

(1999) 11 KAR CK 0002

In the Karnataka High Court

Case No : House Rent Revision Petition No. 944 of 1997 connected with House Rent Revision Petition No. 945 of 1997

Maria Seva Sangha and Others

APPELLANT

Vs

B.N. Fernandes and Another

RESPONDENT

Date of Decision : 05-11-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10 (2)
Karnataka Rent Control Act, 1961 — Section 21 (1) (b), 21 (1) (h), 50 (1)

Citation : (2000) ILR (Kar) 472 : (2000) 4 KarLJ 509 : (2000) 4 KCCR 145 SN

Hon'ble Judges : B.N. Mallikarjuna, J

Bench : Single Bench

Advocate : Sri G. Krishnamurthy, for the Appellant; Sri P.K. Basheer Ahmed and Sri Srikantaiah, for the Respondent

Judgement

1. These two matters are coming in the list for admission, but having regard to the fact that these two matters are of the year 1997 and by consent of the learned Advocates for the respective parties, they are taken up for final disposal.

2. These two revisions u/s 50(1) of the Karnataka Rent Control Act, 1961 (for short, "The Act") are directed against the common order of XIII Additional Judge, Court of Small Causes, Mayo Hall, Bangalore, dated 7-7-1997 in H.R.C. Nos. 10444 and 10445 of 1992. Revision petitioners are the petitioners in both the cases, respondent-B.N. Fernandes in H.R.R.P. No. 944 of 1997 is the respondent in H.R.C. No. 10444 of 1992 and respondent-A. Rebello in H.R.R.P. No. 945 of 1997 is the respondent in H.R.C. No. 10445 of 1992 and both the tenants. I shall hereinafter refer to the parties as they are shown in the original eviction petitions. Petitioners filed separate petitions u/s 21(l)(h) of the Act and those two eviction petitions are dismissed by the common order dated 7-7-1997. Hence, these two revision petitions.

3. It may also be noted that the 2nd petitioner-Dr. Francis Pinto died on 12-4-1996 during the pendency of the eviction proceedings in the Trial Court.

Petitioner 3-Ms. Bernadette Pinto died on 19-8-1997 during the pendency of these revisions. This common order would dispose of both the revision petitions.

4. Deceased 2nd and 3rd petitioners are brother and sister and it is undisputed that they died unmarried. They were the owners of the property bearing No. 12, Rest House Road, Bangalore. It is also not in dispute that there were many buildings in the said area including two small portions leased to the tenants. Fernandes, a former employee of H.A.L. had taken the premises on lease on a monthly rent of Rs. 70/- A. Rebello, an employee of B.E.L., had taken the premises on lease on a rent of Rs. 50A a month. It is stated that petitioners 2 and 3 sold 1/50th share each in the said property in favour of 1st petitioner, a charitable institution registered under the Karnataka Societies Act under two different sale deeds on 30-9-1991. Ex. P. 8 is the registered sale deed executed by 2nd petitioner-Dr. Francis Pinto and Ex. P. 9 is the registered sale deed executed by 3rd petitioner-Miss Bernadette Pinto. It is also stated that on 11-4-1992 second and third petitioners entered into an agreement with the 1st petitioner agreeing that 1st petitioner shall put up construction on the said site after demolishing the existing building including the one in which the petitioners 1 and 2 lived, for setting up of a home for old people. Ex. P. 10 is the agreement executed by deceased petitioners 2 and 3 in favour of 1st petitioner. Further, deceased Dr. Francis Pinto executed General Power of Attorney Es. P. 11 and Mr. Bernadette Pinto executed Power of Attorney Ex. P. 12, both in favour of 1st petitioner dated 11-4-1992 for conducting the cases on their behalf and for other purposes.

