

**SUPREME COURT OF INDIA**

Zakiya Begum

Vs.

Shanaz Ali

C.A.No. \_\_\_\_\_ of 2010

(G.S. Singhvi J.)

09.08.2010

**JUDGEMENT**

**A.K.Ganguly, J.**

1. Leave granted.

2. In this appeal the judgment and order dated 12.11.2007 of a learned Single Judge of the High Court of Karnataka in revisional jurisdiction in H.R.R.P. No. 60 of 2007, under Section 46 (1) of the Karnataka Rent Act, 1999 has been impugned.

3. The revisional petition was filed by Mrs. Zakiya Begum and two others assailing the order dated 18.1.2007, passed by the Learned 1 XVth Additional Small Causes Judge, Mayo Hall Unit, Bangalore on I.A. No. 8/2006 filed by the tenants, respondents herein.

4. The material facts are that the appellants are the landlords of the property bearing No. 28/1, Robertson Road, Frazer Town, Bangalore - 5, measuring 43 feet North, South 37 feet 9 inches, East 25 feet and West 25 feet, the property included 6 feet wide passage leaving from Robertson Road into the scheduled premises (herein after referred to as the said `premises'). The appellants became the owner of the scheduled premises by virtue of a Gift Deed dated 30.3.2000 executed by the husband of appellant No. 1 and the father of appellants No. 2 and 3.

5. The appellants inducted the respondents as tenants on a monthly rent of Rs.4000/- (Four Thousand Only) per month in respect of the said premises. The rent was agreed in accordance with clause 4 of the rent agreement dated 06.11.1997.

6. On or about 21.3.01 the appellants instituted an eviction proceeding being H.R.C. No. 10042/2001 against the respondents under Section 21 (1) (h) and (f) of Karnataka Rent Control Act, 1961 (herein after "the 1961 Act"), inter alia, on the grounds of default, subletting, reasonable and bonafide requirements and some other grounds.

7. In the said eviction proceeding, the respondents filed an IA being, IA 8 of 2006, wherein it was contended by the respondents that during the pendency of the eviction proceeding, under Section 21(h)(f) of the 1961 Act, Karnataka Rent Act 1999 (herein after, "1999 Rent Act") has come into effect repealing the 1961 Act and it was further contended that the eviction proceeding will have to be dealt with under the provisions of the 1999 Rent Act. The appellants also amended their eviction proceedings in accordance with the 1999 Rent Act and the respondents gave their objections to the same.

8. The main objection of the respondents in IA 8 is that admittedly they are tenants on a monthly rental of Rs.4000/- and as such the eviction proceeding is not maintainable in respect of the premises under the 1999 Rent Act as the same is not applicable to premises where the monthly rental exceeds Rs.3500/-. It was, therefore, urged that the Court of Small Causes has no jurisdiction to try the said eviction proceeding as the 1999 Rent Act does not apply.

9. By an Order dated 18.01.2007 the Court of XVth Additional Small Causes Judge, inter alia, held that "since the monthly rent of scheduled premises exceeds Rs.3500/-, hence the Karnataka Rent Act, 1999 is not applicable and this Court has no jurisdiction to try the case and the petition is not maintainable before this court". Saying so, IA 8 was allowed by the XVth Additional Judge of the Small Causes Court.

10. That led the appellants to challenge the said order of the Small Causes Court before the High Court.

11. It may be noted that neither before the High Court nor before this Court the applicability of the 1999 Rent Act, which came into effect in November 2001, was questioned by the appellants. Rather acknowledging its applicability to the pending eviction proceeding the appellant amended the same in accordance with the 1999 Rent Act.

12. It is very clear from Section 70 of the 1999 Rent Act that unless proceedings initiated under the 1961 Act has reached the stage of execution of a decree, 1961 Act will have no application to other eviction proceedings which are pending, prior to the execution stage, on the date of coming into effect of the 1999 Rent Act.

13. The provisions of repeal and savings under Section 70 of the 1999 Rent Act, particularly provisions of Section 70(1) and (2) are set out below:

“70. Repeal and Savings.- (1) The Karnataka Rent Control Act, 1961 (Karnataka Act 22 of 1961) is hereby repealed.

