

Supreme Court of India

State Of Kerala vs Thressia And Another on 27 April, 1993

Equivalent citations: AIR 1994 SC 1488, 1995 Supp (2) SCC 449

Bench: K Ramaswamy, R Sahai

ORDER

1. This is a classic case of not only smack of reasonableness in pursuing the cause, but also the State to actively assist a party who flouts the law and abuses the process of the court. The case has its chequered history but eschewing the irrelevant for the purpose of petition, the material facts are that Smt. Thressia, landlady had an order of eviction under Section 11(4) (iv) of the Kerala Buildings (Lease and Rent Control) Act for demolition and reconstruction of the demised premises against the tenant George son of Verkey. The Court ultimately decreed eviction in 1976, subject to the condition that the landlady should reconstruct the building after surrender of vacant possession by the tenant. Though the tenant had surrendered vacant possession on September 21, 1976 and the building was demolished, yet the landlady did not take any steps for reconstruction. The tenant was constrained to file a petition to direct the landlady to construct the building, but yielded to no result except prolongation. Thereafter the landlady's son was set up to file O.S. No. 740 of 1977 in the District Munsif Court for an injunction restraining her from reconstruction. Finding it a collusive one, the suit was dismissed on October 9, 1980 and the landlady was directed to construct the building within six months. Even then she moved little in that direction, despite repeated extensions of time. On October 17, 1989 the Rent Controller imposed on her a fine of Rs. 500/-for her abstinence in not reconstructing the building. She filed C.R.P. No. 2576 of 1990 and the tenant C. R. P. No. 115 of 1991 in the High Court.

2. On the submissions made by her counsel by order dated January 23, 1991 both parties were directed to appear before the concerned officer in the Municipality to sort out the differences to get the plan approved for reconstruction. By order dated February 5, 1991 the Court directed the Municipality, when it was reported that the Municipality was prolonging to grant sanction, to submit to the court, the omissions in the plan or defects therein. It may be mentioned here that the son of the landlady is a Councillor in that Corporation representing that area. The landlady had made a submission to the court that she was not proposing to make any construction along with lane or put up any structure therein or to block the passage. Accordingly on February 20, 1991 the Court directed the Municipality to sanction the plan and to monitor the construction whether being proceeded in accordance with the sanctioned plan and in case of any dispute it could be sorted out. In spite of these further orders the Municipality adopted dilatory methods and so on February 28, 1991 by order dated March 4, 1991, the court directed the Municipality to make available to the court the relevant files, so that the court itself would scrutinise the plan and give proper directions in that behalf. The court also directed to give sanctioned plan to the counsel for the landlady and a copy to the tenant. Ultimately the landlady was permitted to proceed with the construction on March 7, 1991. The High Court closed the matter after the sanction was granted by the Municipality furnishing a copy of the sanctioned plan to the tenant. Thereafter a stranger obviously set up by the landlady, filed O. P. No. 5227 of 1977 to put hurdles for construction seeking to quash the plan, to which the tenant was not made a party, but on being impleaded and brought to the notice of the District Munsif all the facts, on June 7, 1991 the O.P. was dismissed.

