

**Chandrappa Vs. D. Duggappa**

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**SooperKanoon Citation :** [sooperkanoon.com/387768](http://sooperkanoon.com/387768)

**Court :** Karnataka

**Decided On :** Jun-11-2003

**Reported in :** ILR2004KAR1056

**Judge :** A.V. Srinivasa Reddy, J.

**Acts :** Karnataka Rent Act, 1999 - Sections 27(2), 30 and 31

**Appeal No. :** H.R.R.P. No. 149/2000

**Appellant :** Chandrappa

**Respondent :** D. Duggappa

**Advocate for Def. :** R.S. Ravi, Adv.

**Advocate for Pet/Ap. :** B.M. Siddappa, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**A.V. Srinivasa Reddy, J.**

1. The petitioner - tenant has presented this petition being aggrieved by the order of the Court-below setting aside the order dated 11.3,1996 passed by the Prl. Munsiff, Chitradurga dismissing the petition filed by the respondent - landlord for

eviction under Section 21(1)(a)(h) and (i) of the Karnataka Rent Control Act, 1961 ('the repealed Act' for short) and allowing the petition filed by the respondent-landlord under Section 21(1)(h) of the repealed Act.

2. There is no revision by the respondent -landlord against the dismissal of the petition filed by him under Clauses (a) and (i) of the repealed Act.

3. For the sake of convenience, in the course of this order, the parties are referred to as landlord and tenant.

4. The landlord filed the eviction petition under Section 21(1)(a) (h) (i) of the Karnataka Rent Control Act, 1961 on the ground that he was working as a teacher in Bommenahalli village and was residing there in a rented house and he intends to shift to Chitradurga after his retirement. He further averred in the petition that his wife also owns some lands in Hireguntanur Hobli, Chitradurga Taluk which all these years was given for cultivation on contract basis and after his retirement he intends to cultivate the said lands personally. It is stated in the petition that the said lands are situate much closer to the Chitradurga town and are a long distance away from Bommenahalli. The landlord also stated that his children are also studying in Chitradurga town and their stay in the petition premises is essential for prosecuting their studies in Chitradurga town. The petition under Section 21(1)(h) of the repealed Act was presented by the landlord on these grounds.

5. The learned Munsiff tried the issue of bonafide and reasonable requirement of the premises under point No. 2 and concluded in the negative on the ground that two portions of the petition premises have not been occupied by the landlord though they have been lying vacant for quite sometime. The Court-below drawing attention to this finding of the learned Munsiff held that though the two portions are lying vacant they are unfit for occupation as they do not, admittedly, have a separate latrine or bathroom facility. The Court-below also found, on interpretation of Section 21C, that it being a special provision providing the right of recovery of possession of any premises owned by him and required by him for his own use and occupation or the use and occupation of any member of his family, the landlord is entitled to an order of eviction. It is these findings of the Court below on the question of requirement of the petition premises for the bonafide use and

occupation of the landlord that are challenged in this petition.

6. During the pendency of this revision petition. The Karnataka Rent Act, 1999 ('the Act' for short) has come into force. The Act creates certain special rights in favour of certain class of landlords and provides for regulation of rent and eviction in a spirit of modern economy apart from taking off the rigor of proof under Section 21(1)(h) of the repealed Act. A retired employee of the State is one of those class of persons who have been provided with this special right to recover immediate possession of premises let out by him. The case of the retired government servant is covered by Section 30 and 31 (c) of the Act. The said provisions read

'30. Right to recovery immediate possession of premises to accrued to employee of State or Central Government, (1) Where the landlord is a retired employee of the state or central Government, and the premises let out by him, his spouse or his dependent son or daughter are required for his own use, such employee may, within one year form the date of his retirement or within a period of one year from the date of commencement of this Act, whichever is later, apply to the Court for recovering immediate possession of such premises.

