

(2003) 09 KAR CK 0050

In the Karnataka High Court

Case No : House Rent Revision Petition No. 614 of 2000

Kumaramallappa

APPELLANT

Vs

S. Govinda Baliga (Deceased) by L.Rs and Another

RESPONDENT

Date of Decision : 22-09-2003

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 21(1)(H)
Karnataka Rent Control Act, 1999 — Section 46(1)

Citation : (2003) 6 KarLJ 478

Hon'ble Judges : A. V. Srinivasa Reddy, J

Judgement

A.V. Srinivasa Reddy, J.-This revision is filed against the concurrent findings of the Courts below rejecting the petition filed by the petitioner for eviction of the respondent-tenant under clauses (h) and (j) of Section 21(1) of the Karnataka Rent Control Act, 1961 ("the old Act" for short).

2. The petitioner-landlord filed the eviction petition on the ground that he requires the premises for demolition and reconstruction to set up his son in business. The landlord stated in his petition that his son is doing shandy business and for want of accommodation he could not establish a business. The petitioner-landlord also produced the approved plan and licence obtained from the Municipality to substantiate his claim under clause (j) of Section 21(1) of the old Act. The tenant denied the claim of the landlord. He relied on the circumstance that the earlier petition filed under Section 21(1)(h) and (j) of the old Act has been dismissed and the revision filed against the order of dismissal also met with the same fate and, therefore, the present eviction petition is barred under Section 45 of the old Act. The Rent Court dismissed the eviction petition on the ground that the same issue had previously arisen between the same parties and was substantially decided in a former proceeding under the Act. The Court below also concurred with the view expressed by the Rent Court on this point and on the point of requirement of the premises by the landlord as negated by the Rent Court. Hence, the revision petition.

3. I have heard the learned Counsels on both sides.

4. By repealing the old Act and simultaneously enacting the Karnataka Rent Act, 1999 ("the Act" for short), the Legislature has introduced certain new provisions to govern matters of eviction in such a manner as to balance the interests of both landlords and tenants and to stimulate future construction. Some of the old provisions occurring in the old Act have been retained either in the same form or in a slightly different form. Section 61 of the Act which corresponds to Section 45 of the old Act prohibits reopening of decisions which have become final:

"61. Decisions which have become final not to be reopened.-The Court or the Controller shall summarily reject any application under this Act which raises between the same parties or between parties under whom they or any of them claim, substantially the same issues as have been finally decided in a former proceeding under this Act or under any of the enactments repealed by Section 70".

Section 70(2)(b) of the Act stipulates that all cases and proceedings other than those which have attained finality before the commencement of this Act shall be continued and disposed off in accordance with the provisions of the Act. This being a pending proceedings the issue that was determined by the Court below under Section 45 of the old Act has, therefore, to be determined now with reference to the corresponding Section 61 of the Act. It cannot be disputed that the earlier petition was also filed under clauses (h) and (j) of Section 21(1) of the old Act. If the petitioner had suffered an adverse order on the earlier occasion pleading the very same facts that are now pleaded by him, then, certainly the present eviction petition would be hit by Section 61. The requirement of the landlord for self-occupation of a premises leased to the tenant is a recurring need and it would continue to exist as long as the need for accommodation remains unsatisfied. Such a need does not exhaust itself by efflux of time and the gratification of such need can be said to take place only when the landlord gets some suitable alternative accommodation. But, still, where such a need was propounded for the acceptance of the Court and the Court, on the facts pleaded by the landlord, refused to believe and act on it, a similar petition propounding the same cause cannot be put forth before the Court again unless the grounds urged in support of such claim are factually different and not connected with the facts pleaded in support of the prayer sought in the previous petition. Both the Courts having found on an examination of the plea put forth in the previous petition and the present petition that the present petition is hit by Section 45 of the old Act, I do not think in exercise of the revisionary jurisdiction I should interfere with such a finding which is based on appreciation of factual aspects of the matter. It was for the petitioner-landlord to have shown to the satisfaction of the Rent Court that the pleadings put forth in the earlier petition in support of the grounds for eviction are materially and factually different from the facts pleaded in the present eviction petition and therefore, the decision in the earlier proceedings between the parties can have

no bearing on the merits of the present petition and that the previous decision does not bind the issues that have been raised in the present petition. The petitioner-landlord having failed to discharge this burden, the finding so recorded by the rent Court and affirmed by the Court below on this point does not call for interference. As there is no need for me to determine the issues arising under Section 27(2)(r) of the Act in the light of my concurring with the finding of the Courts below on the applicability of Section 61 of the Act to the present petition, I refrain from referring to the decisions in *Basha Baig v Choodanath*, 1990(1) Kar. L.J. Sh. N. 2 and *Smt. Lakshmikanthamma v M/s. Saree Mandir, Bangalore*, 1998(2) Kar. L.J. 127, which were cited at the Bar.

