

(1971) 07 KAR CK 0016

In the Karnataka High Court

Case No : Civil Revision Petition No's. 237, 403, 412, 621 and 622 of 1968

P.K. Rukmini Bai and Others

APPELLANT

Vs

Venkateswara Silk House and Others

RESPONDENT

Date of Decision : 20-07-1971

Acts Referred:

Evidence Act, 1872 — Section 32, 32 (2)

Karnataka Rent Control Act, 1961 — Section 14, 14 (6), 15, 16

Citation : AIR 1972 Kar 143 : (1971) 2 MysLJ 635

Hon'ble Judges : H.B. Datar, J

Bench : Single Bench

Advocate : S.G. Sundaraswamy, in C.R.Ps. 621 to 623 of 1968; V. Krishnamurthy and V. Tarakaram, in C.R.Ps. 412 and 237 of 1968, for the Appellant; V. Krishnamurthy and V. Tarakaram, in C.R.Ps. 621 to 623 of 1968 and S.G. Sundaraswamy in C.R.Ps. 403, 412 and 237 of 1968, for the Respondent

Judgement

H.B. Datar, J.—These six revision petitions arise out of the three applications filed by the same landlady against the different tenants for fixation of fair rent u/s 14 of the Mysore Rent Control Act, 1961. The three revision petitions have been filed by the landlady challenging the correctness of the order of the lower appellate court and the other three revision petitions have been filed by the tenants challenging the order of the lower appellate court by which an order remanding the application for fresh determination has been made. As common question of law and fact are involved in those petitions, they were heard together and decided by this common judgment.

2. The case of the petitioner-landlady is that the premises in question is a non-residential premises situated in an important locality in Bangalore, i.e., Chickpet, Bangalore-2, in which the respondents are the monthly tenants and it is necessary to determine the fair rent. The objections raised by the tenants is that the old building was destroyed by fire and a new building was built during 1947, as such the fair rent has to be fixed at 6 per cent, of reasonable cost of construction. It was stated that if it is so fixed then the rent which was being

paid would itself be excessive.

3. The particulars of the properties and other details which are relevant for the present purpose are given below:

Serial No.

H. R. C. A. No.

H. R. C. Fr. No.

Premises No.

Alleged rent in the basic period.

Fair rent demanded.

Fair Rent awarded.

1

2

3

4

5

6

7.

1.

32/1966

647/62

927

Rs. 300/-

Rs. 600/-

Rs. 525/-

2.

33/1966

646/62

929/6

Rs. 75/-

Rs. 150/-

Rs. 131/75

3.

34/1966

648/62

926

Rs. 300/-

Rs. 600/-

Rs. 525/-

The House Rent Controller recorded the evidence and came to the conclusion that the fair rent fixed will be effective from 1st January 1963. The correctness of the decision given by the Rent Controller was challenged before the court of the District Judge and the learned District Judge has come to the conclusion that the premises in question was not ready for occupation prior to 1-4-1947, and therefore, the fixation of fair rent by the House Rent Controller was erroneous. It is the legality and correctness of these orders that are challenged in these revision petitions.

4. As the learned counsel appearing for the respondents challenges the jurisdiction of this court to go into the question of fact arising in the case, I will first deal with the objection raised by him. The first contention that arises for consideration with regard to the scope of the revision petition filed u/s 50 of the Mysore Rent Control Act. 1961, Section 50 (1) of the Mysore Rent Control Act. 1961. reads thus:--

"50 (1) Revision by the High Court;

(1) The High Court may, at any time call for and examine--

(i) the records relating to any decision given or proceedings taken by the District Judge:--

(ii) any order passed or proceedings taken by the court under this Act or any order passed by the Controller u/s 14. Section 15 or Section 16;

for the purpose of satisfying itself as to the legality or correctness of such decision, order or proceedings and may pass order in reference thereto as it thinks fit."

According to this provision, the High Court can call for and examine the records for the purpose of "satisfying itself as to the legality or correctness of such decision" and thereafter pass such order as it thinks fit. The submission made by the learned counsel appearing for the respondents is that the jurisdiction to go into the correctness of the order does not entitle the High Court to examine the evidence in the case and take a contrary view. In support of this submission,

reliance is placed upon the judgment of this court in *E. A. Pais v. P. T. Venkatappa Setty* (1964) 2 Mys LJ 18. In that case, this court considered the scope of Section 12-B of the Madras Buildings Lease and Rent Control Act. 1949. Under that Act. the revisional Court has jurisdiction to call for and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality, regularity or propriety of such order. It is the use of the words "legality" and the "propriety" of the order that was under consideration. It was held by this court as under:--

"The powers of a revisional court have always been understood to be more restricted than the powers of an appellate court and the mere fact that an appellate court interfered with findings of fact without sufficient reason is not a ground for interference by the revisional authority with the finding of fact by the appellate authority. But if the findings of fact reached by the appellate authority on admitted or proved facts is so perverse that no reasonable person could have reached that conclusion, the revisional authority will have a right to interfere with the findings of fact."

