

Dharmapal Vs. Vagjibhai

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Court : Karnataka

Decided On : Jul-02-1990

Reported in : 1990(3)KarLJ101

Judge : K.A. Swami and ;N.D.V. Bhatt, JJ.

Acts : Karnataka Rent Control Act, 1961 - Sections 21(1), 26, 27, 28

Appeal No. : C.R.P. No. 3569 of 1988

Appellant : Dharmapal

Respondent : Vagjibhai

Advocate for Def. : Mahabaleshwara Gowda, Adv. for R-1

Advocate for Pet/Ap. : Jayavittal Kolar, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

K.A. Swami, J.

1. This Civil Revision Petition is preferred against the order dated 27th June 1988 passed by the learned Additional District Judge, Gulbarga in Civil Revision Petition No. 8/1983 reversing the order dated 24th June 1982 passed by the I Additional

Munsiff, Gulbarga in Misc. Case No. 182/1968.

2. The Revision Petition is referred to a Division Bench, having regard to the questions of law involved in the case.

3. The learned Judge while referring the matter to a Division Bench has observed that the following questions arise for consideration:

'1. Which Court should entertain and grant relief and by what process?

2. How to enforce the order? Has it the force of a decree?

3. Are the proceedings subject to appeal and revision, under the Karnataka Rent Control Act?

4. Is the right personal to the tenant who has suffered eviction or is it heritable?

5. Is the liability personal to the landlord or does it go with the building, so as to bind his heirs, successors, transferees?

6. What is the period of limitation to exercise this right by way of petition?

7. Is not a civil suit for recovery of possession on the ground of dispossession maintainable . so as to attract Article 65 of Limitation Act?

8. What terms and conditions govern the tenant and the landlord?

9. Is the landlord's occupation illegal and unauthorised? Can he be evicted summarily?

4. As the whole case is before us, it is not necessary for us to consider each one of the questions raised in the order of reference inasmuch as some of the questions do not really arise in the instant case.

5. The respondent was the tenant of the premises bearing No. 8-587-A situated at Asif Gunj, Gulbarga. One Sri Dharmapal S/o Ratnappa was the landlord of the premises. He filed an application under Section 21(1)(j) of the Karnataka Rent Control Act, 1961 (hereinafter referred to as the 'Act') for possession of the

premises on the ground that the same was reasonably and bona fide required by him for the immediate purpose of demolition and erection of a new building in place of the premises sought to be demolished. The case was registered as File No. 54/2/1964 by the Munsiff Court, Gulbarga.

6. Though the tenant initially resisted the application but, ultimately the parties arrived at a compromise. In terms of the compromise, the eviction petition filed under Section 21(1)(j) of the Act was allowed. The order of eviction passed thereon is as follows:

'This suit is coming for hearing on this day, for final disposal before me in the presence of Sri D.J. Muglikar, Advocate for plaintiff and Sri M.A. Raheem Arzoo, Advocate for defendant. Upon perusing the grounds of the by the parties, this Court doth order, petition allowed in terms of compromise.

1. That the respondent shall vacate the premises bearing No. 8-587(A) situated at Asaf Gunj Main Road, Gulbarga, occupied by him as a tenant on or within two months from this the 5th day of September 1964,

2. That the applicant shall demolish and erect new building on or within one year from the date of eviction and hand over of vacant possession of the premises to him by the respondent. The respondent shall pay the rent whatever fixed by the Rent Controller as per Rules.

3. That the applicant shall give first preference to occupy the newly constructed building on the rent fixed by the Rent Controller, Gulbarga, under the Mysore Rent Control Act, to the respondent.

The parties should bear their own costs.'

7. Pursuant to the order of eviction passed under Section 21(1)(j) of the Act, the tenant delivered possession of the premises to the landlord.

