

(2006) 03 KAR CK 0070

In the Karnataka High Court

Case No : Writ Petition No. 1247 of 2006

Sri Rajaram Gangaram Athaley and Others

APPELLANT

Vs

Late Abdul Rahiman Ahmadkar (since deceased by his LR)
and Others

RESPONDENT

Date of Decision : 23-03-2006

Acts Referred:

Karnataka Cinemas (Regulation) Rules, 1971 — Rule 6
Karnataka Rent Act, 1999 — Section 2 (3) (g), 70 (2) (c)

Citation : (2006) ILR (Kar) 1783 : (2006) 3 KarLJ 487 : (2006) 3 KCCR 1447

Hon'ble Judges : Ashok B. Hinchegeri, J

Bench : Single Bench

Advocate : Ashok R. Kalyanshetty, for the Appellant; V. Tharakaram, for N.K. Kantharaju, for R1 and R2 and Asha Kumbargerimath, HCGP for R3, for the Respondent

Final Decision : Dismissed

Judgement

Ashok B. Hinchegeri, J.—This petition is directed against the order dated 28.02.2005 passed by Respondent No. 3 in Case No. CNM/CR/34/2000-01 (Annexure-G) and the order dated 13.06.2005 passed by the Karnataka Appellate Tribunal in Appeal No. 290/2005 (Annexure-K).

2. The brief facts of the case are that the predecessor-in-title of respondents No. 1 and 2 leased the vacant land bearing No CTS 415/A-B in Ward No. 4, Bijapur City by deed dated 11.12.1962 to the petitioner No. 1 and his father. The lease period provided thereunder was 35 years. The monthly rent agreed upon under the lease deed was Rs. 125/- per month. The lessees built the Cinema theatre thereon and installed the equipments, machineries, furniture, etc., The Petitioners' father has been running the Cinema theatre in the name and style of "Lakshmi Talkies". The petitioners' father and thereafter the petitioners have been getting the licence granted and regranted without any difficulty. However in the year 1998, when the petitioners sought the renewal of licence, respondents

No. 1 and 2 raised their objections as a result of which the petitioners' application came to be rejected. The petitioners took up the issue with the Appellate Authority but not with any rate of success.

3. Meanwhile the petitioners also filed OS No. 491/1997 in the Court of the City Civil Judge (Jr.Dn.) Bijapur against respondents No. 1 and 2 herein. The suit was decreed on 31.01.2006 restraining the respondents No. 1 and 2 by an order of permanent injunction from interfering with the petitioners' possession and enjoyment of the property in question; the Civil Court observed that the respondents No. 1 and 2 are at liberty to evict the petitioners from the property in question by following the proper procedure provided under the law.

4. The proceedings initiated by the petitioners agitating their claim for the renewal of licence saw the culmination in the reference being placed before the Full Bench of this Court. The Full Bench, by its order, dated 30.07.2003 answered the reference as follows:

(i) A tenant in occupation of a premises, after the expiry of the lease period, who does not have any protection against eviction under the Eviction Control Law, is not in "lawful possession" of the premises and therefore not entitled to renewal of cinema licence under the Act.

(ii) On the other hand, if a tenant has statutory protection against eviction under the Eviction Control Law, then he will be considered to be in lawful possession even after the expiry of the contractual term of lease. In such a case the occupation continues to be lawful until evicted under the Eviction Control Law. Such a tenant will be entitled to seek renewal of cinema licence subject to fulfilling other requirements of the Act.

(iii) Both decisions (Goverdhan and Bhagyashree) reiterate the said position and there is no conflict between them.

5. Pursuant to the answering of the reference by the Full Bench as afore-extracted, the Division Bench, by its order, dated 6.10.2003 in W.A. No. 2546-47/1999 disposed of the matter with a direction to the respondent No. 3 to consider the claim of the petitioners for renewal of licence in the light of the Full Bench's order.

6. The respondent No. 3 once again rejected the petitioners' request for renewal of licence by his order, dated 28.02.2005. Aggrieved by the rejection of their application, the petitioners presented the Appeal No. 290/2005 to the Karnataka Appellate Tribunal. The Appellate Tribunal, by its order, dated 13.06.2005 dismissed the appeal and confirmed the order passed by the 3rd respondent.

7. On suffering the concurrent orders, the petitioners are once again before this Court. The impugned orders are being assailed before me by Sri. Ashok Kalyanshetty, the Learned Counsel for the petitioners. The formidable submissions of Sri Kalyan Shetty are as follows:

(a) The respondent No. 3 has abdicated his jurisdiction by declining to answer whether the petitioners are in the lawful possession of the property in question. He has relied on a judgment of this Court in the case of R. Sreekanth and Another Vs. Divisional Commissioner, Bangalore and Others, in support of his submission that until the petitioners are evicted under the due process of law, their possession continues to be lawful.

