Ouseph Mathai & Ors vs M. Abdul Khadir on 5 November, 2001

Equivalent citations: AIR 2002 SUPREME COURT 110, 2002 (1) SCC 319, 2001 AIR SCW 4672, (2001) 8 SCALE 110.2, (2002) ILR(KER) 1 SC 143, 2001 (8) SCALE 110, (2001) 9 JT 517 (SC), 2002 SCFBRC 23, (2002) 1 MAHLR 468, (2002) 1 KER LT 3, (2002) 1 PAT LJR 147, (2002) 1 RENCJ 80, (2002) 1 RENCR 182, (2002) 1 RENTLR 624, (2001) 8 SUPREME 262, (2002) 46 ALL LR 269, (2002) 1 ANDH LT 6

Bench: M.B. Shah, R.P. Sethi

CASE NO.:
Appeal (civil) 7519 of 2001
Appeal (civil) 7522 of 2001
Appeal (civil) 7524 of 2001

PETITIONER:
OUSEPH MATHAI & ORS.

Vs.

RESPONDENT:
M. ABDUL KHADIR

DATE OF JUDGMENT: 05/11/2001

BENCH:
M.B. Shah & R.P. Sethi

JUDGMENT:

SETHI,J.

Leave granted.

Assuming jurisdiction and exercising powers under Article 227 of the Constitution of India, the High Court of Kerala, vide the order impugned in these appeals set aside the judgment of the Appellate Authority by which the order passed by the Rent Control court dismissing the respondents-tenants application under Section 11(2)(c) of the Kerala Building (Lease & Rent Control) Act, 1965 (hereinafter referred to as "the Act") had been confirmed. After holding that the deposit of the arrears of rent was in terms of Section 11(2)(c) of the Act, the High Court gave the

respondents-tenants a right to exercise option under the proviso to Section 11(4) of the Act. The court held that the power to superintendence conferred upon the High Court under Article 227 of the Constitution of India was not an original proceeding but revisional jurisdiction akin to Section 115 of the Code of Civil Procedure. The High Court, therefore, impliedly held that exercise of powers under Article 227 was the extension of the statutory powers conferred upon the appellate or revisional authority under a particular statute.

Assailing the impugned judgment it has been argued on behalf of the appellants-landlords that even though the High Court had the power of superintendence under Article 227 of the Constitution of India, yet the same was required to be exercised sparingly and only in cases where the subordinate courts and tribunals are shown to have erroneously assumed jurisdiction or failed to exercise the jurisdiction vested in them and the order impugned showed some error of law apparent on the face of the record. Arriving at a finding which is alleged to be perverse or based on no material could not be a ground to exercise the power under the aforesaid Article.

It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said Article as a matter of right. In fact power under this Article cast a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this Article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

In Waryam Singh vs. Amarnath [1954 SCR 565] this Court held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in Nagendra Nath Bose v. Commr. of Hills Division [1958 SCR 1240]. In Bhahutmal Raichand Oswal v. Laxmibai R. Tarta [AIR 1975 SC 1297] this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the Legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in R v. Northumberland Compensation Appeal Tribunal, Exparte Shaw [1952 (1) All ER 122, 128] this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Gurnam [1986 (4) SCC 447] held:

> "It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the

absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings are perverse and not based on any material evidence or it resulted in manifest injustice (see Trimbak Gangadhar Teland 1977 (2) SCC 437). Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

In Laxmikant Revchand Bhojwani & Anr. v. Pratapsing Mohansingh Pardeshi [1995 (6) SCC 576] this Court held that High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of India in a dispute regarding eviction of tenant under the Rent Control Act, a special legislation governing landlord-tenant relationship. To the same effect is the judgment in Koyilerian Janaki & Ors. v. Rent Controller (Munsiff) Cannanore & Ors. [2000 (9) SCC 406].

In the present appeals, the High Court appears to have assumed the jurisdiction under Article 227 of the Constitution without referring to the facts of the case warranting the exercise of such a jurisdiction. Extraordinary powers appear to have been exercised in a routine manner as if the power under Article 227 of the Constitution was the extension of powers conferred upon a litigant under a specified statute. Such an approach and interpretation is unwarranted. By adopting such an approach some High Courts have assumed jurisdiction even in matters to which the legislature had assigned finality under the specified statutes. Liberal assumption of powers without reference to the facts of the case and the corresponding hardship to be suffered by a litigant has unnecessarily burdened the courts resulting in accumulation of arrears adversely affecting the attention of the court to the deserving cases pending before it.

