

(2011) 01 KAR CK 0023
In the Karnataka High Court
Case No : H.R.R.P. No. 140 of 2009

Sri M.L. Shiva Kumar Gowda

APPELLANT

Vs

Sri N. Annappa Since deceased by L.Rs. (Smt. Manji, Smt
Saroja, Kumari Anusha and Kumari Amitha and Sri M.C.
Krishnappa)

RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 295, 423
Karnataka Rent Act, 1999 — Section 2 (3) (g), 27 (2) (B) (II) (C)

Citation : (2011) 3 KarLJ 657 : (2011) 2 KCCR 1641

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : Padmanabha Mahale and A. Sai Prakash, for the Appellant; Ismail
Musba, for Sandesh J. Chouta, for R1, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This matter is placed before this Division Bench by the special orders passed by the Hon'ble Chief Justice, at a request of the learned Single Judge, for a reference to resolve conflict in the views expressed in several judgments regarding the word "plinth area" used in Section 2(3)(g) of the Karnataka Rent Act, 1999 (for short, hereinafter referred to as the Act").

2. For the purposes of convenience, parties are referred to as they are referred to in the eviction petition HRC No. 177/2007.

3. The subject matter of these proceedings is a shop premises bearing No. 24/24 situated at 17th Cross, 20th Main, M.C. Road, Vijayanagar Bangalore measuring 7% x 101/2 feet along with a portion measuring about 5th x 8th, boundary on the north by 20th Main Road and east by 17th cross road, west by property of Veena Prakash and South by site bearing No. 23. (The said premises is hereinafter referred to as the schedule property).

4. The Petitioner in the eviction petition is the owner of the schedule property. The 1st Respondent -M.C. Krishnappa took schedule premises under lease agreement dated 01.08.1997 on a monthly rent of `1,250/- for running a wine store. The Petitioner initiated eviction proceedings u/s 27(2)(B)(II)(C) and (R) of the Act for eviction of the 1st Respondent - M.C. Krishnappa and the 2nd Respondent Sri M.L. Shivakumar who is said to be the sub-tenant

5. After service of notice, Respondents entered appearance and filed a detailed statement of objections. They contended that, the eviction petition filed by the Petitioner under the Act is not maintainable in view of Section 2(3)(g) of the Act which exempts the application of the Rent Act to commercial premises, the plinth area of which is more than 14 sq. meters. Subsequently, the Respondents also filed an application for considering the maintainability of the application as a preliminary point, which application was numbered as IA No. 6.

6. The learned Small Causes Judge recorded the evidence of the parties and also took note of the measurements given in the lease deed and came to the conclusion that the plinth area which is the subject matter of lease is 116.13 sq. meters though in the lease deed it is mentioned as 2 squares, as the actual measurement according to her is not 2 squares and only 116.13 square feet She was of the view that the schedule premises measures less than 14 sq. meters and therefore, she held, eviction petition is maintainable, by rejecting the application filed by the Respondents. Aggrieved by the same, Respondents preferred this revision petition.

7. Before this Court, by consent of parties, a retired Civil Engineer was appointed as Court Commissioner. He has given his report along with the sketch showing the measurements of the schedule property. He has stated that the carpet area of the petition premises is 12.037 sq. mts. Where as, the plinth area is 15.34 sq. mtrs. So, if the carpet area is taken into consideration, it is less than 14 sq. mtrs. whereas if the plinth area is taken, it would be more than 14 sq. mtrs. .

8. It is in this background, it was contended before the learned Single Judge, in view of the judgment of the learned Single Judge of this Court in P.R. Radhakrishna Setty and Sona Company v. A.N. Satish Babu reported in 2004 (2) KLJ 223, it is the area used for commercial purpose which shall be taken into consideration while interpreting the Section. While doing so, the Walla cannot be used and as such their measurements need not be taken. In other words, it is the carpet area which has to be taken into consideration.

9. Another learned Single Judge of this Court in the case Smt. P. Vatsala Upadhya and Others Vs. Srikanth Keshav Raikar, has held that the plinth area includes essentially all appurtenance that form part of the premises which are let along with the building including the frontage of the shop which forms part of the premises.