5. The provisions of Section 12-B of the Madras Buildings (Lease and Rent Control) Act were also considered by this Court in the case in *IT. Ahmed Hussain v. M. Mohiddin Haji* (1965) 1 Mys LJ 633. This Court after consideration of all the decisions under the Madras Act and use of similar words in other enactments held that an examination of propriety would not include the examination of the correctness of the finding involving the actual reassessment of evidence. This Court at p. 637 observes thus:--

"It would also be pointed out that while determining the extent or ambit of a statutory power the most important factors to be borne in mind are the nature of the corresponding duty and the object with which the duty is imposed. It is a well known rule of interpretation that where duty and power co-exist, the power is intended to enable the authority to effectively discharge its duty, and the nature of the duty has to be ascertained from the point of view of the object to be achieved by exercising that duty, which again has to be ascertained from the general scheme of the statute.

Under the scheme of the Madras Buildings (Lease and Rent Control) Act the order of the appellate authority u/s 12 is final and not liable to be called in question in any court of law, except as provided by Section 12-B and the said latter section limits the interference to an examination of legality, regularity and propriety of the appellate order."

6. The learned counsel for the respondents also placed reliance upon the judgment of the Supreme Court in *Malini Ayyappa Naicker (Now Dead) through I.R. etc. Vs. Seth Manghraj Udhavadas Firm by Managing Partner Chathurthuj Chhabildas (Dead) Thereafter by I.Ss. and Others*, . In that case, their Lordships of the Supreme Court considering the question of the scope of the jurisdiction conferred upon the High Court under the first proviso to Section 75(1). Provincial

Insolvency Act, which states that the High Court for the purpose of satisfying itself that that order made in appeal was according to law may call for the records and pass such orders as it thinks fit. Their Lordships considering this proviso held as under:--

"Quite clearly the legislature did not confer on the High Court under the 1st proviso to Section 75(1) of the Act an appellate power nor did it confer on it a jurisdiction to reappreciate the evidence on record. If the Legislature intended to confer power on it to re-examine both Questions of law and fact it would have conveyed its intention by appropriate words as has been done under various other statutes. A wrong decision on facts by a competent court is also a decision according to law.

At the same time the power conferred under the 1st proviso to Section 75(1) of the Act is not co-extensive with that given to the High Court u/s 100 (1) (a) -- decision being "contrary to law" as provided in Section 100(1)(a) of Civil P. C. is not the same thing as a decision being not "according to law" as prescribed in the 1st proviso of Section 75(1) of the Act -- the latter expression is wider in ambit than the former. The power given to the High Court under the 1st proviso to Section 75(1) of the Act is similar to that given to it u/s 25 of the Provincial Small Cause Courts Act."

7. In my view, the decisions given under the Madras Buildings Lease and Rent Control Act wherein the words of statute are totally different cannot be applied to the question arising for consideration under the Mysore Rent Control Act, 1961. Similarly, the decision of the Supreme Court *Malini Ayyappa Naicker (Now Dead) through I.R. etc. Vs. Seth Manghraj Udhavadas Firm by Managing Partner Chathurthuj Chhabildas (Dead) Thereafter by I.Ss. and Others*, deals with the use of words, "decision being contrary to law" and not the use of the word "correctness of the decision."

On the contrary, the scope of Section 50 of the Mysore Rent Control Act, 1961, has been considered by the Supreme Court in *M/s. Central Tobacco Co. Bangalore v. Chandra Prakash* (1969) 1 SCWR 1142 : (AIR 1969 NSC 83). In that case, this is what their Lordships of the Supreme Court have stated:--

"Section 50 of the Mysore Rent Control Act, 1961 (hereinafter referred to as the "Act") gives the High Court power to call for and examine the records relating to any decision given or proceedings taken by the District Judge for the purpose of satisfying itself as to the legality or correctness of such decision, order or proceedings and it further empowers the High Court to pass such order as it thinks fit. The learned Judge of the High Court examined the evidence and differing from the finding of the District Judge came to the conclusion that the landlord had proved that he reasonably required the premises for his own use and occupation. The High Court held that the burden of proving that eviction would cause greater hardship on the tenant lay on him and took the view that he had not discharged that burden. Counsel for the appellant contended first that it

was not open to the High Court in exercise of its revision any jurisdiction to differ from the concurrent view of the two lower Courts and, secondly, it had wrongly placed the burden of proof of greater hardship on the tenant and this vitiated its ultimate conclusion. As the revisionary powers are couched in very wide terms we are not inclined to accept the first contention."

This court differing from the findings of the court below on fact held that the premises were required by the landlord for his own use and occupation and this was on re-appreciation of evidence. It was held by their Lordships of the Supreme Court that the revisional powers are couched in very wide terms and therefore the contention raised before the Supreme Court that the High Court had no jurisdiction to differ from the concurrent views of the courts below was rejected.