5. Though, the landlord would not be entitled to the relief sought by him under Section 27(2)(r) of the Act, he can successfully reclaim the possession of the petition premises under Section 5 of the Act. Section 5 of the Act provides certain new remedies to the landlord in the matter of eviction of tenants and in bestowing such new remedies it affects the tenancy rights of the tenant that have vested in them, by way of inheritance, under the old Act. Section 5 limits the right of inheritance of tenancy to specific periods. It reads:

"5. Inheritability of tenancy.-(1) In the event of death of a tenant, the right of tenancy shall devolve for a period of five years from the date of his death to his successors in the following order, namely.-

- (a) spouse;
- (b) son or daughter or where there are both son and daughter both of them;
- (c) parents;
- (d) daughter-in-law, being the widow of his predeceased son:

Provided that the successor has ordinarily been living or carrying on business in the premises with the deceased tenant as a member of his family upto the date of his death and was dependent on the deceased tenant:

Provided further that a right to tenancy shall not devolve upon a successor in case such successor or his spouse or any of his dependent son or daughter is owning or occupying a premises in the local area in relation to the premises let.

(2) If a person, being a successor mentioned in sub-section (1), was ordinarily living in or carrying on business in the premises with the deceased tenant but was not dependent on him on the date of his death, or he or his spouse or any of his dependent son or daughter is owning or occupying a premises in the local area in relation to the premises let to which this Act applies such successor shall acquire a right to continue in possession as a tenant for a limited period of one year from the date of death of the tenant; and, on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession of the premises shall become extinguished.

Explanation.-For the removal of doubts, it is hereby declared that.-

(a) where, by reason of sub-section (2), the right of any successor to continue in possession of the premises becomes extinguished, such extinguishment shall not affect the right of any other successor of the same category to continue in possession of the premises but if there is no other successor of the same category, the right to continue in possession of the premises shall not, on such extinguishment, pass on to any other successor specified in any lower category or categories, as the case may be;

(b) the right of every successor, referred to in sub-section (1) to continue in possession of the premises shall be personal to him and shall not, on the death of such successor, devolve on any of his heirs".

6. This provision came up for consideration of this Court in *Shahwar Basheer v Veena Mohan*, AIR 2003 Kant. 1841 (sic) and this Court on a detailed consideration of the manner in which the provision has to be applied to future as well as past causes of action, observed:

"Thus, where the essential prerequisite to be substantiated to get relief under Section 5 of the present Act is merely to show to the satisfaction of this Court that the successors had outstayed the maximum period of inheritance permitted under Section 5, this Court cannot seek proof of any other ground provided for eviction of the tenant under Section 27 of the Act for granting relief of possession of the premises as it would automatically follow under Section 5 as the possession of the premises by the successors of the tenant becomes indefensible after the expiry of 5 years provided under Section 5. Even if the landlord had suffered a negative finding insofar as his claim for self-occupation on the grounds hitherto available to him under the repealed Act and no exception could be taken to the order so passed by the Court below with reference to the provisions of the repealed Act declining the prayer for self-occupation, still, it would be open for the landlord to stake claim under Section 5 because it is a new substantive remedy provided for the enforcement of an existing right. May be, the order impugned in this revision cannot be faulted on the ground of lack of application of relevant principles governing the issue and on the ground of want of proper consideration. But, because the provisions of the present Act, especially Section 5, were not in existence at the time the orders were passed and more still as there is no consideration of the material on record with reference to the altered law that governs the field now, this Court sitting in revision can adjudicate the matters in terms of the altered law as subsequent developments and altered circumstances are relevant at all stages of the proceedings".

7. In the present case the original tenant admittedly died on 21-6-1998 and, therefore, applying the principle laid down in the case of *Shahwar Basheer*, supra, it should be held that Section 5 of the Act comes into play. If we apply Section 5 to the facts of this case it has to be held that the landlord is entitled to recover possession of the petition premises from the successors of the original tenant Govind Baliga.

8. In the result, for the reasons stated above, this revision petition is allowed and an order of eviction is passed under Section 5 of the Act. The respondent is directed to quit and deliver vacant possession of the premises within three months from today.