

MYSORE HIGH COURT

Siddappa Adiveppa

Vs

Venkatesh Raghavendra Hubballi

Civil Revn. Petn. No. 1375 of 1962, Civil Appeal No. 260 of 1960

(A.R. Somnath Iyer and B.M. Kalagate, JJ.)

28.02.1964

JUDGMENT

Somnath Iyer, J.

1. This revision petition is before us consequent on a reference made to this Bench under Section 8 of the Mysore High Court Act.

2. The petitioner is the tenant who was sued by the landlord who is the respondent for possession and rent, which, according to the landlord had fallen due for a period of three years. There were many contentions urged by the tenant. There was a decree for eviction made by the Civil Judge which was confirmed by the lower appellate Court. But the decree for rent was for a smaller sum of money than that claimed by the landlord. Whereas the landlord claimed a sum of ₹ 207-50 nP. the decree was for ₹ 98-42 nP.

3. The suit was instituted on April 12, 1959 and was preceded by the issue of a notice Exhibit 37 on February 9, 1959. The tenant was informed. by that notice that he was a defaulter for a period of three years and that the rent of ₹ 300/- was due from him and that his tenancy was terminated, and that he should deliver possession by the end of the month failing which he would be sued for possession and rent. The principal reason why this revision petition was referred to a Bench was, that whereas according to the pronouncement of the Supreme Court in *Punjatal v. Bhagwatprasad*¹, in the case of a contractual tenancy the termination of the tenancy by a notice issued under Section 106 of the Transfer of Property Act was as necessary as a demand for payment of the rent in arrears under Section 12(2), of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 which will be referred to as the Bombay Rent Act, there are two decisions of this Court in *Shrinivas Annappa v. Dhondoba Balakrishnappa*², and in *Shankarappa Gurupadappa v. Rayappa*³, which may be understood as expressing a contrary view.

4. The argument advanced in this revision petition by Mr. Kothawale is that since the

¹ AIR 1963 SC 120

³1961-39 Mys LJ 340

tenancy, between the parties was admittedly a contractual tenancy, a notice determining the tenancy issued under Section 106 of the Transfer of Property Act should have been issued by the landlord, and that not having been done, the suit brought by the landlord was unsustainable and the tenant could not be evicted.

5. Mr. Kothawale did not dispute and indeed, he could not have been successful in disputing it that by the notice Exhibit 37 the landlord did, terminate the tenancy, and that one part of that notice is really a notice which is enjoined by Section 106 of the Transfer of Property Act since by that part of the notice the landlord did give notice to the tenant terminating the tenancy and giving him fifteen days notice expiring with the end of the month of the tenancy. But it was maintained by Mr. Kothawale that Exhibit 37 when properly understood, is no more than a mere notice under Section 12(2) of the Bombay Rent Act and really not a notice under Section 106 of the Transfer of Property Act. It was further urged that if Exhibit 37 could be understood as a notice under Section 106 of the Transfer of Property Act, then it should follow that it was not the notice required by Section 12(2) of the Rent Act and that in either event the suit was not preceded by one of the two steps which were statutorily prescribed.

6. It is now clear from the pronouncement of the Supreme Court in Punjalal's Case, AIR 1963 SC 120 that a landlord who wishes to sue his tenant in the case of a tenancy governed by the Bombay Rent Act must first terminate the tenancy under Section 111 of the Transfer of Property Act which he could do by the issue of the notice prescribed by Section 106 of that Act. It was also further elucidated that the stage at which the notice enjoined by Section 12(2) of the Bombay Rent Act becomes relevant is the stage which is attained after the termination of the tenancy by the notice prescribed by the Transfer of Property Act.

