

(1978) 11 KAR CK 0005
In the Karnataka High Court
Case No : CRP 1286/75

Gopal Vaman

APPELLANT

Vs

Krishnaji Tatyarao

RESPONDENT

Date of Decision : 22-11-1978

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 21(1)(D)

Citation : (1979) 1 KarLJ 319

Hon'ble Judges : Patil, J

Judgement

1. This is a tenant's revision petition and directed against the order of eviction dated 5-4-1975 passed by the Additional District Judge, Belgaum, in H.R.C.A.No. 23/74 reversing the order dated 6-3-1974 passed by the I Additional Munsiff, Belgaum, in H.R.C.No. 65/72 on the file of his Court.

C.T.S.No. 1792/1 consisting of three rooms with a bath room situate in Kelkarbag of which the petitioner is a monthly tenant in occupation, is the subject-matter of dispute.

2. While the respondent, who is admittedly a landlord of the premises in question, resides in a neighbouring house bearing C.T.S. No. 1791, two of his other tenants namely, i) Laxman (P.W. 2) and ii) Dattatreya (P.W. 3) reside in C.T.S.Nos. 1792/3 and 1792/2 respectively. There is no dispute that C.T.S.No.1792/1 in occupation of the tenant-revision petitioner and C.T.S. Nos. 1792/2 and 1792/3 are situated adjacent to one another. While the latter two face towards north, the former faces to east. There is a well and a privy common to all the three tenements situated towards the west of C.T.S. No.1792/3, i.e., between CTSNo. 1791 in occupation of the landlord and C.T.S. No. 1792/3 in occupation of Laxman (P.W. 2).

3. On 18-12-1973 the land-lord made an application in the court of the Munsiff for eviction of the tenant on the ground of nuisance and annoyance metioned in Clause (d) of sub-section (1) of Section 21 of the Karnataka Rent Control Act, 1961 (hereinafter referred to as "the Act"), alleging, inter alia, the tenant and

the members of his family were preventing the neighbouring tenants from going to well and latrine and constantly picking up quarrels and abusing them and thus disturbing their peaceful life; and the inspite of being repeatedly requested to live peacefully they were not heeding to his advice and that therefore, he issued a notice dated 11-10-197 terminating the tenancy. But the tenant had adamantly continued to occupy the premises and he had therefore to make the application for his eviction.

4. The tenant resisted the claim. He filed his objection on 29-10-1971. He denied all these allegations. He also contended further that he was in occupation of the premises since last more than 15 years paying monthly rent of Rs. 20/-, but the landlord was pressing to pay Rs. 30/- as rent per month, though he offered to pay Rs.25/- per month, he refused to accept the same and as such when sent the rent, by money order, he refused to receive the same, and had come to Court with a false case, in collusion with the other tenants with a view to extract higher rent. He also contended that the notice terminating the tenancy was invalid.

5. At the hearing of the petition, the landlord examined himself as witness as P.W. 1 in support of the allegations made in the application. He also examined the neighbouring two tenants, Laxman (P.W. 2) and Dattatraya (P.W. 3) and got marked several documents, including the notices Exts. P. 14, P. 13 and P. 7 and Exts. P. 11, 12 and P. 9 allegedly issued by the two tenants (P.Ws. 2 and 3) complaining of the nuisance and annoyance. The tenant also examined himself as D.W. 1 in proof of the contentions raised by him and got marked two receipts as Exts. D.1 and D.2.

After hearing arguments, during the course of the judgment, the learned Munsiff raised two points for consideration, namely, (i) whether the notice terminating the tenancy was valid and (ii) whether the tenant and the members of his family had become a continuous source of nuisance and annoyance to the other tenants.

6. On the basis of the oral and documentary evidence before him the learned Munsiff, though found the notice terminating the tenancy was valid but the landlord had failed to establish the annoyance and nuisance to the neighbouring tenants, as alleged in the petition and in that view he dismissed the petition with costs. Being aggrieved by the said order, when the landlord approached the District Judge in appeal, the District Judge took a contrary view. He found the contractual tenancy having ended at the end of the first month of the tenancy, the position of the tenant occupying the premises was nothing more than that of a statutory tenant and as such notice terminating tenancy was not at all necessary. He also found both (nuisance and annoyance, within the meaning of the expressions as used in clause (d) of sub-section(1) of Section 21 of the Act. were established warranting the tenant's eviction, and in that view he reversed the finding recorded by the Munsiff and allowed the application filed by the landlord with costs and made an order for the eviction of the tenant, directing him further to give vacant possession of the premises, being aggrieved of which

the tenant has preferred this revision petition.

