G. Reghunathan vs K.V. Varghese on 23 August, 2005

Equivalent citations: AIR 2005 SUPREME COURT 3680, 2005 (7) SCC 317, 2005 AIR SCW 4086, (2005) ILR(KER) 4 SC 113, 2005 SCFBRC 535, 2005 (6) SCALE 675, (2005) 7 JT 559 (SC), 2005 (8) SRJ 289, 2005 (7) SLT 258, (2005) 34 ALLINDCAS 739 (SC), (2005) 2 WLC(SC)CVL 481, (2006) 1 CIVILCOURTC 67, (2006) 2 KER LJ 688, (2005) 4 KER LT 147, (2006) 1 MAD LW 209, (2005) 2 RENCR 247, (2005) 6 SCJ 678, (2005) 5 SUPREME 776, (2005) 4 ICC 714, (2005) 6 SCALE 675, (2005) 61 ALL LR 138, (2005) 2 RENCJ 1

Author: P.K. Balasubramanyan

Bench: R.C. Lahoti, P.K. Balasubramanyan

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           CASE NO.:
Appeal (civil)  5188 of 2005

PETITIONER:
G. Reghunathan

RESPONDENT:
K.V. Varghese

DATE OF JUDGMENT: 23/08/2005

BENCH:
CJI R.C. LAHOTI & P.K. BALASUBRAMANYAN

JUDGMENT:
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J U D G M E N T (ARISING OUT OF .S.L.P) NO.4189 OF 2004) P.K. BALASUBRAMANYAN, J.

Leave granted.

1. The tenant is before us. He is the tenant of a building governed by the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter called "the Act"). He took on rent a room in the building belonging to the respondent-landlord. He executed an unregistered, insufficiently stamped rent deed on 5.9.1988 which was accepted by the landlord. He entered into possession thereunder. The lease was taken for the purpose of conducting a gold and silver jewellery shop. As per the rent deed, the term of the lease was 15 years. The rent payable was Rs.750/- a month. A sum of Rs.85,000/- was given to the landlord as security. That amount was to be returned to the tenant when he vacated the room. The monthly rent of Rs.750/- was to be paid by the 5th of the succeeding month. The tenant was given the right to install electrical fittings and to take water and telephone connections. He had the right to install all necessary instruments or equipments in the room for the purpose of

gold and silver business.

2. Disputes seem to have arisen immediately thereafter. The tenant did not tender the rent that fell due on 5.10.1988. He removed a door and three windows from the walls of the room and closed up those openings. He cut-off the rafters in the front to a length of two feet. He lowered the level of the floor by one foot. He erected two pillars touching the walls and fixed a rolling shutter in front of the shop. These were done without the written permission of the landlord.

3. The landlord issued a notice in terms of the proviso to Section 11(2) of the Act. He called upon the tenant to pay the rent in arrears. The tenant failed to tender the rent. He filed an application R.C.P. No.2 of 1990 before the Rent Controller for eviction of the tenant. He invoked Section 11(2) of the Act pleading that the tenant had not paid or tendered the rent due by him for the period from 5.10.1988 to 31.12.1990 in spite of the statutory notice. He also relied on the ground under Section 11(4)(ii) of the Act. He alleged that the tenant had used the building in such a manner as to destroy or reduce its value or utility materially and permanently. His case was that by removing the door and the windows and by his other acts the tenant has incurred the liability to be evicted under Section 11 (4) (ii) of the Act. The tenant resisted the application. He pleaded that the landlord did not cooperate with him in getting electricity and water connections and refused to issue receipts for the rent he tendered. Therefore, he had not paid the rent. He had not done anything in the building which materially affected the value or utility of the building. In fact, what he had done, had only made the building safe and enhanced its value. He pleaded that he was not liable to be evicted. He also deposited the rent that was in arrears so as to enable him to contest the proceedings.

4. A commission was taken out. The Commissioner visited the shop in the presence of the tenant. The Commissioner noted the relevant features and also recorded what the tenant told him in respect of the removal of the door and the windows. He noted the lowering of the floor, the erection of the pillars and the fixing of the rolling shutter. The landlord examined himself as PW 1. He admitted the rent note. He admitted that he had received Rs.85,000/- as advance. He pleaded that in spite of the statutory notice, the tenant had not paid the rent. He also spoke of the alterations to the building brought about by the tenant. The tenant, in his evidence tried to justify the non payment of rent. He deposed that what he had done in the premises was only to facilitate the jewellery trade for which the building was taken on rent. He was entitled to do so on the terms of the rent deed. What he had done, was only to strengthen the premises. The value of the building has not been permanently or materially diminished. He was not liable to be evicted.

