

SUPREME COURT OF INDIA

K. Puttaraju

Vs.

A. Hanumegowda

C.A.No.5648 of 2008

(Tarun Chatterjee and Aftab Alam JJ.)

15.09.2008

JUDGMENT

Tarun Chatterjee, J

1. Leave granted.

2. The respondent/landlord herein filed an eviction petition under Section 27(2)(r) read with Section 27(2)(j) of the *Karnataka Rent Act, 1999* (in short, the "Act") against the appellant for eviction in respect of a portion of shop No. 575, 11th Main, 5th Block, Jayanagar, Bangalore - 41, measuring 12 feet East to West and 8 = " North to South (hereinafter referred to as the "said shop"). The said eviction petition was filed before the Judge, Court of Small Causes at Bangalore, which came to be registered as HRC No. 196/2003, inter alia on the ground that the respondent required the said shop for his own use and occupation and for starting a business for his son who was handicapped. So far as the ground under Section 27 (2)(r) of the Act was concerned, the same was allowed and eviction was directed, but the ground under Section 27(2)(j) of the Act was, however, rejected and the appellant was directed to vacate the said shop within three months from the date of passing of the order of eviction, which was passed on 16th of September, 2006. The case of the landlord/respondent was that he filed the eviction petition against the appellant under Section 27(2) (r) of the Act on the ground that he wanted to start a stationary business in the said shop with the assistance of his younger son so as to enable him to earn his livelihood and the appellant, being a retired engineer in the Irrigation Department and a senior citizen, the eviction petition should be allowed in his favour. The younger son, for whom the said shop was required, was/is a handicapped person.

3. Feeling aggrieved by the order of the learned Judge of the Small Causes Court, Bangalore, the High Court was moved in revision by the appellant. The challenge to the aforesaid order of the Small Causes Court Judge, directing the eviction was that the appellant was and/or is in possession of reasonable, suitable accommodation as he is the owner of shopping malls and other 10 shops in the area in question.

4. It may be mentioned that during the pendency of the eviction petition, an application for amendment of the same was filed at the instance of the landlord/respondent praying for amendment of the petition on the ground that the respondent also sought to evict the appellant under Section 31 of the Act. The High Court, by the impugned order, had affirmed the finding of the learned Judge of the Small Causes Court at Bangalore and directed eviction of the appellant from the said shop also on the ground under Section 31 of the Act. Feeling aggrieved by this order of the High Court affirming the order of eviction passed by the Small Causes Court, this Special Leave Petition was filed by the appellant in this Court which, on grant of leave, was heard in presence of the learned counsel for the parties.

5. In our view, this appeal can be disposed of on a very short point. As noted herein earlier, initially, the original petition for eviction was filed only under Section 27(2)(r) read with Section 27(2)(j) of the Act, out of which the ground under Section 27(2)(j) of the Act was negated and eviction was ordered only on the ground of bonafide requirement of the said shop under Section 27(2)(r) of the Act, against which, the revision was moved in the High Court, which also affirmed the order of the learned Judge of the Small Causes Court, Bangalore. It is true that during the pendency of the eviction petition before the Small Causes Court, the ground under Section 31 of the Act was added in the eviction petition which, for our purpose, may be reproduced as under :- "Right to recover immediate possession of premises to accrue to a widow - (1) where the landlord is :- (a) a widow and the premises let out by her, or by her husband; (b) a handicapped person and the premises let out by him; (c) a person who is of the age of sixty-five years or more and the premises let out by him, is required for use by her or him or for her or his family or for any one for ordinarily living with her or him for use, she or he may apply to the Court for recovery of immediate possession of such premises. (2) Where the landlord referred to in sub-section (1) has let out more than one premises, it shall be open to him to make an application under that sub-section in respect of any one residential and one non-residential premises each chosen by him. Explanation - I - For the purposes of this section, "handicapped person" shall mean a person who is as if being an assessee entitled for the time being to the benefits of deduction under section 80U of the *Income Tax Act, 1961* (Central Act 48 of 1961). Explanation- II - The right to recover possession under this section shall be exercisable only once in respect of each for residential and for non-residential use."

6. At this stage, it would be appropriate if we deal with the ground under Section 27(2)(r) of the Act as well. Section 27(2) (r) reads as under:-

"Eviction on Ground of Landlord's Personal Requirement etc. (r) that the premises let are required, whether in the same form or after re-construction or re-building, by the landlord for occupation for himself or for any member of his family if he is the owner thereof, or for any reason for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation :

Provided that where the landlord has required the premises by transfer, no application for the recovery of possession of such premises shall lie under this clause unless a period of one year has elapsed from the date of the acquisition :

Explanation - I - For the purposes of this clause and sections 28 to 31 -

(i) 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;

(ii) premises let for a particular use may be required by the landlord for a different use if such use is permissible under law.

Explanation -II - For the purposes of this clause and sections 28 and 31 an occupation by the landlord of any part of a building of which any premises let out by him forms a part shall not disentitle him to recover the possession of such premises.

Explanation -III - For the purposes of this clause, and section 28 to 31 "owner of the premises" includes a person who has been allotted such premises by the Bangalore Development Authority or any other local authority by way of an agreement of hire-purchase, lease or sub-lease, even before the full ownership rights accrue to such hire-purchaser, lessee or sub-lessee, as the case may be."

