

(1983) 06 KAR CK 0014
In the Karnataka High Court
Case No : CRP 1266/78

Raoji Jagachand Mehta by Lrs.

APPELLANT

Vs

Basthi of Nipani

RESPONDENT

Date of Decision : 14-06-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Karnataka Rent Control Act, 1961 — Section 21(1)(H)

Citation : (1983) 2 KarLJ 258

Hon'ble Judges : P. A. Kulkarni, J

Judgement

1. The revision petition by the legal representatives of the deceased tenant is directed against the order dt. 8-3-1978 passed by the Dist. Judge, Belgaum, in HRC Revn. Petn. No. 19 of 1977 confirming the order of eviction passed by the Addl. Munsiff, Chikodi, in HRC No. 2 of 1973.

2. The petitioner-landlord filed the petition under S. 21 (1) (h) of the Karnataka Rent Control Act, 1961, alleging that the petition premises belonged to the Basti Trust and that he requited the premises for the purpose of the Trust.

3. The opponent-tenant repudiated all the allegations of the petitioner-landlord. He also denied the relationship of the landlord and tenant between him and the petitioner landlord.

4. Both the Courts below on a scrutiny of the evidence, have come to the conclusion that the petition property belonged to the Basti Trust. This concurrent finding is a finding of fact. Therefore, I do not think it permissible for me now to take a different view in the matter. Though the material on record may be capable of another interpretation on the same facts, it is not possible for this Court sitting in revision to put a different interpretation on the very same facts accepted by both the Courts below. It has come in evidence that the Trust known as Ambabai Sakharam Mehta Trust and the Basti Trust are one and the same. The contention of the opponent that the property belonged to some other trust has not been accepted by the Court below and has been negatived. Therefore,

under these circumstances, in view of the concurrent findings of fact recorded by both the Courts below which is well substantiated by the material on record, I am inclined to confirm the finding that the petition property belonged to the petitioner Trust.

5. Learned counsel Sri Tarakaram attacked the finding of the Dist. Judge that where the landlord was a trustee, it was not necessary to prove bona fide and reasonable requirement, S. 21 (1) (h) of the Karnataka Rent Control Act, 1961, read thus:

"that the premises are reasonably and bona fide required by the landlord for occupation by himself or any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust, that the premises are required for occupation for the purposes of the trust;"

The learned Dist. Judge relied on a ruling reported in *Kishinchand Murjimal v. Ba: Kallavati Hansraj Dwarkadas*, 74 Bom. LR 623, wherein it is held thus;

"S. 13 (1) (g) of the Bombay Rents Hotel and Lodging House Rates Control Act merely requires the trustees to establish that there is some requirement importing an element of necessity which compels them to file a suit for ejectment, but it does not require that the requirement of the trustees should be proved to be bona fide and reasonable".

In the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 by the learned Author Sri Dalai, 4th Edn., it has been stated at page 425 thus:

"Requiring for the purposes of a public charitable trust:-This clause has been added by the amending Bombay Act No. 61 of 1953. Where a landlord is a trustee of a public charitable trust, he has an additional advantage under this clause to ask for the occupation of the purpose of the public charitable trust of which he is a trustee.

A trustee cannot say that he requires the premises for occupation of himself; he can say that he requires for the purposes of the trust. The second part of the clause relates to a requirement of a beneficiary and it is confined to that very trust property which is held for the beneficiary. If the trustees of a public charitable trust were to ask for the premises belonging to the trust, such requirement may fall under the first or second part of Cl.(g) but under this part the requirement of a public charitable trust has been specifically provided. The paramount object of this part of the clause is to advance the cause of a public charity by not allowing it to suffer for want of an accommodation. The requirement of a reasonable and bona fide nature is not necessary under this part of the clause. It is sufficient to prove the requirement of the trust. Prima facie the question of comparative hardship would apply to the entire clause".

