

Palani Goundar Vs. Palani Goundar

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Court : Chennai

Decided On : Nov-02-1962

Reported in : (1963)1MLJ231

Appellant : Palani Goundar

Respondent : Palani Goundar

Judgement :

ORDER

Ganapatia Pillai, J.

1. This is a petition to revise the order of the Revenue Divisional Officer, in O.P. No. 150 of 1961 by which he directed eviction of the present petitioner-tenant on the ground that the arrear of rent due by him. was a sum of Rs. 810. The Officer came to this conclusion on the supposition that the rent payable for 1959-1960 and 1960-1961 was Rs. 530 per annum. This supposition was based upon the order of fixation of fair rent in O.P. No. 1 of 1961 by the Tahsildar of Pollachi. The facts leading upto the present petition are the following:

2. There is no written lease deed between the parties. The parties are also not agreed as to what was the rent agreed upon, the tenant saying that it was only Rs. 250 and the landlord contending it was Rs. 450. In O.P. No. 45 of 1960 the landlord filed an application for eviction against the present petitioner on the ground of arrear of rent and contended that the rent due was Rs. 450. The tenant

appeared in that proceeding and contested the same on the ground that the rent agreed was Rs. 250. The Tribunal which heard O.P. No. 45 of 1960 accepted the contention of the respondent and held that the rent due was Rs. 250. Immediately thereafter in October, 1960, the landlord filed an application before the Tahsildar, Coimbatore, for fixation of fair rent. That Officer eventually passed an order holding that the fair rent for the land was Rs. 530 per annum and added a rider to his order, directing the tenant to pay Rs. 810 as arrear of rent for the two years 1959-60 and 1960-61, after giving credit to the sum of Rs. 250 already paid for 1959-1960. Against the order an appeal was taken to the Tribunal, the District Munsif of Coimbatore, who set aside the order in so far as it directed payment of Rs. 810 as arrear of rent on the ground that it was beyond the jurisdiction of the Tahsildar acting as Tribunal for fixation of fair rent to make such an order. This appeal was disposed of during the pendency of the application for eviction in which the order now impugned was ultimately passed. Accepting the order made by the Tahsildar, fixing the arrear at Rs. 810 the Deputy Collector ordered eviction on the ground that that was the arrear due. Mr. Rao for the petitioner contends that the Deputy Collector ought to have given effect to the appellate order of the Tribunal, and should not have calculated the arrear of rent taking the fair rent fixed Rs. 530 to be payable for the year 1959-1960 also. He bases this argument on two grounds : the first is that the appellate Tribunal set aside that portion of the order of the Tahsildar which declared the arrear to be Rs. 810. The second is that the Tahsildar who was empowered to fix fair rent had no jurisdiction to fix fair rent retrospectively.

3. Mr. T. R. Ramachandran, for the respondent, contends that under Section 4 of the Fixation of Fair Rent Act the Tahsildar had jurisdiction to fix fair rent even for a period anterior to the period covered by the application for fixation of fair rent. In support of this argument he relied upon the language of Section 3 of the Act, which does not indicate whether the Tribunal had jurisdiction to fix fair rent only prospectively. He relies on the Proviso to Section 3 which indicates that the Tribunal fixing fair rent had jurisdiction to fix such rent for the harvest which took place in the month of September, 1956. This provision became necessary because the Act in question (Act XXIV of 1956) came into operation on 29th October, 1956 and by reason of Section 1(3) 1 was deemed to have come into

force on 1st October, 1956. This provision would naturally give rise to the presumption that the Tribunal authorised to fix fair rent had no jurisdiction to fix fair rent for any period prior to 1st October, 1956. It was therefore necessary to insert a clause or proviso in Section 3 enabling the Tribunal fixing fair rent to fix such rent even for the harvest which had taken place in September, 1956. The effect of this Proviso according to Mr. Ramachandran is that the Tribunal had jurisdiction to fix fair rent not only prospectively but also retrospectively. This argument, in my opinion, has no force and cannot be accepted, having regard to the scheme of the Act and the decision of this Court. It is well-settled now that till fair rent is fixed by an application made by any of the parties to the concerned authorities the agreed rent shall be the lawful rent and payment (and acceptance) of such rent shall be in full quit of the liability to pay rent. That would mean the fixation of fair rent by the Tribunal would not disturb the rent already paid and accepted in full discharge of the liability for payment of rent. That result would only follow if the operation of the Order fixing fair rent is to be prospective and not retrospective. I took this view in C.R.P. No. 928 of 1960 and said that the order fixing fair rent would take effect from the date of the application in which that order was passed. A different view as to the date from which the order fixing fair rent was to take effect was taken by Ramachandra Iyer, J. (as he then was) in *Mutku Kumar a Padayachi v. Sambandam Pillai* : (1960)1MLJ20 . To resolve this conflict Kunhamed Kutti, J. referred a case (*Peria Mari Goundan v. Ramaswami Goundan* Since reported in : (1962)2MLJ541 to a Bench. The conflict really centred on the question from what date the order passed by the Tribunal fixing fair rent should take effect, namely whether it should take effect from the date of the application for fixation of fair rent as held by me or from the date of the order as held by Ramachandra Iyer, J. (as he then was). The Bench preferred the view that the order should take effect from the date when the application for fixing fair rent was made. The question whether the order would take effect for a period anterior to the date of the application was not raised specifically before the Bench but I read the judgment of the Bench to mean that this contention was impliedly repelled because the learned Judges relied upon Section 6 of the Act that the order fixing fair rent shall be enforced for a period of five years. This provision was understood by the Bench to imply that the Tribunal fixing fair rent had jurisdiction to give effect to their order from the date of

the application for fixing fair rent. To accept the contention of Mr. Ramachandran would lead to the result that though no specific words are found in Section 3 giving jurisdiction to the Tribunal to fix fair rent retrospectively the result of fixing of fair rent would be to reopen settled transactions between the landlord and tenant by which rent was accepted at a rate higher or lower than the rent fixed by the Fair Rent Tribunal, on the ground that the rent accepted was the agreed rent between the parties. I do not find any justification in the language of Section 3 or any other provision of the Act to hold that the Fair Rent Tribunal has jurisdiction to fix rent which would have retrospective effect. It follows that the order complained against is wrong and the Deputy Collector was bound to calculate the arrear on the supposition that the order fixing fair rent had only prospective operation. On that basis the arrear of rent due would be Rs. 280.

4. The order of the Deputy Collector is therefore set aside and in its place an order is made declaring the arrear due to the respondent to be Rs. 280 and the petitioner is directed to deposit this amount in the Office of the Revenue Divisional Officer, Coimbatore, within a period of one month from the date of receipt of the records in that Court. If such a deposit is made the Deputy Collector will dismiss the application for eviction. If no deposit is made in accordance with this order, the Deputy Collector will proceed to pass orders in accordance with law.