8. It may also be stated that the landlord did not take up demolition and erection of a new building immediately as per the terms of the order of eviction and also as per the provisions contained in Section 26 of the Act. Therefore, the tenant filed

H.R.C.No. 76/1966 in the II Additional Munsiff Court, Gulbarga for directing the landlord either to take up demolition and reconstruction immediately or to redeliver possession of the premises on the same terms and conditions on which he had occupied it at the time of delivery of possession of the same to the landlord. However, that application was rejected by the trial Court and the same was affirmed by the District Court in a revision filed under Section 50 of the Act. In the meanwhile, the landlord demolished the premises and erected a new building in place of the premises demolished.

9.1. After reconstruction as per the terms of the order of eviction and also as per the provisions contained in Section 28 of the Act, the landlord was required to deliver possession of the newly erected premises to the tenant. The respondent gave notice to the landlord as per Sub-section (1) of Section 27 of the Act, expressing his intention to occupy the new building on its completion. But the landlord for the reasons best known to him did not put the tenant in possession of the building on its completion. Hence the respondent-tenant approached the Munsiff Court under Section 28 of the Act by filing a Miscellaneous Application No. 182/ 1968. The application was resisted by the landlord.

9.2. It may also be noticed at this stage that during the pendency of Misc.Case No. 182/1968, the original landlord Sri Dharmapal expired. His legal representatives were brought on record. The petitioners 1(a), 1(b), 2, 3 and 4 are the legal representatives of the original landlord. As far as petitioner No. 5 is concerned, it is stated that he is a business partner of petitioner 1(a) doing business in a portion of the premises in question.

10. The Court of first instance in the light of the objections raised by the landlord raised the following two points for consideration:

1. Whether the order in Petition No. 76/2/66 operates against the present petitioner?
2. Whether this Court has jurisdiction to put the petitioner in possession of the said premises?

11. On point No. 1, the Court of first instance held that the order passed in H.R.C.76/2/66 under Section 26 of the Act did not operate as res judicata. However, on point No. 2,, the Court of first instance took a view that the application was not maintainable, whereas a regular suit was maintainable; that the L.Rs. of the deceased landlord were not brought on record in time. The Court of first instance followed a decision of this Court in LAWRENCE MASCREANHAS v. IGNATIUS PEREIRA 1973(2) KLJ 105 in support of its conclusion that the suit was the proper remedy.

12. Being aggrieved by the order passed by the learned I Additional Munsiff, Gulbarga in Misc.No. 182/1968 the first respondent-tenant herein preferred Revision Petition No. 8/1983 before the District Court, Gulbarga. The revision petition was heard and decided by the learned Additional District Judge, Gulbarga. In the revision the following points were raised for determination:

1. Whether the petition is maintainable?
2. Whether the petition is barred by time?
3. Whether the petition is abated?
4. Whether the petition is bade on account of misjoinder of parties?
5. Whether this Court has jurisdiction to pass an order of restoration of the suit shop?
6. What order?

13. The learned District Judge has answered all the points in favour of the tenant. Accordingly, by the order dated 27th June 1988 has allowed the Revision Petition, set aside the order of the I Additional Munsiff, Gulbarga in Misc.No. 182/1968 and allowed the application for restoration of possession. He has also awarded exemplary costs of Rs. 3,000/- on the ground that false, vexatious and untenable defence is raised by the landlord.

14.1. The contention as to maintainability of the application should be viewed in the light of a decision of the Supreme Court in K. SRINIVASA RAO v. K.M.

NARASIMHAIAH ILR 1989 KAR 1186. In that case, there was an application filed under Sections 27 and 28 of the Act for redelivery of possession of the premises in the new building. It was allowed by the first Court holding that the tenant was entitled to get the shop occupied by respondent-2 therein which ad measured 9' x 16' in the place of the old one. The revision petition filed before the High Court was allowed. The order of the Munsiff Court passed in favour of the tenant was set aside. The High Court took a view that the appellant-tenant was not entitled to claim the shop occupied by respondent-2 therein and respondent-1, the landlord therein was only required to give to the appellant any tenement in the newly constructed building. Hence there was an appeal before the Supreme Court. After referring to the provisions contained in Section 21(1)(j), 27 and 28 of the Act, the Supreme Court held that the tenant was entitled to a tenement in the new building which could be said to be reasonably comparable to or to reasonably correspond to the tenement in respect of which the decree of eviction was passed. It was also further held that the question was not as to whether the tenant was entitled to get an identical shop in the new building, whereas the real question was as to whether he was entitled to a comparable shop. The question as to whether the tenant would be entitled to a shop reasonably corresponding to the original shop occupied by him would depend upon the circumstances of the case. On the facts of the case, it was held that the original shop occupied by the tenant ad-measured 17' x 9' and was facing - Balepet Main Road, whereas respondent-1 had offered to the tenant only a shop measuring 11 1/2' x 8 1/2' and it was not facing Balepet Main Road but was on the rear side of the new building. Therefore, it was considered by the Supreme Court that the same was not comparable to the shop originally occupied by the tenant. Accordingly, the Supreme Court allowed the appeal and directed the landlord to put the tenant in possession of the shop occupied by respondent-2 therein.

