CASE NO.:
Appeal (civil) 6347 of 2005

PETITIONER:
Kunhamma @ Lakshmi Ammas Children & Anr

RESPONDENT:
Akkali Purushothaman & Ors

DATE OF JUDGMENT: 12/04/2007

BENCH:
B.P. Singh & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T

HARJIT SINGH BEDI,J

This appeal by special leave arises out of the following facts:

The petitioners before the Rent Controller (brother and sisters respectively) are the owners of the premises in question. On 1.1.1984 by an oral agreement, the premises were rented out to the appellant/tenants herein for a period of three months, by the original sole landlord Akkali Purushothaman.
On 23.4.1991 Akkali Purushothaman gifted the demised premises to his two sisters. These premises consisted of just one room situated in front of another residential building belonging to the two sisters. The three landlords thereafter filed a petition for the ejectment of the tenant(s) under Sections 11(2), 11(3) and 11(4) (i) of the Kerala Buildings (Lease and Rent Control) Act 1965 (hereinafter called the 'Act') alleging therein that the tenant was in arrears of rent, that he had sub-leased the premises without the knowledge or consent of the landlords and finally that the sisters needed the premises for their own use and occupation as it had to be demolished to widen the pathway leading to the building that was situated behind the demised premises. The issues raised by the landlords were controverted by the tenant, who pleaded that the room had been let out to him on 1.1.1982, that there were no arrears of rent as claimed, that no sub-lease had been created, that there was no other suitable place to which he could shift his business as his only source of income was generated from the demised premises and, finally, that the landlord's plea that the premises had to be demolished to widen the pathway did not constitute personal necessity. On the pleadings of the parties, the Rent Controller framed the following points for determination:

1. Whether the petitioners are entitled for an eviction as prayed under Section 11(2) of the Act?

2. Whether the petitioners are entitled for an eviction as prayed under Section 11(3) of the Act?

3. Whether the petitioners are entitled for an eviction as prayed for under Section 11(4) of the Act?

4. Relief and costs.

The Rent Controller in his judgment dated 29th June 1995 held that the tenant was in arrears of rent and was therefore liable to ejectment under Section 11(2) of the Act. On point No.2, the Rent Controller observed that the two sisters were residing in a rented building at Kannur and that they intended to shift to their own residential house situated behind the demised premises and that for their convenient and beneficial stay the existing pathway, which was only 3.5 feet wide, had to be widened and that Section 11(3) of the Act would also apply to a case where the landlord bona fide required the rented building for its demolition so as to facilitate the ingress and egress to another residential building belonging to him. The Rent Controller rejected the plea of the tenant that he was solely dependent on the income derived from the business conducted from the demised premises observing that he was, in fact, an autorickshaw driver and owned atleast one if not two such vehicles. His plea that the autorickshaws belonged to one Anil was rejected by observing that he had not been examined as a witness. The tenant's ancillary submission that he had been unable to find suitable accommodation for relocating himself on account of very high rents was also not accepted as he had been unable to show as to the enquiries that he had made in this regard. Point No.3 was given up by the landlord but as a result of the discussion on point Nos. 1 and 2, the Rent Controller allowed the petition and ordered ejectment under sections 11(2) and 11(3) of the Act. The tenant thereupon filed an appeal before the appellate authority which in its order dated 5th June, 1998 observed that the entire arrears of rent till date had, in the meanwhile, been paid and as such the only issue that now survived was with regard to the ejectment ordered under Section 11(3). The appellate authority on a re-assessment of the evidence held that the plea of bona fide personal necessity was not made out as the residential building to which the sisters wanted to shift had been rented out to college students and that there was no suggestion that the landlords had taken any steps to secure its vacant possession. It was also observed that the two sisters had not even appeared as witnesses to depose as to their bona fide personal need as only their brother, the original landlord, had appeared as PW.1. The appellate authority accordingly allowed the appeal and dismissed the ejectment application. The landlords thereupon preferred a revision petition before the High Court which has been allowed with the finding that the landlords had been able to prove their bonafide need as envisaged under Section 11 (3) of the Act. The tenants are in appeal before us.

