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**Saroja Vs. Krishnamurthy**

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**SooperKanoon Citation** : sooperkanoon.com/382738

**Court** : Karnataka

**Decided On :** Dec-19-1991

**Reported in** : ILR1992KAR1138; 1991(3)KarLJ248

**Judge** : Shivashankar Bhat, J.

**Acts** : Karnataka Rent Control Act, 1961 - Sections 21(1) and 21(4)

**Appeal No.** : C.R.P. Nos. 450 and 3076 of 1991

**Appellant** : Saroja

**Respondent** : Krishnamurthy

**Advocate for Def.** : Kumar & Kumar

**Advocate for Pet/Ap.** : B. Palakshiah, Adv.

**Judgement** :
ORDER

**Shivashankar Bhat, J.**

1. CRP No. 3076/1991 is by the tenant against the partial order of eviction made by the trial Court, while CRP. No. 450/91 is by the land lady against the order denying her the benefit of the entire premises.

2. The landlady sought eviction of the tenant from the schedule premises on the grounds that she required the schedule premises for her own use and occupation and her requirement is reasonable and bonafide; she also alleged that the tenant had acquired vacant possession of another premises of his own, which is suitable for the residence of the tenant. The landlady averred in her eviction petition that during the life time of her husband the premises was built by him raising handloans from his friends and also by borrowing from the L.I.C. and in order to clear the loan, he had to lease the premises to the respondent-tenant on a monthly rent of Rs 325/-, with an understanding that the tenant should vacate the premises in five years and the lease was during the year 1974, The husband of the landlady died in January 1979. Inspite of repeated requests by her, the tenant postponed the handing over of the Premises, The landlady is residing in the outhouse in the same compound, having only asbestos sheet as its roof and the outhouse measures only about 5 squares. It has only, a bedroom, a hall, kitchen, dining hall, pooja room and a toilet. It was earlier used to keep horses and is aged about 100 years. Landlady has two major sons and one daughter. The sons are employed and are of marriageable age. The daughter was in the Engineering College. The sons are having two wheelers which require space to keep them in safety. The outhouse cannot be renovated; the accommodation therein is wholly insufficient, The premises in question has three bed rooms, a verandah, a hall, a dining hall, kitchen, pooja room, a bath and a toilet, This additional accommodation in this schedule premises is claimed by the landlady. According to her, the tenant owned house in Sultanpet, having two floors, having sufficient accommodation for the tenant, of which he acquired vacant possession after evicting his tenant under a compromise order.

3. The tenant denied several assertions of the landlady, and asserted that the accommodation available to her in the outhouse was sufficient, The Sultanpet premises was available to the tenant even at the time he obtained the schedule premises on lease and the said Sultanpet premises was not suitable for him; the ground floor is used by his three sons for their business in provisions and the first floor was being used for the cleaning and packing processes; he also asserted that those sons of the tenant were sleeping in the said Sultanpet building. The tenant has 9 sons and 2 daughters, out of whom 2 sons were studying in the

College situated near the schedule premises. The tenant being a retired person and was more than 87 years of age, is not in a position to pay higher rent by taking another house on lease. It is unnecessary to refer to other averments.

4. The trial Court held that Sultanpet premises was not suitable for the tenant's occupation; as the space available there, was insufficient; further, Sultanpet being a busy commercial area, with its noise and pollution, it was not suitable for the residence of a retired person like the present respondent-tenant. Though the requirement of the landlady was reasonable and bonafide and a case was made out by the landlady under Section 21(1)(h), the trial Court held that tenant would suffer greater hardship by an order of eviction from the entire premises, and this could be avoided by ordering eviction of the tenant from two rooms, which would be sufficient to meet the requirement of the landlady.

5. The learned Counsel for the landlady contended before me that the tenant has exhibited an unreasonable attitude in the instant case; that he having obtained a residential premises of his own after evicting his tenant should not have any hesitation to vacate the schedule premises. The learned counsel for the tenant however, urged that the Sultanpet premises was not only unsuitable, but also insufficient for the respondent's family,

RE. SECTION 21(1)(p):

6. It was contended by the learned Counsel for the landlady that Sultanpet premises belonged to the family of the tenant wherein he was residing earlier, but subsequently leased out to one Gunjikar. In the nearby premises, respondent-tenant's brother is still residing. In the year 1987, the respondent filed an eviction petition against his tenant (Gunjikar) inter alia asserting that: 'his family consists of himself and his 11 (eleven) children. Out of them, two are daughters and the remaining nine are sons. Out of the two daughters, the elder daughter is married and she is living with her husband comfortably at Banashankari II Stage. The other daughter is studying in II year B.Com., and is yet to be married. Among the nine sons, three of them are married. The first and the third sons have got two children and a child respectively. The accommodation available to them at present in the rented premises is hardly sufficient to meet the just needs of the family. Therefore

these married sons are constrained to take alternative premises at exhorbitant rents at different places at Bangalore. Even for the remaining children, the accommodation available in the rented premises is highly inadequate. Among the seven children, who are residing with the petitioner, four are studying in colleges and High Schools. Thus, there is absolutely no accommodation available in the rented premises for their studies.'

