
(2001) 05 KAR CK 0006

In the Karnataka High Court

Case No : House Rent Revision Petition No. 355 of 1999

Triveni Theatres, Bangalore

APPELLANT

Vs

R.S. Devakumar and another

RESPONDENT

Date of Decision : 28-05-2001

Acts Referred:

Evidence Act, 1872 — Section 116

Transfer of Property Act, 1882 — Section 111 A

Citation : (2001) ILR (Kar) 5166

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : Sundara Swamy Ramdas and M/s. Anand, for the Appellant; Sri K.G. Raghavan, for M/s. Dua Associates, for the Respondent

Judgement

1. This revision is filed by the tenants to challenge the order dated 15-2-1999 in HRC No. 1219 of 1998 by the Court of Additional Judge, Court of Small Causes (SCCH No. 8), Bangalore City. In passing the said order, the said Court had rejected the petition filed by the petitioners-tenants u/s 19(1) of the Karnataka Rent Control Act, 1961.

2. The petitioners herein are represented by M/s. Sundara Swaray Ramdas and Anand, Advocates, whereas the contesting respondents-landlords are represented by Sri. K.G. Raghavan appearing for M/s. Dua Associates.

3. I heard both the learned Counsels appearing for the learned Counsel on record. When Sri Naganand had argued for the petitioners-tenants, Sri Arun Kumar appearing along with Sri K.S. Raghavan argued for the respondents-landlords.

4. Before proceeding further, I deem it fit to narrate in brief the relevant facts of the case. They are:

That, the petitioners-tenants originally entered into a contractual lease on 1-2-1963 with the respondents-landlords and further with their father, one R.

Subbanna (since dead) for securing a piece and parcel of land bearing- Municipal Nos. 39 to 44 and further Municipal No. 93, situated at Subedar Chatram Road, Corporation Division No. 12, measuring East by 57", West by 86", North by 231 1/2" and South by 234", now in the heart of the city. The contractual lease period was for 35 years and 6 months as per Clause 14 of the agreement and the rent was at Rs. 1,500/- for the first 25 years six months and at Rs. 3,000/- per month for the next 10 years as per Clause 15 and furthermore, as per Clause 25, it was agreed upon between the parties that on the expiry of the term of lease and that in the event the vacant possession of the premises were not to be delivered by the petitioners-tenants, they were to pay a sum of Rs. 15,000/- inclusive of "ground rent" per month. That, upon entering into the contractual lease duly registered before the jurisdictional Sub-Registrar, the petitioners-tenants had constructed a theatre by name "Triveni Talkies" and they further constructed certain stalls in and around the talkies. That the contractual term of lease had ended on 1-8-1998 and thereafter, the respondents-landlords stated to have issued a letter dated 24-7-1998 to the petitioners-tenants, demanding them to hand over vacant possession of the schedule premises in terms of Clause 14 of the agreement of lease.

5. That the petitioners-tenants claimed that the term of lease in question had not expired and that they were entitled to continue in possession of the property and requested the respondents-landlords to indicate terms for renewal of the lease. Besides, they also issued two cheques, one in the month of July 1998 and another in the month of August 1998 in respect of the rentals at Rs. 3,000/- per month that was due then and the respondents-landlords since refused to receive the cheques, the petitioners-tenants had sent two M.Os, for Rs. 3,000/- i.e., at Rs. 1,500/- each in favour of the respondents-landlords. That the said M.Os. were also not accepted by the respondents-landlords, and upon that, the petitioners-tenants invoked the jurisdiction of the Court below, henceforth in brief referred to as the Trial Court, u/s 19(1) of the Rent Control Act, 1961, henceforth in brief referred to as the "Act".

6. That the respondents-landlords have opposed the said petition filed by the petitioners-tenants, inasmuch as they filed a detailed objection statement opposing the petition. Among other things, they also contended that the agreement of lease dated 1-2-1963 stood expired on 1-8-1998 and as per Section 111(a) of the Transfer of Property Act, the petitioners-tenants had to re-deliver the property to the respondents-landlords in terms of the registered lease agreement, that there was no relationship of tenancy between the parties since the contractual tenancy had come to a close on 31-7-1998 and that the petitioners-tenants were obliged to pay damages at the rate of Rs. 15,000/- per month for the period of their overstay beyond the period from 1-8-1998, that Part V of the Act was no longer applicable to the case of the petitioners-tenants and that with an ulterior motive, they resorted to the petition before the Trial Court by misleading the facts of the case and finally they prayed that the petition be dismissed.

7. That the Trial Court did not hold any enquiry and instead heard the parties and finally, it had dismissed the original petition filed by the petitioners-tenants by passing the impugned order.

8. Having been aggrieved by the impugned order, the petitioners-tenants had resorted to the instant HRRP before this Court, mainly on the ground that the Trial Court had rejected the petition holding erroneously that there was no subsisting relationship of landlord" and "tenant" between the parties, inasmuch as the Trial Court had failed to appreciate the facts and the legal position with regard to the relationship of tenancy between the parties and secondly that the Court below had wrongly placed reliance on the contention of the respondents-landlords that the latter had also denied the existence of such a relationship of tenancy between the parties. While elaborating the points urged in the HRRP, the learned Counsel appearing for the petitioners-tenants Sri Naganand had also argued at the outset that the Trial Court did not hold even a problem of enquiry in the matter and passed the impugned order after hearing the learned Counsel for the parties. That according to him it was totally illegal on the part of the Trial Court to do so. It was also argued by him that the Trial Court had rejected the very petition of the petitioners-tenants, as if the same was not maintainable before it with the denial of relationship between the respondents-landlords on the one side and the petitioner-tenant on the other in following the decision of the learned Single Judge of this Court in Damodaram Nair v T.G. Nesan.

