

P. KESAVAN(DEAD) THROUGH LRS.

v.

AMMUKUTTY AMMA & ORS.

NOVEMBER 26, 1987

[SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.]

Kerala Buildings (Lease and Rent Control) Act, 1965: ss. 11(3), 17 & 20—Eviction—Bona fide need of landlord—Tenant using building for non-residential purpose—Landlord whether entitled to seek eviction on grounds of residential use.

Sub-section (3) of s. 11 of the Kerala Buildings (Lease and Rent Control) Act, 1965 permits eviction of a tenant where the landlord *bona fide* needs the building for his own occupation. The second proviso thereto excepts the tenant depending for his livelihood mainly on business carried on in such building. Sub-s. (1) of s. 17 interdicts conversion of a residential building into a non-residential one or vice-versa and division of such building into separate portions except with the permission of the Accommodation Controller. The proviso thereto makes the consent of the landlord necessary where such conversion involves structural alteration of the building.

The premises in question was being used by the tenant for non-residential purpose. The respondent-landlord required it *bona fide* for his self-occupation. The Rent Controller granted permission under s. 11(3) for eviction of the tenant. The Appellate Authority and the District Judge in revision did not interfere with the concurrent findings of facts on the *bona fide* need of the landlord.

In second revision the contention that since the requirements of the second proviso to s. 11(3) had not been fulfilled, the landlord was not entitled to eviction was rejected by the High Court on the ground that this was a question of fact and all the courts had found in favour of the landlord.

In the appeal by special leave, it was contended for the appellant that since the building in question was used for non-residential purpose by the tenant and the landlord required the same for a residential purpose, such a need could not justify tenant's eviction by virtue of s. 17 of the Act which prohibited such conversion.

A Dismissing the appeal,

HELD: 1. The landlord is entitled to eviction. It is found as a fact that he *bona fide* needed the premises in question for his own use and occupation. Therefore, s. 11(3) has been complied with. [84D-E]

B The prescriptions of s. 17 are not attracted to the instant case. The conversion as contemplated by s. 17(1) for which permission was required is conversion by the tenant and cannot be a conversion by the landlord. The use of expression "such conversion" in the proviso to s. 17(1) indicates that in case of conversion by the tenant permission is required on the consent of the landlord. Further-more, the term "convert" therein does not denote a mere change in the mode of occupation but covers only alterations of the physical features. Putting to a different purpose the user of the building is not a conversion of the building as such. The building was used for non-residential purposes and the purpose for which it was sought was for residential purpose. It has been found that the building has rooms which can be used as bed rooms, sitting rooms etc. and it has a kitchen and dining hall. No alteration or conversion is required if the building is to be used for residential purpose. There was, therefore, no conversion of the building as such involved in the instant case, but a change of user of the building. [86A; 85C-F, 86B]

E *Muhammed v. Abdul Rahiman*, [1983] K.L.T. 874 and *Das Naik v. Narayanan*, [1980] K.L.T. 951, approved.

F [Since the appellants-tenants have been in possession of the premises for sometime, it was directed that the decree for eviction shall not be executed till 30.9.1988 provided they pay arrears of rent, if any, within one month, and undertake to hand over vacant and peaceful possession, to pay future compensation month by month before 10th of every month and not to induct any other person.] [86D-G]

G CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2 of 1982.

From the Judgment and Order dated 16.10.1981 of the Kerala High Court in C. R.P. No. 1927 of 1987.

N. Sudhakaran for the Appellants.

H E.M.S. Anam for the Respondents.

The Judgment of the Court was delivered by

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SABYASACHI MUKHARJI, J. This appeal by special leave is directed against the order of the High Court of Kerala at Ernakulam dated the 16th October, 1981 in Civil Revision Petition No. 1927 of 1981. The appellants are the heirs of the original tenant. The original appellant died and his heirs have been substituted in his place. The landlord being the respondent herein wanted the premises in question for his own use and occupation. He accordingly applied to the Rent Controller for permission. The Rent Controller after hearing the parties granted such permission. The Appellate Authority upholding the order of the Rent Controller, maintained the order of eviction. There was a revision before the learned District Judge. The learned District Judge dismissed the revision petition holding that it was difficult to interfere with the concurrent findings of facts of the Courts below on the *bona fide* need of the landlord for his own use and occupation.

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The tenant came up before the High Court in second revision and the High Court after hearing the parties and considering the contentions urged before it, dismissed the revision upholding the order of Rent Controller, the Appellate Authority and the District Court under Section 20 of the Kerala Building (Lease and Rent Control) Act, 1965 that the landlord required the premises for his *bona fide* need and for self occupation.

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The only contention that was urged in the matter was that the landlord was not entitled to eviction under sub-section (3) of Section 11. Sub-section (3) of Section 11 provides as under:-

“A landlord may apply to the Rent Control Court for an order directing the tenant to put in possession of the building if he *bona fide* needs the building for his own occupation or for the occupation be any member of his family dependent on him.”

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The contention urged before the Courts below including the High Court was that the second proviso to Sub-section (3) of Section 11 had not been fulfilled and the second proviso provides as under:-

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“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

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A 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.”