7. It is on the basis of this pronouncement that Mr. Kothawale urged that Exhibit 37 must really be understood as a notice issued under Section 12(2) of the Act even before there was the termination of the tenancy by the issue of the notice under the Transfer of Property Act. The stress of the argument was on the fact that Exhibit 37 opened with the allusion to the tenant being a defaulter for over a period of three years and that he should pay the sum of ₹ 300/- due from him by way of arrears. That part of the notice which Mr. Kothawale characterizes as a notice issued under Section 12(2) of the Rent Act was too prematurely given, since before that demand was made, there was no determination of the tenancy. In regard to that part of the notice by which the landlord intimated the tenant that the tenancy had been terminated, although it was not disputed that that part of the notice was really a notice under Section 106 of the Transfer of Property Act, the criticism made was that after the issue of that notice if it can be treated as one issued under Section 106 of the Transfer of Property Act, the landlord was bound to wait for a period of 15 days which was the period specified in the notice and then alone could make a demand under Section 12(2) of the Bombay Rent Act.

8. This argument was maintained to support the contention that the two notices which a landlord must issue under Section 106 of the Transfer of Property Act and Section 12(2) of the Bombay Rent Act could not be used simultaneously or by one and the same document but that there should be two independent notices one following the other.

9. I have no doubt in my mind that Exhibit 37 incorporates both the notices which the land lord was required to give the tenant in this case. Part of it was a notice under Section 106 of the Transfer of Property Act intimating the tenant by 5 days notice expiring with the end of the month of the tenancy that his tenancy had been terminated. By the other part of it the landlord demanded the payment of the arrears of rent due from the tenant.

10. The question is whether these two notices could not have been issued to the tenant simultaneously and by one document as the land-lord did in this case. If we can accede to the contention that the landlord must first determine the tenancy by a notice under the Transfer of Property Act and then allow the period of 15 days specified in that notice to expire and then alone can make a demand by notice issued under Section 12(2) of the "Bombay Rent Act, it become clear that Mr. Kothawale's argument can have no answer. If that is what the law requires the landlord to do, a notice under Section 12(2) can never be combined with, a notice under Section 106 of the Transfer of Property Act.

11. But I do not find it possible to say that there is anything either in the Transfer of Property Act or in the Bombay Rent Act which requires the landlord to first issue a notice under Section 106 of the Transfer of Property Act and then to wait until the period specified in that notice expires before he can issue a notice under Section 12(2) of the Rent Act. As explained in Punjalal's case, AIR 1963 SC 120, the two steps which are necessary before a landlord can sue as tenant who enjoys protection of the Rent Act are that there should be a determination of the tenancy and a demand under Section 12(2) of the Rent Act. There is nothing in the judgment of the Supreme Court in Punjalal's case AIR 1963 SC 120 which makes it necessary for the landlord to wait for the expiry of the period of 15 days specified in Section 106 of the Transfer of Property Act before he issues a notice required by Section 12(2) of the Bombay Rent Act.

12. That it is hardly necessary for the landlord to wait in that way is clear from the fact that whereas a notice under the Transfer of Property Act is necessary to bring about the termination of the relationship of landlord and tenant, the notice under the Rent Act has for its object the protection of the tenant who is required to be given a notice so that he may have an opportunity to pay the rent within the period specified in Section 12(2) of the Rent Act.

13. That being the true purpose of the two notices, what a Court has to do when a suit is brought for the eviction of a tenant is to address itself to two matters. What it has first to do is to satisfy itself that the tenancy is one in which a notice determining the tenancy is necessary and if so whether that notice has been issued under the Transfer of Property Act. What it should next do is to address itself to the second question whether the institution of the suit has been preceded by the notice prescribed by Section 12(2) of the Rent Act and whether the suit has been brought after the expiry of the month specified in that sub-section. If both these steps had been taken by the landlord, the Court cannot but consider the suit as having been properly brought and proceed to adjudicate upon it. There is nothing in the Rent Act which impedes the issue of a statutory notice under Section 12(2) of the Act until the determination of the tenancy has become effective after the expiry of the period specified in the Transfer of Property Act.