'The unmarried three children of the petitioner, in the month of September 1986, have started business under the name and style of 'Champak Traders and Agencies' in the shop premises situate just below the schedule premises. The rented premises where they are residing, is at a distance of about 6 kms from the schedule premises. As they are dealing in pulses and grains, they are keeping the shop premises open from morning (8 a.m.) to night (9 p.m.). Considering the nature of the business, it has become very difficult for those sons, who are depending on the business, to visit the house for taking their timely food.'

'Therefore, the petitioner humbly submits, the schedule premises which is a non-residential one, is suitable and convenient for having his establishment there, and therefore he bona fide and reasonably requires the schedule premises for his self occupation. The schedule premises is suitable and sufficient for his needs.'

Thereafter, it was stated that the requirement of the present respondent and his family members was bona fide and reasonable and that his tenant who has been residing in the said Sultanpet premises for the last 30 years has agreed to vacate the same out of sympathy towards the needs of the respondent. This ended in a compromise and the Court ordered eviction of Gunjikar. In the second para of eviction petition filed by the respondent, he has stated that his tenant was in occupation of the first floor of the residential premises at Sultanpet From these averments, it was urged that the respondent having obtained possession of the Sultanpet premises for his own occupation, cannot now contend that it was not suitable to him.

7. A careful reading of the Eviction Petition filed against Gunjikar by the respondent does not convey the meaning attributed to the said petition by the learned Counsel for the landlady. The respondent stated that having regard to the

number of members in his family, the present accommodation was not sufficient and that his unmarried children were carrying on their business in the ground-floor of Sultanpet premises which is 6 kms away from the place of Their present residence. Thereafter, he calls the Sultanpet premises as a non-residential one and was 'suitable and convenient for his establishment there'. In other words, the basic requirement put forth was that the said Sultanpet premises was required for business purposes. It is true that Gunjikar used it for residential purposes; but, respondent did not claim it for his residential purposes only. It has come on record that this first floor of Sultanpet premises consists of one hall and two rooms only, which are now being used for cleaning and packing purposes of the provisions dealt with by the sons of the respondent in the ground floor; these sons were also using it for stocking their goods. The trial Court has found that the accommodation available in this Sultanpet premises was inadequate to the requirements of the respondent and therefore it was not suitable. The respondent as R.W.1 has also stated that this premises of Sultanpet is in a highly commercial locality and not fit for comfortable living. He said:

'Prior to the year 1962 I was residing in that building. I left that premises because there was a heavy traffic and that area became a commercial area and my children could not study. My property No. 176 faces Old Tharagupet road. This area of Old Tharagupet is a business centre for wholesale grain of Bangalore City. It is also a center of papers. There is heavy traffic in day and night in this area. The colleges and schools are not near the Old Tharagupet area and as such not suitable for education.

After 1962 I occupied a rented premises at Visveswarapuram and thereafter Shankarapuram and from 1974 I am residing in PSP.

I cannot reside and occupy first floor of my premises at Tharagupet on health ground and for the children's education. Without cleaning section business cannot be done in the ground floor. So also case of storing. My sons come to my house for taking meals at day time and also in the night time.'

It is his further case that he has been under medical treatment and Dr. Maiya of Jayanagar was his Doctor for the last 5 years.

Section 21(1))(p) of the Act reads:

'that the tenant whether before or after the coming into operation of this Part has built, or acquired vacant possession of, or been allotted a suitable building.'

Acquisition of vacant possession of a suitable building by the tenant has to be established as a ground for eviction under Section 21(1)(p). Mr. Kumar contends that in the instant case, there was no acquisition of any building by the tenant, because, ownership of the building at Sultanpet vested in the tenant even before he took on lease the schedule premises; according to the learned Counsel, the words 'acquired vacant possession' connote the idea of vesting of a higher right such as ownership, or a higher interest in the property by way of transfer or succession etc., and obtaining of a mere vacant possession from a tenant is not acquisition.

