
(1975) 06 KAR CK 0004
In the Karnataka High Court

Eric A. Suares

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 10-06-1975

Acts Referred:

Constitution of India, 1950 — Article 14, 213

Karnataka Rent Control (Amendment) Ordinance, 1975 — Section 7 (ii)

Citation : AIR 1976 Kar 134 : (1975) 2 KarLJ 155

Hon'ble Judges : E.S. Venkataramiah, J

Bench : Single Bench

Advocate : E. Jayachandra Raj, for the Appellant;

Judgement

1. The petitioner in the above writ petition has questioned the validity of the provisions of Section 7 (ii) of the Karnataka Rent Control (Amendment) Ordinance, 1975 (hereinafter referred to as the Ordinance). The petitioner is a tenant of a premises situated in Civil Station Bangalore and respondent-2 is the landlord of the said premises. The 2nd respondent instituted proceedings for the eviction of the petitioner under the provisions of the Karnataka House Rent Control Act, 1961, (hereinafter referred to as the Act) in H. R. C. No. 471/1972 on the file of the Principal Munsiff, Civil Station, Bangalore. The said petition was allowed by the learned Munsiff directing the petitioner to vacate the premises within four months by his order dated 9-4-1975. The petitioner had a right of appeal u/s 48 of the Act against the order of the learned Munsiff and the said right came to be vested in him when the petition was filed in the Court of the Munsiff. But, on 22nd May, 1975, the Governor of Karnataka promulgated the Ordinance by which Section 48 was repealed and it was provided that any person who but for the omission of Section 48 of the Act could have filed an appeal to the District Judge was permitted to file a revision before the District Judge within 30 days from the date of commencement of the Ordinance. The District Judge was directed to dispose of the petition as if it was a revision petition under sub-section (2) of Section 50 of the Act as amended by the Ordinance. The petitioner had not filed an appeal against the order of the Munsiff on May 22, 1975, and the

right to file an appeal was taken away by Section 7 (ii) of the Ordinance.

2. Shri E. Jaya Chandra Raj, learned Counsel for the petitioner, has questioned the validity of Section 7 (ii) of 4k,the Ordinance on the ground that his right to file the appeal which became vested on the date on which the petition was instituted before the Court of the Munsiff could not be taken away retrospectively. There is no substance in this contention. It is no doubt true that a right of appeal is a vested right and it becomes vested in a litigant on the date on which the proceedings are initiated in the Court of first instance. But that right can be taken away by the Legislature by a subsequent law. Following the decision of the Privy Council in Colonial Sugar Refining Co. Ltd. v. Irving (1905 AC 369) the Supreme Court observed in Garikapatti Veeraya Vs. N. Subbiah Choudhury, as follows: -

"(23) From the decisions cited above the following principles clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the Superior Court accrues to the litigant and exists as on and from the date the list commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

3. The last sub-paragraph of the portion of the Supreme Court's decision extracted above clearly establishes that it is permissible for the Legislature to take away the right of appeal by a subsequent enactment by expressly providing for it or by necessary intendment. As already mentioned by the Ordinance, Section 48 was repealed. With regard to persons who but for the omission of Section 48 could have filed , appeal before the District Judie, the Ordinance provided that it was open to them to file a petition to the District Judge within 30 days from the date of commencement of the Ordinance and that the District Judge should dispose of the said petition as if it was a revision petition under sub-section (2) of Section 50 of the Act as amended by the Ordinance. It is clear from Section 7 (ii) of the Ordinance that by necessary intendment the right of

appeal which the petitioner had acquired on the date of the institution of the petition in the Court of the Munsiff had been taken away.

4. It was next contended that the Ordinance does not give reasons for enacting Section 7 (ii) of the Ordinance. It is not obligatory on the part of the Legislature to give reasons in the enactments passed by it in support of the provisions enacted. The fact that the State Government had appointed a Commission to make recommendations in the matter of establishment of Courts and re-distribution of jurisdiction of existing Courts did not take away the authority of the Governor to promulgate an Ordinance in exercise of his undoubted power under Article 213 of the Constitution.

5. Although the petitioner had not raised specifically the plea that Article 14 had been violated, in the course of the argument, Shri Jayachandra Raj, submitted that as between persons who had already filed the appeals before the District Judge and persons who had not filed the appeals, the Ordinance had made a discrimination, and that persons in the position of the petitioner had been discriminated against. It is well settled that it is open to the Legislature to make a classification between pending proceedings and the proceedings which had not been instituted, in any Court vide *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, There is no substance in this contention also.

6. No other contention is urged. This petition, therefore, fails and it is dismissed.

7. Petition dismissed.