14. Mr. Kothawale, however, asked attention to certain passages in Punjalal's case, AIR 1963 SC 120, which, according to him, supported his submission that a notice under Section 12(2) of the Rent Act could not be issued until there was an effective determination of the tenancy. The first

passage on which Mr. Kothawale depended is at page 125 of the report which reads :

"In this context, it is clear that the provisions of Section 12 deal with the stage of the recovery of possession and not with the stages prior to it and that they come into play only when the tenancy is determined and a right to possession has come in existence."

The second passage which is also on that page reads :

"We are therefore of opinion that so long as the contractual tenancy continues a landlord cannot sue for the recovery of possession even if Section 12 of the Act does not bar the institution of such a suit, and that in order to take advantage of this provision of the Act he must first determine the tenancy in accordance with the provisions of the Transfer of Property Act".

The third is at page 124 and it is this :

"This means that the provisions of the Act did not affect the terms of the lease according to which the lease came to an end after the expiry of the period for which it was given. The lessee's possession after the expiry of the lease was by virtue of the provisions of the Act and not by virtue of the extension of the period of the lease. It is a necessary consequence of this view that the restriction on the landlords's right to recover possession under Section 12 of the Act operates after he has determined the tenancy and that till then the rights between the parties with respect to eviction would be governed by the ordinary law."

15. These passages, in my opinion, mean no more than that the provisions of Section 12(2) and their observance have relevance only if there has been a determination of the contractual tenancy by a notice under Transfer of Property Act. They do not indicate the sequence in which the notices have to be issued and do not indicate that a landlord must first issue a notice under Transfer of Property Act and wait for the expiry of the period specified in it and then issue second notice under Section 12(2) of the Bombay Rent Act.

16. In my opinion so long as the two notices in cases where they are necessary have both been issued before the date of the institution of the suit, it does not make any difference that those two notices were issued simultaneously or by one and the same document. The determination of the tenancy by a notice under the Transfer of Property Act and the demand for rent which is required by Section 12(2) of the Act are two independent acts to be performed' in manner enjoined, the occasion for the performance of the one being not dependent to any extent upon the performance of the other in the first instance. The decision in Punjalal's case, AIR 1963 SC 120 makes it clear that the right created by the issue of the notice under the Transfer of Property Act is a right to possession whereas the right created by the issue of the notice under Section 12(2) of, the Rent Act is the right to recover possession. If the right to possession accrues from the issue of the notice under the Transfer of Property Act, whether that right has accrued or not is what has to be examined when the suit is brought. Likewise if the right to recover possession is what comes into

being, by the issue of the notice under Section 12(2) of, the Rent Act, the occasion for the investigation into the question whether that notice is issued is also the occasion when the suit is brought.

17. It is clear from Punjalal's case, AIR 1963 SC 120 that what the Supreme Court decided and intended to decide was that there can be no eviction unless these two notices are issued and not that notice under Section 12(2) of the Rent Act cannot be issued until after the termination of the tenancy has become effective.

18. I am not impressed by the submission that the effect of the decision in Punjalal's case, AIR 1963 SC 120 is that the period of one month prescribed by Section 12(2) of the Rent Act is enlarged to a period of one month and fifteen days of which the period of 15 days is the period specified in Section 106 of the Transfer of Property Act. In my opinion it is correct to say that the total period to the benefit of which the tenant is entitled by reason of the statutory insistence upon the two notices should not be less than a month in any given case. So, if a landlord issues a notice terminating the tenancy and simultaneously issues a notice demanding the arrears, the only protection to which the tenant would be entitled is that no suit shall be brought before the expiry of the period of one month referred to in Section 12(2) of the Rent Act since the period of 15 days would have meanwhile also expired.

