

Radha Krishnan Vs. Thayappa Setty

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Court : Karnataka

Decided On : Aug-28-1985

Reported in : ILR1985KAR3182

Judge : Jagannatha Shetty, J.

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

Appeal No. : C.R.P. No. 3670 of 1983

Appellant : Radha Krishnan

Respondent : Thayappa Setty

Advocate for Def. : G. Kasturi, Adv.

Advocate for Pet/Ap. : U.L. Narayana Rao, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Jagannatha Shetty, J.

1. The application filed by the landlord for eviction of his tenant under Section 21(l)(h) of the Karnataka Rent Control Act ('the Act' for short) has been allowed by the Court below. The validity of the order of eviction has been challenged by the

tenant in this Revision Petition.

2. Thayappa Setty has got three sons, namely, Ramaiah Setty, Narasimha Setty and Panduranga Setty, besides a widowed daughter. Thayappa Setty owns a building at Narayana Pillai Street, Civil Station, Bangalore. The ground-floor of the building is under the occupation of Thayappa Setty along with his son Ramaiah Setty. The first floor is under the occupation of Narasimha Setty along with his widowed sister. One room in the first floor has been kept vacant and is in the possession of Panduranga Setty. There is an out-house connected with the main building and that out-house is under the occupation of the tenant. Thayappa Setty brought an action for eviction of the tenant on the ground that he needs that out-house for the benefit of his third son Panduranga Setty, who has no house of his own. It is said that Panduranga Setty lives at Jayanagar in a premises taken on mortgage.

3. There is no evidence that the entire family of Thayappa Setty lives under one roof with common mess. Thayappa Setty being the father, however, wants to see that every one of his sons is accommodated in an independent premises. That is why he seeks eviction of the out-house occupied by the tenant for the use of his third son Panduranga Setty. The question is whether such a need falls under Section 21(1)(h) of the Act.

4. In my opinion, the case put forward by the landlord, as stated above, does not fall within the scope of Section 21(1)(h) of the Act.

So far as it is relevant, Section 21(1)(h) of the Act provides.

'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 :-

XXX XXX XXX XXX(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.....'

XXX XXX XXX XXX

(4) No decree for eviction shall be passed on the ground specified in Clause (h) of the proviso to sub-section (1) if the Court is satisfied that having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

If the Court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only.

5. The landlord is not seeking eviction of the tenant on the ground that the out-house is reasonably and bonafide required by him for his occupation. He seeks eviction of the tenant only for the benefit of his son who is living else-where carrying on his independent business. The requirement of the third son Panduranga Setty, who is not depending upon his father, cannot be said to be the requirement of the father within the meaning of Section 21(l)(h) of the Act.

6. Nor can it be said that the requirement of Panduranga Setty could fall within the second limb of Section 21(1)(h) of the Act, which provides: 'or any person ; for whose benefit the premises are held'. It is not in dispute that the out-house has not been held for the benefit of Panduranga Setty. He is neither the exclusive owner of it.

7. Apart from that, the Court is required to consider the relative hardship of the parties in making or not making possession order. On this question also, the Court below has miserably failed to discharge its duty. It has observed that Panduranga Setty has no other accommodation of his own and the premises under the occupation of the tenant would be convenient for his children to go to school at Cantonment. With regard to the problem of the tenant, the Court has observed :

'....the only hardship and inconvenience that R.W-1 pleads is that he is unable to pay higher rent in order to secure an alternate accommodation since he is a small petty businessman dealing in buttons, the income from which is not even sufficient to maintain his family. But in my need it has been very often said that the tenant will be put to some inconvenience on account of shifting his residence from one place to another and that he may have to pay a little higher rent for securing alternative accommodation are inevitable in every case of eviction and on that score alone the landlord cannot be denied possession of his own.....'

On the surface, it may just seem that the above finding is justified and the tenant could find out an alternate, accommodation on payment of higher rent. The Court must have been carried away with the glittering surface of Bangalore. Under Section 21(4) of the Act, the Court is required to consider all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant. Under this sub-section, the Court not only is required to consider all the evidence on record, but also to bear in mind the problem of accommodation prevalent in the area. The Court must also bear in mind the respective means of the parties. The Court must also consider the nature of their occupations, the living conditions and the like with the possibility of rehabilitation of the tenant without much difficulty. The Court must use its hindsight on all these facts and surrounding circumstances of the case and cases perhaps not so uncommon around it.

I think it was Cicero who said about someone. 'He saw life clearly and he saw it whole'. Justice Rehnquist of the Supreme Court of America said 'And you have to have a little bit of that what Cicero said'. Indeed, such a perception is all the more necessary for a Trial Judge to reach proper conclusion on the relative hardship of the parties. In this case one could imagine the means of the tenant who has been living in the out-house. He is a petty businessman dealing in buttons. He is so to say a small person with limited income. The question for him is one of survival. The question for the landlord, on the other hand, is of convenience if not comfort. As between the two who deserves more sympathy of the Court. Certainly the tenant. Eviction means driving him to a perilous position. One may think that enough time granted to the tenant may offset his hardship. That was how the Trial

Judge proceeded. But any amount of time granted to find out an alternate accommodation cannot even minimise his hardship. In Bangalore City the hard realities are that the accommodation is scarce. It is too often chased by too many persons. Some of them are prepared to pay even the unreasonable demand as to rent. Surely in these circumstances, the Court should not have made the possession order at all.

8. In the result, the Civil Revision Petition is allowed and the impugned order of eviction is set aside. The application for eviction stands dismissed. In the circumstances of the case, I make no order as to costs.

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