Similar appears to be the view taken in *Mohamad v. Ranchhoddas*, (1963) 4 Guj. LR 279. The wordings used in S. 13 (1) (g) of the Bombay Rent Act are the same as the ones found in S. 21 (1) (h) of the Karnataka Rent Control Act. S. 21 (1)

(h) of the Karnataka Rent Control Act covers two cases, (1) where the premises are required by the landlord for occupation by himself or any person for whose benefit the premises are held; (2) where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust. When two such cases are separately made out in Cl. (h), it is not possible to contend that the words, reasonable and bona fide, also cover the latter part of Cl. (h), which deals with the requirement of a public charitable trust. The words "bona fide and reasonable" have been purposely omitted in the case of the requirement of a trust, because it is meant to advance the cause of the public charitable trust. Public charitable trust is always represented by a trustee. It has no life of its own. As the public charitable trust is a body, it cannot act by itself. It will have to act through others. Therefore, in the case of such persons, the element of reasonable and bona fide requirement may not arise at all. Therefore, under these circumstances, the Legislature has purposely omitted the words "reasonable and bonafide" when it provided for the cause of a public charitable trust. Further the wordings used in Cl. (h) make the intendment of the Legislature quite clear. The words used are, where the landlord is a trustee of the public charitable trust, that the premises are required for occupation for the purpose of the trust. Cl. (h) starts with the word "that". Again the word "that" has been used immediately after the word public charitable trust. Therefore, the case of a public charitable trust is completely different from the case covered by the first part of Cl. (h). Therefore as stated in the said Bombay case and Gujarat case and also as stated by the learned author Sri Dalai, where a public charitable trust requires the premises, the question of bona fide and reasonable requirement will not arise at all. What is required to be decided by the Court in such cases is whether its desire is actuated by the actual need. The word "required" only indicates an element of necessity or need. It does not rope in itself the requirement of reasonableness or bona fide. The learned counsel Sri Tarakaram quoted the decision in T.N. Shankara Rao v. S.A. Wajid, (1971) 2 Mys. LJ 29. It was a case filed by the private landlord against a tenant. It did not consider the question of the requirement of a public charitable trust. It only considered the first part of S. 21 (1) (h) of the Karnataka Rent Control Act. Therefore the principle laid down by this Court in the said case will not be of much assistance in deciding the present case which falls under the latter part of S. 21 (1) (h). He also relied on a decision in Mattulal v. Radhelal, AIR 1974 SC 1596. It was also a case by a private landlord against a tenant The Supreme Court held that the Court while determining the requirement must decide whether the desire of the landlord partakes the character of a need and whether it is further reasonable and bona fide. As I have already stated above, in the said Supreme Court case also, it was a matter between a private landlord and a tenant and it did not consider the case falling under the latter part of S. 21(1) (h). Therefore, under these circumstances, I am of the view that when a public charitable trust files a petition for eviction under S. 21 (1) (h), it is not necessary for it to prove that it required the premises bona fide and reasonably. As already stated above by me, the public charitable trust must prove that it not only

wishes to have possession but also it has got need to have possession of that property.

6. So far as the principle of comparative hardship is concerned, it is applicable to both the cases covered by S. 21 (1) (h). It has come in evidence that the opponent-tenant has got many buildings near about the petition shop premises itself. The petition shop premises is being used by him as a godown. He has got his own shop building near the petition premises. Therefore, even if eviction is ordered, he can shift the business goods to another premises of his own. Therefore, no comparative hardship would be caused to the opponent-tenant even if eviction is ordered. On the other hand, the petitioner trust has no office of its own. It has no place to keep its records, account books, and the things or articles offered by the devotees of the Trust. It has no premises of its own to enable its accountant to examine its accounts. Whenever public servants come for inspection of the trust and its accounts, some provision will have to be made by the trust in order to enable the public servants to come and examine the records and the accounts. Therefore, in view of the fact that the petitioner trust has no building of its own to meet the said absolute requirements, comparatively greater hardship would be caused to the petitioner if possession is refused.

7. If the question of bona fide and reasonable requirement is held to be necessary even in the case of the requirement of a public charitable trust, I am of the opinion, looking to the facts of the case, that the petitioner landlord does require the petition premises bona fide and reasonably for its own use.