7. Mr. J.S. Gunjal, the learned Advocate, appearing for the tenant did not seek to dispute the validity or otherwise of the notice terminating the tenancy. He confined his arguments only on the point of nuisance and argued neither the evidence adduced on behalf of the landlord establishes any acts of nuisance and annoyance nor the acts allegedly committed by the tenant amount to such nuisance and annoyance within the meaning of the expressions as used in clause (d) of sub-section (1) of Section 21 of the Act, nor on the case as made out, the petition for eviction was maintainable and the District Judge had therefore committed material error in allowing the application for eviction and the order therefore deserves to be set aside and the order made by the Munsiff deserved to be restored. Mr. W.K. Joshi, learned Advocate appearing for the landlord, on the other hand, argued neither there was any error of judgment nor any error in appreciation of the evidence and there was no merit at all in the revision petition and it deserved to be dismissed.

8. In view of these contentions the only point that requires to be considered is, whether on the material and evidence placed on record any case of "nuisance" and "annoyance" attracting the provisions of clause (d) of sub-section (1) of section 21 of the Act is made out.

The expressions "nuisance" and "annoyance" have nowhere been defined in the Act. According to shorter Oxford Dictionary "Nuisance" means anything injurious or obnoxious to the community or to the individual as a member of it, for which some legal remedy may be found. Literally, it means anything that causes annoyance or that works hurt or injury, harm or prejudice to an individual or the public or anything wrongfully done or permitted which injures or annoys another in the legitimate enjoyment of his legal rights. It may be an interference in "the enjoyment of the property or an interference with one's personal comfort To put it in short, anything done which unwarrantably affects the rights of the others, endangers life or health, gives offence to the senses, violates the laws of decency or obstructs the comfortable and reasonable use of property may amount to nuisance. However, no precise rule can be laid down as to the degree of inconvenience or discomfort that would be a nuisance, but to constitute nuisance the injury caused must be real and not fanciful or imaginary. It must not be such as results only in trifling inconvenience. (Vide Naider Mal v. Ugar Sain Jain, A.I.R. 1966 Pun. 509.

Annoyance also more or less means the same thing as nuisance. A systematic discourtesy shown by one to his neighbours may be a nuisance. Similarly, constant abusing or using vulgar language or persisting in creating loud noise by a neighbour may constitute a nuisance or annoyance. Therefore, what is a nuisance or annoyance is essentially a question of fact depending upon the facts and circumstances of each case Each case has therefore to be judged on the facts and circumstances of that case.

9. There is no doubt as laid down by this Court in *Joseph D'souza v. State of Mysore*, (1972) 1 Mys. L.J. 356,

"The burden of proving that the tenant is guilty of conduct which is nuisance or annoyance, is always on the landlord. It cannot be decided by any abstract consideration of the thing itself. The Judge must consider the evidence before him and in particular, the circumstances of time, place and the character of annoyance or nuisance, and its impact on the reasonable enjoyment of the adjoining or neighbouring occupiers".

10. The contention of the landlord, here in the case at hand, is the tenant and the members of his family were not only preventing the neighbouring tenants from going to the well and latrine, but constantly picking up quarrels, abusing and disturbing the peaceful life of the neighbouring tenants and the members of the family were not paying any heed to his advice. From the witness box also he swears, the tenant was troubling the other tenants since 4-5 years and was abusing them and obstructing them from going to the well and latrine. He also swears the other tenants were orally complaining to him and telling that they would be vacating the building in case he did not take any action. In fact, he swears, they were complaining about it in writing and had issued notices threatening to vacate the premises. To substantiate it he has also produced letters Exts. P. 14, P. 13 and P. 7 dated 16-8-71, 31-8-71 and 4-11-71 respectively allegedly written by his tenant Laxman (P.W. 2) and letters Exts. P. 11, P. 12 and P. 9 dated 10-8-71, 24-8-71 and 13-11-71 allegedly written by his another tenant Dattatraya (P.W. 3). The two neighbouring tenants Laxman (P.W. 2) and Dattatraya (P.W. 3) also swear to the obstruction allegedly created by the tenant in going to the well and latrine, as also in the washing of the clothes at a particular place. They also speak to their having complained about it orally as also in writing, as in the letters referred to above. The letters also make mention of the obstructions caused in their going to the well and latrine as also of the tenant's wife abusing their wives on their going to wash the clothes. Exts. P-7 and P-9 also make a mention of an instance of the tenant beating the landlord on the latter's advising him. There is, however, no consistency in their evidence as to the period from which this was going on. While, according to the landlord (P.W. 1) and Laxman (P.W. 2), it was going on since 4-5 years, according to Dattatraya (P.W. 3) it had started only from June 1971.