(2) Notwithstanding such repeal and subject to the provisions of section 69,- (a) all proceedings in execution of any decree or order passed under the repealed Act, and

pending at the commencement of this Act, in any Court shall be continued and disposed off by such Court as if the said enactment had not been repealed;

(b) all cases and proceedings other than those referred to in clause (a) pending at the commencement of this Act before the Controller, Deputy Commissioner, Divisional Commissioner, Court, District Judge or the High Court or other authority, as the case may be in respect of the premises to which this Act applies shall be continued and disposed off by such Controller, Deputy Commissioner, Divisional Commissioner, Court, District Judge or the High Court or other authority in accordance with the provisions of this Act.

(c) all other cases and proceedings pending in respect of premises to which this Act does not apply shall as from the date of commencement of the Act stand abated.”

14. The learned counsel for the appellants urged that in view of the provisions of Section 2(3)(e)(i) of the 1999 Rent Act, the decision of the Small Causes Court is bad in law and cannot be sustained.

15. In order to appreciate these controversies the relevant Section is set out below.

“2(3) Nothing contained in this Act shall apply,- (a) xxx (b) xxx (c) xxx (d) xxx (e) to any premises, deemed rent on the date of commencement of this Act or the standard rent of which exceeds,- (i) three thousand five hundred rupees per month in any area referred to in Part A of the first schedule; and (ii) xxx”

16. The learned counsel for the appellants submitted that the non-applicability of the 1999 Rent Act is only on the basis if in the tenanted premises the deemed rent or the standard rent exceeds Rs.3500/- on the date of commencement of the new Act of 1999 Rent Act.

“It was urged that such standard rent is one which is fixed under Section 7 of the Act and it was argued that merely because the agreed rent is Rs.4000/- per month in respect of the schedule premises, the Small Causes Court should not have allowed the application of the tenant.”

17. In order to decide this controversy, the provisions of Sections 6 and 7 of the 1999 Act are to be taken into consideration. Provision of Sections 6 and relevant provisions of Section 7 of the said Act are set out below.

“6. Rent payable.- (1) The rent payable in relation to a premises shall be,- (a) the rent agreed to between the landlord and the tenant as enhanced in the manner provided in the Third Schedule; or (b) the standard rent specified under section 7, as revised under section 9.

(2) In the case of a tenancy entered into before the commencement of this Act, the landlord may, by notice in writing to the tenant within three months from the date of such commencement, enhance the rent as specified under section 7, and the rent so enhanced, shall be payable from the date of such commencement.

7. Standard rent.- (1) Standard rent in relation to any premises, shall be the rent calculated on the basis of ten per cent per annum of the aggregate amount of the cost of construction and the market price of the land comprised in the premises on the date of commencement of the construction:

Provided that the standard rent calculated as aforesaid shall be enhanced in the manner provided in the Third Schedule.

(2) For the purpose of this section,- (a) cost of construction shall include cost of electrical fittings, water pumps, overhead tanks, storage tank and other water, sewerage and other fixtures and fittings affixed in the premises;

(b) in case any fixture and fittings referred to in clause (a) are in common use by more than one occupant in a building, such proportion of cost of the fixtures equipment and fittings shall be included in the cost of construction of the premises as bears proportion to the plinth area of such premises to the plinth area of that building;

(c) the cost of construction shall be the actual amount spent on construction, and in a case where such amount cannot be ascertained, such cost shall be determined as per the scheduled rates of the State Public Works Department for cost of construction for similar construction for the year in which the premises was constructed;

(d) the market price of the land shall be the price for which the land was bought as determined from the deed of sale registered under the Registration Act, 1908 (Central Act 16 of 1908), if construction commenced in the year of registration or the land rates notified by the State Government or a local authority for the year in which construction was commenced, whichever is higher;

(e) the land comprised in the premises shall be the plinth area of the building and such of the vacant land up to fifty per cent, of the plinth area as is appurtenant thereto;

(f) in a case where a premises forms part of a building having more than one premises, such proportion of price of land forming part of such building shall be taken to be the market price of the land comprised in the premises as is equal to the proportion of the plinth area of such premises to the plinth area of that building;

(g) notwithstanding anything contained in clauses (c) and (d), the cost of construction and the market price of the land comprised in the premises purchased from or allotted

by the Government or a local authority shall be the aggregate amount payable to such Government or the local authority for the premises:

Provided that the Controller may, for the purpose of arriving at, the cost of construction and the market price of the land comprised in the premises, allow in addition, subject to a maximum of thirty per cent of amount payable to the Government or the local authority, to the amount so payable for any expenditure incurred by the landlord or by the first or any subsequent purchaser or allottee for any improvement, addition or structural alteration in the premises.”