7. Ms. Suri, learned counsel appearing on behalf of the tenant/appellant submitted before us at the first instance that if the aforesaid two provisions namely, Section 27(2) (r) of the Act and Section 31 of the Act are read together, one must come to the conclusion that the aforesaid two provisions are not independent of each other and while dealing with eviction on the ground of bonafide requirement, the two provisions must be read together. It was further submitted that since the landlord/respondent is in possession of reasonable, suitable accommodation to the extent that the landlord is in possession of shopping malls and 10 shops in the area in question, the High Court as well as the Court below were in error in granting an order for eviction on the aforesaid provisions of the Act. It was further submitted by Ms. Suri that the amendment of the eviction petition was wrongly allowed by the trial Court at the stage when the evidence was already completed. She further argued that the special provision of eviction as made in Section 31 of the Act could not be extended to the respondent as the appellant had failed to satisfy the court that Explanation No. II in Section 31 of the Act to the extent that the landlord- respondent had not taken this special provision even once earlier. This submission of the learned counsel for the appellant was hotly contested by Mr. Chahar, learned senior counsel for the respondent, who submitted that although in evidence, the respondent had admitted that he was having shopping malls and 10 shops but it has been brought to the notice of the Court that those shopping malls and 10 shops are not in possession of the respondent nor there was any space or room for starting a stationary business for his handicapped son. He brought to our notice that the shopping malls and other 10 shops have already been sold out and, therefore, it cannot be held that the

respondent was in possession of reasonable, suitable accommodation for which no eviction order could be passed.

8. Having heard the learned counsel for the parties and taking note of the submissions made by the learned counsel, we are of the view that in view of provisions under Section 31 of the Act, the order of the High Court as well as the Small Causes Court, Bangalore cannot be interfered with for two simple reasons. One, we are unable to agree with Ms. Suri that the provisions under Section 27(2)(r) of the Act and the provisions under Section 31 of the Act are not independent to each other, and the other, on a reading of the aforesaid two provisions, there cannot be any doubt in our mind that Section 31 of the Act gives a special right to some particular classes of landlords. Therefore, in our view, Section 31 of the Act, which imposes certain conditions on the landlord to get order of eviction of his tenant, is satisfied and the landlord is entitled to get an order of eviction without going to the provisions of Section 27(2)(r) of the Act. On a plain reading of Section 27(2) (r) of the Act and the scheme there under, we are of the view that the said provision has been given right to a landlord to evict his tenant inter alia on the ground of reasonable and bonafide requirement if he avers and proves that he reasonably requires the said shop for his own use and occupation and for the members of his family as he is not in possession of the reasonable, suitable accommodation elsewhere. Therefore, the reading of this provision would clearly indicate that this is a general provision for eviction of a tenant given to the landlord to evict his tenant. Whereas Section 31 of the Act has been introduced by the legislature to reflect the policy of the legislature for rendering speedy justice to the landlords belonging to three categories of citizens, namely, a widow, a handicapped person and a person who is a citizen of above 65 years. For these three categories of persons, the legislature has introduced this provision for the purpose of giving immediate possession of the said premises to the landlord. Therefore, in our view, the aforesaid two provisions are quite independent of each other and they can be set in motion in the individual fields. Let us now deal with the question of amending the eviction petition at a later stage. It is true that the respondent filed the application for amendment of the eviction petition when the evidence was over, but we do not find any jurisdictional error of the learned Judge of the Small Causes Court, whose order was affirmed by the High Court in revision and we are not inclined to interfere with the orders of the Courts below in the exercise of our discretionary power under Article 136 of the Constitution allowing the amendment of the eviction petition under Section 31 of the Act.

9. Although, the application under Section 31 of the Act was filed belatedly but it is an admitted position that the ingredients required for getting an order of eviction under Section 31 of the Act were very much present except the requirement in Explanation No. 2 under Section 31 of the Act, requiring the respondent to plead that they have not availed the opportunity of getting the order of eviction under Section 31 of the Act earlier. Admittedly, the respondent was a senior citizen at the time of filing of the eviction petition. In order to bring the eviction petition within the purview of Section 31 of the Act, the respondent pleaded even at the belated stage that he had sought for eviction of the tenant on the ground made under Section 31 of the Act. An additional objection was filed by the appellant to this application for amendment. It was not pleaded by the appellant in their written objection that the respondent had taken this opportunity once before and, therefore, he would not be

entitled to come within the purview of Section 31 of the Act. After a close examination of the record of this case, we do not find that anywhere, either in pleading or in the evidence, the appellants have brought to the notice of the Court that there was any eviction petition filed before it earlier or the respondent had taken an advantage of this provision under Section 31 of the Act. That being the position, we do not find any reason to interfere with the orders of the Courts below allowing the application for amendment of the eviction petition.

10. Accordingly, only on the ground under Section 31 of the Act, we affirm the order of the High Court and we do not like to interfere with the order of the High Court in the exercise of our discretionary power under Article 136 of the Constitution of India. Accordingly, we do not find any merit in this appeal. The appeal is thus disposed of.

11. Considering the facts and circumstances of this case, if the appellant files an undertaking in the Court within one month for giving vacant and peaceful possession to the respondent within nine months from the date of filing an undertaking on payment of the rent at last paid, the appellant shall be entitled to remain in possession for the aforesaid period of nine months. In default, it would be open to the respondent to evict the appellant in accordance with law.

12. With these observations, the appeal is thus disposed of with no order as to costs.