

SUPREME COURT OF INDIA

N.S Viswanatha Shetty

Vs.

K.R. Shivaswamy

C.A.No.2303-2308 of 2005

(P.Venkatarama Reddi and A.K.Mathur JJ.)

31.03.2005

JUDGMENT

P.Venkatarama, J.

1. Delay condoned.
2. Leave granted.
3. The appellant herein is the owner of three shops situate in Kollegal Town, which is a town municipal council constituted as such under the *Karnataka Municipalities Act, 1964*.
4. The appellant filed eviction petitions under the Karnataka Rent Control Act, 1961 (since repealed) for eviction of the respondents-tenants on the ground of bona fide need for personal occupation. Eviction was ordered by the learned Munsif. The District Judge, Mysore confirmed the eviction order on a revision filed by the aggrieved tenants under Section 50(2) of the said Act. Thereupon, the respondents filed further revisions before the High Court of Karnataka under Section 115 of the Code of Civil Procedure. During the pendency of revisions in the *High Court, the Karnataka Rent Act, 1999* came into force on and from 31st December, 2001. Before the revision petitions were taken up for hearing, the learned counsel appearing for the tenants filed a Memo stating that the premises in question was situate in a town municipal council area and, therefore, it was excluded from the purview of the Karnataka Rent Act, 1999 and by virtue of Clause (c) of sub-Section (2) of Section 70 of the said Act, the entire proceedings at whatever stage they were, stood abated.
5. Accepting the submission made by the learned counsel for the tenants, the learned Single Judge held that the eviction proceedings stood abated. The learned Judge then observed that it would not come in the way of the landlord's right to initiate proceedings for eviction under any other law in force. The review petitions filed by the appellant-landlord were also dismissed with an observation that in view of the location of the premises (in the town municipal area), "no useful purpose will be served even if it is held that only revision proceedings would abate and not the entire proceedings having regard to Clause (c) of sub-

Section (2) of Section 70". After the dismissal of the review petitions, the special leave petitions giving rise to the present appeals were preferred by the land-lord.

6. The learned counsel for the appellant submits that the assumption of the High Court that the new Act had no application to the premises situate in town municipal area and, therefore, the proceedings stood abated under Clause (c) of Section 70(2) of the Act of 1999 is not correct. According to him, the expression 'City Municipal Council' encompasses within its scope the town municipal council as well. This contention was not pursued in view of the alternative submission made by the appellant's counsel seeking remand of the case to the High Court on a different ground.

7. The respondents filed revision petitions before the High Court under Section 115 of C.P.C. inasmuch as they already availed of the remedy of revision to the District Judge as provided for by Section 50(2) of the Act of 1961. Such revisions filed under Section 115 C.P.C., according to the learned counsel, are not in any way hit by the Repeal and Savings provision contained in the new Act and, therefore, the revision ought to have been decided on merits. The observations made by the Division Bench of the Karnataka High Court in *M/s. Mercury Press & Ors. vs. Ameen Shacoor & Ors.*¹ are relied upon in this context. It was observed therein:

"iii) The proceeding that get abated under Section 70(2)(c) are only proceeding initiated under the provisions of the Old Act. If the proceeding pending is not initiated under the Old Act (as for example a suit for recovery of rents under Section 26 of CPC or a revision proceeding under Section 115 CPC, then obviously, Section 70(2)(c) will not apply."

8. It is also the contention of the learned counsel for the appellant that the law laid down in the aforesaid decision was not kept in view while passing the impugned orders. Elaborating this contention the learned counsel for the appellant further submits that irrespective of the applicability of the new Rent Act to the buildings in question, the revision petitions ought not to have been thrown out relying on Clause (c) of sub-Section (2) of Section 70. It is brought to our notice that the special leave petition filed against the judgment of the Division Bench referred to supra was dismissed in limine. The correctness of the ruling of the Division Bench has not been questioned before us. The learned counsel for the respondents could not seriously resist the request for remand realizing the fact that the impugned order did not refer to the decision in Mercury Press case. In the circumstances, we are of the view that it would be just and expedient to set aside the impugned order and remit the revision petitions to the High Court for fresh disposal so that the matter could be decided afresh in the light of the principles laid down in Mercury Press (2002 ILR(Kar) 2304) and on merits, if necessary.

The appeals are, accordingly, allowed without expressing any view on the merits of the case.

¹2002 ILR(Kar) 2304