5. The Rent Controller found that the rent note was inadmissible in evidence. It was a tenancy from month to month. He found that the tenant had defaulted payment of rent. An order for eviction under Section 11(2) of the Act was liable to be passed. The fact that he had deposited the entire rent during the pendency of the proceedings, was relevant only for the purpose of Section 11(2)(c) of the Act. He found that the question of material alteration had to be approached from the angle of the landlord. From that angle, it was clear that by the closing of the windows and the door, the amenity to the room had been destroyed by the tenant. The fact that such closing of the door and the windows was necessary to secure the jewellery of the tenant was not relevant. What had been done amounted to material alteration within the meaning of Section 11(4)(ii) of the Act. The tenant was

liable to be evicted. He, thus, ordered eviction on both grounds.

6. The tenant filed an appeal under Section 18 of the Act. He raised a fresh contention. The term of the lease was 15 years. The landlord was not entitled to seek eviction before the expiry of that term. The claim for eviction was barred by Section 11(9) of the Act. Since this aspect is not agitated before us, it is only necessary to mention that this contention was negatived by the Appellate Authority. It held that since the rent deed was unregistered, it was not admissible in evidence. The tenant could not take advantage of the term therein. By payment and acceptance of rent, only a tenancy from month to month has come into existence. Therefore, the application for eviction filed before the expiry of 15 years, was maintainable.

7. As regards the claim under Section 11(2) of the Act, that authority reiterated the reasoning of the Rent Controller and found that the tenant had not tendered the rent or established that as a matter of fact, the landlord had refused to issue a receipt for payment of the same. It relied on a notice issued by the tenant himself accusing the landlord of not cooperating in his getting electrical and water connections and taking the stand that he was not bound to pay the rent. Regarding the claim under Section 11(4) (ii) of the Act, it held that the alterations made by the tenant came within the purview of that provision. The order for eviction thereunder was justified. It dismissed the appeal.

8. The tenant filed a revision under Section 20 of the Act. The High Court, re-appraised the relevant materials. It held that the application for eviction was not premature and was maintainable. It further held that the order for eviction under Section 11(4)(ii) of the Act was sustainable. There was no specific discussion on the order for eviction under Section 11(2) of the Act and the revision was dismissed and the orders for eviction were confirmed. This is what is challenged here.

9. First, the claim under Section 11(4)(ii) of the Act. The relevant provision in the Act reads :-

> "11(4) A landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building-
>
> (i) *****
>
> (ii) if the tenant uses the building in such a manner as to destroy or reduce its value or utility materially and permanently."

For seeking eviction, the user should destroy or reduce the value or utility of the building materially and permanently. Even if the user leads to some reduction in the value or utility of the building, eviction cannot be ordered. But, if the value or utility is materially and permanently affected, an order for eviction could be passed.

10. The Kerala High Court has interpreted this provision in the context of a number of fact situations. Ahammad Kanna Vs. Muhammed Haneef, (1967 K.L.T. 841) held that the demolition of any wall in a building can be deemed to be an act of waste which is likely to impair materially the value and utility of the building. But that was not enough. The Court had to see whether there was

