

K.G. Belliappa Vs. F.C. Kunder

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Court : Karnataka

Decided On : Jun-28-1990

Reported in : ILR1990KAR4003; 1990(3)KarLJ79

Judge : K.A. Swami and ;M.M. Mirdhe, JJ.

Acts : Karnataka Rent Control Act, 1961 Sections 21C; Karnataka Rent Control (Amended) Act, 1984

Appeal No. : C.R.P. No. 3175 of 1986

Appellant : K.G. Belliappa

Respondent : F.C. Kunder

Advocate for Def. : P.K. Ponnappa, Adv.

Advocate for Pet/Ap. : K.R.D. Karanth, Adv.

Disposition : Revision petition allowed

Judgement :

ORDER

K.A. Swami, J.

1. This Civil Revision Petition is preferred against the order dated 13th April 1986 passed by the District Judge, Kodagu in Rev (Rent) 17/1985. The learned District

Judge has reversed the order of eviction dated 7-9-1985 passed by the learned Principal Munsiff, Madikeri in HRC No. 4/1983. Hence, the landlord has come up in this revision petition.

2. The premises is a residential house known as the 'Lodge' situated in S.No. 5, Block No. 18 of Madikeri Town. The petitioner is the landlord and the respondent is the tenant. The petitioner was in Railway service. On his retirement he filed an application under Section 21(1)(h) (i) and (k) of the Karnataka Rent Control Act 1961 (hereinafter referred to as the 'Act') on the ground that he has retired from railway service and he has no other premises for the use and occupation of himself and his family. Therefore, he pleaded that he reasonably and bona fide required the possession of the schedule premises. He also pleaded for possession of the premises on the grounds falling under (i) and (k) of Section 21(1)' of the Act.

3. The respondent/tenant resisted the petition.

4. On the basis of the evidence on record, the trial Court held that the petitioner proved that he reasonably and bonafide required the schedule premises for his own use and occupation. Accordingly, it passed an order of eviction under Section 21(1)(h) of the Act and rejected the petition in so far it pertained to Section 21(1) (i) and (k) of the Act. Being aggrieved by the order of eviction the respondent/tenant went up in revision before the District Court. During the pendency of the revision, the Karnataka Rent Control (Amendment) Act, 1984 (Karnataka Act 6/1984) came into force on 20th March 1984. Karnataka Act 6/1984 inserted special provision viz., Section 21C making a special provision for recovery of possession of premises by a retired Government servant or a member of the family of the deceased retired Government servant. In view of the insertion of the new provision viz., 21C the landlord sought for amendment of the petition in terms of Section 21C of the Act. The amendment petition was allowed and the order of the trial Court was set aside and the case was remitted to the trial Court. Before the trial Court a fresh evidence was adduced and a certificate issued by the General Manager, Wheel and Axle Plant, Bangalore, Ministry of Railways, Government of India was produced as Ex.P-7. Before the trial Court, it was also further submitted by the learned Counsel for the landlord that the grounds raised under Clauses

(i) and (k) of Section 21(1) of the Act were not pressed and similarly it was also further submitted by the learned Counsel for the landlord that in view of Section 21C, even the ground based on Section 21(1)(h) of the Act was also not going to be pressed into service. Therefore, the trial Court considered the case only under Section 21C of the Act. The trial Court had no difficulty in straight away proceeding on the basis that Section 21C of the Act attracted to the case and the certificate issued by the General Manager, Wheel and Axle Plant, satisfied the requirement of the certificate as contemplated under Section 21-C of the Act. The trial Court also further held that the landlord established that he reasonably and bona fide required possession of the premises for his own use and occupation and rejected the contention of the tenant that the whole building was not required as the family of the landlord was small. Accordingly passed an order of eviction.

4.1. Being aggrieved by the aforesaid order, the tenant preferred Revision Petition (Rent) 17/1985 before the District Court, Kodagu. The learned District Judge has allowed the revision petition on the ground that the petitioner was not a Government servant and that the certificate issued by the General Manager of Wheel and Axle Plant was not the one issued by the State Government servant and therefore he did not satisfy the requirement of Section 21C of the Act. Accordingly, the learned District Judge has allowed the revision petition and set aside the order of the trial Court and dismissed the application for possession.