8. Then the last question is whether this Court can call in question the findings recorded by the Courts below either on facts or on law, in the present revision petition which has been filed under S. 115 of the CPC. Let me assume for a moment that the finding recorded by the Munsiff and the Dist. Judge regarding the interpretation of S. 21(1)(h) is erroneous and wrong and even opposed to the wordings used in it. Sri Mandagi placed before me a decision in *Vora Ahbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai*, AIR 1964 SC 1341. The Supreme Court has held in para 14 at page 1346 thus:

"(14). On the view we have expressed the Dist. Court was apparently in error in assuming that by tendering in Court rent at the rate specified in the order dt. Feby. 14, 1957 the requirement of S. 12 (3) (b) regarding payment or tender of standard rent was satisfied. Standard rent for the purpose of S.12(3)(b) is such rent as is already determined or may be finally determined under S.11(d). But it turned out that the amount deposited by the defendant pursuant to the order of the Court was not less than the amount fixed by the trial Court. It is true that the defendant did not continue to pay rent regularly till the suit was finally decided and that deprived him of the protection under S. 12 (3) (b). The Dist. Court enhanced the standard rent to Rs. 70 and directed adjustment of standard rent against the amount paid in Court. That Court, it is true, did not also strictly follow the requirements of law, but the defect was technical. The Court should have before disposing of the appeal fixed a date for payment of the difference

between the standard rent due and the amount actually deposited in Court. The Dist. Court also held that the defendant had otherwise established his readiness and willingness to pay the standard rent."

The Supreme Court further held in para 15 thus:

"(15) The question which then arises: had the High Court jurisdiction to set aside the order of the Dist. Court in exercise of its powers under S. 115 of the CPC? The Dist. Court on an erroneous view of S. 12 (3) (b) held that the requirements of that provision were complied with by the defendant, but it also held that having regard to the circumstances, the readiness and willingness contemplated by sub-sec. (1) was otherwise established. The High Court had, in exercise of its powers under S. 115 of CPC, no authority to set aside the order merely because it was of the opinion that the judgment of the Dist. Court was assailable on the ground of error of fact or even of law. Jurisdiction to try the suit was conferred upon the Subordinate Judge by S. 28 (1) (b) of the Act, and the decree or order passed by the subordinate Judge was by S. 29 (1) (b) subject to appeal to the Dist. Court of the Dist. in which he functioned, but all further appeals were by sub sec. (2) of S. 29 prohibited. The power of the High Court under S. 115 of the CPC was not thereby excluded, but the exercise of that power is by the terms of the statute investing it severely restricted. The High Court may exercise its powers in revision only if it appears that in a case decided by a Subordinate Court in which no appeal lies thereto the subordinate Court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested or has acted in the exercise of its jurisdiction illegally or with material irregularity". (underlining (italics) is mine).

Even if any illegality or material irregularity is committed by the Courts below either on question of fact or on law regarding the interpretation of law, S. 115 of the CPC will not confer any jurisdiction on this Court to correct them. Therefore, even viewed from this angle also, this Court cannot interfere with the concurrent findings recorded by both the Courts below.

9. Further it is brought to my notice that the revision petitioner in this case died during the pendency of the proceedings and his legal representative has been brought on record. It is undisputed that the petition premises is a business premises. As held by this Court in S.P. Hamidsha Chandshawala v. Seshagiri Bhiku Pai, (1973) 1 Mys.LJ 127 and M.V. Sundarraj v. Kamalamma, ILR 1975 Kar. 2028, the legal representative of a tenant occupying the business premises will not be a tenant within the meaning of S. 3 (r) of the Karnataka Rent Control Act and thus he had no right to continue in possession of the business premises. Therefore, even viewed from this angle, I am of the opinion that there is no merit in the revision petition at all.

10. Therefore, the revision petition is accordingly dismissed. At this stage, Sri Tarakaram submitted that even the legal representative would require some time to find out an alternate accommodation to remove the things from the petition

premises and dump them. Taking into consideration that one may require some time to find out an alternate accommodation and also taking into consideration that one will have to muster up his resources to pay higher rent now prevailing in the market, I think that the interest of justice would be met if time till the end of June 1984 is given to the tenant to vacate the premises. No costs.