also been conceded that the landlord is doing such a business not at T.C.13/1412 but only in one portion of the premises taken on rent at the building where the Mascot Hotel at Trivandrum is being conducted. The Rent Controller felt that the schedule premises will be inadequate for running a business in travel agency and therefore it

is not likely that the landlord will shift the travel agency from the Mascot Hotel at Trivandrum to the schedule premises. The learned Rent Appellate Authority however took the view that a travel agency business can be run in any corner of the city and the customers will go based on the goodwill and reputation on the agency. The learned Appellate Authority also felt that the Commission report in the case would not indicate the unsuitability of the schedule premises to accommodate the travel agency business. The learned counsel; for the revision petitioner argued that the absence of evidence on this aspect shall go only against the landlord and not against the tenant. It has already been seen that the burden to prove the bonafide need as well as its genuineness is certainly on the landlord as has been noticed from the ruling of the Supreme Court in *Mattulal Vs. Radhelal* - AIR 1974 Supreme Court 1596. It will therefore be seen that from other points of view it is possible to hold that the landlord is not entitled for an order of eviction on the ground mentioned in section 11(3) for the purpose of running his travel; agency business in the schedule premises.

After finding that the observations of the learned Appellate Authority are vitiated by errors of law and errors of fact, the Revisional Authority set aside the order of the Appellate Authority and restored that of the Rent Controller dismissing the eviction petition.

As noticed earlier, the landlord initially preferred a second revision to the High Court which was dismissed on the ground of maintainability and thereafter a revision under Article 227 was filed. While exercising the revisional jurisdiction the High Court reviewed the findings and reversed the order of the statutory Revisional Authority. The High Court in that process erred factually in narrating the facts. The High Court proceeded as if the travel agency business run by the landlord in Mascot Hotel was under threat of acquisition proceedings and that fact has been conceded by the counsel appearing for the tenant and, therefore, the need was bona fide. The High Court states as follows:-

"He is carrying on the business in travel agency in a room leased out to him in Mascot Hotel. It is in evidence that Government have initiated proceedings to evict the petitioner from that premises. This fact is conceded before me by the respondents' counsel.

The above narration of facts is totally incorrect and contrary to the pleadings and evidence. A reading of the order of the High Court will show that it has substituted

its view in the place of the view taken by the statutory authority which is not within the jurisdiction of the High Court while exercising powers under Article 227 of the Constitution of India. Apart from the above, it is now an admitted fact that the alleged acquisition initiated in the year 1987 must be deemed to have been either given up or lapsed due to efflux of time. This position is not disputed by the learned counsel for the first respondent-landlord. If this is so, the principal ground on which the application for eviction was presented before the Rent Controller is not available to the landlord. This is yet another ground for allowing this appeal.

For the reasons stated above, the appeal is allowed, the order of the High Court is set aside and that of the Rent Controller is restored. There will be no order as to costs.

JUDIS