

(2008) 03 KAR CK 0077

In the Karnataka High Court

Case No : House Rent Revision Petition No. 57 of 2006

Kodi Nagappa since deceased by his L.Rs.

APPELLANT

Vs

Smt. Hampamma since deceased by her L.R.

RESPONDENT

Date of Decision : 19-03-2008

Acts Referred:

Karnataka Rent Act, 1999 — Section 46, 5

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

Citation : AIR 2008 Kar 2329 : (2008) 5 KCCR 3213

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Abhinav R., for Kumar and Kumar and Pavamana D.V, for the Appellant;

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—This is a revision petition u/s 115 of the Code of Civil Procedure, by the tenant, now represented by his legal heirs, who had suffered an eviction order in the eviction petition instituted against him by the respondent-landlord in HRC No. 38 of 1996, on the file of the Additional Civil Judge (Junior Division) and Judicial Magistrate First Class, Bellary, in terms of the order dated 20.11.2000, and had been directed to vacate the premises and handover vacant possession under the provisions of Section 21(1)(h) and 21(1)(k) of the Karnataka Rent Control Act, 1961 (for short, the 1961 Act).

2. The legal heirs of tenant though had preferred a revision petition in HRCR No. 7 of 2002, on the file of Principal District Judge, Bellary, and though succeeded in getting over the order of eviction passed by the Court of first instance, in terms of the order dated 17.3.2005, were nevertheless caught in the web of Section 5 of the Karnataka Rent Act, 1999 (for short the 1999 Act), which enactment has replaced the 1961 Act and being legal heirs of the deceased original tenant and being required to vacate the premises on the expiry of five years from the date of death of the original tenant and having been ordered to handover the vacant

possession of the premises on or before 15.2.2006, are complaining before this Court questioning the correctness of the order passed by the Rent Revisional Court in applying the provisions of Section 5 of the 1999 Act, to this case in this revision u/s 115 CPC.

3. Sri Abhinav, Learned Counsel appearing on behalf of the petitioners Sri Abhinav has put forth a two-fold argument. It is firstly contended that the revisional Court while exercising its revisional jurisdiction u/s 5 of the Rent Control Act, 1961 and later u/s 46 of the Karnataka Rent Act, 1999, could not have passed an eviction order against the petitioners to quit and handover vacant possession of the premises on and after 15.2.2006 by invoking Section 5 of the 1999 Act. It is submitted that assuming the provisions of Section 5 are applicable to the petitioners also, the Court could not have passed such an order suo motu unless the land lady had sought for eviction on this ground and the order is also bad for the reason that the revision petitioner as saddled with such an order, even without according to them an opportunity to present their version notwithstanding the revision petitioner being successful in getting even the order of eviction that the tenant had suffered at the hands of the Court of first instance u/s 21(1)(h) and Section 21(1)(k) of the 1961 Act. Elaborating this submission Sri Abhinav would further contend that passing an order invoking the provisions of Section 5 as in the present case also amounts to violation of principles of natural justice as the petitioner never had an opportunity to put forth the defence if any, that was available to the revision petitioners, that such an order should not have been passed even without an opportunity to contend that Section 5 of the Act was not applicable to the present case.

4. It is elaborating this argument Sri Abhinav would submit that the learned Judge of the Revisional Court is in error in treating the revisional petitioners as the legal heirs of a tenant and subjecting them to the limitation as mentioned in Section 5 of the 1999 Act as the revision petitioners were not actually persons who could be characterised as persons figuring in Clauses A, B, C or D of Sub-section (1) of Section 5, but the petitioners themselves had become tenants even by the time 1999 Act came into force and if so, there is no question of applying the provisions of Section 5 of the 1999 Act, to the petitioners, case after setting aside the eviction order and to direct the revision petitioners to handover vacant possession on and after 15.2.2006. Submission is that the revision petitioners had become tenants even in terms of the provisions of 1961 Act, after the death of their father and when they had already acquired the status of tenant under the provisions of 1961 Act, they continued to retain the status of tenants even as per the provisions of 1999 Act, in which event Section 5 of the 1999 Act does not operate on them.

5. To appreciate this ground taken by the learned Counsel for the petitioners, it is necessary to go into the facts of the case. The tenant suffered an eviction order in HRC 38 of 1996 as on 20.11.2000, revision petition u/s 50 of the 1961 Act was preferred on 5.2.2001 and immediately thereafter the original revision

petitioner-tenant viz., Kodi Nagappa died on 16.2.2001. The record indicates that an application under Order 22, Rule 3 read with Rule 30 of the Karnataka Rent Control Rules, 1961 was filed on 1.3.2001. The application it appears had not been ordered. It is thereafter that 1999 Act came into force w.e.f. 31.12.2001. The application was ordered by the Court only as on 17.8.2004 and the applicants were permitted to come on record in the place of the deceased petitioner Kodi Nagappa. The revision petition has come up for hearing and ultimately in terms of the order dated 17.3.2005 had come to be allowed. The revisional Court found that the order of eviction u/s 21(1)(h) of the Rent Act cannot be sustained as the land lady for whose requirement eviction had been ordered had died subsequently during the pendency of the revision petition and therefore the requirement which was personal to her had ceased. Therefore it is submitted in this regard that while it is no doubt true that the present land lady and the legal heir viz., her daughter who was living in her own premises can also seek for eviction for her personal need, cannot seek the benefit of an eviction order obtained by the while land lady based on a need, which was personal to the original eviction petitioner, that the original requirement does not subsist any more and the daughter herein who was the legal heir of the original land lady is not entitled to such benefit but can maintain the eviction petition independently in her own capacity as the present land lady and therefore urges that the eviction order u/s 21(1)(h) has been rightly set aside and that the revisional Court having found that the notice issued by the Municipal Authorities to invoke Section 21(1)(k) being not a bona fide notice and even under the erst while Act that ground also did not subsist and therefore the eviction order passed both u/s 21(1)(h) and Section 21(1)(k) fails, that there was no further occasion to pass an order by invoking Section 5 of the Act, particularly as the application though was ordered on 17.8.2004 would relate back to the date on which the application was filed i.e., to 1.3.2001 and if it is to be ordered from that day and it is to be taken as the legal heir of the deceased tenant from that day, then the legal heirs themselves become tenants under the 1961 Act in terms of the Section 3(r) which is the definition of a "tenant" under that Act and it is for this reason that Section 5 of the 1999 Act was not attracted as the revision petitioners could not have been treated as persons who had inherited tenancy in terms of the provisions of 1999 Act or persons to whom Section 5 of the Act applies.