10. Later, one more learned Single Judge in the case of K. Thimmegowda. v. B.S. Nagaraj Rao and Ors. reported in ILR 2006 Kar. 2753 took into consideration the

plinth area and also the carpet area and held, that even the space or area beneath the walls has to be included and excluding that portion it would be only the carpet area which is actually used and the provisions of Section 2(3)(g) of the Act states that the plinth area will have to be taken into consideration.

11. It is in this background, the learned Single Judge who was dealing with the matter was of the view that it is necessary to refer the matter to the Division Bench to resolve the controversy. Accordingly, the matter was referred.

12. In order to set at rest the controversy, it is necessary to see the statutory provisions, which calls for interpretation.

The Act was enacted by the Karnataka Legislature to provide for the regulation of rent and eviction of tenants, in certain areas of the State of Karnataka and for the matters connected therewith or incidental thereto.

Section 2 is the interpretation Section. Section 2 deals with application of the Act. Sub-section (1) of Section 2 states Chapters I to in and Chapters V to VIII of the Act shall apply to areas specified in the first schedule i.e., geographical boundaries to which the Act applies. It provides that chapters I to IV shall apply only to areas specified in the second schedule i.e., the, areas within the limits of cities constitution, under the Karnataka Municipal Corporation Act, 1976 and within the radius of 3 kms. from the limits of the said cities. Sub-section (3) deals with the premises to which this act shall not apply. One such premises to which the Act would not apply is provided in Clause (g) which reads as under:

(g) to any premises used for nonresidential purpose but excluding premises having a plinth area of not exceeding fourteen square meters used for commercial purpose.

The "premises" is defined u/s 3(i) of the Act which reads as under:

"(i) "Premises" means,

The "Building" is defined under Clause (a) as under:

""Building" means any building or hut or part of a building or hut other than a farm house, let or to be let separately and induces,-

(i) the garden, grounds and outhouses, if any appurtenant to such building or hut and let or to be let along with such building or hut or part of building or hut,

(ii) any furniture or equipment supplied by the landlord fir the use in such budding or hut or part of a building or hut;

(iii) Any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof,

but does not include a room or other accommodation in a hotel or a lodging house;

13. From the aforesaid definitions, it is clear, both the building and the land fall within the definition of the "premises" under the Act. However, if the land is used for agricultural purpose, then, it would not be construed as premises under the Act. It is only the land not used for agricultural purpose, falls within the definition of "premises" under the Act. Similarly, though a farm house is a building, as the same is normally constructed in an agricultural land, is not included in the definition of the word "building". Therefore, agricultural land and farm house which are constructed on such agricultural lands shall not fall within the definition of the "premises" under the Act.

Again, "residential purpose", "residential user" or "purpose of residence" is defined, which includes, letting out for running a public institution. A "public institution" is also defined under the Act. Therefore, the premises which is not used for residential purpose which is let out for running a public institution, though not used for residential purpose are all governed by this Act.

However, Section 2(g) of the Act makes it clear that, nothing contained in this Act shall apply to any premises used for non residential purpose. Therefore, the Act is not applicable to such premises used for nonresidential purpose. This is the general rule. However, an exception is carved out from this general rule i.e., if any non residential premises is used for commercial purpose, and its plinth area is less than 14 sq. meters, the Act is made applicable. If the non residential premises is used for commercial purposes and the plinth area of the said commercial premises exceeds 14 sq. meters, then the Act is not applicable.

It is in this background, the meaning of the word "plinth area" assumes importance.

14. In P.R. Radhakrishna Setty and Sons Company Vs. A.N. Satish Babu, , while interpreting the word "plinth area", it was held as under:

What is important is "plinth area used for commercial purpose" The word "used" assumes importance. Therefore, only the area used for commercial purpose shall be taken into consideration. In such an event, walls cannot be used and as such their measurements need not be taken.

