

Kerala HC Deprecates Invocation Of Writ Jurisdiction Alleging 'Breach Of Duty' By Police To Register Complaint When The Dispute Is Civil In Nature

2022 LiveLaw (Ker) 599

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
K. VINOD CHANDRAN; J., C. JAYACHANDRAN; J.**

W.A. No. 1133 of 2022; 15 November, 2022

SANTHOSH KUMAR NAIR versus SURESH P. SREEDHARAN

Appellant / Respondent No. 5: by Advs. C. Dheeraj Rajan; Anand Kalyanakrishnan

Respondents / Petitioner & Respondent Nos.1 to 4 by Advs. Alexander Joseph; Santhosh P. Poduval, SC, Thrissur Corporation, T.K. Vipindas - Sr.G.P.

J U D G M E N T

C. Jayachandran, J.

1. The 5th respondent in W.P.(C).No.21186/2022 - petitioner's landlord - is the appellant herein. The judgment in the above writ petition dated 8.8.2022 is impugned in this appeal, which directed the Station House Officer concerned (3rd respondent in the writ petition) to afford adequate police protection to the petitioner as regards his life and property. The judgment also directed the 4th respondent (The Corporation, Thrissur) not to cancel Ext.P2 license for conducting a restaurant, without notice to the petitioner and hearing him.

2. Facts in brief:-

The parties are referred to from their original status in the Writ Petition. The petitioner is conducting a restaurant in building no.39/1687/1 taken on rent from the 5th respondent/landlord. Ext.P1 dated 31.8.2021 is the consent issued by the 5th respondent before the 4th respondent Corporation, enabling the petitioner to conduct the restaurant. The petitioner is possessed of Ext.P2 license issued by the Corporation and Ext.P3 consent to operate issued by the Kerala State Pollution Control Board. The restaurant was inaugurated on 08.05.2022, as evidenced by Exts.P4 and P4(a) photographs. From 05.06.2022 onwards, the petitioner fell sick and could not open the restaurant. During that period, the 5th respondent/landlord trespassed into the tenanted premises on 24.6.2022, opened the same with the duplicate key, removed the furniture, fittings and other valuables therein and destroyed the improvements made in the kitchen. Besides, the petitioner, who went to the premises, upon coming to know about the above high handed activities of the 5th respondent, was assaulted. He preferred Ext.P5 complaint before the 3rd respondent/Inspector of Police. He also preferred Ext.P8 complaint to the District Police Chief. According to the petitioner, he has spent more than Rupees fifty lakhs for the restaurant and he is a lawful tenant and therefore, the 5th respondent/landlord has no authority to enter into the tenanted premises without the junction of the petitioner, much less to remove the valuables therein. On such premise, he seeks issuance of writ of mandamus seeking adequate and effective police protection to the life and property of the petitioner, along with an order directing respondents 2 and 3 to register a criminal case against the 5th respondent, acting upon Exts.P5 and P8 complaints.

3. The 5th respondent filed counter affidavit denying the allegations and contending as follows:-

The premises were given on rent as per agreement dated 17.8.2021, but the same was cancelled by the petitioner himself, as he was not in a position to afford payment of rent. Ext.R5(a) is the letter issued by the petitioner/tenant to the Secretary of the 4th respondent Corporation seeking cancellation of license. Accordingly, the 5th respondent got back the possession of the rented premises. A sum of Rs.3,00,000/- is due from the petitioner towards arrears of rent, in security of which, a few fixtures of the petitioner's hotel is kept with the

landlord. The petitioner has no right over the tenanted premises, since he had relinquished his tenancy by cancelling the agreement voluntarily. He is not entitled to invoke the extraordinary jurisdiction of this Court and his remedy lies before the civil court. The 5th respondent lodged a Caveat O.P. before the jurisdictional Munsiff Court, a copy of which is produced as Ext.R5(b). Due to harassment by the police, the 5th respondent was constrained to prefer a complaint before the District Police Chief vide Ext.R5(c). Ext.R5(f) is the FIR registered at the instance of the petitioner/tenant against the 5th respondent/landlord. Ext.R5(g) is another complaint preferred by the 5th respondent before the District Police Chief raising specific allegations against a particular police officer, who allegedly threatened the 5th respondent.

4. The learned Single Judge by the impugned order frowned upon Ext.R5(a) letter for cancellation of license and found that so long as the tenancy continues, a landlord can seek eviction only by an order duly passed by the competent authority under the Kerala Buildings (Lease and Rent Control) Act, as per Section 11 of the same. On the finding that a summary eviction, without taking recourse to law as referred above, is completely untenable, the learned Single Judge allowed the writ petition granting the reliefs afore referred.

5. Heard Sri.Dheeraj Rajan.C., learned counsel for the appellant/R5 and Sri.Alexander Joseph, learned counsel for the 1st respondent/petitioner. Perused the records.

6. Learned counsel for R5/appellant/landlord submitted that the judgment impugned is bad in law, inasmuch as the same concludes disputed questions of facts in a summary proceeding under Article 226 of the Constitution. An order for police protection under Article 226, in the midst of disputed facts and when the remedy squarely lies before a civil court, can hardly be countenanced, is the submission of the learned counsel.