8. I do not think that I can accept this highly technical and juristic meaning of the word 'acquired' attributed to it by Mr. Kumar. The basic idea behind Section 21(1)(p) is to withdraw the protection afforded by the Act against a tenant from eviction if he has secured an alternative suitable accommodation; when a person has in his command a suitable premises, suited for his purposes, he does not need any protection from eviction from the premises wherein he is a tenant; he could be evicted, from the tenanted premises and he can shift to the other premises available to him, so that, the tenanted premises will be available for other needy persons. No doubt, that a person who is a tenant of a residential premises cannot be evicted, if he secures vacant possession of a non-residential premises. The premises obtained by the tenant should be suitable for the purpose, for which he is in occupation of the tenanted premises. The premises acquired by the tenant should suit his purposes, and the Act does permit a tenant to have the protection when another premises at his command is left unutilised, while he continues to occupy a tenanted premises. However, 'suitability' of the acquired premises has to be tested with reference to the requirements of the tenant, who is sought to be evicted from the tenanted premises; the acquired premises should, reasonably, be a good substitute for the existing premises wherein he is tenanted. While considering the suitability, tenant's position, economic or otherwise, and number of

persons normally residing with him, the locality, the extent of accommodation required and other factors which have nexus to the purpose for which he is using the tenanted premises, cannot be ignored at all. Concept of suitability, is quite wide, but has to be understood in the context of Section 21(1)(p) of the Act.

9. In R ANANTHA RAO v. INDUMATHI alias LAKSHMI BAI, 1973 (1) Mys.L.J. 31 it was observed, at p. 32:

'The expression 'suitable' has not been defined in the Act According to the ordinary meaning given in the Oxford and Chambers Dictionaries, the word 'suitable' means which is fitted for the purpose, appropriate to the occasion. The word 'suitable' is of such an amplitude that it includes within it several factors, the totality of which make the premises suitable. Though it is not possible to make an exhaustive enumeration of the factors which may be taken into consideration for he purpose of ascertaining as to whether a particular building is suitable for residence or not, it is clear that factors such as the nature and extent of accommodation, the type of building, the location, the facilities of communication are among others, important factors which have got to be taken into consideration'.

10. White considering the case of the landlord seeking eviction of the tenant under Section 21(1)(p), the requirement of the landlord is entirely irrelevant While under Section 21(1)(h) - without reference to Section 21(4) - the case has to be considered with reference to the landlord's situation, the case under Section 21(1)(p) has to be examined by reference to the premises acquired by the tenant and his situation. Therefore, in the instant case, the requirement of the landlady as established by her cannot have any bearing on the liability of the tenant to be evicted under Section 21(1)(p) of the Act. Availability of an alternative accommodation to the tenant is a factor to be considered while weighing the comparative hardship under Section 21(1)(h) of the Act, as incidental to the question under Section 21(1)(h) only.

11. The tenant, here, has left Sultanpet area in the year 1962 specifically with a view to reside in a more congenial atmosphere. Even though he had his own premises, he chose to reside elsewhere in view of the developments that had taken place in Sultanpet locality. There can be no doubt that it is one of the busiest

commercial spot in Bangalore. The real purpose begin evicting the tenant, Gunjikar by the respondent herein, was to accommodate his business in the said premises; accommodation available in that premises is entirely insufficient for the family of the respondent, apart from the environmental peculiarities of the said locality. In these circumstances, I agree with the finding of the trial Court that, the premises at Sultanpet is not suitable for the residence of the respondent. The claim for eviction under Section 21(1)(p) is accordingly rejected.

RE SECTION 21(1)(h) and SECTION 21(4):

12. The respondent has tried to project a case that the landlady has sufficient accommodation available to her in the outhouse where she is residing. The fact that she has been residing in the said house for several years is no reason to compel her to continue to reside, ignoring the changed circumstances. Her children have grown up and were of marriageable age when she filed the eviction petition. It is said that the outhouse has only one room, a hall, a dining hall and a kitchen. By this time the sons must have been married; they are properly employed; they have their own two wheelers. The daughter was studying in the Engineering College at the time of eviction petition and it is said that she is not yet married. Family has thus not only grown up in number, but also seems to have prospered to lead a comfortable life. The trial Court has also held that both set of parties to this litigation are financially comfortable. It is quite natural for any human being to aspire to live in a comfortable house, when it is available and if it could be maintained. Life is not just a matter of sailing with the time; it has to be meaningful and its charm lies, saintly or miserly persons apart, in having material comforts.

13. In MYAGERI v. SRINIVASA, : ILR 1991 KAR1232 I had an occassion to observe, at page 1246:

'The other aspect is the obvious change in the life style of the petitioner, in the sense, petitioner and his brothers get good education and his children also are having higher education. An aspiration to live in a more congenial atmosphere, leaving the busy, commercial locality, slowly develops in such a situation. Effect of material prosperity and the education on the members of the family of P.W.1 cannot be ignored while testing the contention of the learned Counsel for the

tenant.'