6. The Revisional Court while has rightly concluded on the merits of the matter that the eviction order passed by the Court of first instance under the provisions of Section 21(1)(h) and 21(1)(k) was required to be set aside nevertheless has committed an error in law in passing an eviction order by applying Section 5 of the 1999 Act, and therefore the order suffers from an illegality.

7. It is for this reason that the revision petitioners who had made an application to come on record in the place of the original revisional petitioner tenant on 1.3.2001 and if such an application should have been ordered within a reasonable time definitely they would have become tenants in their own capacity under the 1961 Act itself. Even if the Court did not order this application

immediately but the order was passed on 17.8.2004, it should be accepted that this order relates back to the application filed on 1.3.2001 and therefore the applicants acquire the right to continue the proceedings and it should be taken that the legal heirs can prosecute the proceedings from the day after the original tenant died, and in their capacity as tenants themselves.

8. If the position is accepted in law, when the 1999 Act came into force w.e.f. 31.12.2000, the revisional petitioners were the tenants in their own capacity and not because they had a protection u/s 5 of the 1999 Act, as persons who are continuing in the tenanted premises being close relatives of the tenants. It is to be noticed that the definition of a "tenant" under the 1999 Act, Section 3(n) reads as under:

Section 3(n): "tenant" means any person by whom or on whose account or behalf the rent of any premises, is or but for a special contract would be, payable, and includes.-

(i) a sub-tenant;

(ii) any person continuing in possession after the termination of his tenancy, but does not include any person to whom a licence as defined in Section 52 of the Indian Easements Act, 1882 (Central Act 5 of 1882) has been granted;

It does not include the legal heirs of a deceased tenant as was the case of the definition of tenant under the 1961 Act u/s 3(r) reads as under:

Section 3(r): "tenant" means any person by whom or on whose account rent is payable for a premises and includes the surviving spouse or any son or daughter or father or mother of a deceased tenant who had been living with the tenant in the premises as a member of the tenant's family upto the death of the tenant and a person continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a premises by its tenant or a person to whom the collection of rents or fees in a public market, cart-stand or slaughter house or of rents for shops has been framed out or leased by a local authority.

9. This distinction between the definition of "tenant" under the 1961 Act and the definition of "tenant" under the 1999 Act makes all the difference. Under the 1961 Act while the legal heirs of the deceased tenant themselves become tenant and are entitled for the protection provided under the 1999 Act, under the 1999 Act, the legal heirs or the mere relatives of the tenants who were living with the tenant at the time of his death do not become tenants by themselves. It is for this reason the 1999 Act has provided the protection u/s 5 of the 1999 Act indicating that the right of tenancy was devolving on them for a period of five years from the date of the death of the original tenant. This protection is to be found only in terms of Section 5 and not because persons were otherwise tenants under the Act. If the protection is for a limited period, it is no doubt true that such persons cannot continue to remain in possession as tenants after this

period and therefore, the order as passed by the revisional Court perhaps could have been sustained, though it is submitted by Sri Abhinav, learned Counsel for the revision petitioners that if the persons who were protected u/s 5 of the Act, cease to be so, after the expiry of five years, there is no question of passing the eviction order under this Act again, and an order of eviction should be sought only under the general law by filing an ejectment suit.

10. I am not impressed by this submission as persons who claim benefit of Section 5 after the expiry of this five year period cannot turn around and say that another legal proceedings should be started to evict them, as they are persons who are already beneficiaries under the protection of this Act cannot be permitted to contend that Act does not apply to them when it comes to the possibility of the Court passing an order to hand over vacant possession of the premises, by contending that the Court has no jurisdiction to pass such an order. A person who has already availed of a benefit under the provisions of the 1999 Act is stopped from contending later that the Act does not govern him.

11. Be that as it may, that situation does not arise for the reason that the revision petitioners were not persons who are required to seek the protection u/s 5 of the 1999 Act, but they were persons who had become tenants under the 1961 Act and as they were so even before the 1999 Act came into force. The revision petitioners were themselves tenants. Section 5 of the Act, could have application only if a tenant had expired after the 1999 Act came into force and not otherwise. Therefore, I am of the view that Section 5 of the 1999 Act is not attracted in the present situation, particularly having regard to the facts as noticed above and even as a situation that had developed during the pendency of the Section 50 revision petition, before the Rent Revisional Court.

12. It is for this reason this revision petition is allowed. The order passed by the Revisional Court on 17.3.2005 in HRC No. 7 of 2001 is set aside insofar as it has directed the revision petitioner to handover vacant possession of the premises on and after 15.2.2006.

13. It is however, made clear that the present owners of the premises are entitled to institute independent proceedings as is open to them in law and the earlier proceedings which had been commenced in HRC 38 of 1996 having come to an end and passing of the orders in this petition will not come in the way of filing of a fresh petition by the present landlords and against the present tenants, if the present law so enables them.

14. No order as to costs in this petition.