(b) On the expiry of the lease period, the occupants become the tenants holding over.

(c) Admittedly the respondents No. 1 and 2 have not filed any suit for the ejectment of the petitioners. Therefore there is no threat of their dispossession.

(d) The petitioners are the tenants protected by the provisions of the Karnataka Rent Act, 1999. As they are the statutory tenants, the holding of the proceedings in HRC No. 19/1997 as abated is erroneous.

8. Per contra, the Learned Sr. Counsel, Sri Tarakaram for Sri Kantharaju appearing for the respondents No. 1 and 2 submits that the petitioners' possessions of the property in question is not lawful, which is a precondition for the grant of licence, as per Rule 6 of the Karnataka Cinema Regulation Rules, 1971. He submits that the lawful possession is not litigious possession. Lawful possession is a possession which the law accepts; juridical possession cannot be equated with lawful possession. Juridical possession only means that the occupant is protected from forceful dispossession by the owner/lessor. In this regard, he has cited a judgment of the Hon'ble Supreme Court in the case of M.C. Chockalingam and Others Vs. V. Manickavasagam and Others, . The relevant portion of the said judgment is extracted here in below:

Para 15: ...The word "lawful", therefore, naturally assumes significance in the second part while it was not even necessary in the first part. The fact that after expiry of the lease the tenant will be able to continue in possession of the property by resisting a suit for eviction, does not establish a case in law to answer the requirement of lawful possession of the property within the meaning of Rule 13. Lawful possession cannot be established without the concomitant existence of a lawful relationship between the landlord and the tenant. This relationship cannot be established against the consent of the landlord unless, however, in view of a special law, his consent becomes irrelevant. Lawful possession is not litigious possession and must have some foundation in a legal right to possess the property which cannot be equated with a temporary right to enforce recovery of the property in case a person is wrongfully or forcibly dispossessed from it. This Court in Lallu Yeshwant Singh Vs. Rao Jagdish Singh and Others, had not to consider whether juridical possession in that case was also lawful possession. We are clearly of opinion that juridical possession is possession protected by law against wrongful dispossession but cannot per se always be equated with lawful possession.

9. Nextly, the Sr. Counsel took me through the judgment of the Hon'ble

Supreme Court in the case of R.V. Bhupal Prasad Vs. State of Andhra Pradesh and others, , and based thereon contended that when the petitioners are tenants at sufferance and are liable to be ejected in the due course of law, their possession cannot be legal, much less lawful; by no stretch of imagination, the petitioners' possession can be considered to be a settled possession; although initially the petitioners/their father had lawful entry, their possession as of now is akin to trespassers.

10. As the lease is not extended or renewed in the instant case, merely receiving the rent by the respondents No. 1 and 2 even after the expiry of the lease period, does not render the possession of the petitioners lawful. In support of this proposition, the Sr. Counsel relied on a Division Bench judgment of this Court in the case of M/s. Bhagyashree Combines, Bellary Vs. The District Magistrate, Bellary District, Bellary and Others, .

11. The judgment of this Court in the case of Kanthamma v. Sudarshan and Anr. ILR 1981 KAR 1033, is also pressed into service by the Sr. Counsel. In the reported case, this Court has taken a considered view that lawful possession cannot be established without the concomitant existence of a lawful relationship between the landlord and the tenant and that relationship cannot be established against the consent of the landlord unless, however, in view of a special law, his consent becomes irrelevant. Lawful possession must have foundation in a legal right to possess the property. Juridical possession is protected by law against unlawful dispossession but cannot per se always be equated with lawful possession. This Court, in the said reported case has further held that the payment of rents for about four months by a leasee after the expiration of the lease does not establish the lessors' assent to continue the tenancy. The Sr. Counsel Sri Tarakaram, drawing support from a judgment of this Court in the case of Thayarammal Vs. People's Charity Fund, Bangalore and Others, , submits that once the period of lease is fixed, lessee is bound to put the lessor in possession of the lease property on the termination of the lease. In the instant case, the lease period has admittedly expired on 10.12.1997. He brings to my notice certain clauses of the lease agreement, particularly Clause 7 which reads as follows:

The lessees will be bound to remove all the buildings etc., constructed on the lease site and restore the land to its original position at the time of delivery thereof to the lessors on the expiry of the lease period or on the previous termination of the lease, if any, as the lessors would be entitled to the rent till the date of delivery of property to them by the lessees.

12. There is no clause for the extension or renewal of the lease period.

13. He submits that the respondents No. 1 and 2 issued the notice to the petitioners on 7.11.1997 itself about one month prior to the actual expiry of the lease period-to vacate the property in question. This aspect of the matter is not being disclosed by the petitioner either before this Court or in the proceedings

before the District Magistrate or before the Karnataka Appellate Tribunal. The issuance of this notice cannot be disputed because its receipt is acknowledged by the petitioners' act of causing the issuance of the reply to the said notice through their counsel. These undisputed facts clearly go to establish that the status of the petitioners is at the most the tenants at sufferance.