15. No doubt in this decision, the question as to whether the proper remedy was by way of suit or by way of an application or by way of execution of the eviction order passed under Section 21(1)(j) of the Act was not specifically raised. But the jurisdiction was invoked by filing an application under Section 27 and 28 of the Act and the same was upheld by the Supreme Court. Subsequent to the aforesaid decision, a Division Bench of this Court in K.C. SAREE EMPORIUM v. ACHAL

CHAND K. KOTHARI : ILR 1989 KAR1981 has held that if the order of eviction is clear, it can even be executed, and negated the contention that the right created under Section 27 and 28 of the Act is incapable of enforcing. It is further held that such a right, if incorporated in the decree passed in pursuance of the compromise between the landlord and tenant, it cannot be defeated or its fructification delayed by insisting on a separate forum to enforce it. The Act creates the relationship of landlord and tenant between the parties, as provided thereunder. In fact, concept of a 'statutory tenant is not a new subject. The Division Bench also further held thus:

'We are of the view that the case before us can be decided without examining the abstract proposition of law posed in Leelavathi's case. Here, there is a decree comprising within itself the terms of the compromise. What is sought to be executed is the order under proviso (j) to Section 21(1). Unless these terms of the decree are held invalid, they are to be held as executable.'

16. In C. YETHRAPPA v. D. YUSUF KHAN AND ANR : ILR 1990 KAR3981 . after referring to the decision in K.C. Saree Emporium's case another Division Bench of this Court consisting of K.A. Swami, J., and M.M. Mirdhe, J., has held thus:

'7. It may be pointed out that neither Section 21(l)(j) nor Sections 26, 27 and 28 of the Act contain express provisions as to the manner and mode of obtaining delivery of possession by a tenant of the premises erected after demolishing the old pursuant to an order of eviction obtained under Section 21(1)(j) of the Act. The Rules framed under the Act also do not contain any provision in this regard. As far as the order of eviction passed under any of the provisos to Sub-section (1) of Section 21 of the Act including clause (j) is concerned, it is a settled position of law that it is executable in the same manner a decree of a Civil Court is executed under the provisions of the Code of Civil Procedure (See MEENAKSHAMMA v. MODUR RANGAMMA - 1968(2) Mys.L.J. 255; SUBBANNA v. B. SEETHAMMA [1970(2) Mys.L.J. 560] and MATHEW M.M. v. PRAFUL CHAND AMRITLAL - [1980(1) Kar.L.J. page 234]. Similarly if an order of eviction passed under Section 21(l)(j) of the Act contains the terms as to delivery of possession of the premises by the tenant to the landlord and redelivery of the premises to the tenant by the

landlord after erecting a new building in place of the premises sought to be demolished, we do not see any difficulty whatsoever in executing such order in the manner the decree of a Civil Court is executed, because apart from Section 28 of the Act, the very order of eviction itself creates an obligation on the landlord to restore possession of the new building on its completion to the tenant which binds the landlord and as such it can be executed just like any other order of a Civil Court or an order of eviction passed under the Act.