5. It is also the case of petitioners that 1st petitioner was in the process of acquiring the whole of the property and in fact deceased petitioners 2 and 3 made separate wills dated 30-11-1991 bequeathing their remaining portion of the property in favour of the society. Petitioners pleaded that the purpose of the agreement and sale was to enable 1st petitioner, a charitable institution, to put up new construction for running it as a home for elderly people. It is therefore, petitioners pleaded that they need the whole of the area comprised in No. 12, Rest House Road for the purpose of putting up new construction and accordingly, filed two separate eviction petitions against the respondents.

6. Respondents resisted the petitions contending inter alia that the intention of the petitioners 2 and 3 is only to evict the respondents and lease it for higher rent. In fact, there were 14 tenements in the premises and cases are filed only against these two and no action is taken against other twelve tenants, for the reason that they agreed to pay higher rent. Respondents further plead that the petitioners having failed in their earlier attempt to evict the respondents have created the documents (sale deeds and other document) in collusion with the first petitioner for the purpose of filing these Eviction Petitions, the documents are not true and genuine. It is stated that petitioners 2 and 3 filed petitions in H.R.C. No. 10721 of 1987 and H.R.C. No. 10722 of 1987 u/s 21(1)(h) and (d) of the Act and after contest those two petitions were dismissed on 14-2-1991. It is

thereafter petitioners 1 to 3 joining together have engineered these sale deeds only to deprive the respondents the shelter and evict them from the premises.

7. Thereafter, both the cases are clubbed and common evidence is recorded in H.R.C. No. 10444 of 1992. Petitioners examined two witnesses including the deceased 2nd petitioner. P.W. 1 is Air Com. N.C. Rego and it is stated that he is the Vice-President and Executive Director of the 1st petitioner-institution. P.W. 2 is the 2nd petitioner Miss Bernadette Pinto and have produced documents Exs. P. 1 to 72 in support of their claim. On behalf of respondents, two respondents are examined as RAVs. 1 and 2, R.W. 1 A. Rebello is the respondent in H.R.C. No. 10445 of 1992, R.W. 2 B.N. Fernandes is the respondent in H.R.C. No. 10444 of 1992, they have produced documents Exs. R. 1 to 3, Respondents also pleaded that they have dependents and school going children and if they are evicted they would be put to greater hardship.

8. Learned Trial Judge after hearing the arguments and during the course of the order, has raised these points for consideration, they are:

"(1) Whether the petition filed by the first petitioner u/s 21(1)(h) of Karnataka Rent Control Act, is maintainable in law?

(2) Whether the petitioners have proved that they require the petition schedule premises for their bona fide use and occupation?

(3) Whether the respondents will suffer more hardship if they are evicted from the schedule premises compared to the hardship that may be caused to the petitioners?

(4) Whether a portion of petition schedule premises satisfy the requirement of the petitioners?

(5) What order?"

On the first point, Court holds that the 1st petitioner is also a co- owner along with petitioners 2 and 3 on the date of petition. Further, finds that the petitioners 1 and 3 on the death of the 2nd petitioner on 12-4-1996 have succeeded to his interest in the said property, it also holds that the first petitioner is a charitable institution. Having said that 1st petitioner is a charitable institution, holds that the petition for eviction by the said institution is not maintainable in view of Section 2(7)(bb)(iii) of the Act. On the second point, Court holds that in view of the finding on the first point, requirement pleaded by the 1st petitioner cannot be considered and not maintainable. Further, it records that in view of the earlier proceedings, requirement pleaded by petitioners 2 and 3 cannot be accepted. However, on points 3 and 4, Court records that in view of its finding on points 1 and 2, there is no need to record any finding. Accordingly, dismisses the petitions.

9. Heard Sri G. Krishnamurthy, learned Counsel for the petitioners and Sri Basheer Ahmed and Sri [Radhananadan], learned Counsels for respondents.

10. In view of the rival contentions, points that would arise for consideration in

these two revision petitions are:

1. Whether the Court is right in holding that the petitions for eviction u/s 21(1) (h) of the Act filed in the year 1992 by the first petitioner, a charitable institution are not maintainable?

