

CASE NO.:
Appeal (civil) 3283 of 2002

PETITIONER:
THE CORPORATION OF CALICUT

Vs.

RESPONDENT:
K. SREENIVASAN

DATE OF JUDGMENT: 03/05/2002

BENCH:
S. Rajendra Babu & B.N. Agrawal

JUDGMENT:

B.N. AGRAWAL, J.

Leave granted.

The judgment impugned in this appeal has been passed by Kerala High Court in a Second Appeal whereby the same has been allowed, appellate decree, upholding that of the trial court dismissing the suit, set aside and the suit has been decreed.

The short facts are that the appellant-Corporation, which was established by an Act promulgated by Kerala Legislature, owned a building constructed by it in the year 1972 and immediately after construction the plaintiff-respondent was put in its occupation as a licensee on payment of licence fee at the rate of Rs. 4325/- per month wherein he was running a lodging house as well as a restaurant. As the plaintiff-respondent defaulted in making payment of licence fee, the licence was terminated on 1.3.1989 whereafter the plaintiff's continuance in occupation of the building in question became unauthorised leading to issuance of a notice by the Estate Officer under Section 4 of the Kerala Public Buildings (Eviction of Unauthorised Occupants) Act, 1968 (hereinafter referred to as 'the Act') which was duly served upon the plaintiff-respondent, requiring him to show-cause as to why an order of eviction be not passed against him in view of the fact that his occupation became unauthorised within the meaning of Section 2(f) of the Act inasmuch as the licence granted in his favour was terminated. Thereupon, on 23.6.1989 the Estate Officer after satisfying himself that the building was in unauthorised occupation of the respondent passed an order of his eviction therefrom. The said order of eviction was challenged by the plaintiff-respondent before the Civil Court by filing a suit for permanent injunction restraining the defendant-appellant from evicting the plaintiff from the building pursuant to the aforesaid order of eviction stating, inter alia, that the plaintiff was inducted as a tenant and not licensee and in case he was found to be a licensee, his occupation could not be treated to be unauthorised within the meaning of Section 2(f) of the Act, as such the Estate Officer could not have assumed jurisdiction and passed order of eviction. The suit was contested by the defendant-appellant on grounds, inter alia, that the plaintiff was a licensee and not a lessee, that occupation of licensee after termination of the licence became unauthorised within the meaning of Section 2(f) of the Act, as such the Estate Officer was quite competent to pass an order of eviction and the suit was barred under Section 15 of the Act.

The trial court dismissed the suit observing that it was not necessary to go into the question as to whether the transaction was lease or licence as even if it

was a case of licence, the same was covered by the provisions of Section 2(f) of the Act, the Estate Officer had jurisdiction to decide the matter and pass an order of eviction and consequently the suit was barred under Section 15 of the Act. On appeal being preferred, the trial court's decree was affirmed with a finding that the transaction in question was licence and not lease. Thereupon, the plaintiff-respondent filed a Second Appeal before the Kerala High Court which allowed the same, set aside judgment and decree passed by the appellate court upholding those of the trial court and decreed the suit on the ground that the Estate Officer had no jurisdiction to entertain the matter and pass order of eviction under the provisions of the Act as occupation of the plaintiff-respondent cannot be treated to be unauthorised within the meaning of Section 2(f) of the Act as case of licensee is not covered therein and consequently the bar created by Section 15 of the Act did not operate. Challenging decision of the High Court, the present appeal has been filed by special leave.

Shri T.L. Vishwanatha Iyer, learned Senior Counsel appearing on behalf of the appellant, in support of appeal submitted that case of a licensee is covered by Section 2(f) of the Act and the High Court was not justified in holding otherwise and decreeing the suit on the ground that the Estate Officer had no jurisdiction to pass the order of eviction. On the other hand, Shri P. Krishnamoorthy, learned Senior Counsel appearing on behalf of the respondent, submitted that occupation of plaintiff, who was a licensee, cannot be treated to be unauthorised within the meaning of Section 2(f) of the Act and consequently, the Estate Officer having no jurisdiction to pass the order of eviction, the suit has been rightly decreed by the High Court. In view of the rival submissions, the question that arises for consideration of this Court is:

"whether continuance in occupation of a licensee after expiry or termination of the authority for occupation granted under the licence can be treated to be unauthorised within the meaning of Section 2(f) of the Act?"

