

Smt. Peryakkal and ors. Vs. Smt. Dakshayini and anr.

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Court : Karnataka

Decided On : Mar-02-1971

Reported in : AIR1971Kant259; AIR1971Mys259; (1971)1MysLJ428

Judge : H.B. Datar, J.

Acts : Mysore Rent Control Act, 1961 - Sections 21, 29 and 29(4)

Appeal No. : Civil Revn. Petn. No. 2066 of 1970

Appellant : Smt. Peryakkal and ors.

Respondent : Smt. Dakshayini and anr.

Advocate for Def. : S.C. Javali, Adv.

Advocate for Pet/Ap. : S.K. Bopaiah, Adv.

Disposition : Petition dismissed

Judgement :

1. Petitioners in this revision petition are the heirs and legal representatives of the deceased tenant. An application for eviction has been filed by the landlord under the provisions of the Mysore Rent Control Act, 1961, hereinafter called the Act As the tenant did not pay the agreed and undisputed rent that he was obliged to pay even during the pendency of the eviction proceedings, the landlord made an application under Section 29(1) and (4) of the Act. The said application has been

granted and so the petitioners have approached this court challenging the legality and correctness of the said order.

2. Only two objections were raised in the Court below, namely, that the provisions of the 1961 Act are inapplicable to the premises in question and that an order under Section 29 of the Act should not be passed without first directing payment of arrears of rent and giving an opportunity to the petitioners to pay the same. It is these very objections that were negatived by the court below, have been again urged before me in this revision petition.

3. It is not disputed that the subject-matter of lease is an open space, which has been let out for carrying on business. In the petition it has been stated as for non-residential purpose, i.e., for doing business of Motor Body building. Section 3 (a) of the Act defines 'building' and Section 3 (n) defines 'Premises'. According to the definition 'Premises', means: (i) a building as defined in Clause (a); (ii) any land not used for agricultural purposes. Part V of the Act deals with the control of eviction of tenants and obligation of landlords. Section 21 of the Act states that no order or decree for the recovery of possession 'of any premises' shall be made by any court or other authority in favour of the landlord against the tenant, unless the conditions laid down are satisfied. The provisions of Section 21 are applicable to any premises and not merely to building. Section 29 states that no tenant against whom an application for eviction has been filed under Section 21, shall be entitled to contest the proceedings etc. It may be seen that Section 29 is attracted in all cases where eviction is sought. The result is that even regarding premises, in question provisions of Section 29 are attracted. (Underlining is mine).

4. The learned Advocate for the petitioners cited before me the decision of this Court reported in (1965) 2 Mys LJ 596. The said decision deals with the question of fixation of fair rent under the 1961 Act, and it was held that the fair rent cannot be fixed re: vacant land. The fact that the Legislature did not provide for fixation of fair rent does not mean that even for eviction no provision has been made.

5. On the other hand, the judgment of the High Court of Bombay in : AIR1957 Bom94 and that of the Supreme Court in : [1962]3SCR928 , have considerable bearing on the point in controversy. While considering the similar provisions in the

Bombay Bents, Hotel and Lodging House Rates Control Act, 1947, it was held that lease of an open plot of land for the purpose of building etc., attracts the provisions of the Act. Section 5 (8) of the Bombay Act defines 'premises' as meaning land used for non-agricultural purpose etc., an open plot not used for agricultural purpose was therefore held as satisfying the requirement. This view of the Bombay High Court has been approved in the Supreme Court decision referred to above. The resulting position is that so far as the eviction of tenants is concerned, tenants of even open space are covered by Section 21 of the Act and so Section 29 of the Act is attracted. The contention advanced that the provision of the 1961 Act is inapplicable is rejected.

6. As regards the second contention advanced by Sri Bopaiah, learned counsel for the petitioners, is concerned, it may be seen that the petitioners have admitted that they have not paid either arrears of rents which accrued prior to the filing of the application or the rents which have been fallen due subsequent to the date of the petition. The petitioners have not stated any reasons for non-payment of the rents. Under Section 29 (1) of the Act, tenant is precluded from contesting the proceedings unless he has paid or deposited the rents which have fallen due during the pendency of the proceedings. Section 29 (4) of the Act enjoins the Court to stop all further proceedings and make an order directing the tenant to put the landlord in possession of the premises unless the tenant shows sufficient cause to the contrary. As the teamed Judge has remarked in the present case, the tenant has not shown any cause as to why the proceedings should not be stopped.

7. The petitioners' counsel relied upon the judgments of this court in support of his contention that the court should give some opportunity to pay the rent and since the opportunity has not been given that opportunity should now be made available to him. The first judgment relied upon by him is C. H. P. No. 76 of 1970, D/- 18-9-1970 (Mys). In the said case, it is important to note that the tenant disputed the quantum of rent that he was liable to pay and there was also dispute with regard to the advance amount of Us. 500/- which was with the landlord. It was challenged before this Court that the Munsiff who came to the conclusion that certain amount was still due, without giving an opportunity directing the payment of rent which was

found due by the Court, straightway an order was passed under Section 29 (4) of the Act; the provision of Section 29 (3) was over-looked. It is in these circumstances, this Court held as here-under;

'... Having come to that conclusion the court below straightway proceeded to make an order under Section 29 without giving time to the tenant to deposit the amount held as due. The procedure adopted by the Court below, in my opinion, is clearly illegal. Sub-section (3) of Section 29 provides that 'where there is any dispute as to the amount of rent to be paid or deposited under Sub-section (1), the Court shall, on application made to it either by the tenant or the landlord and after making such enquiry as it deems necessary determine summarily the rent to be so paid or deposited.'

These observations are totally inapplicable to the facts of the present case. The second decision referred to is the Judgment in C. E. P. No. 666 of 1969, D/- 24-11-1969 (Mys). In that case, the trial Court passed an order under Section 29 (4) of the Act and that order was challenged before this Court. In paragraph 3 of the judgment of this court it was stated that:

'The scheme envisaged by sub-section (4) of Section 29 is that the tenant should have an opportunity of paying the arrears of rent and paying subsequent rent from month to month as and when such rent falls due as required by Sub-section (1) of Section 29. If the tenant fails to pay the rent in the manner prescribed in sub-section (1) of Section 29, then he has to show cause as to why an order for stoppage of proceedings or eviction should not be passed against him.'

After this principle was laid down, the Court came to the conclusion that non-payment of subsequent rent because of certain misconception of law was unacceptable and further the ground that was made out before this Court showing cause, being not the ground before the court below, the tenant could not urge those contentions before this court and accordingly this court held that the order of the learned Munsiff was perfectly good and the revision application was dismissed. I am not able to see how the Judgment of this court referred to above is of any assistance to the petitioners. On the contrary, it is against the contentions advanced by the petitioners' counsel. The petitioners in the present case also do

not show any cause in the court below and advanced some new contentions before the Court showing reasons for non-payment of rent. In the objection statement filed to the application filed under Section 29, in paragraph 1, it has been stated that 'It is true that these respondents are tenants of the Schedule premises but it is not true that they are due in a sum of Rs. 2,175/- as alleged.' Barring this, there is not one word in the entire application as to why that amount was not paid. On the contrary, the landlord stated how the rent of Rs. 2,175/- has been arrived at.

8. Under the circumstances, I find that there is no good ground to set aside the order of the court below. The revision petition is accordingly dismissed. Having regard to the fact that the petitioners are carrying on business in the premises, I grant six months time to the petitioners to vacate the premises.

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