2. What order?

11. Provisions of the Act were not applicable only to the premises that belonged to a muzrai institution or a religious or charitable institution under the management of the State Government in view of Section 2(7)(bb)(iii) of the Act before 18-5-1994. By amending the said sub-section by Act No. 32 of 1994 the provisions of the Act were made inapplicable to all the premises belonging to a muzrai institution or a religious or charitable institution. Section 2(7)(bb)(iii) of the Act as it stood before amending read as follows:

"2(7) Nothing in this Act shall apply-

(a) xx xx xx xx. (b) xx xx xx xx. (bb) to any premises belonging to-

(i) xx xx xx xx. (ii) xx xx xx xx. (iii) a muzrai institution or a religious or charitable institution under the management of the State Government".

By introducing amendment by Act 32 of 1994, the words "under the management of the State Government" are deleted and this has come into force with effect from 18-5-1994. Act 32 of the 1994 received the assent of the Governor on 13-9-1994. Sub-section (2) Section 1 of the Karnataka Act No. 23 of 1994 stipulated that the amendment brought about shall be deemed to have come into force w.e.f. 18-5-1994. It reads:

"Section 1. Short title, extent, commencement and duration.-

(1) XX XX XX XX. (2) It shall be deemed to have come into force with effect from the 18th day of May, 1994".

In the instant case, the two petitions u/s 21(1)(h) were filed in the month of August, 1992 and were pending on 18-5-1994. The learned Trial Judge therefore holds that the amendment affects the pending proceedings and as such the two Eviction Petitions u/s 21 of the Act by the first petitioner, a charitable institution are not maintainable.

12. Therefore, the question is whether the Court was right in saying that the amendment attracted even eviction proceedings instituted by a charitable institution earlier and pending as on 18-5-1994. I find no need for elaborate discussion on this aspect of the matter for the reason that the controversy is set at rest by the decision of the Division Bench of this Court in H.R.R.P. Nos, 16 to 20 of 1997, disposed of on 27-2-1998. There was divergent opinion as to whether the amendment would be retrospective or prospective. In Sri Ananthaswamy Ashram Trust v Smt. K.A. Nirmala, a learned Single Judge held that the amendment is prospec- tive in operation and will not apply to pending

proceedings. But another learned Single Judge in BHS Managing Committee Vs. Sringeri Mutt, , held that the amendment is retrospective in operation and applies even to pending proceedings. Therefore, the matter came up before the Division Bench and the Division Bench held that the amendment is prospective in nature and will not affect the proceedings pending either in the Trial Court or in revision. Relevant observation reads thus:

"Considering the various important pronouncements referred to earlier, we hold that the operation of Amendment Act 32 of 1994 is prospective in nature. Further, as there is no specific mention as to what should happen to pending proceedings, we hold that pending proceedings do not come under the purview of the Amendment Act and as such the proceedings concluded by the Rent Control Courts prior to 18-5-1994 on which date amendment is deemed to come into effect and are pending in appeal or revision are not affected by the Amendment Act. Hence, we answer the reference as follows:

The operation of Amendment Act 32 of 1994 is prospective in nature and further all pending proceedings are not affected by the amendment".

(emphasis supplied)

13. In Airflow Transport (India) Pvt. Ltd. Vs. Rao Bahadur B.P. Annaswamy Mudaliar and others, , this Court took the view that the amendment is prospective. SLP in SLP (C) No. 8904 of 1997 in one of those cases was filed before the Apex Court challenging the said order of this Court dated 27-3-1997. But the SLP also came to be dismissed.

In the instant case, eviction petitions filed in the month of August 1992 are no doubt disposed of on 7-7-1997. It is in between these two dates, sub-clause (iii) of clause (b) of sub-section (7) of Section 2 was amended with effect from 18-5-1994. The Trial Court holds that in view of the amendment, 1st petitioner, a charitable institution cannot seek eviction u/s 21(1) of the Act. This finding of the Trial Court is not sustainable in law, in view of the decision of the Division Bench.