sufficient evidence to show that the tenant had committed such acts of waste as to impair the value or utility of the building. It was found that the motive for the removal of the wall was for convenience of trade. Since it was not shown that any damage to the building was caused by the removal of the wall and the boundary was not obliterated, an order for eviction under Section 11(4)(ii) could not be granted. When the tenant destroyed a boundary wall, the decision in "Ahammad Kanna" was distinguished and it was held in Ayissabeevi Vs. Aboobaker (1971 K.L.T. 273) that the pulling down of a wall might or might not amount to waste, and the question will depend upon the purpose for which the wall was pulled down. When the purpose was to remove the boundary wall and that resulted in the obliteration of the boundary line and the tagging on of the property with the adjoining property through the medium of a corridor, it attracted Section 11(4)(ii) of the Act. Shanmugam Vs. Rao Saheb (1988 (1) K.L.T. 86) reiterated that there can be no hard and fast rule that the removal of a wall or construction of a door or providing a common verandah should, necessarily lead to an inference that there was destruction or reduction of the value or utility. Such acts of the tenant have to be judged on the facts of each case. Mere proof of reduction or even destruction of utility or value was not sufficient and the words "materially and permanently" were important. The destruction or reduction of utility or value of the building must be of a reasonably substantial magnitude. Prabodhini Vs. Rajammal (1991 (1) K.L.J. 113) decided that the fixing of a gate after removing a portion of the wall, could not be taken as an act which destroyed or reduced the value or utility of the building. Nor could it be considered to be an act which materially affected the value or utility of the building, that too, permanently. In Thankappan Vs. Reji Xavier (1995 (1) K.L.J. 86) it was held that the removal of a ceiling attracted Section 11(4)(ii) of the Act since the value of the building was not only reduced but its utility was also materially and permanently reduced. Mathew vs. Gilbert (1998 (2) K.L.T. 19) held that the failure of the tenant to protect the furniture in the building passed on to him with the letting of the building, would not attract Section 11(4)(ii) of the Act. In Aboobacker Vs. Nanu (2001 (3) K.L.T. 815) it was held that on proof of minor destruction or alteration even if it resulted in marginal reduction of value or utility, the landlord could not get an order of eviction under Section 11(4)(ii) of the Act. Seethalakshmi Ammal Vs. Nabeesath Beevi (2003 (1) K.L.T. 391) held that the dismantling of the original roof followed by the substitution of a new roof, the replacing of old walls by new walls, the old flooring by a new flooring and the placing of shutters replacing the doors after practically demolishing the old building, were acts that attracted Section 11(4) (ii) of the Act.

11. This Court had considered the scope of the analogous provision in sister enactments. The U.P. Cantonments (Control of Rent and Eviction) Act was involved in Manmohan Das Vs. Bishun Das (1967 (1) SCR 836). Even if the alterations did not cause any damage to the premises or did not substantially diminish its value, the alterations were material alterations. On that basis alone, the landlord was entitled to evict the tenant. That was in the context of the provision which enabled a landlord to get an order for eviction, if the tenant had, without the permission of the landlord, made any construction which has materially altered the accommodation. Eviction could also be ordered even if that construction or alteration was likely to substantially diminish the value of the building. The difference with the Kerala Act is that the two requirements were disjunctive. It was enough to satisfy either one of them. It was clarified that although the expression "material alteration" was not defined, the question would depend on the facts of each case. In that case the acts of the tenant were held to amount to material alterations. In Om Prakash Vs. Amar Singh (AIR 1987 SC 617)

interpreting the same provision, it was held that the question whether a construction materially altered the accommodation was a mixed question of fact and law. The dictionary meaning of the expression "materially" and "alter" were considered. It was held to mean "a substantial change in the character, form and the structure of the building without destroying its identity". It had to be seen whether the constructions were substantial in nature and they altered the form, front and structure of the accommodation. No exhaustive list of constructions that constitute material alteration could be given. The determination of that question depended on the facts of each case. On facts, it was held that there was no material alteration. It was also laid down that the construction of a temporary shed in the premises which could easily be removed did not come within the mischief of the section. Brijendra Nath Vs. Harsh Wardhan 1988 (2) SCR 124) held that the construction of a wooden balcony in the showroom did not amount to material alteration. Replacing of wooden plank on the front door of the building by a rolling shutter was held to be not an alteration that caused any damage to the building and that was held not to provide a ground for eviction in Arunachalam (died) through L.Rs. and another Vs. Thondarperienambi and another (AIR 1992 SC 977). In Vipin Kumar vs. Roshan Lal Anand (1993 (2) SCC 614) a claim under Section 13(2) (iii) of the East Punjab Urban Rent Restriction Act, 1949, it was held that the impairment of the value or utility of the building was from the point of the landlord and not of the tenant. It had to be shown that there was impairment of the building due to acts of the tenant and, secondly, it had to be shown that the utility or value of the building had been materially impaired. The Court went on to say that the statute on proof of facts gave discretion to the Court to order eviction. The wording of the provision was "if the tenant has committed such acts as are likely to impair the value or utility of the building or rented land". The Rent Controller had to independently consider and exercise the discretion vested in him keeping in view the proved facts to decree ejectment. It was for the landlord to prove such facts which warrant the Controller to order eviction in his favour. In Waryam Singh Vs. Baldev Singh (2003 (1) SCC 59) construing the same provision, it was held that enclosing a verandah by constructing walls and placing a rolling shutter in front, did not justify an inference that the value or utility of the building had been impaired, in the absence of evidence led by the landlord to prove that the value or utility had been affected. So an order of eviction could not be granted.