19. What I have said so far negatives the contention that there can be no simultaneous notices under the two statutory provisions and that it is permissible to issue both notices at one and the same time. If that is so, it is hardly reasonable for any one to contend that those notices should be by two independent documents. There is nothing; either in the Transfer of Property Act or in the Bombay Rent Act requiring the landlord to issue the notice required by the Transfer of Property Act engrossing it on one piece of paper and issue another notice under Section 12(2) of the Rent Act writing it on another piece of paper. Likewise, there would be small reason for thinking that the notices should be forwarded in different envelopes. The notices required are intimations to the tenant and it matters very little whether those intimations are conveyed through same document or through different documents.

20. The view that I take receives support from a recent decision of the Special Bench of the High Court of Calcutta in *Surya Properties Private Ltd. v. Bimalendu Nath*⁴, in which the Chief Justice and the five Judges of that High Court each one of whom

⁴ AIR 1964 Cal 1

prepared a separate judgment, had no hesitation in coming to the conclusion that the decision in Punjalal's case, AIR 1963 SC 120 does not prohibit the combination of a notice under the Transfer of Property Act with a notice under Section 12(2) of the Bombay Rent Act. With this view, I respectfully agree.

21. In the view that I take, it becomes clear that the notice Exhibit 37 cannot be assailed as defective.

22. The only other contention urged was that the courts below neglected to deduct from the sum of money for which they made a decree for rent, a sum of ₹ 10/- which had been waived by the landlord through his purshis Exhibit 38 which he produced to the Court of the Civil Judge in the

course of the proceedings. It seems to me that this complaint has really no substance. The landlord claimed that he was entitled to a sum of ₹ 207-50 nP. out of which he remitted ₹ 10/-. The Civil Judge came to the conclusion that what was payable to the landlord was only a sum of ₹ 98-42 nP. Mr. Kothawale contended that out of this ₹ 98-42 nP. the sum of ₹ 10/- remitted by the landlord should have been deducted. This is an impossible argument to advance. The clear meaning of the purshis of the landlord was that out of a sum of ₹ 207-50 nP. he had given up a sum of ₹ 10/- which means that if a sum of ₹ 207-50 nP. was found due to the landlord, he would be willing to receive a smaller sum, namely, ₹ 197-50 nP. The purshis certainly does not mean that if the landlord was found to be entitled to a smaller sum of ₹ 197-50 nP. he should still be compelled to deduct a sum of ₹ 10/- out of the smaller sum of money.

23. Before concluding we should notice a submission made by Mr. Krishnaswamy, the learned Advocate for the landlord. He asked us to say that there is really no conflict between the view expressed by this Court in 1958-36 Mys LJ 858 : AIR 1959 Mysore 87, and 1961-39 Mys LJ 340 and that expressed by the Supreme Court in Punjalal's case, AIR 1963 SC 120. Mr. Krishnaswamy's submission was that Punjalal's case, AIR 1963 SC 120 was a case of contractual tenancy and he is right in making that submission. But it is clear from the decision in Punjalal's case, AIR 1963 SC 120 that a notice determining a tenancy under the provisions of the Transfer of Property Act is necessary in all cases where the tenancy created by the parties subsists and has not disappeared either by termination or otherwise, an instance of which is a contractual tenancy which has not been terminated by notice. But if the tenancy does not subsist but has come to an end by a process known to law and the tenant is in, possession because he is a statutory tenant enjoying the protection afforded to him under a law like the Bombay Rent Act, it is manifest, as can be seen even from the pronouncement in Punjalal's case, AIR 1963 SC 120 that a determination of the tenancy by a notice under the Transfer of Property Act would hardly be necessary. It is however, clear that the view expressed by this Court in the two cases referred to above that no proceeding for eviction under the Bombay Rent Act need be preceded by the termination of the tenancy by a notice under Section 106 of the Transfer of Property Act can no longer hold the field after, the pronouncement of the Supreme Court in Punjalal's case AIR 1963 SC 120.

24. This revision petition is dismissed. But there will be no order as to costs.

Kalagate, J.

25. I agree.

Revision dismissed.