

(1992) 12 SC CK 0058

In the Supreme Court Of India

Case No : Civil Appeal No. 10148 Of 1983

Azra Abdulla (Smt) and Another

APPELLANT

Vs

Asiatic Oxygen and Acetylene Co. Ltd.

RESPONDENT

Date of Decision : 04-12-1992

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 50

Citation : (1995) 4 SCC 397 Supp

Hon'ble Judges : V. Ramaswami, J;T. K. Thommen, J;R. M. Sahai, J

Bench : Full Bench

Final Decision : Allowed

Judgement

1. This appeal is by the landlord challenging the judgment of the High court of Karnataka in Civil Revision Petition No. 2051 of 1976, whereby the High court, reversing the findings of the trial court, allowed the tenant's appeal and rejected the landlord's prayer for ejectment. The trial court found that the tenant was liable to be ejected on the ground mentioned in Section 21(I)(c) of the Karnataka Rent Control Act, 1961. Section 21(I)(c) reads:

"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:-

(A) (b) (c) that the tenant has without the landlord's consent given in writing, erected on the premises any permanent structure."

2. The landlord had pleaded that various structures of a permanent nature had been erected by the tenant without her consent. The trial court, taking into

account the totality of the pleadings and evidence, held that the structures alleged to have been erected by the landlord were constructed subsequent to the date on which the Karnataka Rent Control Act, 1961 came into force; the structures were of a permanent character, and the landlord had, at no time, given her consent to the erection of any one of the structures mentioned by her. The petition for eviction contains in paragraph 2 details of the structures allegedly made by the tenant without the landlord's consent and subsequent to the coming into force of the Karnataka Rent Control Act, 1961. Paragraph 2 of the eviction petition reads:

"The Respondent has without the consent of the petitioner erected on the premises the following permanent structures:

- (I) Sitting room door closed by a wall leading to the left bedroom.
- (II) Left bedroom window which was facing the dining room is replaced by built-in cupboard (work under progress at the time of inspection).
- (III) Pantry room extended.
- (IV) Middle bathroom commode removed and other work was under progress at the time of inspection.
- (V) Two rooms constructed in open verandah stairs leading to first floor.
- (VI) One godown constructed next to garage.
- (VII) Water tanks constructed in the back yard.
- (VIII) Door closed leading to terrace in upstairs dining room.
- (IX) In the first floor bathroom commode removed and underground system installed.
- (X) The front compound wall is being raised and the work is now in progress."

3. The details of the structures stated by the landlord in paragraph 2 clearly and undoubtedly speak for themselves. The nature of the various structures admittedly made by the tenant shows that they are of a permanent character. The question then is whether the landlord had given her consent in writing. There is no plea or evidence to the effect that the landlord had either in writing or by conduct ever consented to the construction of the various structures. From the totality of the pleadings and evidence as well as the notice preceding the suit, the learned trial Judge came to the conclusion that all the structures had been erected subsequent to the date on which the Act came into force. The trial court accepted without question the allegations of the landlord with respect to Section 21(1)(c) of the Act.

4. The High court in exercise of its revisional power under Section 50 of the Karnataka Rent Control Act reversed the findings of the trial court on two grounds. The High court held that the present owner of the building was not the

owner at the time of filing the suit. The cause of action, according to the High court, perished with the transfer of property by the previous owner to the present owner. It is true that during the proceedings in the High court, the "landlord", namely, the mother transferred by a Deed of Gift the premises in question to her daughter who is, therefore, now the present "landlord". The fact that during the proceedings the property in question was under a deed of gift transferred by the mother to the daughter does not on the facts of the case in any manner affect the cause of action pursued by the present landlord. She is entitled to urge all contentions open to the landlord in respect of her application for ejectment. The finding of the High court to the contrary, in our view, was wrong. The fairness to counsel for the respondent, it must be stated that this question was not urged at the Bar.

5. The main contention which was urged by Mr. Tarkunde appearing for the respondent-tenant, was that there was no proof that the structures in question had been erected subsequent to the coming into force of the Act. He further contended that the structures, assuming they were constructed subsequent to the coming into force of the Act, were not shown to be of a permanent character.

6. Whether or not the erection of the structures was subsequent to the relevant date and whether or not such construction was of a permanent character, is a question of fact and that question had been determined by the fact-finding authority, namely, the trial court. The finding of the trial court, as stated earlier, was undoubtedly in favour of the landlord. On the facts and in the circumstances of this case, the High court was in error in interfering with the findings of the trial court.

7. Before we conclude, we must state that various decisions were cited at the Bar on behalf of the tenant; but none of them, in our view, is of direct relevance in the facts of this case. (See: *Om Prakash v. Amar Singh*, *Brijendra Nath Bhargava v. Harsh Wardhan Venkatlal G. Pittie v. Bright Bros. (P) Ltd.*

8. In the circumstances, the appeal is allowed and the order of the High court is set aside. The decree of the trial court shall accordingly stand restored. The landlord is entitled to costs throughout.