

SUPREME COURT OF INDIA

P. Suryanarayana (Dead) By Lrs.

Vs.

K. S. Muddugowramma

C.A.No.645 of 2004

(Ashok Bhan and R.C.Lahoti JJ.)

25.02.2004

JUDGMENT

R.C.Lahoti, J.

1. This is a landlord-tenant dispute wherein the landlady has sought for eviction of the tenant on the ground of bona fide requirement of the suit premises for her own occupation - by herself and by members of her family residing with her, under clause (h) of the proviso to sub-section (1) of Section 21 of the *Karnataka Rent Control Act, 1961* (hereinafter "the 1961 Act" for short). Admittedly, the respondent landlady is a widow. She is also the owner of the premises wherein the appellants are the tenants. The eviction petition was filed sometime in the year 1985. The requirement as pleaded by the landlady is that she has two major sons and two minor sons. The occupation of the landlady's family is weaving. One of the major sons was married, also blessed with a child and engaged in the family business. The second major son was unemployed and yet to be married. He was desirous of starting his own business but the premises presently in occupation of the landlady were not sufficient to accommodate any business activity of the second son. The other two sons were minor and did not have any place to study available within the premises in their occupation. The second of the major sons was to be married and the premises in occupation of the landlady did not have enough accommodation to allow occupation by the second major son as a married member of the family, inasmuch as his wife shall also have to be accommodated in the premises in occupation of the family.

2. It is not disputed that the tenanted premises, that is, the scheduled house premises in occupation of the tenants are residential premises. The tenants in their written statement filed before the Rent Controller admitted the premises to be residential and in their occupation for residence.

3. The Rent Controller and the appellate court found the requirement of the landlady not made out. The two courts also examined the case from the point of view of comparative hardship as required by sub-section (4) of Section 21 of the 1961 Act and arrived at a finding that if the tenant appellants were directed to be evicted, they would suffer greater hardship

than the hardship which would be suffered by the landlady in the event of the eviction being denied.

4. The landlady preferred a revision petition in the High Court under Section 115 of the *Code of Civil Procedure, 1908*. During the pendency of the civil revision, the Karnataka Rent Act, 1999 (for short "the 1999 Act") came into force. The High Court took notice of the provisions of the new Act and applied the same to the case before it as required by clause (b) of sub-section (2) of Section 70 of the 1999 Act and held that the bona fide requirement of the landlady was made out, allowed the revision and reversing the judgments of the two courts below directed the tenant appellants to be evicted. Indeed, it may be noted that during the pendency of the revision, the respondent landlady had moved an application for amendment in her petition for eviction which was allowed by the High Court, and therein the landlady had specifically pleaded the right to recover immediate possession of the premises to the widow as contemplated by Section 31 of the 1999 Act. That ground has also found favour with the High Court.

5. Aggrieved by the judgment of the High Court, the tenant appellants have preferred this appeal by special leave.

6. So far as the applicability of the provisions of the 1999 Act is concerned, no fault can be found with the view taken by the High Court that the provisions of the 1999 Act apply to pending civil revisions. Section 70 of the 1999 Act repeals the 1961 Act. Clause (b) of sub-section (2) of Section 70 provides that all cases and proceedings other than those referred to in clause (a) and pending at the commencement of the 1999 Act in respect of the premises to which the 1999 Act is applicable, shall be continued and disposed of in accordance with the provisions of the 1999 Act. It is not disputed that the scheduled premises, which are in the occupation of the tenant appellants and form subject-matter of these proceedings, are those to which the 1999 Act is applicable. The applicability of Section 70(2)(b) of the 1999 Act is clearly attracted and the High Court was justified in taking notice of the provisions contained in the 1999 Act and deciding the revision pending before it consistently with and keeping in view the provisions of the 1999 Act.

7. Indeed, the provisions of the 1999 Act, especially the provisions relating to eviction on the ground of bona fide requirement, have a material bearing on the case and the proceedings forming the subject-matter of the present appeal. Under the 1961 Act, the relevant ground for eviction of the tenant was contained in clause (h) of sub-section (1) of Section 21 which provided for an order for the recovery of possession of premises being made on the ground that the premises are reasonably and bonafidely required by the landlord for occupation by himself and so on. However, sub-section (4) of Section 21 provided that a ground for eviction under clause (h) abovesaid, in spite of having been made out, yet decree for eviction could not be passed if the court was satisfied, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord, that a greater hardship would be caused to the tenant by passing the decree than by refusing to pass it. A partial eviction was also permissible consistently with the finding on the question of hardship. Under the 1999 Act, the relevant ground for eviction as