15. Again, a learned Single Judge, in the case of Smt. P. Vatsala Upadhyaya and Others Vs. Srikanth Keshav Raikar, held as under:

Clause (g) of Sub-section (3) of Section 2 which is relevant for purposes of considering the question involved in these petitions states that the provisions of the New Act do not apply to any premises used for nonresidential purpose having a plinth area of not exceeding 14 sq. meters used for commercial purpose. It is not in dispute that the tenants are making use of the shops in question for commercial purpose. In my view any vacant space left by the landlord in front of the shop should also be included having regard to the purpose or usage of the premises by the tenants. What is important is the purpose or the making use of the shops in question for purposes of determining whether it is residential or non-

residential.

16. Again in the case of K. Thimmegowda Vs. B.S. Nagaraj Rao and Others, after interpreting the word "plinth area" with reference to dictionary meaning as well as it is used in other statutes, it was held as under:

17. From the aforesaid, it is dear that plinth area of a premises includes the area or space beneath the walls of a building. If the space or area beneath the walls is excluded, and only the space between the walls are taken into consideration, then it is commonly called as "carpet area". It means actual usable space, where one can put a carpet. Therefore, "plinth area" has a definite connotation and there is no ambiguity in the meaning of these words.

Further it was held,

The meaning of the word "plinth area" is unambiguous. It includes the area beneath the walls. Therefore, in finding out the measurement of the non-residential premises not only the actual space available between the walls, but also the area covered by the walls has to be taken into consideration.

Having regard to the meaning of the word "plinth" in determining the plinth area, the space covered beneath the walls is excluded and the actual space in between the walls is taken into consideration, the said area is popularly known as "carpet area" i.e., the actual usable space. But the legislature has not used the word "carpet area". They have advisedly used the word "plinth area". Therefore, the Court has to necessarily take into consideration not only what has not been said but also what has been said in the statute. If that aspect is borne in mind, the legislature never meant to prescribe the "carpet area" for deciding the exclusion of the non-residential premises used for commercial purpose from the application of the Act. It is not open to the Court to substitute the word "carpet area" in place of "plinth area" which is not permissible in law.

In fact, subsequent to this judgment, yet another learned Single Judge of this Court in the case of B. Chikkanna and Another Vs. Smt. K.M. Jagadamba, has also held that, the contention that the carpet area of the building should be taken is untenable. The plinth of the building is the criteria to assess the total measurements, to find out whether it comes within the purview of the Rent Act or otherwise.

17. So, it is in this context, we have to decide what is the meaning of the word "plinth area".

The word "plinth area" is defined in various dictionaries as under:

"P. Ramanatha Iyer Concise Lex Dictionary:

plinth means- part of a wall or structure between ground level and the level of the lower floor of a building above ground level

Random House Dictionary of the English Language:

A slab-like member beneath the base of a column or pier, a square base or a lower block, as of a pedestal; a projecting course of stones at the base of a wall, earth table.

The Chambers Dictionary:

"plinth" - the square block under the base of a column; a block serving as a pedestal; a flat faced projecting base at the bottom of a wall.

The Oxford Dictionary:

"plinth" - a block of stone on which a column or statue stands.

The Longman Dictionary:

"plinth" - a square block usually made of stone, that is used as the base for a pillar or statue.

In the City of Bangalore Municipal Corporation Building Bye-laws of 2003, plinth, plinth area and plinth level has been defined as under:

"plinth" means the portion of a structure between the surface of the surrounding ground and surface of the floor immediately above the ground:

"plinth area" means the built-up covered area of the building/buildings immediately above plinth level;

"plinth level" means the level of the floor of a building immediately above the surrounding ground.

In Bangalore Municipal Building Bye laws 2003, which is framed in exercise of the powers conferred u/s 295 r/w. 423 Karnataka Municipal Corporation Act, 1976, the word "plinth" and "plinth area" and "plinth level" has been defined at 2.63, 2.64 and 2.65 as under:

2.63: "plinth" means a portion of structure between the surface of the surrounded ground and the surface of the floor immediately above the ground.

2.64: "plinth area" means the built-up covered area of the building/"buildings immediately above plinth level.

2.65, "plinth level" means the level of the floor of a building immediately above the surrounding ground.