18. The Hon'ble High Court did not accept the contention of the appellants and dismissed the revision petition filed by the appellants.

19. We are also inclined to agree with the view taken by the Hon'ble High Court for the reasons indicated below.

20. The 1999 Rent Act (Karnataka Act 34 of 2001) was brought into existence to remedy problems of urbanisation and to give protection of this only to certain categories of tenants and in respect of some kinds of tenanted premises.

“Before enacting this law, recommendations of Economic Administration Reforms Commission and the National Commission on Urbanisation were considered.”

21. On the recommendations of those two commissions, this new legislation was brought in to balance the interests of both the landlord and the tenant and the new law was to provide for regulation of rent and eviction in the spirit of modern economy and it was designed to replace the 1961 Rent Act.

22. From the statement of objects and reasons some of the features of the 1999 Rent Act are clear. The application of the Act is restricted to,-

“(i) to any residential building the Standard rent of which does not exceed rupees 3,500 per month in the areas covered by Karnataka Municipal Corporation Act, 1976 and rupees 2,000 per month in other areas and a commercial building having plinth area of not exceeding 14 square meter.

(ii) to buildings which are more than 15 years old.

(2) The Rent Deed is required to be in writing and registered.

(3) Tenancy is made inheritable to a limited extent.

(4) Provision is made,- (a) for collection of standard rent in relation to the investment on property and for enhancement of rent, and for determination of Standard Rent by Rent Controller;

(b) for registration of middlemen and estate agents;

(c) for adjudication of eviction application by Rent Courts, with only Right of Revision, but no appeal;

(d) for immediate eviction of tenants of State or Central Government Employees, members of Armed Forces, widows, handicapped persons and persons above the age of 65 years under certain circumstances;

(e) to laydown Special Procedure for trial of cases before the controllers and also the Courts so as to achieve quick disposals and negotiated settlement.

(f) to impose certain Special obligations on the landlords and tenants, etc.”

23. Therefore 1999 Rent Act is a socio-economic legislative measure and is designed to give protection to certain classes of tenants. A tenant who is paying deemed rent or standard rent above Rs.3500/- in respect of his tenanted premises on the day of commencement of the new Act is outside the purview of the Act.

24. Under Section 6 of the Act, set out hereinabove, rent payable in respect to the premises is the rent agreed between the landlord and tenant as enhanced in the manner provided in the Third Schedule or the standard rent as specified under Section 7 and revised under Section 9.

25. Insofar as deemed rent on the date of commencement of the Act is concerned, the same has been explained under Explanation to Section 2(3)(e) which is set out below.

“Explanation.- "Deemed rent on the date of commencement of this Act"

shall be the rent calculated in the manner provided in section 7, together with revision, if any, as provided in section 9 and decreased in the case of premises constructed after the commencement of this Act at the same rate as the rate of enhancement stipulated in the third Schedule to reflect the position on the date of commencement of this Act”

26. A perusal of the said Explanation would show that the deemed rent refers to Sections 7 and 9 of 1999 Rent Act.

27. In the instant case, the agreed rent is Rs.4000/- which comes within the definition of Section 6(1)(a) and the said agreement was admittedly entered into between the appellants and respondents prior to the commencement of the 1999 Rent Act.

28. In a case where there is an admitted agreed rent, the question of fixation of standard rent does not arise.

29. An explanation to a Section should normally be read to "harmonise with and clear up any ambiguity in the main Section" and normally not to widen its ambit. (See *Bihta Co-operative Development and Cane Marketing Union Ltd., and another vs. Bank of Bihar and others*<sup>1</sup> and *M/s. Oblum Electrical Industries Pvt. Ltd., Hyderabad vs. Collector of Customs, Bombay*<sup>2</sup>).

30. In the instant case the agreed rent is the deemed rent since there is no dispute about the quantum of agreed rent before the coming into force of this Act.

31. For the reasons aforesaid, this Court does not find any error in the reasoning of the High Court and the appeal is accordingly dismissed.

No order as to costs.

<sup>1</sup>*AIR 1967 SC 389 at page 393*

<sup>2</sup>*AIR 1997 SC 3467 at page 3471*