The necessity of enacting Kerala Public Buildings (Eviction of Unauthorised Occupants) Act, 1968 by the Kerala Legislature appears to be that the tendency to unauthorisedly occupy public buildings, either from its very inception without any authority whatsoever or continuing in its occupation after the authority under which a person was allowed to occupy had either expired or had been determined for any reason whatsoever, was galloping fast and keeping in mind the time taken for eviction under ordinary law by resorting to civil suit in a protracted litigation, a speedy remedy has been provided by enacting such special legislation therefor. 'Public building' has been defined under Section 2(d) of the Act to mean any building or part of a building belonging to or taken on lease or requisitioned by, or on behalf of, the Government or a local authority or a company or a Corporation. 'Corporation' has been defined under Section 2(aa) to mean a Corporation established or constituted by or under any Central or State Act and owned or controlled by the Government of Kerala. Under Section 3 of the Act the State Government is empowered to appoint any Gazetted Officer below the rank of District Collector as Estate Officer for exercising the powers under the Act and Section 4 empowers the Estate Officer to initiate a proceeding for eviction of those persons who are found to be in unauthorised occupation of any public building whereas under Section 5 he is competent to pass an order of eviction. Section 10 provides for an appeal against the order of eviction. Section 15 of the Act creates a bar to the institution of a suit challenging the order of eviction passed by the Estate Officer as well as that passed in appeal. Section 2(f) of the Act which defines the expression 'unauthorised occupation' may be usefully quoted hereinbelow:-

"S.2(f).- "unauthorised occupation", in relation to any public building, means the occupation by any person of the building without authority for such occupation and includes the continuance in occupation by any person of the public building after the authority (whether by way of lease or any other mode of transfer) under which he was allowed

to occupy the building has expired or has been determined for any reason whatsoever."

[Emphasis added]

The definition of expression 'unauthorised occupation' contained in Section 2(f) of the Act is in two parts. In the first part the said expression has been defined to mean the occupation by any person of the public building without authority for such occupation. It implies occupation by a person who has entered in occupation of any public building without lawful authority as well as occupation which was permissive at the inception but has ceased to be so. The second part of the definition is inclusive in nature and it expressly covers continuance in occupation by any person of the public building after the authority (whether by way of lease or any other mode of transfer) under which he was allowed to occupy the building has expired or has been determined for any reason whatsoever. This part covers a case where a person had entered into occupation legally under valid authority, but who continues in occupation after the authority under which he was put in occupation has expired or has been determined. The words 'whether by way of lease or any other mode of transfer' in this part of the definition are very wide in amplitude and would, undoubtedly, cover a case where a person has come into occupation of a public building under an authority granted in his favour by the licence, as a licensee, which has expired or has been determined.

'Lease' has been defined under Section 105 of the Transfer of Property Act, 1882, relevant portion whereof reads thus:-

"S.105. Lease defined.- A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."

'Licence' has been defined under Section 52 of the Indian Easements Act, 1882 to mean a grant by one person to another or to a definite number of other persons, a right to do, or continue to do, in or upon immovable property of the grantor, something which would, in the absence of such right, be unlawful and such right does not amount to an easement or an interest in the property. Section 53 specifies the persons who can grant a licence and Section 54 lays down that the grant may be express or implied whereas Section 55 defines accessory licences. According to Section 56 only certain types of licences enumerated thereunder are transferable and not all. Duties of the grantors are specified in Sections 57 and 58 whereas Section 59 says that grantor's transferee is not bound by the licence. Section 60 provides grounds for revocation of licence and Section 62 the contingencies under which a licence is deemed to be revoked whereas Section 61 lays down that revocation of licence may be express or implied. Rights of a licensee, whose licence has been revoked in accordance with law, to remain in occupation of the property for a reasonable time after its revocation, have been enumerated in Section 63. Under Section 64 even if a licensee is evicted, though grounds for revocation of licence do not exist or forcefully evicted, his only remedy is to recover compensation from grantor and not to resume occupation which undoubtedly would never mean that a licensee can be forcefully evicted by the grantor without taking recourse to the provisions of law. We may usefully refer to the provisions of Section 52 of the Indian Easements Act, 1882 which run thus:

"S.52. Licence defined.- Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence"

[Emphasis added]

At this juncture, it may be useful to state that similar provisions have been made in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Central Act') enacted by the Parliament wherein also an Estate Officer is authorised to pass an order of eviction of persons who were found to be in unauthorised occupation of a public premises and expression 'unauthorised occupation' has been defined under Section 2(g) of the Central Act as under:-

"S.2(g).- 'unauthorised occupation' in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever".