3. The landlady filed an application for extension of time and by order dated August 27, 1991 the court refused to enlarge the time for reconstruction. Even then the landlady did not take any action. Therefore, by order dated December 1991 the High Court permitted the tenant to carry on construction in accordance with the plan approved by the Municipality. When it was objected further direction was given on December 28, 1991 granting police protection to the tenant to continue the construction. Direction was also given to the Commissioner of the Municipality to supervise the construction, so that the construction would be in accordance with the plan. Finding no alternative to prolong the matter the son of the landlady filed a petition in the High Court alleging that the tenant was not constructing the building in accordance with the plan and the plan was not legally sanctioned one. The court after notice found that the construction was not illegal. By order dated January 14, 1992 the petition was dismissed. Again manoeuvre was made in the Municipality to stall the construction by issuing notice to the landlady on August 30, 1991 stating that the construction was not in accordance with the plan and the Municipality ordered stay of further construction. The tenant brought this development to the notice of the court. On a notice issued to the Advocate General of the State on October 4, 1991 on a contempt Petition that it was admitted that it was pursuant to the direction issued by the Govt. letter dated Sept. 12, 1991. He undertook to see that the order of stay granted by the Govt. get vacated without reference to the court. Then the Municipality filed C.M.P. in the court seeking direction to restrain construction of the building. By order dated December 12, 1991 the Municipality was given right to pass such orders as are open under law. Thereon a report was submitted to the court that the construction was not in accordance with the rules and the plan. Therefore, taking advantage of the permission given to pass appropriate orders the Govt. again issued an order on December 10, 1991 staying further construction. The order of the Govt. was brought again by way of a petition. On notice issued, the Dy. Secretary to the Govt. Local Administration Department submitted a report stating that the construction was in violation of the conditions of the permit. He also stated that the building was almost complete. On that plea the State filed an application to implead as a respondent to the closed C.R.P. No. 2576/90. After hearing all the parties the court found in the impugned order thus:

From the brief statement of facts noticed above it is clear that the landlady and tenant are not colluding. There is no doubt that in case of any violation, the landlady will bring it to the notice of this Court. Moreover the Tripunthura Municipality represented by the Municipal Commissioner who is an officer of the Govt. is also a party to the , proceedings. In fact he was directed to arrange close supervision of the construction in order that the conditions in the permit for construction may not be violated. The Commissioner has been filing regular reports before this Court regarding the construction. We are passing separate orders on those reports and so the details of those reports need not be mentioned here. Under these circumstances we are of the view that there is no justification to allow these petitions. In this connection it may also be observed that there are hundreds of petitions before the Rent Control Courts on the ground of reconstruction. We have not come across any other instance where the State wanted to get itself impleaded in any such proceeding. The State is not a necessary or proper party in these proceedings. In case it is found necessary, the State can issue suitable directions to the Commissioner of the Municipality. Thus there is no merit in the petitions. Accordingly these petitions are dismissed.

4. Despite the aforesaid order the State has chosen to file this Special Leave Petition against the above conclusions reached by the High Court. We find from the records that the High Court is well justified in not only not impleading the State, but practically monitoring the construction. It is obvious from the above facts that the landlady had abused the process of the court, obtained possession of the demised building from the tenant and had it demolished but made no reconstruction. Every attempt was made to nullify the order of the court. When it found impossible to get the reconstruction stalled and all possible and conceivable obstructions put in the way of the tenant for reconstruction were removed and in that process obviously at the behest of the son of the landlady not only the Municipality lent its power but the State machinery was geared up to scuttle the construction as per orders of the court. Every attempt to nullifying the orders of the court proved abortive. Even the observations made in the impugned order did not impress upon the State. Thereby as stated earlier the officers concerned representing the State not only behaved in an irresponsible way, but actively aided to sabotage the implementation of the orders of the court. Thus this is the case of wanton abuse of process of the court without responsibility. Thus we find that this is a case where all the persons responsible to take decision to file special leave petition should bear the burden. We accordingly award exemplary cost of Rs. 10,000/- on them. When we repeatedly asked the names of the officers who have taken a decision to file the special leave petition, the counsel for the State repeated that on the advice of the counsel and the Govt. the special leave petition was filed without disclosing the names. Therefore, we feel that it is a case where all the personnel responsible to take the decision to file the special leave petition and the counsel mat advised the Govt. to file the special leave petition should pro rata bear the cost. The Chief Secretary is directed to collect Rs. 10,000/- from the personal pay of all the officers or persons and the legal counsel and send the amount to the account of the Supreme Court Legal Aid Committee. The Chief Secretary is also directed to send the certificate to the Registry of this Court to the effect that the amount was recovered from the aforesaid personnel.
5. The special leave petition is accordingly dismissed with the above directions and exemplary costs.