Had the High Court noticed the facts of the present case, there was no necessity of assuming the jurisdiction under Article 227 of the Constitution and passing the impugned order. It is not disputed before us that the appellants filed an eviction petition against the respondents on the grounds specified under Section 11(2)(b) and Section 11(4)(iv) of the Act. The Rent Control court held that the landlord had failed to prove the defaults in the payment of rent within the meaning of Section 11(2)(b) of the Act but passed an order for eviction on the ground of bonafide need for reconstruction within the meaning of Section 11(4)(iv) of the Act vide its orders dated 30th September, 1984. Both the landlords and the tenants preferred appeals against the order of the Rent Control court before the Appellate Authority. Whereas the appeals filed by the tenant was dismissed, the appeal preferred by the landlords for eviction, also on the ground of arrears of rent, was allowed. The respondents-tenants filed a revision petition which was dismissed on 3rd December, 1984 by the District Court, Kottayam (the revisional authority). However, a period of two months was fixed

by the court for vacating the order of eviction if the tenants deposited the arrears of rent in terms of Section 11(2)(c) of the Act. The tenants did not avail the opportunity granted to them for deposit of the arrears of rent and instead preferred a second revision petition being CRP No.3210 of 1984 in the High Court of Kerala which was dismissed on 4.2.1987 holding that after the dismissal of the first revision petition the second revision in the High Court was not maintainable. Thereafter the respondents-tenants filed a petition under Article 227 of the Constitution which was registered as O.P. No.5970 of 1987. They also moved IA No.756 of 1987 before the District Court, Kottayam, the revisional authority for extension of time for the deposit of the rent. The said application was dismissed on 7.7.1987. Despite dismissal of the application for extension of time for deposit of arrears of rent, neither the arrears were paid nor the said order was challenged in any appropriate proceedings. When O.P. No.5970 of 1987 filed by the respondents-tenants was dismissed on 27th September, 1991, they deposited the arrears of rent on 24th October, 1991 to claim benefit of Section 11(2)(c) of the Act.

Not being satisfied with the deposit in terms of Section 11(2)(c) of the Act they themselves moved an application in the Rent Control Court with a prayer for vacating the order of eviction on deposit of arrears of rent made by them on 24th October, 1991. The application was dismissed on 29.9.1992 holding that the rent had not been deposited in time and that the application filed by the tenants was barred by res- judicata. The appeal preferred against the order of the Rent Control Court was dismissed by the Appellate Authority on 30th March, 1995. The respondents thereafter filed the application under Article 227 of the Constitution which was disposed of by the order impugned in these appeals.

To determine the controversy reference may be made to some of the provisions of the Act. Section 2(5) of the Act defines "Rent Control Court" to mean court constituted under Section 3 of the Act which, inter alia, provides:

> "3. Constitution of rent control courts and appointment of Accommodation Controllers - (1) The Government may, by notification in the Gazette, appoint a person who is or is qualified to be appointed, a Munsiff to be the Rent Control Court for local areas as may be specified therein.
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> (2) The Government may, by notification in the Gazette, appoint any officer not below the rank of a Tahsildar to be the Accommodation Controller for any area to which this Act applies.
>
> (3) The Accommodation Controller shall exercise his powers and perform his functions subject to such general directions as the Government may issue."

Section 11 deals with the grounds upon the proof of which a tenant can be evicted from the leased premises. Section 11(2) provides:

> "11(2)(a) A landlord who seeks to evict his tenant shall apply to the Rent Control Court for a direction in that behalf.

(b) If the Rent Control, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied that the tenant ahs not paid or tendered the rent due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable, it shall make an order directing the tenant to put the landlord in possession of the building, and if it is not satisfied it shall make an order rejecting the application thereof by him:

Provided that an application under this sub-section shall be made only if the landlord has sent a registered notice to the tenant intimating the default and the tenant has failed to pay or tender the rent together with interest at six per cent per annum and postal charges incurred in sending the notice within fifteen days of the receipt of the notice or of the refusal thereof.

(c) The order of the Rent Control Court directing the tenant to put the landlord in possession of the building shall not be executed before the expiry of one month from the date of such order or such further period as the Rent Control Act may in its discretion allow; and if the tenant deposits the arrears of rent with interest and cost of proceedings within the said period of one month or such further period, as the case may be, it shall vacated that order."

Section 12 of the Act provides that no tenant against whom an application for eviction has been made by a landlord under Section 11 shall be entitled to contest the application before the Rent Control Act under that Section or to prefer an appeal under Section 18 against any order made by the Rent Control Court on the application unless he has paid or pays to the landlord or deposits with the Rent Control Court or the Appellate Authority, as the case may be, all arrears of rent, admitted by the tenants, to be due in respect of the building upto the date of payment or deposit and continues to pay or to deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Rent Control Court or the appellate authority, as the case may be. Section 18 makes the provision for filing of appeals. Sub-section (4) of Section 18 provides that the Appellate Authority shall have all the powers of Rent Control Court including the fixing of a rent. Sub-section (5) of Section 18 provides:

"18(5) The decision of the appellate authority, and subject to such decision, an order of the Rent Control Court shall be final and shall not be liable to be called in question in any court of law, except as provided in section 20."