The learned counsel for the appellants has urged that a bare perusal of Section 11(3) of the Act would show that the bona fide need visualized therein had to be equated with physical occupation of the premises by the landlord after ejectment and would therefore not include its demolition for the purpose of widening a passage to another property belonging to the landlord. It has also been pleaded that the appellant had no alternative accommodation available to him which was suitable to his needs and that his only source of income was generated from the business conducted from the solitary room which constituted the demised premises and for this reason too the order under challenge was not sustainable. The learned counsel for the respondents has however supported the judgment and order of the High Court and has placed reliance on a judgment of this Court in Ramniklal Pitambardas Mehta Vs. Indradaman Amratlal Sheth (AIR 1964 SC 1676) a judgment of the Kerala High Court reported as 1969 KLT 133 (Sarada & Others vs. M.K.Kumaran) and the judgment of the Privy Council reported as 1956 All England Law Reports 262 (Mckenna and

Anr. Vs. Porter Motors Ltd.) to contend that the "use and occupation" envisaged under Section 11(3) would include a demolition of the demised premises so as to widen a pathway for another building belonging to the landlord. The learned counsel has also referred to 1988 (1) KLT 131 (Krishna Menon vs. District Judge) to submit that the word "building" occurring in Section 2(1) of the Act included gardens, grounds etc. which were appurtenant to a building and that the definition had been kept flexible in order to meet the numerous and varied exigencies which may arise in individual cases.

We have considered the arguments advanced by the learned counsel in the light of the law and the facts brought out before us. It is virtually the accepted position since long that the personal necessity envisaged under the Act would include re-possession of the demised premises by the landlord for the purposes of its demolition so as to widen the entrance to another building belonging to the landlord in the immediate vicinity. In Ramniklal Pitambardas Mehta's case (supra) it was observed as under:-

"Occupation of the premises in clause (g) does not necessarily refer to occupation as residence. The owner can occupy a place by making use of it in any manner. In a case like the present, if the plaintiffs on getting possession start their work of demolition within the prescribed period, they would have occupied the premises in order to erect a building fit for their occupation."

The observations of the Privy Council are much to the same effect. In K. Menon's case (supra) the court reinforced its opinion by an analogy and by putting a hypothetical question to itself:

"Can he not use the space occupied by the old building as car park, or as passage to the new building? If he cannot do so, the entire rear portion may become practically useless. This would be one of the hard consequences if S.11 (3) of the Act is given a narrow or strict interpretation. Such consequences can be averted if S. 11(3) is given a wider interpretation".

The Court thereafter reiterated the judgment of the High Court in Sarada's case (supra). The Court also observed that the preponderance of opinion of the Court was in favour of the above construction and that "if two constructions are possible upon the language of the statute, the Court must choose the one which is consistent with good sense and fairness and eschew the other which makes its operation unduly oppressive, unjust or unreasonable or which would lead to strange inconsistent results or otherwise introduce an element of bewildering uncertainty and practical inconvenience in the working of the statute."

The learned counsel for the appellants has, however, argued that even if a particular declaration of law had stood the test of time it was still open to a party to contend that the law needed to be reconsidered, as to ignore this aspect would be a transgression of the law itself more particularly if the Court were

to hold that though the law had been wrongly interpreted, it had nevertheless to be maintained on the plea that it had been followed since long. In this connection, the learned counsel has placed reliance upon the judgment of this Court reported as (2000) 4 SCC 285 Molar Mal (Dead) through LRs. V. Kay Iron Works (P) Ltd.

We have considered this argument as well and we find that it does not arise on the facts of the case and on the contrary the matter appears to be settled by this Court, the Privy Council and the Kerala High Court, as alluded to above We are of the opinion that the interpretation given to Section 11(3) has not only stood the test of time but is even otherwise a correct enunciation of the law. In Molar Mal's case (supra) this Court observed that:

"We will be failing in our duty if we do not declare an erroneous interpretation of law by the High Court to be so, solely on the ground that it has stood the test of time. Since in our opinion, in regard to the interpretation of the above proviso, no two views are possible, we are constrained to hold that the law declared by the Punjab and Haryana High Court with reference to the proviso is not the correct interpretation and hold that the said judgment is no more a good law."

It would be clear from the above quote that the Court had held that as the decision of the High Court was erroneous and unsustainable it was obligatory that it be set aright. The judgment in question therefore does not advance the case of the tenants.

It has finally been argued by the learned counsel for the tenants that the second proviso to Section 11(3) of the Act envisaged that no ejectment could be ordered if the tenant was earning his livelihood from the business conducted from the demised premise and that there was no other suitable place to which he could shift his business. We find no merit in these pleas as well. From a perusal of the judgment of the Full Bench of the Kerala High Court reported in Francis vs. Sreedevi Varassiar 2003 (2) KLT 230 we observe that the onus lies on the tenant to prove that he was dependent on the income derived from the business being carried on from the demised premises and that there was no other suitable building to which he could shift his business. We have perused the evidence on this aspect and are of the opinion that this onus has not been discharged and on the contrary the evidence shows that he was not using the premises for his business as he was an autorickshaw driver and, had, in addition, made absolutely no attempt to ascertain the availability of another suitable building to which he could shift his business as his statement in Court was that it was not possible to relocate on account of the high rents without giving any details of the enquiry etc. that he might have made in this regard.

We are, accordingly, of the opinion that there is no merit in this appeal. It is accordingly dismissed