XXX XXX XXX10.2. In Ignatius Pereira's case, the learned Judge has not taken into consideration the fact that redelivery of possession of the premises after reconstruction by the landlord to the tenant is not in any way independent of and unconnected with the order of eviction passed under Section 21(l)(j) of the Act. The provisions contained in Section 21(1)(j), 26, 27 and 28 of the Act are to be read together. They form one group and relate to the ground of eviction falling under Section 21(l)(j) of the Act. They provide that after the eviction of the tenant, if the landlord does not demolish within the time stipulated, it is open to the tenant to seek re-delivery of possession on the same terms and conditions on which he occupied the premises immediately before the eviction under Section 21(l)(j) of the Act. Section 27 provides for giving notice to the tenant to the landlord expressing his intention to occupy the new building on its completion. Section 28 further provides that on reconstruction, it is open to the tenant to seek delivery of possession if the landlord fails to redeliver the new building on its completion. Therefore, once an order of eviction under Section 21(l)(j) of the Act is passed, whether Sections 26, 27- and 28 of the Act are specifically stated in the order of eviction or not, they are to be read as incorporated in the order itself because the statute itself provides that the consequences mentioned in Sections 26, 27 and 28 of the Act should follow pursuant to the order of eviction passed under Section 21(1)(j) of the Act. That being the position, we are of the view that for the purpose of ousting the jurisdiction of a Civil Court, it is not necessary that there should be a specific provision to oust the jurisdiction of a Civil Court. Such an ousting may be by way of necessary implications also. When the statute provides for eviction of the tenant on particular grounds by a specified Court and it also provides the consequences of such an order of eviction, the jurisdiction of a Civil Court by necessary implication is excluded. Therefore, we are of the view that if the order of

eviction is in clear terms and without any ambiguity which requires to be clarified by way of evidence, the only proper remedy is the execution of such an order in the same manner as the order of eviction is executed.

10.3. However, in a case where an order of eviction passed under Section 21(1)(j) of the Act is vague and it does not contain all the particulars necessary for seeking redelivery of the premises erected after demolishing the old one by the landlord to the tenant, an application can be filed before the Court which passed the order of eviction seeking redelivery of possession in terms of the provisions contained in Sections 26, 27 and 28 of the Act. Therefore, it is not possible for us to agree with the view expressed in Ignatius Pereira's case (I.L.R. 1973 Kar 798) that the suit is the only remedy for seeking re-delivery of possession,

10.4. M.B. Chikkarevanna's case (E.S.A. 78/77 DD 13-3-1978) follows the decision in Ignatius Pereira's case (I.L.R. 1973 Kar 798). Therefore, we are of the view that both these decisions do not lay down the law correctly. Hence both the decisions are overruled.

10.5. Similarly in LEELAVATHI @ RANJAN BAI v. SHARADA : ILR 1987 KAR469 , the learned Single Judge has held thus:

XXX XXX XXXIt is not possible to agree with the view expressed in the above case because the order of eviction passed under Section 21(l)(j) of the Act, as already pointed out, if it contains necessary particulars for seeking redelivery of possession from the landlord to the tenant of the premises erected after demolishing the old premises, it can also be executed. In case the order of eviction passed under Section 21(l)(j) of the Act is vague, the right of the tenant under Sections 27 and 28 of the Act can be enforced by way of a separate application before the Court which passed the order of eviction. Therefore, the decision in Leela-vathi's case : ILR 1987 KAR469 that restoration of possession can be sought by a tenant who has been evicted under an order passed under Section 21(1)(j) of the Act, only through a separate application and not by way of execution of the said order, cannot be held to be wholly correct. Therefore, to that extent, the said decision is over-ruled.

10.6. xxx xxx10.7. In LAWRENCE MASCARNHAS v. IGNATIUS PEREIRA [1973(2) Kar.L.J. 105], it was held that the proper remedy to seek restoration of possession by a tenant who was evicted under Section 21(l)(j) of the Act, was by way of suit. In the light of the view expressed by us, it is not possible to agree with the view expressed in this decision. Hence it is overruled.