7. Per contra, learned counsel for the petitioner/R1/tenant argued that, once the tenancy in favour of the 1st respondent/petitioner is admitted by the R5/appellant, he can be evicted only through the due process of law as contemplated in Section 11 of the Kerala Buildings (Lease and Rent Control) Act. By the impugned order, the learned Single Judge had only given protection from the high-handed actions of the appellant/5th respondent, as against the legal remedies open before him. Learned counsel contended that the R3 Inspector of Police, as also, the 2nd respondent District Police Chief (R4 and R3 in the Writ Appeal) are duty bound to take appropriate action in Exts.P5 and P8 complaints respectively, which they failed to do. Thus, there is failure to perform a statutory duty, wherefore, issuance of writ of mandamus is perfectly justified. In fact, the learned Single Judge had only recognized the rights of the 1st respondent/petitioner under Part III of the Constitution. According to the learned counsel, when the landlord trespassed into the tenanted premises and committed mischief therein, the 1st respondent/tenant has no remedy, but to approach the police and if the police fails to take necessary action, a writ under Article 226 of the Constitution seeking police protection is well conceived. Learned counsel relied upon a Bench decision of this Court in **Central Bank of India and Another vs. Beena Thiruvekitam** [2019 (3) KHC 819].

8. Having heard the learned counsel appearing on both sides, we are afraid that the order impugned cannot be sustained. Before addressing the facts, we will first refer to the fundamental principles to be borne in mind while exercising the power under Article 226 of the Constitution. As held in **K.S.Rashid and son v. The Income Tax Investigation Commission** [AIR 1954 SC 207] and reiterated in **Director of Settlements, A.P. & Others v. M. R. Appa Rao & another** [2002 (4) SCC 638], the power under Article 226 of the Constitution is discretionary, to be exercised judicially, based on recognized judicial principles. If the basic facts are disputed and the rights claimed by the petitioner is not capable of being established in a summary proceeding under Article 226, for, the same requires a detailed examination of the evidence, as may be done in a suit, the discretion cannot be exercised in favour of the petitioner [**DLF Housing v. Delhi Municipal Corporation** - AIR 1976 SC 386; **Moti Das Mahant v Sahi, S.P** – AIR 1959 SC 942]. In **Sohanlal v. Union of**

India [AIR 1957 SC 529] it was held that the object of Article 226 is the enforcement, and not the establishment, of a right and the merits of rival claims of title to property has to be dealt with by a civil court in a properly constituted suit. Therefore, a disputed question of fact is not liable to be investigated in a proceeding under Article 226, especially when an alternative remedy is available [**Union of India v. Ghaus Muhammed** - AIR 1961 SC 1526]; **Hindustan Steel Works Construction Ltd. v. Hindustan Steel Works Construction Ltd. Employees Union** - 2005 (6) SCC 725]. In **State of Rajasthan v. Bhawani Singh** [AIR 1992 SC 1018], the Hon'ble Supreme Court held that the merits of the rival claim to property or disputed question of title is not a matter for adjudication under Article 226 of the Constitution of India.

9. Coming to the facts, it is clear from the pleadings that the petitioner/1st respondent/tenant claims reliefs in his capacity as a tenant under the 5th respondent/appellant/landlord. This claim is however seriously refuted by the appellant/landlord by contending that the tenancy rights have been surrendered by the 1st respondent/tenant, as evidenced from Ext.R5(a) letter issued to the Secretary of Thrissur Corporation. Suffice to say that the pleadings before the learned Single Judge discerns disputed questions of facts. A special statute is enacted to regulate lease of buildings and to check excessive demands of rent, that is to say, the Kerala Buildings (Lease and Rent Control) Act, 1965, which stipulates various provisions regulating tenancy rights of the landlord and also of the tenant. Besides, if there is a threat of an illegal eviction, the jurisdiction of a civil court can well nigh be invoked and so could an illegal trespass be thwarted by a civil court and remedied by a mandatory injunction. It is in such state of affairs that the 1st respondent/tenant rushed to the High Court seeking police protection against the landlord alleging trespass and mischief, both the causes of action squarely falling within the jurisdictional scope of a civil court. It is also relevant to note that the 5th respondent/landlord had lodged Ext.R5(b) caveat before the jurisdictional Munsiff's court and it is allegedly to circumvent the same that the 1st respondent/tenant had approached this Court under Article 226. The finding of the learned Single Judge in paragraph no.8 that Ext.R5(a) letter may be untenable in view of a subsequent renewal of license cannot be endorsed. It has to be examined whether on such renewal, there is a requirement for a further consent from the landlord and if that is not required, the tenant may well be attempting to trace his steps back and resume to occupy the premises, after having surrendered it; which is the plea of the appellant-landlord. We are of the opinion that the decisions in **Mohan Pandey** [1992 KHC 912] and **Roshina T.** [2018 KHC 6945] referred to in paragraph no.7 of the impugned order, which restrains the jurisdiction under Article 226 for police protection when possession is disputed, are quite relevant to the issue under consideration.

10. We are also not impressed by the argument that Exts.P5 and P8 complaints were not acted upon by the police. Ext.R5(f) is the FIR registered on Ext.P5 complaint preferred by the petitioner/tenant. Once the issue at hand is of a civil nature - pure and simple - its nature and character cannot be altered by preferring a complaint before the police and alleging inaction on their part, so as to canvass a breach of duty for the purpose of issuance of a writ of mandamus. Furthermore, if the grievance of the petitioner is the inaction of the police to put the criminal law in motion by registering an FIR, on the ground of commission of an offence against him by the 5th respondent, then his remedy is under Section 156(3) or Section 190 of the Cr.P.C. In any event, an alleged trespass cannot be removed with police aid, without recourse to a civil court, especially when there are disputed questions on whether it is a trespass at all.

We therefore allow this writ appeal. The impugned order is set aside, reserving the liberty of both the parties to seek appropriate remedy before the civil court or the Rent Control Court, as advised. Parties to suffer their respective costs.