

(2006) 02 KAR CK 0070

In the Karnataka High Court

Case No : Writ Petition No. 40235 of 2002

Subray Phondur Prabhu, Pundalik Phondur Prabhu, Damodar
Phondur Prabhu and Devi Das Phondur Prabhu

APPELLANT

Vs

Fathimabi and Others

RESPONDENT

Date of Decision : 02-02-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 226, 227
Karnataka Rent Act, 1999 — Section 70
Karnataka Rent Control Act, 1961 — Section 198, 2, 21 (1) (a), 21 (1) (h), 29

Citation : (2006) 4 KarLJ 470 : (2006) 3 KCCR 1642

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

**Advocate : V.P. Kulkarni, for the Appellant; K.S. Desai and Harsh Desai for R4,
for the Respondent**

Final Decision : Dismissed

Judgement

K. Ramanna, J.—This writ petition is filed by the petitioners-tenants under Articles 226 and 227 of the Constitution assailing the order dated 19.8.2002 passed by the District Judge, Uttara Kannada, in HRC.RP. No. 1/1998 and the Judgment and Order dated 21.11.1997 passed by the Civil Judge (Jr.Dn.,) Ankola, in HRC. No. 2/1981 mainly on the ground that the schedule premises is situated in the Ankola and the Karnataka Rent Act is not at all applicable to the premises situated in Ankola town. Therefore, the order passed by the learned District Judge on the eviction petition filed by the respondents stands abated, in view of the provisions of the Karnataka Rent Act and the order of the District Judge that the revision petition filed by the petitioners abated is erroneous and contrary to the provisions of the Karnataka Rent Act and even the order passed by the trial Court is not correct. The findings, given thereof are not based on any sound reasonings and the trial Court ought to have seen the title to the property is not by issue of sales certificate but for flow of title to the property. The finding of

the trial Court holding entries in the Record of Rights and the Municipal extract are also changed in the name of the respondents as per the sales certificate is not a good proof of title as the bringing of the Record of Rights in the Municipal extract will not confer any title to the person unless the flow of title is proved. These records are not sufficient to prove the onus or title to the property. But the trial Court has wrongly come to the conclusion that the respondent is the owner of the said premises and the trial Court has not given proper reasons that the premises are required for his bona fide use and occupation. Hence this writ petition.

2. This Court heard the arguments of the learned Counsel for the petitioners and the learned Counsel for the respondents and perused the records. It is seen that the L.Rs of Janab Abdul Sattar Shaikh Usman have filed the petition u/s 21(1)(a) and (h) of the Karnataka Rent Control Act 1961 for eviction with a prayer to pass a decree in favour of them against the respondent to deliver vacant possession of the premises, payment of all rents due, u/s 29. After considering the evidence of both parties, the Civil Judge (Jr. Dn.), Ankola allowed the petition filed by the respondents-owners herein and the respondents are hereby directed to handover vacant possession of the petition schedule premises to the respondents petitioners within one month and the respondents-landlords are entitled to recover the arrears of rent at the admitted rate of Rs. 20/- per month from the date of petition till the date of taking possession of the petition schedule premises from 27.11.1997. Accordingly, the petitioners who has preferred a revision petition u/s 50 before the District Judge in HRC.RP. No. 1/1998 of the Karnataka Rent Control Act, 1961, read with Section 151 of the Code of Civil Procedure. When the matter was pending before the revisional Court, the Karnataka Rent Control Act, 1961, was repealed and the Karnataka Rent Act of 1999 came into force. Therefore, the revision petition, which was pending on the file of the District Judge, Uttara Kannada, came to be abated as per the order dated 19.8.2002 arising out of the Ankola Taluk. Therefore, the petitioners herein have come up with this writ petition to quash the order dated 21.11.1997 at Annexure-A passed by the Civil Judge, (Jr.Dn.), Ankola, in HRC. No. 2/1981.

3. During the course of arguments, the learned Counsel. Sri. Kulkarni for the petitioners contended that the respondents herein have not at all proved their title over the said property. Mere production of R.T.C. and the Municipal Tax Receipts, khata extract does not get any title and the trial Court has not considered all these aspects and simply allowed the petition filed by the respondents u/s 21(1)(a) and (h) of the Karnataka Rent Control Act. It is further contended that the Karnataka Rent Act 1961 is not applicable to the premises situated in Ankola town, Hence, the learned District Judge ought to have held that the eviction petition filed by the respondents stands abated in view of the provisions of the Karnataka Rent Act and the order of the District Judge holding that the revision petition filed by the petitioners stands abated is erroneous. Further it is submitted that in the first schedule of the Karnataka Rent Act of 1999, the Ankola town is not included either in Part A or Part B of the first

schedule. Only the areas within the limits of Cities constituted under the Karnataka Municipal Corporation Act 1976 and within a radius of 3 Kilometres from the limit of that area, this Act is applicable. So also as Part B of first schedule of the Karnataka Rent Act, 1999:

Areas within the limits of City Municipal Councils constituted under Karnataka Municipalities Act, 1964" only this Act is applicable.

