

KERALA HIGH COURT
Justice V. R. Krishna Iyer

KALLIANI AND OTHERS v. MADHAVI AND OTHERS

Parallel citation(s): 1970 KHC 48 : 1970 KLT 257

Kerala Buildings (Lease and Rent Control) Act, 1965 -- S.11(4) -- Eviction on the ground of Bona fide requiring to reconstruct the building -- Wider and more realistic expression to be given for the expression "condition of the building"-- "condition of the building" includes the social surrounding and the allied factors -- Tenants evicted on the ground of need to reconstruct should be put back way reconstructed

Important Para(s):2, 3

Referred: AIR 1963 SC 499; Referred to Advocates:

T. Karunakaran Nambiar; For Petitioner

A. Achuthan Nambiar; T. P. Kelu Nambiar; For Respondents

ORDER

1. The only ground which found favour with the hierarchy of tribunals under the Rent Control law for ordering eviction was the one falling under S.11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act, 1965. The landlord contended that the building, which was admittedly 50 years old and was a thatched one, was in such a condition that it needed reconstruction. He also averred that he required it honestly to reconstruct it. He had the necessary plan and licence and satisfied the Court of his ability to rebuild. Thereupon, the Courts granted an eviction order.

2. Counsel for the tenant revision petitioner argues that two conditions need to be satisfied and they are independent conditions. For one thing, the landlord must satisfy the Court that he bona fide requires to reconstruct the building. The ruling reported in AIR 1963 SC 499 explains the conditions which are implied in this requirement of the law. "The controller has to be satisfied about the genuineness of the claim, To reach this conclusion obviously the controller must be satisfied about the reality of the claim made by the landlord, and this can only be established by looking at all surrounding

circumstances, such as the condition of the building, its situation, the possibility of its being put to a more profitable use after construction, the means of the landlord and so on. It is not enough that the landlord conies forward, and says that he entertains a particular intention, however strongly, said to be entertained by him. The clause speaks not of the bona fides of the landlord, but says on the other hand that the claim of the landlord that he requires the building for reconstruction and reerection must be bona fide, that is to say, honest in the circumstances. It is impossible, therefore, to hold that the investigation by the controller should be confined only to the existence of an intention in the mind of the landlord to reconstruct. This intention must be honestly held in relation to the surrounding circumstances."

These observations of the Supreme Court, rendered in connection with a similar statute, will apply to the Kerala Act also with equal force. In the present case, the landlord has satisfied the Courts of his ability to rebuild. He has got the necessary plan and licence and he swears that he intends to reconstruct the building. Counsel for the revision petitioner argues that the landlord bad originally put forward the ground of bona fide need for his own occupation but finding that the tenant had been on the building long prior to 1940 he gave up that ground on account of the insuperable barrier contained in S.11(17). The argument is that what he failed to achieve on account of the embargo in S.11(17) he is trying to accomplish through S.11(4)(iv). If really the landlord is wanting to start a big trade on his own and for that purpose he is trying to get recovery of possession, it follows that he bona fide intends to reconstruct the present building because it is common case that in the present thatched shed the landlord cannot carry on any business that he envisages. Therefore, far from negating the bona fides of the landlord in the matter of reconstruction, his desire to start a business of his own emphasises the bona fides of his intention to rebuild. On the whole, I am satisfied that the landlord has made out a case that he bona fides requires to reconstruct the building.

3. Counsel, however, argues and rightly, that the building must be in such a condition that it needs reconstruction and this ingredient has to be made out apart from the landlord's bona fide intention to reconstruct. Here, it is argued that the stress is upon the physical condition of the building. I do not agree. If eviction can be had only on the Court being satisfied that the physical condition of the building is on the verge of collapse, there is no doubt that few buildings could be evicted before they have actually collapsed. Knowing the length of time taken in rent control litigation in Kerala, not unusual to find the period between the institution of an application and its ultimate disposal in the revisional court lengthening into several years if a building perilously close to sinking alone can justify a petition under S.11(4)(iv) in a State with heavy monsoons, I do not know what purpose would be served by such a course except to endanger he lives of tenants. It is obvious,

therefore, that a wider and more realistic meaning must be given to the expression "condition of the building". The social purpose of this provision is to remove the road blocks in the way of progress in building programmes. Old structures in newly developing areas may be like pimples on fair faces. Replacement and renewal of obsolescent and unsightly buildings to make room for larger, modern constructions is a social necessity, provided existing tenants are not thrown into the streets. The "condition of the building" is a larger concept which includes considerations of social surroundings and allied factors. Where the building is very old and incongruous with the social setting and the surroundings of the place, the Court has got to take a more liberal view in applying the provision of law. However, the primary purpose of the statute viz., prevention of unreasonable eviction must also inform the Court when applying this provision. That is precisely why the statute itself provides that the tenant, if evicted on the ground of need to reconstruct, should be put back in the building, when reconstructed. A blend of the social needs of replacement and renewal and the avoidance of unreasonable eviction is achieved by S.11(4)(iv), in that it provides for eviction when the building is in a physically or socially bad condition. At the same time, the tenant is armed with a right to get back into possession of the premises when rebuilt.

4. The building with which we are concerned is situated in a bazaar (in a major Panchayat) where there are only tiled buildings although. This thatched, shrunken survivor, 50 years old, is sought to be replaced by a better building. Having due regard to the circumstances, I see no ground for interfering with the concurrent findings of the Courts below.

5. Whenever a court directs eviction for purposes of reconstruction it undertakes the anxious responsibility to watch and prevent the landlord using it as a ruse to remove the tenant without the obligation to rebuild expeditiously, and reinduct the former tenant. The court must be astute and vigilant to baulk the landlord's devices. So, while I affirm the order for eviction I think it necessary to give directions to protect the tenant from being kept out of the possession of the building for too long a period. It is appropriate to give nothing more than 6 months' time for the landlord to rebuild. Even his advocate agrees it is reasonable. He has already a plan and licence and, therefore, it must certainly be possible for him to complete that structure within that span of time. The landlord will, therefore, be directed to complete the building within 6 months from the date on which the tenant or the court puts him into possession. If for any reason the landlord does not give the tenant possession immediately after the completion of the new building, or if the landlord does not complete the reconstruction within the time stipulated above, the tenant will be entitled to move the Rent Control Court to compel the landlord to put the tenant back in possession

of an equal extent of space in the rebuilt area on a fair rent; and if the building itself is not complete, the Court will proceed against the landlord for violation of its directions and compel him by appropriate steps to complete it within a short time thereafter to be fixed by the Court. The tenant's right to get back possession should be the paramount consideration of the Court while giving the directions contemplated by S.11(4)(iv). Subject to these guide lines I dismiss the Civil Revision Petition.