This Court while dealing with distinction between 'licence' and 'lease' has enumerated in various decisions as to what are the rights of a licensee. In the case of Associated Hotels of India Ltd. vs. R.N. Kapoor, AIR 1959 SC 1262, it was observed at page 1269 thus:-

".if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a licence. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful."

[Emphasis added]

In the case of B.M. Lall vs. M/s. Dunlop Rubber Co. (India) Ltd.. & Anr., AIR 1968 SC 175, there was an agreement between the employer and the employee under which occupation of the employee in the premises was to cease not only on the termination of his employment but also on his transfer from one station to another and on his death. The employer was at liberty to allot any other flat to the employee on his transfer to another station and assign the premises fallen vacant by virtue of transfer to any other employee. In these circumstances, the Court observed at page 178 thus:

"All the terms of the agreement are consistent with the expressed intention that the officer is permitted to occupy the flat as a licensee and nothing in the agreement shall be deemed to create the relationship of landlord and tenant. The agreement on its true construction read in the light of the surrounding circumstances operates as a license and not as a tenancy. It creates no interest in the land. It gives only a personal privilege or license to the servant to occupy the premises for the greater convenience of his work."

[Emphasis added]

In the case of Qudrat Ullah . vs. Municipal Board, Bareilly., AIR 1974 SC 396, it was observed at page 398 thus:-

"If an interest in immovable property, entitling the transferee to enjoyment is created, it is a lease; if permission to use land without right to exclusive possession is alone granted, a licence is the legal result".

[Emphasis added]

In the case of Khalil Ahmed Bashir Ahmed vs. Tufelhussein Samasbhai

Sarangpurwala, AIR 1988 SC 184, Sabyasachi Mukharji, J., as he then was, observed at page 190 thus:

"To put precisely..if permission to use land without exclusive possession was alone granted, a licence was the legal result. We are of the opinion that this was a licence."

[Emphasis added]

A Constitution Bench of this Court in the case of Ashoka Marketing Ltd., and Anr. vs. Punjab National Bank & Ors., AIR 1991 SC 855, which was case of a lessee, was considering the matter under the Central Act and in relation to the provisions of Section 2(g) of the Act observed at page 870 thus:-

"It implies occupation by a person who has entered into occupaiton of any public premises without lawful authority as well as occupation which was permissive at the inception but has ceased to be so..This part covers a case where a person had entered into occupation legally under valid authority but who continues in occupation after the authority under which he was put in occupation has expired or has been determined. The words "whether by way of grant or any other mode of transfer" in this part of the definition are wide in amplitude".

In the case of M/s. Jain Ink Manufacturing Company vs. Life Insurance Corporation of India & Anr., AIR 1981 SC 670, the Court while considering the import of expression 'unauthorised occupation' within the meaning of Section 2(g) of the Central Act, in relation to a lessee, which provision is similar to that of Section 2(f) of the Act, observed at page 672 thus:-

"To begin with, it is manifest that S. 2(g) does not use the word 'possession' or the words 'entry into possession' at any point of time at all. The section merely requires occupation of any public premises. Entry into possession connotes one single terminus, viz., the point of time when a person enters into possession or occupies the property whereas occupation is a continuous process which starts right from the point of time when the person enters into possession or occupies the premises and continues, until he leaves the premises. What is germane for the purpose of interpretation of Section 2(g) is whether or not the person concerned was in occupation of the public premises when the Premises Act was passed. In the instant case, it is not disputed that the appellant continued to occupy the property even after the Premises Act came into force. In these circumstances, therefore, the case of the appellant squarely falls within the ambit of the definition of 'unauthorized occupation' as contemplated by S.2(g)."

