

VALIYAVALLAPPIL SAROJAKSHAN & ORS.

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v.

SUMALSANKAR GAIKEVADA & ORS.

(Civil Appeal Nos. 6819-6820 of 2009)

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MARCH 29, 2017

[KURIAN JOSEPH AND R. BANUMATHI, JJ.;

Kerala Buildings (Lease and Rent Control) Act, 1965 – s.11(4)(iii) and (iv) – Eviction sought u/s.11(4)(iii) and s.11(4)(iv) – Rent control court allowed the petition u/s.11(4)(iv) only – Appellant-landlords filed appeals before the First Appellate Authority for seeking eviction u/s.11(4)(iii) also – Pending these appeals, however, the appellant-landlords took delivery of premises in execution proceedings – Appeals were ultimately allowed – Respondents-tenants filed revision before the High Court – High Court held that once the delivery of the premises had already been taken in execution, no further proceedings for eviction could be pursued on any other ground – On appeal, held: The eviction on the respective grounds under the Act has different ramifications since the grounds are distinct and separate – Therefore, merely because the landlords had taken possession on the basis of an eviction order on one ground that does not mean that the surviving grounds became non-est – High Court did not consider the revision petitions filed by the respondents-tenants on merits on account of the view taken by the High Court – Matter remitted to High Court for fresh consideration.

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Allowing the appeals and remitting the matter to High Court, the Court

HELD: The moot question is whether the landlords are entitled to eviction on all the grounds taken by the landlords in the petitions for eviction. The eviction on the respective grounds under the Act has different ramifications since the grounds being distinct and separate. For all practical purposes and legal consequences, the said grounds do survive to be considered under law. [Para 11] [946-C-D]

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A CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 6819-6820 of 2009.

From the Judgment and Order dated 03.07.2007 of the High Court of Kerala at Ernakulam in C. R. P. Nos. 1274 & 1377 of 2000.

B R. Basant, Sr. Adv., T. G. Narayanan Nair, K. N. Madhusoodhanan, Advs. for the Appellants.

Ranjith K. C., Bijo Mathew Joy, Advs. for the Respondents.

The Judgment of the Court was delivered by

C **KURIAN, J.** 1. In the present appeals, we are called upon to consider the interplay between Section 11(4)(iii) and Section 11(4)(iv) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (in short, "the Act").

2. The provisions to the extent relevant read as follows :-

D “(iii) *If the tenant already has in his possession a building or subsequently acquires possession of or puts up a building, reasonably sufficient for his requirements in the same city, town or village; or*

E *(iv) If the building is in such a condition that it needs reconstruction and if the landlord requires bona fide to reconstruct the same and if he satisfies the court that he has the plan and licence, if any required, and the ability to build and if the proposal is not made as a pretext for eviction; Provided that the landlord who evicts a tenant and does not reconstruct completely the building within a time which may be fixed or extended by the Rent Control Court, shall on a petition before that Court be liable to a fine of rupees five hundred, if it is proved that he has wilfully neglected to reconstruct completely the building within such time; provided further that the court shall have power at any time to issue directions regarding the reconstruction of the building and on failure of compliance by the landlord, to give effect to the order in any manner the Court deems fit and in appropriate cases to put the tenant back in possession or award the evicted tenant damages equal to the excess rent he has to pay for another building that he is occupying in consequence of such*

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eviction; provided further that the tenant who was evicted shall have the first option to have the reconstructed building allotted to him with liability to pay its fair rent." A

3. The appellants filed Rent Control Petition Nos. 82 of 1994 and 83 of 1994 on the file of the Rent Control Court, Vatakara, seeking eviction of the respondents-tenants, mainly under Sections 11(4) (iii) and 11(4) (iv). B

4. The Rent Control Court allowed the petitions under Sections 11(4) (iv) on the ground of requirement for demolition and reconstruction.

5. Aggrieved, the appellants-landlords pursued the eviction before the first Appellate Authority on the ground also of Section 11(4) (iii), which had been declined by the Rent Control Court. The first Appellate Authority, in RCA No. 106 of 1997 and 107 of 1997, entered a finding that the respondents-tenants were in possession of buildings of their own, which were reasonably sufficient for their requirement in the same town and, hence, allowed the eviction on the ground of Section 11(4) (iii) as well. C D

6. While the Rent Control appeals were pending before the first Appellate Authority, the appellants-landlords took delivery of the premises in execution proceedings. The order passed by the Appellate Authority happened to be passed after such delivery. E

7. The respondents-tenants pursued the matter before the High Court in Civil Revision Petition Nos. 1274 and 1377 of 2000, leading to the impugned Judgment.

8. The High Court has taken a view that once the delivery of the premises had already been taken in execution and for that matter, in case vacant possession of the premises had been surrendered, no further proceedings for eviction can be pursued on any other ground. In the instant case, the delivery of possession had already been taken. The High Court observed that "*.....the subject matter of eviction proceedings itself having become non-est by such demolition, the landlord could not have proceeded further with a claim for eviction on other grounds, inter alia, on ground under Section 11(4) (iii) of the Act, which was illegally allowed by the Appellate Authority.*" In that view of the matter, the Civil Revision Petitions were allowed. The orders passed by the first Appellate Authority were set aside and those F G

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A of the Rent Control Court were restored. In other words, the appellants-landlords have been granted eviction only on the ground of demolition and reconstruction under Section 11(4) (iv) of the Act.

9. Thus aggrieved, the appellants-landlords are before this Court.

B 10. Heard Sh. R. Basant, learned senior counsel appearing for the appellants-landlords and Sh. Ranjith K.C., learned counsel appearing for the respondents-tenants.

C 11. With great respect, we find it difficult to appreciate the view taken by the High Court. The moot question is whether the landlords are entitled to eviction on all the grounds taken by the landlords in the petitions for eviction. It needs to be noted that eviction on the respective grounds under the Act has different ramifications since the grounds being distinct and separate. Therefore, merely because the landlords have taken possession on the basis of an order for eviction granted on one ground, that does not mean that the surviving grounds have become non-est.
D For all practical purposes and legal consequences, the said grounds do survive to be considered under law.

E 12. We find that in the instant case, the High Court has not considered the revision petitions filed by the respondents-tenants on merits on account of the view taken by the High Court, which we have found to be unacceptable. Therefore, the only course open to this Court is to set aside the impugned Judgment and send the matter to the High Court for consideration on merits.

F 13. Therefore, these appeals are allowed. The impugned orders are set aside. The Civil Revision Petitions are remitted to the High Court for consideration on merits on the grounds taken by the respondents-tenants before the High Court. Since the proceedings for eviction had been initiated in the year 1994, we request the High Court to dispose of the civil revision petitions expeditiously and preferably within six months.

G 14. Needless also to say that the claims, if any, made by the respondents-tenants need to be considered only after the disposal of the civil revision petitions by the High Court.

No costs.

H Devika Gujral

Appeals allowed.