14. Next point for consideration is as to what would be the next step in the matter for the reason that the Trial Court has refused to record any finding on the requirement pleaded by 1st petitioner. Sri Basheer Ahmed and Sri [Radhanandan], learned Counsels for respondents very fairly conceded that as the Trial Court has refused to record any finding on the requirement pleaded by 1st petitioner, there is need to remand the matter to the Trial Court for the purpose of considering the evidence and to record its finding as to the requirement or the need pleaded by the 1st petitioner. It is also necessary to remand the matter for the reason that the Trial Court has failed to comply with the mandatory requirement of Section 21(4) of the Act, viz., it has to record its findings as to the relative hardship and also the feasibility of partial eviction. The Court has declined to record its finding on the ground that in view of its finding on first and second point, there is no need to consider those points, but Section 21(4) of the Act mandates that the Court in cases where eviction is sought u/s

21(1)(h) must also consider not only relative hardship but also feasibility of partial eviction. While considering Point No. 2 raised for consideration. Trial Court has not recorded any finding as to the requirement pleaded by the 1st petitioner. Petitioners have pleaded that the premises in dispute was required for the 1st petitioner to demolish and put up construction. In fact, evidence has been let in as to the economic status of the 1st petitioner, the need etc. But this portion of the evidence has not been considered at all, it only holds that petitioners 2 and 3 cannot seek eviction.

15. Before concluding, there is need to consider the applications filed in these Revision Petitions by one Marietta Pinto Hayes under Order 1, Rule 10(2) of the CPC read with Rule 35 of the Act. These two applications are filed in this Court on 15-10-1998. She claims to be the legal representative of deceased petitioners 2 and 3 and further submits that her presence is necessary in resolving the controversy. On a careful scrutiny of the material, I do not find any merit in the contention, 2nd petitioner-Dr. Francis Pinto died on 12-4-1996, 3rd petitioner died on 19-8-1997. This application is filed on 15-10-1998. There is inordinate delay in filing these applications, though in fact that the averments demonstrate that she had the knowledge of the proceedings earlier.

It is also clear from the affidavit sworn to by the applicant that she has already filed two suits one in O.S. No. 4483 of 1998 and the other in O.S. No. 4484 of 1998 in which she has questioned the sale deeds Exs. P. 8 and 9 and sought for declaring them as null and void. It is also clear from the evidence of both P.Ws. 1 and 2 (deceased 2nd petitioner) that 2nd and 3rd petitioner executed sale deeds Exs. P. 8 and 9 each selling 1/50th share in the said property. In eviction proceedings under the Act the Court is not required to consider the question of ownership. What is necessary for the Court to consider in an eviction proceeding is as to whether there exists the relationship of landlord and tenant between the parties within the definition of those expressions contained in Section 3(h) and (r) of the Act. Admittedly, petitioners 2 and 3 were the owners of the property and they also join 1st petitioner in filing the eviction petition u/s 21 of the Act. It has come in evidence of the tenants R.Ws. 1 and 2 that as per the instructions of 2nd petitioner they are paying rent to 1st petitioner. If really, applicant-intervenor is the legal representative and succeeds to the interest of petitioners 2 and 3, she could as well work out her remedy in the two suits that are already filed by her and pending disposal. With these observations these two applications are dismissed.

16. In the result and for the reasons hereinabove stated, these two Revision Petitions H.R.R.P. Nos. 944 and 945 of 1997 are allowed. Order impugned dated 7-7-1997 is set aside and the matter is remanded to the Trial Court with a clear direction to dispose of the matter on merits and in accordance with law after affording an opportunity to both the parties to lead further evidence if any, and in the light of the observations made during the course of this order, as expeditiously as possible.

It is also made clear that the evidence already recorded shall be read as evidence during the trial after this remand and if desired by the parties, the Court is at liberty to permit the parties to lead further evidence only in regard to the requirement pleaded, the relative hardship and feasibility of partial eviction. In the peculiar circumstances of the case, I direct each party to bear their own costs.