'The requirement of a person depends not only on the number of persons in the family, but also other circumstances referred above. A particular desire to have a better atmosphere to live may be in the realm of fancy for a few unfortunate souls; but for others it may be of utmost necessity; which is considered as a luxury by one, will be considered as an absolute necessity by another. The genuineness of the need and its reasonableness are to be considered in the background of the person who puts forth the case of requirement. The Court has to examine as to whether the need spoken to by the landlord is a genuine need, not with reference to the background and situation of men in general; otherwise, a slum dweller who has been fortunate enough to become prosperous and educate members of his family, will not be able to seek eviction of his tenant from a good locality so that he may shift to five comfortably, Man is entitled to enjoy the fruits of his enterprise and human effort normally, is to seek better living conditions. The test of reasonableness no doubt, is objective. But objectivity cannot ignore the realities of life, Court has to examine, whether in the situation and the background of the landlord, whether any reasonable person would require to shift his residence and require a residence in a better locality. Care has to be taken to eschew any subjective approach, in the sense, the motive and emotions of the particular landlord should not influence the decision. No doubt, thereafter considerations relevant under Section 21(4) also will have to be applied'.

14. The outhouse wherein the landlady is residing at present has only asbestos sheets for itself. The main house was let out earlier, obviously because of the financial constraints faced by the husband of the landlady, when, the said house was built. It is said that the outhouse, at one time, was being used to keep hoses by landlady's father-in-law. She has not demanded any higher rent and the plea raised in the objection statement by the tenant to the contra was subsequently given up. Though, the landlady as P.W.1 stated that she had no plan to demolish the outhouse, it cannot be said that the said accommodation is sufficient to meet her present requirements.

15. I concur with the finding given by the trial Court that the present accommodation available to the landlady is insufficient and the requirement pleaded by her is quite reasonable and bona fide.

16. While considering the case of comparative hardship and possibility of directing a partial eviction, the trial court held that requirement of landlady can be met by ordering eviction of the tenant from the two rooms. This would however, involve, breaking open the rear walls of the two rooms to fit the doors for entry from the outhouse and closing of the present doors of the said two rooms. Here, the very order involves an additional expenditure to the landlady; the outhouse and the main house are in the same compound and are closely to each other, still they are not part of the same structure. It will not be quite convenient for the members of the landlady's family to enjoy the house as one unit. The space left for the tenant, by the trial Court is not much, but, just to meet his physical requirements. The requisite parking space for the sons of the landlady also is not met by this order. These circumstances were appreciated by the tenant and his learned Counsel and Mr. Kumar, the learned Counsel for the tenant made the statement that the tenant was willing to shift to the outhouse immediately leaving the entire schedule premises to the landlady and further stated that the tenant would continue to pay the same rent which he has been paying all along for the schedule premises. This offer of the tenant solves the real problem, though, the learned Counsel for the landlady was not willing to accept the offer. However, I am of the view that while considering the case under Section 21(4) of the Act, the Court may in appropriate cases, permit the parties to agree to adjust the situation and if no such agreement is arrived at, as an alternative to the order of partial eviction, court may, give an option to the landlord, to exchange the premises in his occupation (which, he is competent to exchange as its owner), for the tenanted premises from which he seeks the eviction of the tenant, subject to reasonable terms as to payment of rent etc. Section 21(4) essentially, confers an equitable power in the Court, and it should be so read as to create appropriate jurisdiction in the Court enabling to make an equitable order, having regard to all just considerations.

17. Mr. Kumar submitted that his client had made a similar offer in the trial Court also and he abides by it Having regard to the age of the tenant, the difficulty

created in climbing the stairs of the first floor, and the number of members in his family, the premises at Sultanpet, cannot be held as sufficient or suitable to meet the respondent's requirements, while the entire accommodation in the schedule premises (the main house) would certainly be sufficient for a comfortable living by the landlady and member of her family, as, on today. In the circumstances, while upholding the order of partial eviction made by the trial Court, I deem it just to record the statement of Mr. Kumar, that his client is willing to vacate the petition schedule premises in its entirety if the landlady would permit him to occupy the outhouse as a tenant and that he is willing to pay the same rent as hitherto.

18. In view of this statement, I modify the order of the partial eviction, made by the trial Court as follows:

19. Petition under Section 21(1)(h) of the Act is party allowed. Respondent-tenant is directed to vacate the two rooms situated towards the north eastern corner of the petition schedule premises as shown in Ex.P.8 and measuring 8' X 7.6' and 8' X 9.6' and handover vacant possession of the same to the petitioner.

20. However, the petitioner is given the option to take possession of the entire schedule premises subject to the condition that, she hands over vacant possession of the outhouse to the respondent-tenant for his occupation as a tenant, on a monthly rent of Rs 325/-. If the petitioner-landlady is agreeable to this, she shall file an affidavit agreeing to handover vacant possession of the outhouse to the respondent-tenant in terms of this order and such an affidavit shall be filed within four weeks from today.

The Revision Petitions are disposed of accordingly. No costs.

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