contemplated by clause (r) of sub-section (2) of Section 27 is that the premises let are required whether in the same form or after reconstruction or rebuilding by the landlord for occupation for himself or for any member of his family and so on; and that the landlord has no other reasonably suitable accommodation to satisfy the said requirement. The concept of comparative hardship has been given up and instead sub-section (3) of Section 27 now provides that the court may, on a ground for eviction under clause (r) abovesaid having been made out, allow eviction from only a part of the premises if the landlord is agreeable to the same. A new provision has been enacted vide Section 31 of the 1999 Act which provides that if the landlady be a widow and the premises were let out by her or by her husband and the tenanted premises are required for use by her and for her family members or for anyone ordinarily living with her she may apply to the court for recovery of immediate possession of such premises.

8. Explanation I appended to clause (r), sub-section (2) of Section 27 of the 1999 Act provides, inter alia:

9. Where the landlord in his application supported by an affidavit submits that the premises are required by him for occupation for himself or for any member of his family dependent on him, the court shall presume that the premises are so required.

10. Another provision enacted by the same Explanation is that the premises let for a particular use may be required by the landlord for a different use if such use is permissible under law. The rules enacted by the abovesaid Explanation are available to be invoked not only for the purpose of Section 27(2)(r) but also for Section 31, the two provisions with which we are concerned as relevant for the purpose of the present case. We have already noted hereinabove that the plea of availability of ground under Section 31 in addition to the one already pleaded and tried by the Rent Controller, was specifically raised by the respondent by way of an amendment in the pleadings and the requisite affidavit making out the ground under Section 31 was also filed. The tenant appellants had full opportunity of meeting the case which was pleaded by the respondent landlady by way of subsequent event based on the enactment of the 1999 Act.

11. In view of the provisions of the new Act having been introduced during the pendency of the revision, the High Court heard the learned counsel for the parties and gave a fresh look to the relevant facts in the light of the evidence and material available on record and arrived at a finding that the grounds for eviction under Section 27(2)(r) and Section 31 of the 1999 Act were both made out.

12. The learned counsel for the appellants has submitted that the High Court has proceeded to decide the case solely on the basis of the presumption enacted by the 1999 Act in favour of the landlord and has not dealt with other relevant facts and material available on record. It was also submitted by him that in view of the jurisdiction vesting in the High Court being one of revision under Section 115 of the Code of Civil Procedure, the High Court was not justified in upturning the finding of fact arrived at concurrently by the two courts below. We do not find merit in any of the two submissions so made. The presumption enacted by

Explanation I(i) appended to clause (r) of sub-section (2) of Section 27 of the Act is mandatory, and has to be drawn in view of the phraseology employed by the legislature in enacting the provision which speaks : "the court shall presume that the premises are so required". The presumption has to be drawn: of course the tenant may rebut the presumption. The mandatory presumption enacted by the 1999 Act shall have the effect of shifting the burden of proof; while the landlord may rest on the presumption, it will be for the tenant to rebut the same.

13. We have already noticed that the respondent is a widow. The applicability of presumption is attracted. Other than the applicability of presumption, there is ample material available on record to substantiate that the need pleaded by the respondent is bona fide. The approach adopted by the courts below and the High Court was unrealistic and impermissible. Suffice it to observe that the approach adopted by the learned Rent Controller was too technical an approach, devoid of realities of life. The same error was committed by the learned District Judge. The learned District Judge has gone wrong on many counts. At least two can be demonstrated immediately. At one place, the learned District Judge has observed that if some more rooms are made available the sons of the petitioner landlady may live comfortably but that itself cannot be taken to hold that the tenants are required to be evicted from the scheduled premises. The learned District Judge completely erred in holding the requirement of the landlady to be a mere desire and not a requirement. At another place, the learned District Judge observed that there were powerlooms installed in the scheduled premises which finding is clearly beyond the pleadings of the parties, inasmuch as it was an admitted case of the parties that the scheduled premises were being used for the purpose of residence. Be that as it may, the issue as to comparative hardship has lost its relevance under the provisions of the 1999 Act whereunder the civil revision pending before the High Court had to be decided.

14. No fault can be found with the view taken by the High Court. The appeal is devoid of any merit and liable to be dismissed. It is dismissed, accordingly. However, to save the tenant appellants from the peril of sudden eviction, they are allowed four months' time from today for vacating the premises subject to their filing the usual undertaking within a period of three weeks from today. With the executing court, the appellants shall within the said period of three weeks, deposit all the arrears of rent up to date and also deposit the rent calculated for the period of four months for which they will occupy the premises under the orders of this Court.