(1988) 08 KAR CK 0018

In the Karnataka High Court

Case No : W.A. 1801 of 1985

Bharath Gold Mines Ltd. APPELLANT

Vs

Kannappa RESPONDENT

Date of Decision : 11-08-1988

Acts Referred:

Constitution of India, 1950 — Article 254
Karnataka Rent Control Act, 1961 — Section 14, 2 (7), 2 (7) (c)

Citation : (1988) ILR (Kar) 3092 : (1988) 3 KarLJ 327

Hon'ble Judges : Prem Chand Jain, C.J;Shivashankar Bhat, J

Bench : Division Bench

Advocate : K.J. Shetty, for the Appellant; Kusuma R. Muniraj Advocate for R-1 and S.V. Jagannath, Government Advocate for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Shivashankar Bhat, J.—This appeal is by the Writ Petitioners, against the dismissal of their Writ Petition. The 1st appellant is referred as the appellant-company hereinafter, for the sake of convenience.

2. The question raised pertains to the applicability of the provisions governing fixation of fair rent under the Karnataka Rent Control Act, 1961 (for short, referred as the ''R.C. Act''), to the premises leased by the appellant-company to the 1st respondent.

3. Appellant-company is a company registered under Indian Companies Act and its entire share capital is owned by the Government of India. It has in possession vast extent of mining area obtained by it on mining tease from the State Government. In some of the areas it has put up structures, which have been granted by it on lease to persons like the 1st respondent. Here, the subject-matter of lease is stated, originally to be a Tailor-shop, converted into a flour-mill, though, the first respondent asserts the same to be a ''building-cum-residence''. The rent was fixed long ago. The appellant-company issued notice revising the rent payable by the first respondent, in the year 1981. Thereafter,

the first respondent filed an application u/s 14 of the R.C. Act, before the 2nd respondent for fixation of fair rent.

4. The appellant-company questioned the applicability of the R.C. Act to the premises in question mainly on two grounds - (i) that the premises is covered by the provisions of Public Premises (Eviction of un authorized Occupants) Act, 1971 (for short referred as the P.P. Act), which is a Central enactment, which overrides the provisions of R.C. Act; and (ii) the R.C. Act is not applicable to the premises in question and the relationship between the parties hereto, in view of Section 2(7) of the R.C. Act.

5. The 2nd respondent did not accept the plea of the appellant-company and fixed the fair rent. This was challenged by the appellant-company in the Writ Petition.

6. The main contention urged by the appellant-company, was that, the premises belonging to it comes within the definition of ''public premises'', as defined u/s 2(e) of the P.P. Act and hence governed by the provisions of the said Act; in view of this, it was contended that the provisions of the R.C. Act are inapplicable to its premises. The provisions of the P.P. Act, which is a Central enactment overrides, the provisions of the R.C. Act.

7. The learned single Judge rejected this contention, and held, that the P.P. Act covered only the subject of eviction of persons who are in occupation of public premises arid not the fixation of fair rent for the said premises. The field of fixing fair rent not being occupied by the Central law, (P.P. Act), there is no repugnancy between the provisions of the P.P. Act and the provisions governing the fixation of fair rent under the R.C. Act.

8. The learned Counsel relied on the decision of the Supreme Court in Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India and Another, in support of his contention. The learned single Judge before whom this decision was cited, found the same inapplicable to the facts of the case. The premises belonged to L.I.C. which determined the lease of the appellant-tenant and initiated action under the provisions of P.P. Act to evict the appellant who Objected to the applicability of the P.P. Act. Thereafter, the tenant challenged the order made under the P.P. Act by filing a Writ Petition in which, his contentions were negatived. It was argued there, that the premises was covered by the Delhi Rent Control Act and that the tenant was protected by the said Act. Rejecting this contention, it was held, at paras-8 and 9 :

".......So far as the Premises Act is concerned it operates in a very limited field in that it applies only to a limited nature of premises belonging only to particular sets of individuals, a particular set of juristic persons like companies, corporations or the Central Government. Thus, the Premises Act has a very limited application. Secondly, the object of the Premises Act is to provide for eviction of un authorized occupants from public premises by a summary procedure so that the premises may be available to the authorities mentioned in the Premises Act which constitute a class by themselves......."

"Thus, it would appear that both the scope and the object of the Premises Act is quite different from that of the Rent Act. The Rent Act is of much wider application than the Premises Act inasmuch as it applies to all private premises which do not fall within the limited exceptions indicated in Section 2 of the Premises Act.......On a parity of reasoning, therefore, there can be no doubt that the Premises Act as compared to the Rent Act, which has a very broad spectrum is a special Act and override the provisions of the Rent Act."

