

**Veeraswamy Vs. Nil**

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**Court :** Karnataka

**Decided On :** Feb-15-1985

**Reported in :** ILR1985KAR2298

**Judge :** Venkatachala, J.

**Acts :** Karnataka Rent Control Act, 1961 - Sections 21(1) and 50(1)

**Appeal No. :** C.R.P. No. 1660 of 1985

**Appellant :** Veeraswamy

**Respondent :** Nil

**Advocate for Pet/Ap. :** C. Srinivas Vakil, Adv.

**Disposition :** Revision petition dismissed

**Judgement :**

ORDER

**Venkatachala, J.**

1. An argument of 'abdication' strongly pressed, as such, upon me requires consideration and decision in this revision Petition.
2. The petitioner here is the landlord of certain premises. In the Court below, he filed an eviction petition seeking recovery of possession of that premises from Smt.

Geetha Ramanujam, who was a tenant of that premises. The ground urged in support of the petition, was that of reasonable and bona fide requirement of that premises for his (landlord's) self occupation as permitted under clause (h) of the proviso to sub-section (1) of Section 21 of the Karnataka Rent Control Act, 1961 ('the Act'). He gave evidence as P.W. 1 and produced documents, Exhibits P-1 to P-3, to support the said ground, Thereafter, the eviction petition was adjourned by the Court below to a future date for pronouncing orders thereon on merits. But, before rendering of such orders, the respondent 11 tenant voluntarily delivered possession of the said premises to the petitioner-landlord, who acknowledged the same. This development made the Respondent tenant move the Court below with a memo, seeking dismissal of the eviction petition on the plea that it had become infructuous. The Court below accepting that memo, by its order dated 11-1-1985, dismissed the eviction petition treating it as having become infructuous. It is the validity of that order which has been questioned by the landlord (the petitioner here) in this revision petition.

3. In the cause title to the memorandum of revision petition presented in the office of this Court, in the placemeant for respondent's name, it had been shown as 'nil'. The Office returned the revision petition raising a query as to how the revision petition with no respondent was maintainable. But, it was represented with an explanation which runs thus :

'The Respondent before the lower Court is not made a party in this revision as she has vacated the premises pendency of the Petition before the lower Court and as such, has no interest in the premises and as such, is not made a party in the revision. The same is clear from the facts of the case and the order. Kindly post the revision for admission. Explained and represented.'

In view of the said explanation, the revision petition is listed before this Court for orders.

4. It was not disputed by Shri C. Srinivas Vakil, Learned Counsel for the landlord (the petitioner here), that the land-lord had recovered possession of his premises, the recovery of which he had sought in the Court below, by filing the eviction petition under clause (h) of the proviso to sub-section (1) of Section 21 of the Act,

when that petition had been set down for pronouncement of orders on its merits. But, it was submitted by him that the Court, below, in dismissing the landlord's eviction petition as having become infructuous on a memo filed in this regard by the tenant, had 'abdicated' its jurisdiction, in that, it had omitted to record a finding respecting bona fide and reasonable requirement of the premises concerned in the eviction petition for the personal occupation of the landlord. Consequence of the said omission of the Court below has since resulted in driving the landlord to the necessity of approaching the Controller under the Act seeking his mercy in the matter of releasing the premises concerned for his (landlord's) self occupation, such omission of the Court it was submitted, had to be regarded as 'abdication' of its jurisdiction. I am not able to see any merit whatsoever in the submissions of the Learned Counsel for the reasons which I shall presently state.

5. Whether a Court has failed to exercise a jurisdiction vested in it, cannot be judged from the consequences that flowthere from, in that, failure to exercise a jurisdiction vested in a Court does not and cannot in any way depend on the gravity or otherwise of the consequences of the Court's failure to exercise its jurisdiction. Therefore, thisCourt's revisional power to direct its subordinate Court, which has omitted to exercise the power vested in it, to exercise that power, cannot be tested on the touchstone of consequences that have flown from the non-exercise of the powers so vested in it. Hence, it is neither necessary nor proper for me to consider a consequence alleged to have flown from a subordinate Court's non-exercise of power vested in it, to find whether it has failed to exercise the power vested in it. Consequently, need to consider the complaint of the Learned Counsel for the landlord that the landlord has now to approach the Controller for release of the premises concerned for his self occupation by seeking his mercy, does not arise.

6. Whether the Court below has failed to exercise the power which is vested in it, as urged for the petitioner-landlord depends upon the provision of law governing the matter. Section 21(1) proviso (h) of the Act, which bears on the point, read :

'21. Protection of tenants against eviction, -

(1) Notwithstanding anything to the contrary contained in any other law or contract, 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 :

Provided that the Court may on an application made to it, make an order for the recovery of possession of a premises on one or more of the following grounds only, namely :-

(h) that the premises are reasonably and bona fide required by the landlord for occupation by himself or any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust, that the premises are required for occupation for the purposes of the trust.'

7. Sub-section (1) above, as seen there from, imposes a prohibition on any Court or other authority from making any order or decree for the recovery of possession of any premises under the Act, in favour of the landlord and against the tenant, notwithstanding anything to the contrary contained in any other law or contract. But, the proviso thereto carves out an exception by which a Court functioning under the Act, is enabled to make an order for the recovery of possession of a premises, on one or more of the grounds specified there under including ground (h) founded on reasonable and bona fide requirement of the premises for self occupation. Therefore, when an application (eviction Petition) under the proviso is made to the Court by a land-lord requiring it to make an order for the recovery of possession of the premises on any of the grounds specified there under including ground (h) thereto, the merit of the relevant ground has to be examined by it when the need to make an order for the recovery of possession of the premises in favour of the landlord and against the tenant, subsists. On the other hand, when the need to make an order under the proviso for the recovery of possession of the premises in favour of the landlord and against the tenant, ceases to exist or disappears, for any reason whatsoever, it is not only expedient for it, but also incumbent upon it to terminate the Petition as having become infructuous, in that, the relief; sought therein has become futile. It is so for the reason that a Court specially empowered under the Act to make an order for the recovery of possession of a premises in favour of the landlord and against the tenant, would be embarking on a

purposeless and fruitless enquiry on the basis of which it is not called upon to make an order under the proviso. Therefore, when the Court below has dismissed the eviction Petition of the petitioner-landlord as having become infructuous after being intimated that the landlord had recovered possession of the premises from the tenant, it cannot be said that it has 'abdicated' its jurisdiction in not deciding the merits of the claim in the eviction Petition filed by the land-lord, instead has complied with the requirement of law.

8. When the cause of action supposed to have existed as the basis of the eviction Petition of the landlord for therecovery of possession of the concerned premises from its tenant, ceased to subsist because of his obtaining possession of such premises before the pronouncement of the orders by the Court on that eviction Petition, he (landlord) can have no grievance respecting the order made by the Court subsequently dismissing the Petition as having become infructuous. If that is so, no Revision Petition presented by him under Section 50(1) of the Act respecting the order of dismissal of his. Petition as having become infructuous, can be maintained.

9. In the result, the Revision Petition is dismissed as not maintainable.

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