Therefore, it is submitted that the order passed by the District Judge that the revision petition is abated in view of the Karnataka Rent Act, 1999, is not correct.

3. In support of all these contentions, the learned Counsel for the petitioners referring to a decision in the case of BANSILAL v. Dr. N.C. NAGARAJ reported in 2005(4) KCCR 2419 wherein this Court has held:

The proceedings with respect to those premises were pending when 1961 Act lapsed by time, i.e., 31.12.2001. The provision of the 1961 Act in those areas, where it was applicable earlier, came to an end because of lapse of time and not because of repeal under 1999 Act.

4. It is further submitted by the learned Counsel for the petitioner that if it was a case of repeal under the Karnataka Rent Act 1999, none of the provisions of Section 70 of 1999 Act can govern such situation, But one will have to look into the provision of Section 198 itself. The 1961 Act expressly provided for the applicability of the Karnataka General Clauses Act, 1999, Hence, such revisions which are pending u/s 50 of the 1961 Act, the provision of Section 6 of the Act was applicable and they were saved from being disposed of in accordance with the provisions of 1961 Act. Therefore, it is contended that the order passed by the District Judge holding that the revision petition is abated in view of the enactment of the Karnataka Rent Act is incorrect and therefore prays to allow the writ petition by setting aside the order passed by the trial court.

5. On the other hand, the learned Counsel for the respondents contended that under the old Act, the Ankola town was included in the schedule. The premises in question, is situated within the limits of Ankola and therefore, the old Act was applicable, Now, the Ankola Town is not included either in Part 1 or Part B of the first schedule or under Karnataka Rent Act, 1999. Therefore, the learned District Judge is right in passing the order abating the revision petition filed by the petitioners. It is further contended that for the Ankola town, provisions of the new Act is not applicable. Therefore, the present writ petition filed by the petitioners does not disclose that whether there is any incorrect or illegal findings towards the evidence placed on record by the trial Court in passing the order of eviction u/s 21(a) and (h) of the Karnataka Rent Control Act. Further, it is submitted that when a new Act, Karnataka Rent Act, 1999, was enacted, the revision petition was pending before the District Judge, Uttara Kannada. Therefore, any proceedings initiated under the old Act pending either before the Court of first instance or Controller or Deputy Commissioner stands abated as on 31.12.2001. Likewise, any revision petition pending u/s 50 of the old Act which

was pending before the District Judge or trial Court shall stand abated as on 31.12.2001. Therefore, the learned District Judge is right in passing the order that the revision petition which was pending stands abated. Since the petitioners have not proved that the trial Court has recorded an incorrect finding and the evidence placed on record has not been properly appreciated, does not arise. In order to prove that the respondents are their landlords and they are the owners of the said house property and they purchased in auction and to that effect the necessary records have been produced to prove their ownership. Therefore, there is no incorrect or illegal findings have been recorded by the trial court.

6. The learned Counsel for the respondents relied on a Division Bench decision of this Court in the case of Mercury Press Vs. Ameen Shacoor and Others, :

i) Any proceedings initiated under the Old Act pending either before the Court of first instance, or controller or Deputy Commissioner stand abated as from 31.12.2001.

ii) Any Revision proceedings initiated u/s 50 of the Old Act and pending before the District Court, or High Court shall stand abated as from 31.12.2001. As a consequence any revision proceedings initiated u/s 50 of the Old Act, on or after 31.12.2001 will also stand abated as and when they are initiated.

He also relied on another decision of the Hon'ble Apex Court in the case of Mahendra Saree Emporium v. Srinivasa Murthy reported in ILR 2004 KAR 4171:

Premises to which 1999 Act does not apply.

Therefore, he prays that the landlords can evict a tenant without much difficulty simply by making out a case for eviction under the general law which is the Transfer of Property Act. If the proceeding pending on 31.12.1999 is by the landlord seeking eviction of tenant, the proceeding need not continue as the landlord has available to his advantage. Therefore, he prays for dismissal of the case by granting three or six months time to vacate and handover vacant possession of the premises to the landlords.