(2) Where the landlord is an employee of the State or Central Government and has a period of less than one year proceeding the date of his retirement and the premises let out by him, his spouse or his dependent son or daughter are required by him for his own us after his retirement, he may, at any time within a period of one year before the date of his retirement, apply to the Court for recovering immediate possession of such premises.

(3) When the landlord, his spouse or his dependent son or daughter referred to in Sub-section (1) or Sub-section (2) has let out more than one premises, it shall be open to him, his spouse or his dependent son or daughter, as the case may be to make an application under that sub-section in respect of only one of the premises chosen by him.'

'31. Right to recover immediate possession of premises to accrue to a widow - (1) Where the landlord is

(a) a widow and the premises let out by her, or her husband,

(b) a handicapped person and the premises let out by him.

(c) a person who is of the age of sixty-five years or more and the premises let out by him, is required for use by her or him or for her or his family or for any one for ordinary living with her or him for use, she or he may apply to the Court for recovery of immediate possession of such premises.

(2) Where the landlord referred to in Sub-section (1) has let out more than open premises, it shall be open to him to make an application under that sub-section in respect of anyone residential and one non-residential premises each chosen by him,

Explanation 1 - for the purposes of this section, 'handicapped person,' shall mean a person who is as if being an assessee entitled for the time being to the benefits of deduction under Section 80U of the Income Tax Act, 1961 (Central Act 48 of 1961)

Explanation II - the right to recover possession under this section shall be exercisable only once in respect of each for residential and for non-residential use.'

The petition filed by the landlord, who is a Government servant, in terms states the requirement of the premises by him for his own use and occupation and for the use and occupation of his children. The petitioner besides being a Government servant is also aged more than 65 years. Law being pragmatic must be understood to have been made or altered to suit the changing requirements of the community, to add flexibility to the jural relations between the members of the community and to fulfil its role of solving problems of a special nature which under the existing laws could not be affectivity solved. Thus, whenever a change in law is effected, the Court should be conscious of the problem which the legislature intended to solve and the intention should not be rendered futile while interpreting the provisions which obviously are intended to bring about operational speed in bridging the gap between the occurrence of the need and its fulfillment. The

Legislature being alive to the problems faced by senior citizens in recovering possession of the premises owned by them when they are required for the own occupation or the occupation of their family, has introduced the above provisions to assist in immediate recovery of possession of such premises without subjecting them to suffer the law's delays. Such provisions must not be rendered a mere make-believe or reduced to a parody and the right of immediate recovery guaranteed by the Act to a special class of persons should be honoured and ensured. The court-below on being, satisfied of the requirement of the landlord has passed the impugned order. The requirement of the premises by the landlord being for his own use and occupation the same is covered under Section 27(2)(r) of the Act. Explanation 1 to Section 27(2)(r) of the Act clarifies how this burden of establishing the requirement of the petition premises should be discharged by the landlord seeking the premises under Section 27(2)(r) Explanation 1 reads.

'Explanation I - For the purposes of this clause and Sections 28 to 31,

(i) Where the landlord in his application supported by an affidavit submits that the premises are required by him for occupation for himself or for any member of his family dependent on him, the Court shall presume that the premises are so required.

(ii) The new Act, therefore, does away with the need to establish that the premises is reasonable and bonafide required by the landlord unlike under the old Act. When such a need is done away with, the Court has little or no option other than to hold that the requirement as pleaded by the landlord which is supported by an affidavit is true and beyond dispute and the Court is under a statutory duty to draw a presumption that the requirement of the landlord is true. The Court-below has also found, as of fact, that the premises is in fact required by the landlord for use by him and his family. In these circumstances, this Court cannot interfere with a finding of fact recorded by the Court-below in order to reach a different conclusion in the matter. As the factum of requirement is established by the landlord, he would be entitled to the immediate recovery of the possession of the petition premises in terms of Section 30 of the Act.

7. In the result, I find no merit in this revision and it is, accordingly, dismissed.

The tenant is given three months' time to quit and deliver the vacant possession of the petition premises to the landlord.

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