14. Smt. Asha Kumbagerimath, the Learned HCGP, submits that the impugned orders are absolutely legal and sustainable. The respondent No. 3 and the Karnataka Appellate Tribunal have taken into all the relevant factors and materials into consideration and passed the impugned orders.

15. Keeping in view the rival submissions made at the bar, the impugned orders are to be examined. The judgments cited before me and to which a reference is made hereinabove, throw adequate light on what constitutes lawful possession and juridical possession. The above referred reported judgments make clear the legal position to the effect that the possession of a lessee, who continues to be in possession on the expiry of the lease period or in contravention of the terms of lease deed, his possession cannot be said to be lawful.

16. The factual matrix of this case reveals the following:

(a) The lease period admittedly expired on 10.12.1997;

(b) There is no clause for the renewal/extension of the lease period; The petitioners have no legally vested right to insist for the renewal of the lease.

(c) The lease deed contemplates the invariable requirement that the lessees should remove the structures and restore the land to the lessors. It implies that once the period of lease is fixed, the lessees are bound to put the lessors in possession of the leased property on the termination of the lease or the expiry of the lease period.

(d) On the verge of the expiry of the lease period with the efflux of time, the respondents No. 1 and 2 issued the termination notice dated 7.11.1997 calling upon the petitioners to remove the structures and deliver vacant possession of the property; Therefore I do not find any substance in the submission of the petitioners that they acquired any right for the renewal of the lease.

(e) The petitioners have not challenged the aforesaid termination notice. Therefore it has become final. No doubt the petitioners filed O.S. No. 491 of 1997 but prayed only for a decree of permanent injunction against the respondents No. 1 and 2. For the reasons best known to themselves, the petitioners did not seek the declaratory relief in the said suit. Therefore the obtaining of the decree of permanent injunction in the said suit does not make any difference for the purpose of considering the petitioners' application for the grant of licence. With or without this decree, the petitioners cannot be dispossessed forcibly; the respondents No. 1 and 2 can evict the petitioners in accordance with law. This position is made clear in the decree itself which reads: "The defendants would be at liberty to evict the plaintiff from the suit property by following the procedure

provided under the law."

(f) The eviction proceedings in HRC No. 19 of 1997 culminated in the abatement of the proceedings, as per the legislative intentment and prescription contained in Section 70(2)(c) c/w Section 2(3)(g) of the Karnataka Rent Act, 1999. Therefore the protection under the Karnataka Rent Act is not available to the petitioners. At this juncture Sri Kalyana Shetty submits that the rent revision petition filed against the order passed by the Court of Principal Civil Judge (Jr. Dvn.), Bijapur, is pending consideration before the I Additional District Judge, Bijapur in RRP No. 1 of 2006. Sri Kantharaju repels this submission by stating that the revision petition is filed after four long years and that too only after the filing of his statement of objections to this writ petition. Be it as it may, the position as of now, as held by the Trial Court is that the Karnataka Rent Act, 1999 has no application for the property in question, as it is admittedly measuring more than 14 Sq.meters in plinth area and is a non-residential premises.

17. In the factual matrix of this case, the respondent No. 3 and the Karnataka Appellate Tribunal had no option but to hold that the petitioners' possession of the property in question is not lawful and consequently rejected their application for the grant of licence. My scrutiny of the impugned orders reveals that both the authorities down below have given their anxious consideration to all the aspects of the matter. It may also be profitable to refer to the latest judgment of this Court in the case of Bishendas and Another Vs. The Divisional Commissioner and Others, , wherein it is held:

On going through these pronouncement there can be no doubt as to the position of law. And as such it has to be held that once lease period has expired, possession of the lessee is not lawful but only a litigious possession. It is to be noted at this stage itself the alternative argument of the petitioners. It is contended that even if the lease has expired, exception from the provisions of the Karnataka Rent Control Act is only for the purpose of eviction and are not for any other purpose and as such tenant continues to be a statutory tenant and hence only he is evicted under the process of law his possession cannot be termed as unlawful. I am afraid to accept this contention in view of the aforesaid clear law laid down.

18. In the light of the facts and circumstances of this case and the law laid down by the Hon"ble Supreme Court and this Court, I have no hesitation in holding that the petitioners' possession is only juridical and not lawful. Therefore the third respondent licensing authority is justified in rejecting the petitioners' application for the grant of licence. This order is rightfully confirmed. Both the orders are reasoned and correct, warranting no interference whatsoever at my hands. I dismiss this writ petition. No orders as to costs.