

(1993) 10 KAR CK 0009
In the Karnataka High Court
Case No : C.R.P. No. 282 of 1993

Dr. J. Navneethan

APPELLANT

Vs

Director (Maintenance)

RESPONDENT

Date of Decision : 20-10-1993

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 2 (7), 2 (e), 21
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 15, 4, 5

Citation : (1993) ILR (Kar) 3404 : (1993) 4 KarLJ 544

Hon'ble Judges : Shivaraj Patil, J

Bench : Single Bench

Advocate : N.S. Krishnan, for the Appellant; P. Jayalakshmi, Central Govt. Stdg. Counsel for R-1, for the Respondent

Final Decision : Allowed

Judgement

Shivaraj Patil, J.—This Revision Petition is by the landlord-petitioner directed against the order dated 5.2.1993, passed by the learned 4th Additional Judge, Court of Small Causes, Mayohall, Bangalore, in H.R.C. No. 10404/92.

2. The brief facts leading to this Revision Petition are :

The petitioner filed petition u/s 21(1)(f), (h) and (p) of the Karnataka Rent Control Act, 1961 (for short "the Act, 1961") seeking an order of eviction against the respondents.

The first respondent is the Director (Maintenance), Southern Telecom Sub-Region, 125, Infantry Road, Bangalore and respondent No. 2 who is working under the first respondent is in occupation of the schedule premises.

The second respondent in his objection statement among other grounds has raised a ground that the petition filed for eviction itself was not maintainable in view of the provisions contained in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short "the Act, 1971"), as the Act 1961 has no application to the petition schedule premises it being a public premises.

The learned Small Cause Judge heard the learned Counsel on the question of maintainability of the Petition. Accepting the submission of the learned Counsel for the respondents that the schedule premises is a public premises within the meaning of Section 2(e) of the Act, 1971, the Court below held that the petition filed u/s 21 of the Act 1961 was not maintainable. Accordingly, the petition filed for eviction was dismissed as not maintainable by the order dated 5.2.1993, which is called in question in this Revision Petition.

3. Sri N.S. Krishnan, learned Counsel for the petitioner urged that the premises in question is not a public premises as defined u/s 2(e) of the Act, 1971; the occupation of respondent No. 2 cannot be said to be unauthorised occupation so as to apply the Act, 1971 and Section 2(7) of the Act 1961 does not exclude the application of that Act to the premises in question. Thus, he submitted that the order under Revision cannot be sustained.

4. Smt. P. Jayalakshmi, learned Central Government Standing Counsel for respondent No. 1, argued in support and justification of the impugned order.

5. I have considered the submissions made by the learned Counsel for the parties.

6. I think it is appropriate to extract the relevant averments from the pleadings having bearing on the question to be decided. Paras-2, 3 and para-4 so far they are relevant read thus :

"The petitioner is the landlord of the premises detailed in the schedule. The first respondent is the tenant.

The premises bearing No. 125 was taken on lease by the first respondent on 30.4.1974 and the lease was being extended from time to time. The rate is Rs. 6,900/- per month.

The premises bearing No. 125/1 is a residential premises which was taken on lease by the first respondent to provide residential accommodation for its staff. The respondent No. 1 has provided a residential accommodation to Sri. Pandarinathan in premises No. 125/1 who is an official of the respondent No. 1 and was not let out to Pandarinathan i.e. second respondent by the petitioner. As such the second respondent cannot claim to be the tenant under the petitioner. Likewise the first respondent cannot disown their status as tenant of premises bearing No. 125/1 which was taken on lease by the first respondent to provide residential accommodation to its staff".

7. Premises bearing No. 125 and 125/1 situated in Infantry Road, Bangalore, are shown in the Schedule of the Petition.

8. Para-1 of the objection statement filed by the first respondent reads:

"The respondent submits that it is true that the respondent is a tenant in respect of the occupation of the petition schedule premises."

Para-2 of the objections so far it is relevant reads thus:

"The respondent submits that Sri G. Pandarinathan is staying in premises No. 125/1 in his personal capacity after 1.1.89 and not as Departmental Officer. As a matter of fact the rent is being paid by him directly to the petitioner who is accepting the rent in his private capacity and acknowledging receipt."

"Public premises" as per Section 2(e)(1) of Act, 1971 means:

"any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised occupants) Amendment Act, 1980, under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat."

As per Section 2(g) "unauthorised occupation" in relation to any public premises, means:

"the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

Under Section 15 of the Act, 1971 no Court shall have jurisdiction to entertain any suit or proceeding in respect of:

(a) the eviction of any person who is in unauthorised occupation of any public premises, or

(b) to (e) xxx xxx xxx

Section 2(7) of the Act, 1961 so far it is relevant reads:

"Nothing in this Act shall apply:

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

(b) xxx xxx xxx

(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."

10. The Court below has taken the view that the schedule premises is a public premises within the meaning of Section 2(e) of the Act, 1971, hence Section 21 of the Act, 1961 has no application. On this basis, the petition filed by the petitioner u/s 21 of Act, 1961 is dismissed as not maintainable.