B All the Courts have found against the tenant's contention on this aspect of the matter. As this is a question of fact, the High Court in our opinion has rightly declined to interfere with that findings of fact.

C Before we proceed further it was pointed out by the counsel for the respondents that in view of the provisions of the said Act and in view of the decision of this Court in the case of *Aundal Ammal v. Sadasivan Pillai*, [1987] 1 S.C.C. 183 the second revision before the High Court in the facts and circumstances of this case did not lie. For the purpose of this appeal, we are not proceeding with on that basis but have examined the facts found by the courts below to find out if there is any infirmity in their findings as mentioned hereinbefore.

D It is found as a fact that the landlord *bona fide* needed the premises in question for his own use and occupation. Therefore, Section 11(3) has been complied with.

E The only contention raised was whether on the second proviso to Section 11(3) of the Act the landlord was not entitled to eviction. That was rejected by the High Court on the ground that this was a question of fact and all the Courts have found in favour of the landlord. We agree with this. Even if a second revision lay the scope of interference by the High Court in the second revision is very limited. This has been so held by this Court in *M/s Sri Raja Lakshmi Dyeing Works and Others, v. Rangaswamy Chettiar*, A.I.R. 1980 S.C. 1253. We adhere to this principle.

G It was urged before us that the building in question was used for non-residential purpose by the tenant and the *bona fide* need of the landlord was said to be for the use and occupation of the landlord and his family which is a residential purpose. It was submitted that such a need cannot justify in this case the eviction of the tenant. It was also submitted that Section 17 of the Act prohibited such conversion. Sub-section (1) of Section 17 which is relevant for the present purpose provides as follows:-

H “Section 17. Conversion of buildings and failure by land-

lord to make necessary repairs:

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(1) No residential buildings shall be converted into a non-residential building or vice-versa and no such building shall be divided into separate portions for letting on rent or for other purposes except with the permission in writing of the Accommodation Controller:

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Provided that where such conversion involves structural alteration of the building, the consent of the landlord shall also be necessary."

It appears clear that this conversion as contemplated for which permission was required is conversion by the tenant and cannot be a conversion by the landlord. Quite apart from the fact that in this case there was no conversion of the building sought. The building was used for non-residential purpose and the purpose for which the building was sought was for residential purpose. It appears to us that putting to a different purpose the user of the building is not a conversion of the building as such. It has been found that the building as it is without any structural change can be put to residential purpose. There was no conversion of the building as such is involved in this case but a change of user of the building. Furthermore, in any event the proviso to Section (1) makes it clear, in our opinion, that such conversion as contemplated by Section 17 of the Act for which permission in writing by the Accommodation Controller required is in case of change of the user of the premises by the tenant and not by the landlord. The use of the expression "such conversion" in the proviso indicates that in case of conversion by the tenant permission is required on the consent of the landlord. Therefore the absence of permission in writing of the Accommodation Controller in this case does in our opinion affect the position. This appears to be the view of the Kerala High Court on this aspect of the matter. See in this connection *Muhammed v. Abdul Rahiman*, [1983] K.L.T. 874 and *Das Naik v. Narayanan*, [1980] K.L.T. 951. This appears to be the correct view of law. Our attention was also not drawn to any decision of the Kerala High Court which has taken any contrary view. The view held by the Kerala High Court in this aspect has been relied by the High Court in the judgment under appeal. It seems to be logical view. We would therefore follow that view. In view of the proviso explaining the ambit of that requirement that permission sought for or mentioned in Section 17(1) is in respect of the different user by the tenant and not by the landlord. The High Court has also observed in term

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- A "convert" does not denote a mere change in the mode of occupation, but covers only alterations of the physical features, the prescriptions of Section 17 are not attracted to the present case at all. Admittedly the building in question has rooms which can be used as bed rooms, sitting room etc. and it has a kitchen and dining hall. No alteration or conversion is required if the building is to be used for residential purposes.
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In the aforesaid view of the matter there was hardly any scope for interference by the District Judge and he declined to do so on this basis. In our opinion he was right. Similar was the position of the High Court on these facts and it declined to interfere with the findings of fact.

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- In the aforesaid view there is no merit in this appeal. The appeal fails and is dismissed accordingly. Parties will pay and bear their own costs.

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- Since the tenants have been in possession of the premises for some time we direct that the decree for eviction shall not be executed till 30.9.1988 provided all the heirs of deceased appellant file an usual undertaking in this Court within four weeks from today stating *inter alia*, as follows;

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1. That the appellant will hand over vacant and peaceful possession of the suit premises to the respondent on or before 30.9.1988 from today.

2. That the appellants will pay to the respondent arrears of rent, if any, within one month from today.

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3. That the appellants will pay to the respondent future compensation for use and occupation of the suit premises month by month before 10th of every month.

4. That the appellants will not induct any other person in the suit premises.

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- It is further directed that in default of compliance with any one or more of these conditions or if the undertaking is not filed as required within the stipulated time, the decree shall become executable forthwith.