

Dinanath and Another

Vs

Gopala Krishna (Dead) By Lrs

Civil Appeal No. 4508 of 1984

(Dr. T. K. Thommen, R. M. Sahai JJ)

16.03.1990

ORDER

1. This appeal by special leave arises from the judgment of the Karnataka High Court in Civil Revision Petition No. 528 of 1984. The High Court held that the respondent-landlord has satisfied the requirements of clause (1) of Section 21(1) of the Karnataka Rent Control Act, 1961 (Act 22 of 1961). The High Court found :

"But, however the test of bona fide and reasonableness will have to be determined with reference to the financial capacity and the sanction of the plan etc. That the landlord has got sufficient financial capacity is not disputed by the other side. He has also produced sanctioned plan. Therefore, though the revisional court has erred in opining that the bona fide and reasonableness need not be proved, the material on record amply proves the same."

2. Section 21(1) (1) reads :

"2. Protection of tenants against eviction. - (1) Notwithstanding to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or other authority in favour of the landlord against the tenant :

Provided that the court may on an application made to it, make an order for the recovery of possession of a premises on one or more of the following grounds only, namely.....

(1) that where the premises are land, such land is reasonably and bona fide required by the landlord for the erection of a new building which a local authority or other competent authority has approved or permitted him to build hereon."

3. Evidence had been let in by the landlord as to his requirements in the trial court. No evidence had been let in on the side of the tenant. However, the burden of establishing any one of the grounds mentioned in the proviso to Section 21(1) is upon the landlord.

4. The High Court, in our view, had misunderstood the scope of clause (1). The learned Judges understood it to mean that all that the landlord had to prove was that he had the financial capacity and had acquired the necessary sanction of the concerned authority that the expressions "reasonably" and "bona fide" require more than mere financial capacity and the sanction of the authorities was

not appreciated by the High Court. These two expressions are present in clause (h) also, but the clause deals with a different situation and it cannot, therefore, be read into clause (1). But the expressions in both the provisions must be understood with reference to the evidence adduced by the landlord as to the reasonableness and the bona fide character of his requirements. While clause (h) refers to a landlord's requirements of occupation of an existing building, clause (1) refers to a vacant land required by the landlord for construction of new building. His reasonable and bona fide requirements must be established by the landlord, irrespective and independent of any sanction which he may have obtained from the local authority. That the landlord has obtained the necessary sanction of the local authority and that he is financially capable of constructing a building will not by themselves mean that his requirements are reasonable and bona fide. Although his financial capacity may be one of the elements which may be taken into account, that by itself, in our view, would not be sufficient to establish the reasonableness and the bona fide character of his requirements.

5. These are aspects which must be considered solely with reference to the pleadings and the evidence on record. The High Court does not seem to have properly and correctly interpreted clause (1) or appreciated the evidence on record.

6. In the circumstances, we are of the view that it would be fair and just if the matter is reconsidered by the High Court with reference to clause (1) and the evidence already on record. Accordingly, we set aside the judgment under appeal, and remand the case to the High Court for fresh consideration as aforesaid.

7. In view of the fact that this case has been pending for about 20 years we have no doubt that the High Court will hasten the proceedings and come to a final decision as urgently as possible. The appeal is disposed of accordingly. The parties shall bear their respective costs.

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