Supreme Court concluded that P.P. Act was a special enactment which superseded the Rent Act. These observations of the Supreme Court are to be read in the context of the facts of the case. The question arose because of the eviction proceedings. The earlier part of the observations quoted above, clearly demonstrate that the object of the P.P. Act is to provide for eviction of un authorized occupants. The said Act is not stated to be exhaustive of the relationship of landlord and tenant in respect of public premises. The scheme of the said Act read with its object, confines the operation of the provisions of the Act of the topic of eviction only.

9. When there are two legislations touching a subject matter, legislated by two different law making bodies (i.e., by Parliament and the State Legislature) it has to be examined as to whether the State Law is repugnant to the provisions of the Central Law and whether the provisions of the two enactments cannot stand together. The State taw should yield to the Central Law to the extent of its repugnancy to the Central Law, as provided under Article 254 of the Constitution. In such a situation the entire State Law does not become unenforceable; its sterility is confined to the extent of its repugnancy to the Central Law.

10. Nowhere the P.P. Act deals with the topic of rent-fixation. The object of the P.P. Act as is clear from its preamble, is to provide for the eviction of un authorized occupants from public premises and for certain incidental matters. ''un authorized Occupation'' is defined u/s 2(g). Sections 3 to 5 provide the machinery to evict an un authorized person. Sections 5-A to 5-C provide for the removal etc.. of un authorized constructions. Section 7 provides for the recovery of arrears of rent and to assess damages for the use and occupation of a public premises. Even here, Section 7 does not empower the fixation of rent of the premises. It is again, a procedural provision, as held by the Supreme Court in New Delhi Municipal Committee Vs. Kalu Ram and Another, wherein the scope of Section 7 of the P.P. Act came up for consideration. The Municipality contended that the said provision enabled it to recover even time-barred arrears of rent i.e., the arrears of rent which could not be recovered by resort to ordinary suit. While rejecting this contention, it was held that Section 7 of the P.P. Act provided only, a special procedure for the realisation of rent in arrears and did not constitute a source or foundation of a right to claim a debt otherwise time barred. The ratio was that Section 7 did not create new rights. Section 7 provided only a summary procedure for the recovery of arrears of rent.

11. A perusal of Section 7(2) shows that u/s 7(2), a power is conferred on the Estate Officer to assess damages on account of the use and occupation of the premises by an un authorized person; the assessment has to be made having regard to the principles that may be prescribed under the Rules. Other provisions of the Act, govern other procedural matters as also appeals from certain orders. Finality given to the orders of an Estate Officer u/s 10, is again, in respect of orders made under the said Act only.

12. Payment of rent may have relevancy to the question of eviction, because, failure to pay the rent may create cause for eviction; the lessor may determine or terminate the lease, resulting in the tenant''s subsequent occupation becoming un authorized. But that does not mean that such a power essentially includes a power to fix fair rent. It is entirely a different matter, if the lessor, not being satisfied with the conduct of the tenant or by the fixation of fair rent terminates the tenancy and thus alter the status of the tenant into that of an "un authorized occupant", if there is such a power with the lessor. This is the risk to be faced by the tenant while initiating a proceeding under the R.C. Act for fixation of fair rent. Such a possibility cannot result in holding that these provisions of R.C. Act are repugnant to the provisions of the P.P. Act.

13. Subject of eviction is an independent and distinct subject from the subject of rent fixation. An incidental affect of one subject over the other would not make them mutually destructive or repugnant to each other. Therefore, it is not possible to accept the contention that the P.P. Act overrides the provisions of R.C. Act in the matter of fixation of fair rent.

14. The decision of Delhi High Court in INDO IMEX AGENCIES (Pvt) LIMITED v. LIFE INSURANCE CORPORATION OF INDIA etc., AIR 1983 Delhi 409 relied upon by the learned Counsel, is again distinguishable on facts. The eviction proceedings under the P.P. Act was challenged, on the ground that Rent Control Act protected the tenant. It in -this context, the Delhi High Court observed that, P.P. Act was a complete Code and provided the principles and machinery for dealing with those persons who are in un authorized occupation of public premises.

15. It is also necessary to note here that, the legislative competence of the State Legislature to apply the R.C. Act to public premises, was not challenged before us. The argument proceeded entirely on the hypothesis that the P.P. Act overrides the R.C. Act.