5. Having regard to the fact that the case involved interpretation of Section 21C of the Act, it has been referred to a Division Bench.

6. We have heard Sri Karanth, learned Counsel for the petitioner and Sri Ponnappa, learned Counsel for the respondent/tenant.

7. In the light of the contentions urged, the points that arise for consideration are as follows:

1. Whether a retired servant of the Railways of Government of India is covered by Section 21C of the Act?

2. Whether the certificate issued by the General Manager, Wheel and Axle Plant of the Ministry of Railways of Government of India falls within the Explanation to Section 21-C(2) of the Act?

8. Point No. 1: Section 21-C of the Act as inserted by Karnataka Act 6/1984 is as follows:

'21C. Special provision for recovery of possession of premises by the retired Government Servants or a member of the family of the deceased retired Government Servant - (1) Notwithstanding anything contained in this Act-

(a) a landlord, being a person who was appointed to a public service or post in connection with the affairs of the State of Karnataka (hereinafter referred to as the Government servant) and is duly retired (which term shall include premature retirement) shall be entitled to recover possession of any premises on the ground that the premises is bonafide required by him for occupation by himself or any member of his family and the Court shall pass a decree for eviction on such ground if the landlord at the hearing of the suit, produces a certificate signed by the Controlling Officer to the effect that -

(i) the landlord is a person who was appointed to a public service or post in connection with the affairs of the State of Karnataka and is now a retired Government servant;

(ii) he does not possess any other suitable premises in the local area where he or the members of his family can reside.

(b) Where a person who was appointed to a public service or post in connection with the affairs of the State of Karnataka dies within five years of his retirement, his widow who is or becomes a landlord of any premises which belonged to him shall be entitled to recover possession of such premises on the ground that the accommodation is bonafide required by herself or any member of her family and the Court shall pass a decree for eviction on such ground, if such widow at the hearing of the suit, produces a certificate signed by the Controlling Officer to the effect that-

- (i) she is the widow of a deceased Government servant as aforesaid;
- (ii) she does not possess any other suitable premises in the local area where she or the members of her family can reside.

Explanation - For the purposes of this Sub-section 'Controlling Officer' means the Officer of the State Government drawing the salary of the retired or deceased Government servant immediately before his retirement or death, as the case may be, and where the retired or deceased Government servant was drawing his salary himself, his successor in office or where the drawing officer is not an officer of the State Government.

(2) For the purpose of this Section, any certificate referred to in Sub-section (1), shall be conclusive evidence of the facts stated therein.'

9. The objects and reasons for inserting the aforesaid provisions are stated in the statement of objects and reasons appended to the Karnataka Rent Control (Amendment) Bill 10/1984. The same is as follows:

'STATEMENT OF OBJECTS AND REASONS

The Karnataka State Government Employees Association, the Karnataka State Secondary Teachers Association and the Karnataka State Pensioners Association have represented that the retired Government servants and their family members are facing difficulties in getting possession of their houses back from their tenants after their retirement on or death under the existing provisions, of the Rent Control Act. Therefore, they have requested to amend the Karnataka Rent Control Act, 1961 providing for summary termination of the tenancy of houses owned by Government servants or by the members of their families when they are required for self occupation on retirement from service or death. It is felt necessary that the Government servants who have put in long years of service should be enabled to lead peaceful life in their own houses after retirement by making the case of ex-service men of their families. Hence the process of securing possession easier and quicker as in Bill.'

From the aforesaid objects and reasons stated therein, it is clear that though the amendment came to be introduced on a representation made by the Karnataka State Government Employees Association, the Karnataka State Secondary Teachers Association and the Karnataka State Pensioners Association, the State Government did not confine its objects and reasons only to State Government servants. It stated that it was felt necessary that the Government servants who have put in long years of service should be enabled to lead peaceful life in their own houses after retirement and to make the process of securing possession easier and quicker as in the Bill.