7. I have carefully examined the material placed on record and also the arguments advanced at the Bar.

8. It is an undisputed fact that the petitioners being the L.Rs of Janab Abdul Sattar Shaikh Usman filed an eviction petition u/s 21(a) and (h) of the Karnataka Rent Control Act, 1961. Initially, on 10.9.1975, HRC. No. 18/1975 was filed before the Munsiff Court at Karwar. In the year 1981, a new Court was established at Ankola. Therefore, the HRC. No. 18/1975 pending on the file of Munsiff Court at Karwar came to be transferred and renumbered as HRC. No. 2/1981. It is seen that the petitioners stated to be traders, are running the cloth business at Karwar and the deceased petitioner was the owner of the premises bearing Panchayat No. 1603 of Ankola Town Panchayat purchased the same in a Court auction and took possession as per the orders passed in Miscellaneous Case No. 26/1970 of Execution Case No. 1/1969 through Civil Judge Court,

Karwar. Since the deceased first petitioner Phondur Subraya Prabhu was the tenant in respect of the house on a monthly rent of Rs. 75/-. Since the deceased tenant Phondur Subraya Prabhu was in arrears of rent, therefore the petitioner-owner filed an eviction petition in the year 1971 for non-payment of rent and accordingly, both were allowed to adduce evidence. After considering the evidence placed on record, the learned Civil Judge (Jr.Dn.), Ankola, allowed the eviction petition filed by the respondents u/s 21(1)(a) and (h) of the Karnataka Rent Control Act on 27.11.1997 directing the L.Rs of the deceased respondent to handover the vacant possession of the petition schedule premises and to pay the arrears of rent. It was decreed that the respondents being the owners of the petition schedule premises are entitled to recover the arrears of rent at the admitted rate of Rs. 20/- per month. While passing the order, the trial Court has directed the petitioners-tenants to handover the premises to the respondents-petitioners within one month. Therefore, the petitioners assailing the said order of eviction filed HRC. No. 1/1998. While the said petition was pending, the Karnataka Rent Act came into force on 31.12.2001. The learned District Judge considered Section 2 of the Karnataka Rent Control Act. This case arises out of the Ankola Town Taluk and the Ankola Town is not included in the new Act. Therefore, the case against the revision petition is abated.

9. It is seen from the decided law that if any proceedings under the old Act is pending either before the Court of first instance or Controller or Deputy Commissioner, it shall stand abated as from 31.12.2001. The revision petition filed by the petitioners was pending as on 31.12.2001 before the District Judge Karwar. So, the order of eviction passed under the old Act has become final or conclusive on or before 31.12.2001 with regard to which, no execution petition was levied on or before 31.12.2001 and also the execution, Therefore, even if the revision petition proceedings are pending before the District Judge u/s 50 of the Karnataka Rent Control Act, 1961, the same shall stand abated as on 31.12.2001. Therefore, the contention of the learned Counsel for the petitioners that the learned District Judge is not right in abating the revision petition filed by the petitioners. Since, the new Karnataka Rent Act, 1999, is not applicable to the premises situated within the limits of Ankola and the new Act is not applicable to the town of Ankola. Therefore, in order to give an opportunity for such persons to challenge the same by way of writ petition, the petitioners herein have come up with this writ petition.

10. As far as the other contentions urged are concerned that, though the trial Court has not properly appreciated the material placed on record, it is seen that Ex.P.1 is the sales certificate issued by the Civil Judge Court in the year 1969. Since the deceased petitioner-Owner Janab Abdul Sattar Shaikh Usman was the highest bidder in the auction held by the civil court, the sale was confirmed and confirmed the bid in his favour in the court auction. Subsequently, the khata has been changed in his name. Exs.P.2 to P.7 are the Record of Rights and Exs. P.23 and P.28 are the assessment of building and the receipts which clearly indicates that the respondents being the owner of the said house rightly complied with the

mandatory provisions and got issued the notice to the petitioners-tenants herein as per Ex.P.8. And in para-22 of the Judgment, the trial Court has discussed about the contentions raised by both the parties and came to a right conclusion. Therefore, it cannot be said that the respondents have failed to prove that they are the owners of the said premises and the Court below has not properly considered the material placed on record. Since the deceased respondents has purchased the schedule premises in a Court auction and the possession was taken on the basis of sales certificate, therefore, now the petitioners cannot challenge before the revisional Court that he was not the owner. Moreover, the petitioners will have to prove before the trial court whether the said premises was required for bona fide use and occupation of the respondents. This aspect also has been considered by the trial Court at length and regarding their hardship if the order of eviction is not passed, has also been considered. The trial Court has rightly allowed the petition and decreed the petition and directed the petitioner-respondents to handover vacant possession of the petition schedule premises within one month and the respondents/owners/landlords are entitled to recover rent at the rate of Rs. 20/- per month from the date of this petition till the date of taking possession. Therefore, considering the facts and circumstances, I do not find that any illegality or incorrect findings has been recorded by the trial Court. In fact the trial courts law rightly appreciated the evidence placed on record by both the parties.

10. Therefore, the present Writ Petition fails and the same is hereby dismissed. However, six months time is granted to the petitioners to vacate and handover vacant possession of the petition schedule premises to the respondents-landlords.