16. The next contention is based on the provisions of Section 2(7) of the R.C. Act. According to the 1st respondent he was allotted the building (shop-cum-residence) on rental basis. According to the appellant-company, the 1st respondent was formerly running a Tailor shop, but now runs a flour-mill. Therefore, the premises in question being a building, cannot be doubted.

17. Nowhere in the Writ Petition, nor in the objection statement filed by the appellant-company before the 2nd respondent it was pleaded that the premises

belong to the State Government. There is a vague plea that the appellant-company had taken the mining area on lease from the State Government and thereafter allowed a few persons to have structures on the sites allotted to them on ground rent basis and a few persons were allowed, on lease basis to run business in the ''structures built and belonging'' to the appellant-company. We are constrained to proceed on the hypothesis that the premises involved in this appeal is a building put up by and belongs to the appellant-company, as, no other clear plea is forth coming. The main contention urged throughout by the appellant-company was, that it was a company in which the share capital was entirely held by the Central Government and therefore, the premises belonging to it is a ''public premises'' covered by the P.P. Act.

18. In this appeal one of the contentions urged by the learned Counsel for the appellant was that by virtue of Section 2(7) of the R.C. Act the provisions of the said Act would not apply to its premises. Relevant part of Section 2(7) of R.C. Act reads thus :-

"Nothing in this Act shall apply --

(a) to any premises belonging to the State Government or the Central Government; or

(b) to (bc) xx xx (omitted) (c) to any tenancy or other like relationship created by a grant from the State Government or the Central Government in respect of any premises taken on lease or requisitioned by the State Government or the Central Government."

The appellant-company is a company incorporated under the provisions of Indian Companies Act. Even though its entire share capital is owned by the Government of India, the company has an independent existence. As observed by the Supreme Court in Heavy Engineering Mazdoor Union Vs. State of Bihar and Others,

"......An incorporated company, as is well known, has a separate existence and the law recognises it as a juristic person separate and distinct from its members. This new personality emerges from the moment of its incorporation and from that date the persons subscribing to its memorandum of association and others joining it as members are regarded as a body incorporate or a Corporation aggregate and the new person begins to function as an entity, (cf. Saloman v. Saloman and Co. 1987 AC 22). Its rights and obligations are different from those of its share holders. Action taken against it does not directly affect its shares holders. The company in holding its property and carrying on its business is not the agent of its share holders....."

Again, at page 86:

".....The company so incorporated derives its powers and functions from and by virtue of its memorandum of association and its articles of association. Therefore, the mere fact that the entire share capital of the respondent-company was contributed by the Central Government and the fact that all its shares are held by the President and certain officers of the Central Government does not make any difference. The company and the share-holders being, as aforesaid, distinct entities the fact that the President of India and certain Officers hold all its shares does not make the company an agent either of the President of the Central Government. A notice to the President of India and the said Officers of the Central Government, who hold between them all the shares of the company would not be a notice to the company; nor can a suit maintainable by and in the name of the company be sustained by or in the name of the President and the said Officers."

19. The appellant-company is a distinct juristic personality and is an independent legal person; it cannot be equated to the Centra Government. Hence the premises belonging to it cannot be held to be the premises belonging to the Central Government. Consequently Section 2(7)(a) of the R.C. Act is inapplicable.

20. The next question pertains to the meaning of Section 2(7)(c) of the R.C. Act. The subject of this sub-clause is any tenancy or other like relationship created by a grant from the Government in respect of any premises taken on lease or requisitioned by the Government. In other words, the premises should be taken on lease or requisitioned by the Government. In respect of such a premises, the Government may create any tenancy or like relationship; the creation of this lease or relationship ought to be by a grant from the Government. So, the Government having obtained a premises on lease or by requisition, in turn, leases it or creates a like relationship in respect of it, such a tenancy or relationship will not be governed by the R.C. Act. Whereas u/s 2(7)(a), the Act is inapplicable to the premises "belonging" to the Government, u/s 2(7)(c), the Act is made inapplicable to the leases or like relationship, created by the Government in respect of premises taken by the Government earlier, by lease or requisition. The idea is to except the provisions of the Act from governing the governmental premises and the legal relationships created by the Governments in respect of any premises.

21. Here, that is not the position. The premises was not taken on lease by the Government nor requisitioned by the Government. The relationship between the appellant-company and the 1st respondent was not created by any of the Governments. Hence, the attempt of the appellant-company to get exemption by recourse to Section 2(7) of the B.C. Act has to fail.

22. No other contention survives for consideration.

23. In the result, for the reasons stated above, this appeal fails and is dismissed, without any order as to costs.