11. In para-2 of the Petition it is stated that the petitioner is the landlord of the

schedule premises, that is, premises bearing Nos. 125 and 125/1 both situated in Infantry Road, Bangalore and the first respondent is the tenant. The first respondent is the Director (Maintenance), Southern Telecom Sub-Region, 125, Infantry Road, Bangalore. In para-1 of the statement of objections it is admitted that the first respondent is a tenant in respect of the occupation of the petition schedule premises, which includes premises No. 125 and 125/1. In para-2 of the objections statement it is stated that respondent No. 2 is staying in premises No. 125/1 in his personal capacity and not as a Departmental Officer and he is paying rent directly to the petitioner, who is accepting the same in his private capacity.

12. Since the premises in question does not belong to the State Government or the Central Government or it is not a 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 application of Section 21 of the Act, 1961 to the schedule premises cannot be excluded u/s 2(7) of the Act, 1961. The occupation of the schedule premises by the respondents in this case cannot be said to be unauthorised occupation within the meaning of Section 2(g) of the Act, 1971. From the pleadings it cannot be said that either occupation or continuance in occupation of the schedule premises by the respondents is without authority for such occupation or they are occupying it after the authority under which they were allowed to occupy the premises has expired or has been determined for any reason whatsoever. Sections 4 and 5 of the Act, 1971 deal with eviction of unauthorised occupants. Section 15 of the same Act bars jurisdiction of Court to entertain any suit or proceeding in respect of the eviction of any person, who is in unauthorised occupation of any public premises besides other things mentioned in the said Section. Since the application of the provisions of Section 21 are not excepted to the premises in question u/s 2(7) of the Act, 1961 Section 21 of the Act seeking eviction of a tenant gets attracted, more so, when the occupants of the schedule premises are not unauthorised occupants so as to take action for their eviction under the Act, 1971.

13. This Court in the case of STATE OF KARNATAKA v. PANDURANGARAO MADHAVARAO AND Anr. 1988 (1) KarLJ 400 referring to Section 2(7) of the Act, 1961 in para-4 of the order held that the exemption applies to any tenancy or other like relationship created by a grant from the State Government or the Central Government and not to any lease taken by the Government on lease.

The Division Bench of this Court in the case Bharath Gold Mines Ltd. Vs. Kannappa, has ruled that Section 2(7)(c) of the Act, 1961 excepts the provisions of the Act, 1961 to the Governmental premises and legal relationships created by Governments in respect of any premises. Para-20 of the said Judgment reads:

"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 applicable to the premises "belonging" to the Government, u/s 2(7)(c), the Act is made inapplicable to the leases or like relationships, 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 Government in respect of any premises."

14. The Court below did not take into consideration the pleadings of the parties to apply the law and pass the order that the petition is not maintainable, on the assumption that the schedule premises is a public premises. It did not apply its mind and did not take into consideration the provisions of Sections 4, 5 and 15 of the Act, 1971 and Section 2(7)(c) of the Act, 1961. It has come to the wrong conclusion. On facts, the respondents cannot be said to be unauthorised occupants, as such there cannot be a bar of jurisdiction u/s 15 of the Act, 1971 to entertain a petition u/s 21 (1)(f), (h) and (p) of the Act, 1961. Further, Section 2(7) of the Act, 1961 does not exclude the application of the provisions of the Act, 1961 in respect of the schedule premises, which does not fall in any one of the categories mentioned under the said Section.

15. In Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India and Another, the Supreme Court in para-9 of the Decision has stated that the scope and 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. The object of the Rent Act is to afford special protection to all the tenants or private landlords or landlords who are neither a Corporation nor Government or Corporate Bodies.

In INDO IMEX AGENCIES (Pvt.) LIMITED v. LIFE INSURANCE CORPORATION OF INDIA AIR 1983 Delhi 409, it is stated that the occupant of public premises cannot claim the protection of Rent Act after the premises are declared "public premises" by the Public Premises Act of 1971. The application of the Rent Act is excluded, as Section 15 of the Public Premises Act ousts the jurisdiction of the Court to deal with the matter of eviction or recovery of rent in respect of the public premises.

The aforesaid Decisions are not correctly understood by the Court below so as to apply to the facts of the case on hand.

16. Thus, having regard to all aspects of the matter, I am of the considered

opinion that the Court below committed an error in holding that the petition filed for eviction was not maintainable.

17. In the result, for the reasons stated and discussion made above I pass the following order:

(1) The Revision Petition is allowed.

(2) The order dated 5.2.1993, passed by the 4th Additional Judge, Court of Small Causes, Mayohall, Bangalore, in H.R.C. No. 10404/92 is set aside holding that the petition filed by the petitioner for eviction of the respondents is maintainable.

(3) The Court below is directed to restore H.R.C. No. 10404 of 1992 and to dispose it off in accordance with law.