10.8. Thus on contention No. I, it is held that if the order of eviction passed under Section 21(l)(j) of the Act is not vague and contains in clear terms the particulars necessary for seeking redelivery of possession from the landlord to the tenant of the premises erected after demolishing the old premises pursuant to the order of eviction passed under Section 21(1)(j) of the Act, the tenant can seek possession by executing that order. In a case where the order of eviction passed under Section 21(l)(j) of the Act does not contain all the necessary particulars regarding redelivery of possession from the landlord to the tenant of the premises built on demolishing the old premises and simply directs eviction under Section 21(l)(j) of the Act, the application for redelivery of possession can be filed by the tenant for seeking possession of the reconstructed premises before the Court which has passed the order of eviction under Section 21(l)(j) of the Act. The suit is not the proper remedy. The matter lies within the jurisdiction of the Court specified under the Act. Therefore, the jurisdiction of a Civil Court is excluded.'

Therefore, it is clear that depending upon the contents of the order of eviction passed under Section 21(1)(j) of the Act, the delivery of possession of a new building can be sought by the tenant either by execution of the order of eviction or by filing an application under Sections 27 and 28 of the Act before the Court which has passed the order of eviction. Therefore, the contention as to maintainability of the application is negated.

17. Sri Kolar, learned Counsel appearing for the petitioner in addition to the aforesaid contention advanced the following three more contentions:

i) That the District Court has ignored the third term of the order of eviction passed on the basis of the compromise;

ii) That subsequent to the order of eviction and delivery of possession by the tenant there was a division in the family of the landlord and pursuant to a decree for partition passed by a competent Court division was effected and in that division, the schedule premises fell to the share of petitioner No. 2 who was not a party to the eviction proceeding therefore, the petitioner No. 2 is not bound by the terms contained in the order of eviction passed under Section 21(l)(j) of the Act, hence the tenant cannot enforce the right; and (iii) That the tenant had filed a petition under Section 26 of the Act in H.R.C. No. 76/2/1966 in the Court of the II Munsiff, Gulbarga for directing the landlord to take up the work of demolition and reconstruction immediately and if not, to hand over possession of the premises back to the tenant on the same terms and conditions which he enjoyed at the time of delivery of possession. That case was dismissed by the Munsiff Court and affirmed by the District Court and Civil Revision Petition No. 2966/1984 filed by the tenant before this Court was also dismissed on 17-1-1986. Therefore, it is contended that the said order operated as res judicata and as such the tenant was not entitled to enforce his right under Section 28 of the Act.'

18. We now take up these contentions for consideration. The third term of the order of eviction reads thus:

'That the applicant shall give first preference to occupy the newly constructed building on the rent fixed by the Rent Controller, Gulbarga, under the Mysore Rent Control Act, to the respondent.'

On the basis of this term which is not specifically referred to by the District Court, it is contended that the tenant has no unqualified right to enforce reoccupation of the premises. It is not possible to accept this contention. An order of eviction passed under Section 21(1)(j) of the Act carries with it, the provisions contained in Sections 26, 27 and 28 of the Act. In other words the order of eviction passed under Section 21(1)(j) of the Act has to be read with the provisions contained in Sections 26, 27 and 28 of the Act. The order of eviction obtained by the landlord is subject to the right of the tenant as incorporated in Sections 26, 27 and 28 of the Act. In fact, whether these provisions are mentioned in the order of eviction passed under Section 21(1)(j) of the Act or not by reasons of the very contents of

those Sections and Sections 21(l)(j) of the Act these three provisions become part and parcel of the order of eviction. Therefore, there is no option left to the landlord but to deliver possession to the tenant of the new premises which reasonably corresponds to the original premises, unless the tenant himself declines to occupy the new, building. As far as the fixation of the rent is concerned the statute keeps it open for the parties to agree or leave it to be decided by the statutory authority. That being so, the contention that by reason of clause 3 of the term contained in the order of eviction the tenant has lost his unqualified right as conferred by Section 28 of the Act to seek redelivery of the newly constructed premises cannot be accepted. Even without such a term contained in the order of eviction, the tenant was entitled to seek delivery of possession of the new premises reasonably corresponding to the original premises. Hence, the contention is rejected.

