

(1981) 07 KAR CK 0039
In the Karnataka High Court
Case No : CRP 1194/81

Metal Box of India Ltd.

APPELLANT

Vs

M.V. Appiah and Others

RESPONDENT

Date of Decision : 21-07-1981

Acts Referred:

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

Citation : (1981) 2 KarLJ 353

Hon'ble Judges : N. D. Venkatesh, J

Judgement

1. The Petitioner, a Company registered under the Companies Act, took on lease from respondents 1 and 2 a premises situated in Langford Town, Bangalore City, in the year 1968 and continues to be in possession of the same. The lease is evidenced by a registered lease deed dated 19-8-68, the term of the lease being 10 years commencing from the 11th July, 1968. The premises is said to have been allotted to the share of the 3rd respondent, son of respondents 1 and 2, at a partition in their family.

2. Stating that the contractual lease- entered into between them and the petitioner had come to an end by 10-7-78 by efflux of time and that they wanted possession of the premises for their own bona fide use and occupation, the respondents filed an application under Clause (h) of sub-section (1) of S. 21 of the Karnataka Rent Control Act, 1961 (the Act) against the petitioner in the Court of the Civil Judge, Civil Station, Bangalore, in the month of November, 1978. The proceeding thus commenced is, on transfer, pending in H.R.C. No. 833 of 1978 on the file of the VI Small Causes Judge, Civil Station, Bangalore. The claim of the landlords for possession of the premises is being resisted by the tenant. Apart from stating that the claim of the landlords was neither bona fide nor reasonable the tenant in the statement of objections it has filed to the application, pleads that under the registered lease deed (referred to above), it had reserved the right to exercise its option for renewal of tenancy, that in fact, it had exercised that option; and that in the circumstances, the application was liable to be dismissed in limine, being not maintainable.

3. In the month of January, 1981, by which time some evidence had also been recorded, the tenant filed an application, I.A. II, in the court below under S. 151 CPC read with Rule 35 of the Karnataka Rent Control, Rules, 1961, requesting the court to stay further proceedings in the case. It may be noted that a few days earlier to the filing of this I.A., the tenant had filed an O.S. No. 1028 of 1981, in the I Additional Civil Court, Bangalore, against the landlords claiming a declaration that it was entitled to continue in possession of the premises as a tenant until the 11th day of July, 1988, and for a permanent injunction restraining them from dispossessing it during that period. The tenant's plea in the said original suit has been that the right reserved to it under the lease-deed (referred to above) to renew the lease for a further period of ten years had been exercised by it and that it, the tenant, was entitled to continue on the same terms and conditions as a lessee of the premises in question until 11-7-1978; that though the landlords had no right to evict it from the premises during that period they had initiated a proceeding in the court constituted under the Act for its eviction; and that, in the circumstances, it was seeking the relief of declaration and injunction at the hands of that court.

4. Reiterating the aforesaid averments made in the plaint and further stating that the proceeding in the court was of a summary nature, that its jurisdiction was very much limited and that the question whether it had exercised its option of renewal and whether the lease in question was a contractual one etc., were questions of a complicated nature and they were beyond the scope of the enquiry in that court of limited jurisdiction, it, the tenant, filed I.A. II and sought for stay of the proceeding. I.A. II was resisted by the landlord. By its impugned order the court below has dismissed I.A. II.

5. Challenging that order it is contended by the learned Counsel for the petitioner that, as averred by his client in the original suit referred to above and in I.A. II filed in the proceeding in question, the lease between his client and the landlords was contractual in nature; that the landlords, not having reserved any right of re-entry into the premises during the currency of that lease, had no right to seek his client's eviction under Clause (h) of sub-sec. (1) of S. 21 of the Act; that the court, constituted as it is under the Act, was a court of limited jurisdiction following a summary procedure and, as such, any enquiry by it into complicated questions involving the construction or interpretation of the lease deed in question and as to whether the lease was contractual or not, and the like were all beyond its scope of enquiry; and that, therefore, it should have stopped its proceeding awaiting the findings in the original suit referred to above.

6. On the other, hand, learned Counsel for the landlords contended that the Court below was competent to go into these questions and that therefore had rightly rejected I.A. II.