8. Prior to the pronouncement of the decision of the Supreme Court, this court in the case reported in Mr. Ramachandraiah v. S. R. Shankara Narayana Setty (1968) 1 Mys LJ 442 considered the scope of interference by the High Court under S. 50 of the Mysore Rent Control Act 1961, and held that the High Court is not precluded from examining the facts. It was further stated that the correctness or otherwise of the findings of fact cannot be without reference to the evidence bearing on the question in the context of Section 50 of the Mysore Rent Control Act. At page 416, this is what this court has stated:--

"The argument of Sri M. S. Gopal, the learned counsel appearing on behalf of the respondent, was that the word "correctness" would not permit interference with the findings of fact, and it appertains only to conclusions arrived at by the learned District Judge on facts. He was in difficulty when a question was put to him as to the process by which such findings on facts could be decided pr reviewed without reference to the evidence on which they were based. I am clearly of the opinion that the correctness or otherwise of the findings of fact cannot be decided without reference to the evidence bearing on the question in the context of Section 50 of the Mysore Rent Control Act."

9. Therefore, having regard to the scheme of the Mysore Rent Control Act and the power conferred upon the High Court u/s 50 of the Mysore Rent Control Act, the jurisdiction to go into the question of legality or correctness of the decision includes the power to re appreciate the evidence. An examination of the correctness of the finding on fact involves the actual reassessment of evidence, and therefore, this court is entitled to go into the questions of fact and arrive at a decision. In that view, the first contention raised by the learned counsel appearing for the respondents is rejected.

10. In view of the decision given by me holding that this court is competent to go into the question of fact and determine the correctness of the order passed by the court below, I am now called upon to consider the evidence and see as to whether the decision arrived at by the court below is correct or is required to be set aside.

11. u/s 14 of the Mysore Rent Control Act, 1961, the tenant has to make an application to the Controller for fixing fair rent of the building and the provisions of Section 14 (1) (i) prescribed the period of limitation within which the application is to be filed. On receipt of the application, the Controller holds an enquiry and fixes the fair rent for the building. It is in fixing the fair rent, the Controller is required to have due regard to the facts enumerated in Section 14 (3) of the Act. Section 14 (3) (a) of the Act states that the Controller shall have due regard to the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances under the twelve months prior to the first day of April 1947. So far Section 14 (6) is concerned, it would be applicable only if a building is constructed after the first day of April 1947. But, in so far as the buildings which are constructed before the first day of April 1947, are concerned that provision does not apply and it is the earlier provisions, which will apply and in accordance with those provisions only that the determination of fair rent is required to be made. In my view, the important thing that is to be determined in the present case is as to whether the building has been constructed before or after the first day of April 1947.

(After discussing the evidence in paras 12 to 14 the judgment proceeded).

These documents are relied upon to show that the building was ready for occupation and I am not able to see how it can be contended that these documents are documents which are inadmissible in evidence. It was submitted by the learned counsel appearing for the respondents that the counterfoils are not admissible in evidence u/s 32 of the Indian Evidence Act. In my view, u/s 32(2) of the Indian Evidence Act the memorandum made in the ordinary course of business is admissible in evidence. (His Lordship after discussing the evidence further, proceeded):

It is therefore clear that the material on record would show that the building had been constructed prior to 1-4-1947.

15. The learned counsel appearing for the respondents submitted that it was alleged that 18 months were required to complete the building and it was in 1946 and therefore the building was not complete before 1-4-1947. In my view, having regard to the positive material on record, this submission cannot be accepted. Similarly, the fact that the building licence obtained from the Municipality has not been produced nor the report intimating the municipality about the completion of the building does not disprove that the building was not ready before 1-4-1947. It is also necessary to note that P. W. 1 Srinivasa Rao has stated that the account books were destroyed and they were not available. In this view, on the material on record. I am of the view that the building had been constructed and ready for occupation, prior to 1-4-1947.

16. The next question that arises for consideration is what is the order that should be passed in the present cases. The learned appellate Judge has not considered the question as to whether the fair rent fixed by the Rent Controller

was proper or not. In that view, it is necessary for the learned Appellate Judge to consider the remaining question and determine the same. In that view, there is no other choice but to remand the appeals back for the fresh disposal of the only question remaining for decision as to whether the fair rent fixed by the Rent Controller was proper in the circumstances of the present case. In view of the conclusion arrived at by me C R, Ps. 403. 412 and 237 of 1968 filed by the tenants do not survive. In the result. Civil Revision Petitions Nos. 621. 622 and 623 are allowed. The order passed by the learned Appellate Judge in each of these cases is set aside and the appeals are remitted back for fresh disposal in accordance with law to consider the only surviving question whether the fair rents fixed by the Rent Controller are proper or not. As the matters are pending for the last several years, I direct the learned Appellate Judge to dispose of these matters within six months from this date. No costs.