SUPREME COURT OF INDIA

R. Kapilanath

Vs.

Krishna

C.A.No.2474 of 1999

(R. C. Lahoti and Brijesh Kumar JJ.)

13.12.2002

JUDGEMENT

R.C.Lahoti, J.

1. The suit premises are a residential house comprised in CTS Nos. 936 and 939 of Ward II of Hubli City. The premises are owned by a temple - a religious institution but not under the management of the State Government. The adoptive father of the respondent, Late Shankarbhat, was Pujari and Manager of the temple. The appellant was inducted as a tenant in the suit premises by Late Shankarbhat. Shankarbhat has, through a registered deed of adoption, adopted the respondent as his son who is presently Pujari and Manager of the temple. The appellant has been paying rent to the respondent. It is not in doubt, nor in dispute, that whatever be the ownership of the suit premises the respondent is certainly the Rent Collector.

2. The respondent claiming himself to be the owner of the premises filed a suit for eviction of the tenant-appellant on the grounds available under Clauses (h) and (p) of sub-section (1) of Section 21 of the *Karnataka Rent Control Act, 1961* (hereinafter 'the Act' for short). Availability of ground under clause (h) has been negated while the Court of Munsif upheld the entitlement of respondent to a decree under Clause (p). The appellant preferred a revision before the first Additional District Judge, Dharwad under S. 50(2) of the Act and subsequently a revision petition to the High Court under Section 115 of the Code of Civil Procedure. Both have been dismissed conforming the decree for eviction under Clause (p) abovesaid. The finding arrived at by all the Courts is that the tenant has built or acquired vacant possession of a suitable building. The tenant has preferred the present appeal by special leave.

3. The principal submission of Ms. Kiran Suri, the learned counsel for the appellant, centres around an amendment made in the Act by Karnataka Act No. 32 of 1994. It was submitted by the learned counsel for the appellant that the suit premises belong to a temple which is a religious institution. *The Karnataka Rent Control Act, 1961* was enacted inter alia to control evictions of tenants. The Act has a wide application. However, sub-section (7) of Section 2

provides that nothing in this Act shall apply to certain premises specified in the several clauses therein. One of the categories of the premises, excepted from the application of the Act, was 'any premises belonging to a religious or charitable institution under the management of the State Government'. By the *Karnataka Rent Control (Amendment) Act, 1994* (Act No. 32 of 1994) which came into force with effect from 18th May, 1994, the words "under the management of the State Government" were deleted. The effect of the amendment is that while earlier only the premises belonging to a religious or charitable institution under the management of the State Government were exempted from the operation of the Act now subsequent to the amendment, the scope of excepted category has been enlarged so as to cover all premises belonging to a religious or charitable institution without regard to the fact whether they are under the management of the State Government or not. The proceedings for eviction of a tenant under S. 21 of the Act are maintainable in a Court which, as defined in Clause (d) of Section 3, is the Court of Munsif. So far as the suit premises are concerned, the proceedings were initiated in the year 1986 in the Court of Munsif. Revision petition before Additional District Judge was filed in the year 1990 and came to be decided on 14th September, 1995. During the pendency of the revision, the 1994 Amendment came into force. The effect of the amendment is that the suit premises were taken out of the operation of the Act and therefore the Munsif lost jurisdiction to try a case for eviction over such premises. The learned Additional District Judge ought to have taken note of this change in law and directed the proceedings held before the Munsif to be a nullity for want of jurisdiction in view of the change in law.

4. The above submission of the learned counsel has been stated only to be rejected. It is pertinent to note that the proceedings in the Court of Munsif had already stood concluded by the time the amendment came into force. It is not disputed that Amendment Act No. 32 of 1994 has not been given a retrospective operation and there is nothing in the Act to infer retrospectivity by necessary implication. The Act has been specifically brought into force w.e.f. the 18th day of May, 1994. The learned counsel for the appellant cited a number of decisions laying down the law as to how an amendment in legislation brought into force during the pendency of legal proceedings has to be given effect to. Without stating the decisions so cited, suffice it to observe that all those decisions deal with substantive rights having been created or abolished during the pendency of legal proceedings and depending on the legislative intent and the language employed by the Legislature in the relevant enactment, this Court has determined the impact of the legislation on pending proceedings and the power of the Court to take note of change in law and suitably mould the relief consistently with the legislative changes. So far as the present case is concerned, the only submission made by the learned counsel for the appellant is that the effect of the amendment is to deprive the Court of Munsif of its jurisdiction to hear and decide proceedings for eviction over such premises as the suit premises are. In other words, it is a change in forum brought during the pendency of the proceedings. The correct approach to be adopted in such cases is that a new law bringing about a change in forum does not affect pending actions, unless a provision is made in it for change over of proceedings or there is some other clear indication that pending actions are affected. (See Principles of Statutory Interpretation. Justice G. P. Singh, 8th Edition, 2001, p. 442). We have already indicated that the Act does not bring about a change in forum so far as the pending actions are concerned. Moreover by the time the amendment

came into force, the proceedings before the Munsif had already stood concluded and the case was pending at the stage of revision before the Additional District Judge. Further we find that an objection laying challenge to forum's competence was not raised before the learned Additional District Judge nor the objection was taken before the High Court in the civil revision preferred by the appellant. It was not taken as a ground in the special leave petition. It has been taken only by way of a separate petition filed subsequently and seeking leave to urge additional grounds. Such an objection cannot be allowed to be urged so belatedly. However, we have already held the argument based on 1994 Amendment as of no merit.

5. It was next submitted that though a petition for eviction under S. 21(1)(p) of the Act can be filed by a landlord and it is not necessary that he must also be the owner of the premises yet it is necessary that the petitioner must claim himself to be only a landlord and not an owner. The learned counsel further submitted that the respondent has claimed himself to be the owner of the premises which claim is inconsistent with his being a mere rent collector on behalf of the temple and so the claim for eviction at his instance should have been refused. This submission too is wholly devoid of any merit. A petition for recovery of possession of any premises can be filed by the landlord against the tenant within the meaning of S. 21(1). Clause (h) of S. 3 includes in the meaning of 'landlord' any person who is for the time being receiving or entitled to receive rent in respect of any premises whether on his own account or on account or on behalf, or for the benefit of any other person etc. It cannot be doubted nor has it been disputed that the respondent is 'landlord' within the meaning of S. 3(h) abovesaid. Though the appellant claimed himself to be an owner also so long as he has been found to be a landlord he is entitled to maintain the action for eviction under S. 21(1)(p). The plaintiff or petitioner may claim a higher right and may succeed in proving only a smaller right or entitlement to relief but that would not result in disentitling the plaintiff or petitioner from succeeding so long as the smaller right successfully substantiated by him is enough in law to entitle him to a relief against the defendant.

6. For the foregoing reasons, the appeal is held to be devoid of any merit and liable to be dismissed. It is dismissed with costs throughout. The decree for execution shall not be available for execution for a period of four months from today subject to the appellant clearing all the arrears of rent and filing the usual undertaking - both within a period of three weeks from today - for delivering vacant and peaceful possession to the landlord-respondent on the expiry of the said period of four months and continuing to clear the arrears falling due month by month till then.

Appeal dismissed.