10. Keeping in view the objects with which Section 21C was inserted, we are of the view that the expression 'public service' occurring in Clauses (a) and (b) of Sub-section (1) of Section 21C of the Act is not controlled by the words in connection with the affairs of the State of Karnataka'. The natural meaning of the expression 'public service' is wide enough to include service under a State Government or the Central Government. In the absence of any contra indication in the Section and the context in which it is used, there is no justification to confine the meaning of the expression 'public service' to the Karnataka State Government Servants only and not taking into its fold the servants of the Central Government. Whether the expression 'public service' occurring in Section 21C(1) covers the servants of other States need not be considered because it does not arise in this case. This decision shall not be construed as covering such cases. A public servant may be of a State Government or of the Central Government. If it is held that the expression 'public service' is controlled by the words 'in connection with the affairs of the State of Karnataka' the words 'or post' found therein immediately after the expression 'public service' would become redundant. Therefore, it is clear that the legislature intended to include all those landlords who retire or have retired from public service, whether they be of the State Government service or the Central Government service, and also those who had held any post in connection with the affairs of the State of Karnataka. This interpretation also receives support from the words 'where the drawing officer is not an officer of the State Government, the State Government' occurring in the Explanation to Sub-section (1) of Section 21C of the Act. If Section 21C(1) of the Act was intended to benefit only the Karnataka State Government servants, then there was no question of Controlling Officer not

being a State Government Servant. Therefore, we are of the view that the expression 'Public Service' occurring in Clauses (a) and (b) of Section 21C of the Act, cover civil servants of the State Government as well as of the Central Government. As to whether it covers the services under or the employees of, the Corporations, public undertakings, autonomous institutions, bodies or agencies and instrumentalities of the State or the Central Government, need not be gone into in this case because as far as the present case is concerned, the landlord was an official of the Railways which is a Department of the Government of India. Hence, he was a Government of India servant. As such he falls within the, category of public service contemplated under Sub-section (1) of Section 21C of the Act. It is also relevant to notice-that when the object of the enactment is to enable the Government servants to secure possession of their premises on their retirement for their bona fide and reasonable requirement by a quicker process, there should not be any difference or it should not make any difference whether the land-lord was a Central Government servant or the State Government servant. The interpretation placed by us advances and effectuates the object of the Act and extends benefit of Section 21C of the Act to all those to whom the legislature intended. Therefore, we are of the view that the learned District Judge is not correct in holding that Section 21C of the Act covers only the Karnataka State Government servants. Point No. 1 is answered in favour of the petitioner-landlord and it is held that Section 21-C of the Act covers a retired Railway Official of the Government of India. As such the petitioner who is a retired official of the Indian Railway is entitled to take the benefit of Section 21C of the Act.

POINT NQ.2

11. The certificate is issued by the General Manager of the Wheel and Axle Plant. The Wheel and Axle Plant is an undertaking of the Railways and not an undertaking of the State Government, Therefore, the General Manager, Wheel and Axle Plant who has issued the certificate is not a State Government servant nor he can be equated to any post under the State Government. According to Sub-section (1) of Section 21C of the Act, a certificate has to be issued by the Controlling Officer in terms of Clauses (i) and (ii) of Sub-clause (a) of Section 21C(1) of the Act, if Sub-clause (a) applies to the case or in terms of Clauses (i)

and (ii) of Sub-clause (b) of Section 21C(1) of the Act if Clause (b) applies to the case. The meaning and extent of the expression 'public service' occurring in Section 21C(1) of the Act has already been explained. The Explanation to Section 21C(1) of the Act states in categorical terms as to who should be 'Controlling Officer' for the purpose of Sub-section (1) of Section 21C of the Act. According to the Explanation 'Controlling Officer' means 'the Officer of the State Government drawing the salary of the retired or deceased Government servant immediately before his retirement or death, as the case may be, and where the retired or deceased Government servant was drawing his salary himself, his successor-in-office or where the drawing officer is not an officer of the State Government, the State Government.' Therefore, the certificate could be issued in the case of the retired or deceased Government servant who was not drawing his salary himself by the drawing officer of the State Government drawing the salary of the retired or deceased Government servant immediately before his retirement or death as the case may be. In the case of the retired or deceased Government servant who was drawing his salary himself, his successor-in-office. In the case where the drawing officer is not an officer of the State Government, the State Government is the Controlling Officer. In the instant case, the petitioner himself was a drawing officer. He was not a State Government servant. Therefore, the Certificate could have been issued only by the State Government and not by the General Manager, Wheel and Axle Plant. Therefore, the certificate produced by the petitioner as Ex,P-7 is the one issued by the incompetent Authority. Hence it is not valid and does not fall within the Explanation to Sub-section (1) of Section 21C of the Act. Accordingly, point No. 2 is answered in the negative.

