

(1973) 02 KAR CK 0011

In the Karnataka High Court

Case No : Civil Revision Petition No. 2487 of 1972

Smt. Maju Bai

APPELLANT

Vs

F. Mohammed Ibrahim

RESPONDENT

Date of Decision : 13-02-1973

Acts Referred:

Citation : AIR 1974 Kar 14

Hon'ble Judges : B. Venkataswami, J

Bench : Single Bench

Advocate : S.H. Sait, for the Appellant; Mohaboob Ali Khan, for the Respondent

Final Decision : Dismissed

Judgement

B. Venkataswami, J.—This is a petition by the landlord u/s 50 of the Mysore Rent Control Act, 1961. It is directed -against the order made on I. A. No. 1 by the Principal Munsiff, Civil Station, Bangalore, in H. R. C. No. 27 of 1969. I. A No. 1 is an application filed by the landlord for an order u/s 29 (4) of that Act.

2. The case of the landlord is that the dues on account of the light and water charges had not been paid and such dues are really part of the rent payable for the use and occupation of the premises. The learned Munsiff rejected this contention and dismissed the application.

3. On behalf of the petitioner, Sri S. M. Sait the learned Advocate." contended that having regard to the relevant clauses of the lease deed and the meaning assigned to the word "rent", in the context of a similar Rent Act, by the Supreme Court in the decision of Karnani Properties Ltd. Vs. Augustin, the charges claimed on account of water and electricity must be construed as rent within the meaning of Section 92 of the Rent Control Act.

4. On behalf of the respondent Sri Mehboob Ali Khan, the learned counsel, submitted that the decision in Karnani Properties Ltd. Vs. Augustin, would not be of any assistance to the petitioner, as it would be clear therefrom, that it is

nowhere laid down therein that the charges payable to the Local Authorities, concerned with the supply of water and electricity, would amount to rent payable to a landlord for the use and occupation of a premises let out. He also submitted that the said decision was clearly distinguishable. He further contended that the arrears relative to such charges have been treated by the landlord himself distinct and separate from rent in that the arrears of charges relate to a period prior to the year 1968 whereas arrears of rent claimed in the petition relate to a period subsequent to 11-1-1971.

5. On a careful examination of the matter, I am of the view that this petition must fail and for the following reasons:

6. In the decision relied on by the petitioner-landlord, in *Karnani Properties Ltd. Vs. Augustin*, the Supreme Court was concerned with a case of fixation of fair rent of premises governed by the West Bengal Premises Rent Control (Temporary Provisions) Act (Act 17. of 1960).

6-A. The relevant observation reads thus:

The term "rent" has not been defined in the Act. Hence it must be taken to have been used in its ordinary dictionary meaning. The term "rent" is comprehensive enough to include all payments agreed by the tenant to be paid to his landlord for the use and occupation not only of the building and its appurtenances but also of furnishings, electric installations and other amenities agreed between the parties to be provided by and at the cost of the landlord. Therefore all that is included in the term "rent" is within the purview of the Act and the Rent Controller and other authorities have the power to control the same.

7. It is conceded that in the present Act, the position is the same in regard to definition of rent. It is plain that the principle contained in the above passage is that if certain sums as hire or premium are agreed upon between the lessor and lessee in respect of amenities, inclusive of electrical installations, then all such payments shall be construed as part of "rent" payable by a lessee. But the crucial point to be noted is that such charges do arise only on account of the use and occupation of the premises leased and "appurtenances and furnishings and, other amenities provided by the landlord, himself. In the case on hand the landlord has been seeking to recover amounts due and payable to the public authorities concerned on account of consumption of water and electricity. This is certainly not something which can be provided by a landlord. The landlord in order, to bring himself within the scope and ambit of the definition of rent as expressed in the aforesaid decision he must further have stipulated with the tenant for charges by way of hire, separately with regard to the provision of fixtures and installations concerning water and electricity. As it happens in the instant case the rent stipulated is inclusive of hire charges payable on account of such amenities.

8. By this I do not mean to say that all charges including the charges such as those concerned in this case, cannot be agreed upon. In case of such an

agreement, it will certainly become recoverable; provided such charges are fixed and certain and are not dependent on the actual consumption and use of such amenities. In any case, the agreement must clearly stipulate for the payment of such charges to the landlord.

9. In this context, an annotation in Stroud's Judicial Dictionary, (Third Edition), may be usefully referred to. It is:

The power which a tenant has, u/s 96, Metropolis Management Act, 1862, to deduct "out of the rent" moneys he pays to the local authority for paying charges, does not make such moneys a payment of "rent"; they are only a payment on account of the costs and expenses demandable by the local authority.

10. Some sustenance was sought to be derived by Sri Sait from the relevant clauses in the lease deed, in support of his main contention. The clause relied on runs thus:

The lessee shall pay the light and water charges from his pocket in addition to the monthly rental of Rs. Thirty (Rs. 30/-)".

11. It seems to me that this clause, if anything, clearly places the responsibility for payment of relevant charges on the tenant. It does not even specify, directly or indirectly, that the said charges are payable to, the landlord. It is, therefore, clear that the landlord has no right to claim such charges from the tenant on the basis of this clause in the lease deed. But it is contended by Sri Sait that the background for such a stipulation is that the tenement in question and several other tenements together are serviced by a common meter, and, therefore, the landlord could only apportion such charges between all such tenants and collect and remit the same himself. Indeed, the argument is that this implied agreement had always been there and the same formed part of the agreement of lease between the parties. I do not consider it necessary to go into this aspect of the case, as this petition has to fail on the ground discussed earlier.

12. The result is that this petition fails and is accordingly dismissed. No costs.