[Emphasis added]

In the case of Jiwan Dass vs. Life Insurance Corporation of India & Anr., 1995 (1) Rent Control Journal 541, while upholding constitutional validity of the Central Act which was challenged by a tenant, this Court observed that the provisions of Section 5 of the Central Act, conferring power upon the Estate Officer to order eviction from public premises, would apply in a case of tenancy, lease or licence and observed at pages 543-44 thus:-

"The statute advisedly empowered the authority to act in the public interest and determine the tenancy or lease or licence before taking action under Section 5 of the Act..An owner is entitled to deal with his property in his own way profitable in its use and occupation. A public authority is equally entitled to use the public property to the best advantage as a commercial venture. As an integral incidence of ejection of a tenant/licensee is inevitable."

[Emphasis added]

It is true that a licensee does not acquire any interest in the property by virtue of grant of licence in his favour in relation to any immovable property, but once the authority to occupy and use the same is granted in his favour by way of licence, he continues to exercise that right so long the authority has not expired or has not been determined for any reason whatsoever, meaning thereby so long the period of licence has not expired or the same has not been determined on the grounds permissible under the contract or law. Occupation of licensee is permissive by virtue of the grant of licence in his favour, though he does not acquire any right in the property and the property remains in possession and control of the grantor, but by virtue of such a grant, he acquires a right to remain in occupation so long the licence is not revoked and/or he is not evicted from its occupation either in accordance with law or otherwise. Main thrust of Section 2(f) of the Act is upon the expression 'occupation' with authority or without authority. If a person without any authority occupies any public building he would be a trespasser and his case would be covered by first part of Section 2(f) and would be liable to be evicted under the provisions of the Act instead of taking recourse to ordinary law by filing a properly constituted suit which is dragged on for years together. Second part of Section 2(f) deals with cases where a person is in occupation by virtue of an authority granted in his favour irrespective of the fact whether the authority is in the form of lease or licence or in any other form. So far as case of lease of a public building is concerned, upon expiry of the period limited thereby or its determination in accordance with law, the special procedure prescribed under the Act providing speedy remedy for eviction would apply even though some interest in the immovable property is created in favour of the lessee by virtue of creation of lease in his favour. But in a case of licence, no interest in the property is created by virtue of the grant, but a person acquires a right to continue his occupation by virtue of the authority granted in his favour under the licence unless the period of licence has expired or the same has been determined or licence has been revoked and/or the licensee is evicted by the grantor. If it is held that Section 2(f) would apply only in case of lease and not in the case of licence, the position will be very incongruous as in the case of lease, though a lessee acquires interest in the property which is a higher right, but he can be evicted under the special procedure prescribed under the law providing much speedy remedy whereas in case of licence, a licensee, who does not acquire any interest in the property and has only some sort of right of occupation by virtue of the nature of grant in his favour so long he is not evicted, can be evicted through long drawn ordinary procedure of filing a civil suit. This could not have been the intention of the Legislature. Apart from that, out of the expressions 'whether by way of lease' or 'any other mode of transfer', the expression 'any other mode of transfer' is very wide and would not necessarily mean only that mode of transfer whereby a right has been created in immovable property. The expression 'transfer' under the Transfer of Property Act connotes creation of some interest in immovable property. But under Section 2(f) of the Act such a restricted meaning would defeat the purpose of legislation which is impermissible. The expression "any other mode of transfer" would definitely bring within its sweep the case of a licensee where right of the grantor to occupy and continue to occupy immovable property is transferred though under law, the property remains in possession and control of the grantor. In view of the foregoing discussions, we hold that the expression 'unauthorised occupation' within the meaning of Section 2(f) of the Act would embrace within its ambit the case of licensee as well after expiry of the period of licence or upon its determination for any reason whatsoever, as such the Estate Officer was quite justified in initiating proceeding under the Act and passing eviction order therein.

In the result, the appeal is allowed, impugned judgment and decree rendered by the High Court are set aside and those passed by the appellate court upholding judgment of the trial court are restored. In the circumstances of the case, there shall be no order as to costs.

...J.
[S. RAJENDRA BABU]

J.

[B.N. AGRAWAL]

MAY 3, 2002.

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