18. In the background of all these definitions, when we look at the section, it is clear that what is excluded from the application of the Act is the "premises" having plinth area of not exceeding 14 sq. meters. Therefore in finding out the "plinth area" one cannot exclude the area or space beneath the walls of the building. The word "plinth area" is a definite connotation. It is well understood. There is no ambiguity in the meaning of these words. The statute being an edict of the legislature, it is necessary that it is expressed in clear and unambiguous language. The Court shall give effect to that meaning as ascribed to the said

word by the legislature. When the words used in statute are defined in the statute itself or the meaning of the said word is clear and there is no ambiguity, then there is no scope for interpretation of the said words by the Court. The Court only has to construe the said words in the context in which they occur. It is well settled that these words must take their color from that context in which they appear. The Court ought to give a liberal meaning to the language used by the legislature unless the language is ambiguous or its liberal sense gives rise to an anomaly or absurdity or results in something which would defeat the purpose of the Act. When the words are clear, there is no absurdity, there is no ambiguity and the intention of the legislature is clearly shown, there is no scope for the Court to interpret or take upon itself the task of amending or altering the statutory provisions. What is to be borne in mind is what has been said in the statute as also what has not been said. A construction which requires substitution of the words or which results in rejection of the words used in the statute is to be avoided. Under the guise of interpretation, the Court cannot give its own meaning or a different meaning contrary to the real meaning of the words or re-write the statutory provisions.

19. The Supreme Court in the case of *Union of India v. Deoki Nandan Aggarwal* reported in AIR 1992 SC 96 dealing with the power of the Court to legislate, held as under:

It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the Legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the Legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words into it, which are not there. Assuming there is defect or an omission in the words used by the Legislature, the Court could not go to its aid to correct or make up the deficiency. Court shall decide what the law is and not what it should be. The Court, of course, adopts a construction, which will carry out the obvious intention of the Legislature but could not legislate itself. But to invoke judicial activism to set naught legislative judgment, is subversive of the constitutional harmony and comity of instrumentalities.

20. Therefore, the duty of the Court is to attribute the meaning which is well understood. In other words, to give a literal meaning to the word used by the legislature in the statutory provisions. When such meaning is attributed, there is no scope of excluding what is included in the "plinth area" on the concept of non user of that premises. Therefore, the said provision cannot be construed as meaning that it is only actual user of the area used for commercial purpose which is to be taken into consideration. There is no warrant for such construction or interpretation as the word employed is very clear. The word is used in the context of user of the premises, either for residential or non residential, which decides the application of the aforesaid provision. The first condition is, the premises should be used for non residential purpose. Thereafter, it should be

used for commercial purpose. It is only then, if the area of the premises exceeds 14 sq. meters, the application of the Act is excluded. Therefore, the word "user" used in the provision is in the context of the purpose for which the premises is used and not the area which is put to use.

21. For the aforesaid reasons, keeping in mind, the words used in the statute, the law regarding interpretation of the statutory provisions and the purpose for which the Act is enacted and this exclusion from the application of the Act which is provided for, it is manifest that the plinth area is not the carpet area. It is carpet area and the area covered by the walls of the premises, which constitutes "Plinth Area", which is to be taken into consideration.

22. For the aforesaid reasons, the judgment rendered by this Court in the case of P.R. Radhakrishna Setty and Sons Company Vs. A.N. Satish Babu, do not correctly decide the said question and accordingly it is overruled.

23. Corning to the facts of the case, in view of the commissioner's report before this Court, which is not disputed, the "plinth area" of the schedule premises exceeds 14 sq. meters. Therefore, the petition filed under the Act before the Court of Small Causes was not maintainable. The learned Small Causes Judge was in error in holding it as maintainable. Hence, we pass the following:

(i) The revision petition is allowed.

(ii) The order passed by the Learned Small Causes Judge holding that the petition is maintainable is hereby set aside.

(iii) The eviction petition is not maintainable as the subject matter of the eviction petition was a non residential premises used for commercial purpose, the area of which is in excess of 14 sq. meters and accordingly the eviction petition is dismissed.

The parties to bear their own costs.