7. Whether the lease in question is a contractual one, and, if so, are the landlords precluded from seeking eviction of the tenant under Section 21 (1) (h) of the Act, the landlords not having reserved any right of re-entry during the

extended period of the said contractual lease need not be pone into in this revision. These questions are required to be decided at the appropriate forums wherein they are being urged. The only question that arises for our consideration in this revision at this stage is whether the court below is not competent to go into these questions.

8. It is true that the court, as constituted under the Act, is a court of limited jurisdiction. Its powers are circumscribed by the provisions of the Act. The Act, as observed by a Division Bench of this Court in *R. Govindaswamy v. C.S. Pannalal*, ILR (1978) Kar. 813, itself is a self-contained enactment governing leases in respect of buildings to which the Act applies. In the case of such buildings or premises the landlords can recover possession only on one or more of the grounds enumerated in sub-sec. (1) of S. 21 and by filing an application as provided therein in the court (constituted under the Act.)

9. Apart from other points or questions that might have arisen in the court below in the proceeding in question, in view of the rival pleadings of the parties, the two points that arise are:

(i) Whether the lease in question is a contractual one as contended by the tenant; and (ii) If so, is the court not competent to proceed with the application of the landlords for the reasons urged by the tenant.

10. Since the aforesaid questions go to the very root of the matter touching the competency and jurisdiction of the court, to proceed with the claim on merits it will have to first decide these questions. In this connection the following observation of the learned Author H.W.R. Wade in his "Administrative Law" (4th Edn.) at page 240 may be noted:

"Power to determine Jurisdictional Questions.-Where a jurisdictional question is disputed before a tribunal, the tribunal must necessarily decide it. If it refuses to do so, it is wrongfully declining jurisdiction and the court will order it to act properly. Otherwise the tribunal or other authority would be able to wield an absolutely despotic power, which the legislature never intended that it should exercise. It follows that the question is within the tribunal's own jurisdiction, but with this difference, that the tribunal's decision about it cannot be conclusive. This also was explained in the classic case:

"Suppose a judge with jurisdiction limited to a particular hundred, and the matter is brought before him as having arisen within it, but the party charged contends that it arose in another hundred, this is clearly a collateral matter independent of the merits; on its being presented, the Judge must not immediately forbear to proceed, but must enquire into its truth or falsehood, and for the time decide it, and either proceed or not with the principal subject-matter according as he finds on that point; but this decision must be open to question, and if he has improperly either forborne or proceeded on the main matter in consequence of an error, on this, the Court of Queen's Bench will issue its mandamus or prohibition to correct his mistake."

Similarly Lord Goddard C.J., explained that:

"If a certain state of facts has to exist before an inferior tribunal have jurisdiction, they can inquire into the facts in order to decide whether or not they have jurisdiction, but cannot give themselves jurisdiction by a wrong decision upon them; and this Court may, by means of proceedings for certiorari, inquire into the correctness of the decision. The decision as to these facts is regarded as collateral because, though the existence of jurisdiction depends on it, it is not the main question which the tribunal have to decide.

A collateral question is thus to be contrasted with "the main question", or the actual matter committed to its decision upon which the tribunal's own decision is conclusive.

All this doctrine applies just as much to ordinary administrative action as it does to the decisions of courts and tribunals".

11. The learned Counsel for the petitioner argued that in the circumstances of the case and in view of the pendency of the original suit wherein these very questions will come up for trial before that court having original jurisdiction, the court below should have stopped its proceeding awaiting the decision in the original suit. I am unable to agree with this view.

12. As observed by the learned Author H.W.R. Wade when questions like these touching the jurisdiction of the Court or tribunal are raised in a proceeding pending before it that court or tribunal must necessarily decide those questions before proceeding with the merits of the claim. If the court or tribunal, refuses to decide those questions it would be wrongfully declining the jurisdiction vested in it. In the instant case no doubt the court below has over-ruled the objections raised by the tenant to proceed with the matter, but in doing so makes certain observations on the merits of the contentions raised in I.A. II. Therefore, that order is required to be set aside with appropriate directions to it to proceed with the matter afresh.

13. For the reasons mentioned above this revision petition is allowed. The impugned order of the Court below is set aside. The Court below is directed, to hear the two points or questions raised above (in para 9) preliminarily, and, after answering them, in the light of those answers to proceed with the enquiry in the case.

14. Parties are directed to bear their own costs.