19. The order of eviction passed under Section 21(1)(j) of the Act not only binds the original landlord but also his heirs and successors-in-interest and those who get the premises in a partition among the members of the joint Hindu family. Therefore, whosoever becomes the successor of the right of the landlord to the premises under eviction will be bound by the order of eviction passed under Section 21(1)(j) of the Act. The order of eviction passed under Section 21(1)(j) of the Act gives a right to the tenant to secure possession of the new premises which reasonably corresponds to the one occupied by him before demolition and reconstruction. It is a right in property i.e., the premises, which goes with it. Change of ownership of the premises does not affect the right of the tenant to seek reoccupation. Therefore, the fact that there was a division between the original landlord and his sons and in that division the schedule premises was allotted to the share of petitioner No. 2, one of the sons of the original landlord did not and could not affect the right of the tenant under Sections 26, 27 and 28 of the Act. The original landlord was the kartha of the family consisting of himself and his children and as such he must be deemed to have represented his children also, in the eviction proceeding. Even otherwise, an order of eviction passed under Section 21(1)(j) not only imposes a condition or creates obligation in terms of the provisions contained in Sections 26, 27 and 28 of the Act on the right of the landlord but also creates a similar liability on the premises also. Therefore, whosoever comes to acquire the premises subsequent to the order of eviction

passed under Section 21(1)(j) of the Act will be bound by the order of eviction and will be liable to comply with it as per the provisions contained in Sections 26, 27 and 28 of the Act. If the contention of the learned Counsel is accepted, the right accrued to the tenant could be very easily defeated and the provisions of Sections 26, 27 and 28 of the Act would be rendered otiose, and it would also result in giving handle to unreasonable landlords to enter into nominal transactions to defeat the right of the tenant. An interpretation which leads to defeating the very object of the statute should be avoided. Hence the contention is rejected.

20. The last contention that by reason of the order passed in H.R.C. 76/2/1966 the tenant must be held to have lost his right to seek redelivery of the newly constructed premises cannot also be accepted. It is relevant to remember that the scope and the object of Section 26 of the Act is only to see that the landlord on obtaining possession under Section 21(1)(j) of the Act takes up demolition and reconstruction within the period specified in the order of eviction. In case he fails to take up demolition and reconstruction of the premises within the specified period, a right is given to the tenant to seek vacant possession of the premises on the same terms and conditions on which he occupied them. Under Sub-section (2) of Section 26 of the Act, the obligation is on the landlord to satisfy the Court; that he has commenced the work of demolition of the premises within a period of one month from the date of taking possession of the premises and in case he fails to do so, it is open to the Court to direct the landlord to deliver vacant possession of the premises to the tenant. Therefore, an order passed under Section 26 of the Act rejecting the application of the tenant does not in any manner affect or take away the right accrued to the tenant to seek possession of the new building on its completion under Section 28 of the Act. Therefore, the learned District Judge has rightly rejected the contention. We accordingly reject this contention also.

21. Lastly it is contended that the District Judge is not justified in awarding exemplary costs of Rs. 3,000/- on the ground that the defence of the landlords was either false, vexatious or untenable. The learned District Judge has given reasons in para 22 of his Judgment for coming to that conclusion. However, we do not consider it necessary to go into this question. It is sufficient to notice that the construction was completed in the year 1963 itself. Immediately, the possession

ought to have been delivered to the tenant. However, the possession was not delivered. Hence the tenant was compelled to approach the Court. Now 22 years have elapsed. Under these circumstances, we are of the view that a sum of Rs. 3,000/- awarded as costs may be taken as compensating the tenant for the injury and loss caused to him by depriving him of the possession of the premises for all these years. Hence we do not see any justification to interfere with the order of the lower Court awarding exemplary costs of Rs. 3,000/-.

22. For the reasons stated above, the revision I petition fails and the same is dismissed. However, there shall be no order as to costs.

23, The District Judge has given three months to deliver possession of the premises. However, that order was stayed by this Court. Consequently, the landlord still continues to be in possession. It is stated that he is doing business in the premises. Under these circumstances, he is granted time till the end of September 1990 to deliver vacant possession of the premises as ordered by the Court below to the first respondent.