12. Of course, the trial Court has gone into the question as to the scope of the certificate with reference to a decision of the Supreme Court in SHIVRAM ANAND SHI ROOR v. MRS. RADHA BAI SHANTARAM ILR 1985 KAR 41. In that decision, the Supreme Court has considered the certificate issued with reference to the provisions contained in Section 13A(1) of the Bombay Rent Control Act which are in pari materia with the provisions contained in Section 218 of the Act, and has held thus:

'Notwithstanding the expressed legislative bias in favour of the tenant, the legislature itself made a serious departure from the general rule so as to lean in favour of landlords who are or were members of the armed services, and who because of the exigencies of their service were not able to occupy their own premises during the course of their service. Section 13A(1) was enacted, relaxing the rigour of Section 13 in favour of a landlord who is or was a member of the Armed forces. It is now provided that if he produces a certificate in the manner prescribed it shall be taken as established, without further proof that he is presently a member of the Armed Forces of the Union or that he was such member and is now a retired ex-serviceman and that he does not possess any other suitable residence in the local area where he or any member of his family can reside. All that he has to further prove is that he bonafide requires the premises for occupation by himself or any member of his family. The certificate is conclusive proof that he does not possess any suitable residence in the local area, but not that he bona fide requires the same for occupation by himself or any member of his family. There may be cases where he does not possess any other suitable residence in the local area and yet he does not bonafide require the premises for occupation by himself or any member of his family being comfortably settled elsewhere with no need or pressure to move. But so soon as he establishes that he bonafide requires the premises for occupation of his family, he is entitled to recover possession and does not have to further prove that greater hardship would be caused to him than to the tenant if a decree for possession is not granted. It is of course, implicit that the person producing the certificate is the landlord. It is further implicit that the person mentioned in the certificate as presently or previously a member of the Armed Forces was at a simultaneous point of time both landlord and member of the Armed Forces.'

13. In the instant case, the certificate itself is issued by an incompetent Authority. Therefore, the order of eviction passed by the trial Court on the basis of such certificate cannot be sustained. However, it is submitted by Sri Karanth, learned Counsel for the petitioner-landlord that as the petitioner was under an erroneous impression that the certificate issued by his immediate superior would satisfy the requirement of the Explanation to Section 21C of the Act, he obtained the certificate from the General Manager, Wheel and Axle Plant and produced it as

Ex.P-7, therefore, he may be afforded an opportunity to obtain the necessary certificate from the State Government and produce it before the District Court. It is further submitted that instead of remitting the case to the trial Court, it may be remitted to the District Court so that the further life of the litigation may be shortened and the petitioner may be able to secure possession of the premises at an early date. The proceeding for possession was initiated as long back as, on 25-1-1983. By now 7 years have elapsed. The petitioner retired from service on 21-12-1982. The object of Section 21C of the Act is to enable a retired public servant or a widow of a retired public servant who dies within five years of his retirement, to enable him or his widow to secure possession of the premises immediately on retirement or on the death of retired public servant. Therefore, keeping in view the object of Section 21C of the Act, we are of the view that instead of remitting the case to the trial Court, it is just and proper to remit the case to the District Court.

14. For the reasons stated above, the revision petition is allowed. The order dated 18-4-1986 passed by the District Court is set aside. The case is remitted to the District Court, Madikeri, with a direction to permit the petitioner to produce the certificate issued by the State Government within three months from today. In the event the petitioner fails to obtain the certificate and produce within three months from today, the order of the trial Court directing the eviction shall stand set aside and the H.R.C. case shall stand dismissed.

14.1. We also further make it clear that in such an event, it is open to the petitioner to initiate a proceeding under any of the provisos to Section 21(1) of the Act.

14.2. The contentions of both the sides, having a bearing on the ground that the premises are bona fide required by the landlord as contemplated under Section 21C of the Act, are left open.

14.3. In the facts and circumstances of the case, there will be no order as to costs.