Section 20 deals with the filing of revisions under the Act and provides:

"20. Revision-(1) In cases where the appellate authority empowered under section 18 is a Subordinate Judge,. the District Court, and in other case the High Court, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceedings taken under this Act by such authority for

> the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings, and may pass such order in reference thereof as it thinks fit.
>
> (2) The costs of and incident to all proceedings before the High Court or District Court under sub-section (1) shall be in its discretion."

Sub-section (5) of Section 18 unambiguously provides that the decision of the Appellate Authority and subject to such decision, an order of the Rent Control Court shall be final and shall not be libale to be called in question in any court of law except as provided in Section 20 of the Act. It follows, therefore, that the order of eviction, if passed against a tenant shall attain finality after the decision of the appellate authority or at the most after the decision of the revisional authority as contemplated under Section 20 of the Act. If an order of eviction has been passed under Section 11(2) of the Act, the said order and direction shall become executable after the expiry of one month from the date of the final order passed by the Rent Control Court, the Appellate Court or the Revisional Court, as the case may be, subject, however, to the extension of time granted by of the aforesaid courts and authorities in terms of clause (c) of sub-section (2) of Section 11. Proceedings under Article 227, not being the extension of the proceedings under the Act would not automatically authorise the court to extend the time under the aforesaid proviso. However, it does not mean that in no case the High Court can extend the time. Exercise of such a power may be necessary if it is shown that grave injustice has been done to a party and the case was a fit case where the High Court should have exercised the extraordinary discretionary power in favour of the defaulting party.

In this case the court appears to have condoned the delay in depositing the arrears of rent on the assumption that the petition under Article 227 of the Constitution was extension of appeal or revisional powers under the Act. The court impliedly held that as the OP No.5970 of 1987 filed by the tenants was dismissed on 27th Septemebr, 1991, they had a statutory right to deposit the arrears of rent within the meaning of Section 11(2)(c) within a period of one month therefrom. Such is not the correct position of law.

Learned counsel appearing for the respondents-tenants submitted that as there was a stay regarding dispossession of the tenants, the tenants were justified in depositing the rent within one month after the dismissal of their petition under Article 227 of the Constitution of India. It is settled position of law that stay granted by the court does not confer a right upon a party and it is granted always subject to the final result of the matter in the court and at the risks and costs of the party obtaining the stay. After the dismissal, of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay. Grant of stay does not automatically amount to extension of a statutory protection.

In the instant case the revision petition filed by the respondents-tenants under Section 20 of the Act was dismissed on 3rd December, 1984 giving them two months' time to deposit the rent under Section 11(2)(c) of the Act which they admittedly did not deposit till 24th October, 1991. Nothing has been placed on record to show that even in the petition filed under Article 227 of the Constitution, the court had stayed the direction for deposit of rent within the extended statutory period. Even while dismissing the petition O.P.No.5970 of 1987, the court did not extend time for the deposit of

arrears of rent. It is pertinent to note that the application of the respondents-tenants for extension of time for deposit of rent filed in the revisional court was dismissed on 7.7.1987 against which no action was taken.

Looking from any angle it is apparent that the order of eviction passed against the respondents-tenants had become executable on 3rd February, 1985 and in no case beyond 7.7.1987. There is no dispute that Rent Control Act is a social welfare legislation meant to protect and safeguard the interests of the tenants but it does not confer unfettered powers on the tenants to remain in possession of the leased premises notwithstanding the compliance of directions of the court or the provisions of the statute. The Act is intended to protect the interests of bonafide tenants in possession. The Act has put restrictions on the right of the landlord to seek eviction of the tenant on the ground of defaults in the payment of rent which are regulated by Sub-section (2) of Section 11 of the Act. A tenant is under an obligation to pay or tender the rent in respect of the building under his occupation within 15 days after the expiry of time fixed in the agreement of tenancy or in the absence of such agreement by the last day of month next falling for which the rent is payable. Non payment of rent, as per contract and statutory provisions, entitles the landlord to seek possession only after compliance of sending a registered notice to the tenants intimating the default. If after the receipt of such a notice a genuine tenant pays or tenders the rent together with interest at 6% per annum and postal charges, the right accrued to the landlord to get possession on this ground is defeated. Even after passing of the eviction order a further right is conferred upon tenant in terms of clause (c) of sub-section (2) of Section 11. It is only such tenant who defaults to pay the rent at all the three relevant times that the law requires him to be dispossessed. In the instant case the respondents-tenants are proved to have failed to pay the arrears of rent at all the three relevant times. Under the facts and circumstances of the case, the tenants were not entitled to any discretionary relief under Article 227 of the Constitution of India. Without referring to the facts of the case the High Court has passed the impugned order which is not sustainable.

In view of what has been stated hereinabove, the appeals are allowed by setting aside the order impugned and upholding the order passed by the appellate and revisional authority against the respondents-tenants. No costs.

.....J. (M.B. Shah) .....J. (R.P. Sethi) November 5, 2001