12. From the above, it is clear that the question depends on the facts of the case. The nature of the building, the purpose of the letting, the terms of the contract and the nature of the interference with the structure by the tenant, are all relevant. The destruction or damage has to be adjudged from the stand point of the landlord. Let us look at the facts in the present case. The building is 75 years old. According to the tenant, it is 80 years old. The difference is not of any significance. It is the northern room in a building consisting of a number of rooms. It is let out for 15 years for a jewellery trade. The term has, of course, not come into effect for want of registration of the deed. The door in the western wall has been bricked up. The windows on the northern, western and southern walls have also been bricked up. Obviously, the bricked up portions can be removed and the doors and windows restored without weakening the structure. But more importantly, the level of the floor was lowered, the rafters cut, two concrete pillars erected and a rolling shutter fixed. The lowering of the floor and the tampering with of the roof, is of some significance. They could lead to impairment of the value or utility of the building, materially and permanently. That again has to be judged in the light of the surrounding circumstances. But a rolling shutter has been fixed. That provides more security to the premises. The height of the floor can be restored without impairment to the structure.

Here, we find that the landlord has not even pleaded that the alterations made by the tenant have destroyed or reduced the value or utility of the building materially and permanently. No doubt, he has stated so in his evidence. But the tenant has stated that, considering that it was a jewellery business that was being started, these things had to be done. Securing of the premises was essential. He had given to the landlord Rs. 85,000/- as security to be returned, when he vacated the building. The value of the building, if at all, has only been enhanced. In this state of the record, it is not possible to infer that the acts of the tenant have materially and permanently destroyed or reduced the value or utility of the building. The age of the building cannot be ignored. The purpose of the letting cannot be ignored.

13. We find that the Authorities below have not approached the question from the proper perspective. They have not given sufficient emphasis to the statutory requirement of the effect being material and permanent. It is "material and permanent". The words are not disjunctive, like in some other Acts. Here the landlord had not proved the material and permanent impairment in value or utility. One suspects that the value and utility are enhanced. The landlord admits that he will get a higher rent if the room is again let out. We are, therefore, satisfied that interference is justified. We hold that the landlord has failed to prove that the acts of the tenant constitute the user of the building in such a manner as to destroy or reduce the value or utility of the building materially and permanently. We set aside the order for eviction under Section 11(4) (ii) of the Act.

14. Now, the claim under Section 11(2) of the Act. There cannot be any dispute that the tenant had not paid the rent from 5.10.1988 onwards as claimed by the landlord. He had deposited the rent in the proceeding. If he has done so, it is relevant only for considering the question whether he is entitled to relief in terms of Section 11(2)(c) of the Act. The only question is whether the fact that he had paid a sum of Rs. 85,000/- as security, which the landlord was liable to refund to him at the time of his vacating the room, could be taken note of as an amount available with the landlord for being adjusted against the rent due. Under Section 8(1) of the Act, the landlord is not entitled to take any premium or other like sum. Under Section 8(2), he could receive or stipulate for payment only, an amount not exceeding one month's rent by way of advance. In both cases, if he has received it, it becomes refundable at once. Hence, it would be an amount available with him. In Issac Ninan Vs. State of Kerala (1995 (2) KLT 848) the High Court has declared that provisions relating to fair rent, that is, Sections 5, 6 and 8 of the Act, put together, are ultra vires the Constitution of India and are void. The questions may have, therefore, to be considered without reference to Section 8 of the Act. In a case where a substantial amount had been received as advance at the time of letting, which was liable to be refunded without interest on the expiry of the lease, this Court held in Modern Hotel Vs. K. Radhakrishnaiah (1989) 2 SCC 686, that when the amount of arrears of rent was smaller than the advance amount held by the landlord on account of the tenant, there was no default in payment of rent and the grant of eviction on the ground of arrears of rent was not justified. This was reiterated in K. Narasimha Rao Vs. T.M. Nasimuddin Ahmed (1996 (3) SCC 45). For the purpose of this case, especially when the tenant had pleaded that he had deposited the rent even while filing his objection in the Rent Control Court, we do not think that it is necessary to pronounce finally on this question. We feel that it is only necessary to clarify that the tenant will have two months from today to deposit the rent in arrears till date and the other sums in terms of Section 11(2) (c) of the Act so as to avert the execution of the order for eviction on the ground of arrears of rent granted under Section 11(2) of

the Act.

15. The appeal is, thus, allowed by setting aside the order of eviction under Section 11 (4)(ii) of the Act and by granting the tenant time of two months from today for averting the order of eviction under Section 11(2) of the Act by making the deposit (or by making up the needed deposit) in terms of Section 11(2)(c) of the Act. We make no order as to costs.