11. But, apart from the fact the answers elicited in the cross-examination, as noticed by the District Judge himself, showed the quarrels if any, were mainly between the women folk and the children and that all began only after the other two tenants, Laxman (P.W. 2) and Dattatraya (P.W. 3) brought their families. Both well and the latrine are towards the west of C.T.S. No. 1792/3 and there is no question of the tenant or his wife obstructing or preventing them from using the same. As a matter of fact, there seems to be no obstruction as such, as admitted by the landlord himself, during the cross-examination, that the tenant was found abusing others asking as to why they were going to latrine earlier to

him and nothing more. This cannot be said to be a nuisance or annoyance. At best, it may be a trifling inconvenience and not sufficient to attract the provisions of clause (d) of sub-section (1) of S. 21 of the Act. There is no denial of the fact the tenant was in occupation of the premises in C.T.S No. 1792/1 since April 1958 and was an oldest tenant and the two tenants, Laxman (P.W. 2) and Dattatraya (P.W. 3), came there only later on four years and seven years prior to the institution of these proceedings. If, as admitted by the landlord himself during the course of the cross-examination, there were three or four tenants previously occupying the premises in C.T.S. No. 1792/3 and C.T.S. No. 1792/2 now let out to Laxman (P.W. 2) and Dattatraya (P.W. 3), and those previous tenants had nothing to complain about such nuisance or annoyance on the part of the tenant, one fails to understand why he should now think of creating such nuisance or annoyance to his neighbouring tenant.

12. Judging from this background there was nothing improbable, as contended by the tenant, since he refused to pay Rs. 30 per month as against the agreed rent of Rs. 25 as demanded by the landlord, he had brought the action for eviction in collusion of the two tenants. When cross examined the landlord admitted when the tenant had sent him a money order of Rs. 50 he refused to receive it. But, when later on he sent a money order of Rs 125 he accepted it. He also admitted while Laxman (P.W. 2) was paying Rs. 30, Dattatraya (P.W. 3) was paying Rs. 25 per month. Though he was unable to say, if the premises in occupation of the tenant was now let-out, it would fetch a rent of Rs. 50 or Rs. 60 per month, but admitted he was depending for his livelihood on the rental income of the house. Again though he denied the suggestion, he wanted to let out the premises to others for higher rents after repairing it, he admitted he wanted to reside therein after repairing it. This gives clear indication to the direction the action now brought for eviction was with an oblique motive of extracting higher rents.

As already noticed above, the contention of the tenant was he had sent a rent of Rs. 50 for July and August, the landlord had refused to receive it and it is thereafter the notice terminating the tenancy and the other letters referred to above, allegedly written by the two tenants complaining about the nuisance, came into existence. The tenor of the letters also showed they were almost in the same tone and sequence and that showed the collusion.

13. Therefore the view taken by the District Judge on the evidence and material placed on record cannot be justified. What appears to have weighed more with the District Judge was a criminal complaint was lodged with the Police against the tenant by someone and the tenant had got the matter compounded by giving an undertaking that he would not create any trouble. This, the District Judge thought, was sufficient to hold he had committed the acts of nuisance and had caused annoyance to his neighbours. But the criminal com. plaint seems to have nothing to do with the case. Admittedly, none of the neighbouring tenants had complained about the nuisance to the Police. The landlord had also not

complained about it. That complaint by someone other, in some other circumstances seems to be altogether irrelevant so far as consideration of the question of law raised in the present case. It is this irrelevant factor in the evidence that has led the District Judge in reversing the finding of the Munsiff and reaching erroneous conclusions that the landlord had succeeded in making out a case attracting the provisions of clause (d) of sub-section (1) of S. 21 of the Act. As already observed above, what had provoked the landlord for bringing the action was the refusal on the part of the tenant to pay enhanced rent, as rightly found by the Munsiff and the view taken by the District Judge on the material on record cannot be supported. The Revision is, therefore, entitled to succeed.

14. In the result, the Revision is allowed. The Judgment and Order dated 5-4-1975 passed by the I Additional District Judge, Belgaum, in H.R.C. Appeal No. 23 of 1974, is set aside and the order dated 6-3-1974, passed by the I Additional Munsiff, Belgaum, in H.R.C. No. 65/72, is restored, and the application of the landlord for eviction is dismissed with costs throughout.