9. To substantiate his argument that there subsisted tenancy between the parties despite the termination of the contractual tenancy, he had cited the following decisions:

1. M/s. Bombay Tyres International Ltd., Bombay and another Vs. K.S. Prakash (deceased by LR"s) and another, ;
2. B.S. Giridhar Vs. P.V. Shetty, ;
3. Smt. Periyakkal and Others v Dakshayini and Another;
4. Nalanikant Ramadas Gujjar Vs. Tulasibai (dead) by LRs. and others, ;
5. Kamla Devi Vs. Laxmi Devi, ;
6. Damodaran"s case supra.

10. The further argument of Sri Naganand was that, u/s 19 of the Act, his party was entitled to deposit the admitted rent on the same being refused by the respondents-landlords. While taking me through the provision in Section 19, it was also pointed out by him that under the Act, a tenant has got right to deposit the rent lawfully payable to the landlord in respect of the tenanted premises. It was also argued by him that the Full Bench of this Court in the case of M/s. Bombay Tyres International Limited, supra, had held that the Rent Control Act would operate de hors the contract and that the Full Bench of this Court held so, in following the case of V. Dhanapal Chettiar Vs. Yesodai Ammal, . Therefore,

according to him, it was very much available for the petitioners-tenants herein, who also originally were the contractual tenants, along with their father, since deceased, till 1-8-1998 and that they were the statutory tenants under the Act beyond 1-8-1998, and as such, it was very much available for them to recourse to Section 19 of the Act to deposit the rentals before the Trial Court.

11. It was also argued by Sri Naganand that, though u/s 31 of the Act it was not available for the respondents-landlords to recourse to Section 21 of the Act to resort to the eviction proceedings under the Act, since Part V of the Act is not available for the respondents-landlords to resort to the eviction petition, the other parts of the Act were very much applicable to the tenanted premises as that of the petition schedule premises in the instant case in hand in the matter of deposit of rentals u/s 19 of the Act by the petitioners-tenants. In support of that contention of his, Sri Naganand had also placed reliance on B.S. Giridhar's case referred to above. Incidentally, he had also pointed out that u/s 2(3) of the Act, Part IV (under which Section 19 occurs) and Part V of the Act shall be applicable to the areas specified in Schedule II thereunder and that under Schedule II, areas within the limits of cities under the Karnataka Municipal Corporations Act, 1976 and to be more specific, the areas within the radius of 3 kms. from the limits of the said cities are covered, and as such, the petition schedule premises being in the heart of Bangalore City Corporation, Part IV of the Act is very well-applicable to the petition schedule premises.

12. Therefore, he prayed that the impugned order passed by the Trial Court be set aside and the matter be remitted to the Trial Court to dispose of the matter in consonance with law.

13. The learned Counsel appearing for the respondents-landlords on the other side, Sri Arun Kumar appearing for the learned Counsel Sri Raghavan had counter-argued that the petitioners-tenants were the contractual tenants, as the respondents-landlords on the one side and the petitioners-tenants on the other had entered into a registered agreement of lease as long back as on 1-2-1963 and that under the said agreement, the petitioners-tenants having secured the vacant possession of the subject land had to put up a cinema theatre and other buildings for the purpose of running the same and that they had to pay to the lessors, i.e., the respondents-landlords for the first 25 years and six months, rentals at Rs. 1,500/- and that for the next 10 years, they had to pay the rentals at Rs. 3,000/- per month and further that, on expiry of the agreed lease period of 35 years and six months they had to make over vacant possession of the premises together with the land and buildings thereon and accordingly, the said lease created under the registered lease deed had come to a close on 1-8-1998 and as such, according to him, there was no lawful relationship of tenancy between the parties. He also argued that the status of the petitioners-tenants is that of the trespassers and as such, they were liable to be ejected from the petition schedule premises. It was also argued by him that the petitioners-tenants had not complied with the terms of the registered agreement of lease,

inasmuch as they failed to quit and vacate from the petition schedule premises and further make over the same to his parties and it is for that good reason, his parties were also obliged to file a suit for ejectment in O.S. No. 7743 of 1998 on the file of the City Civil Court, Bangalore City. It was also argued by him that when the petitioners-tenants in filing a detailed objection statement before the Trial Court denied that there existed a relationship of tenancy between the parties as claimed in the petition filed by the petitioners-tenants, it was not available for the Trial Court to try the petition.

14. In support of that argument, he had drawn my attention to what was held by the learned Single Judge of this Court in the case of Damodaran Nair, *supra*, the one he cited before me. While drawing my attention to the said decision, it was also pointed out by Sri Arun Kumar that this Court in the said reported case had held that when the person who was described in the application u/s 19 as the landlord of the depositor, stated that the depositor was not his tenant, it would not be permissible for the Court to embark upon an adjudication of that dispute and that such an adjudication was outside the scope of Section 19. According to him, the set of facts in the instant case in hand and the set of facts in the above reported case relied upon by him are similarly placed. It was also argued by Sri Arun Kumar that there was no legal necessity for the petitioners-tenants to recourse to Section 19 of the Act in view of the admitted circumstances that they are facing a suit for ejectment referred to above in the hands of the respondents-landlords. It was further argued by him that u/s 31 of the Act, it is provided therein that Part V of the Act shall not apply to the non-residential buildings, the monthly rent of which exceeds Rs. 500/- or the annual rental value of which exceeds Rs. 6,000/- and that, admittedly in the instant case in hand, the rental was Rs. 3,000/- per month and therefore, according to him, it is futile for the other side to argue now before this Court that it was available for the petitioners-tenants to recourse to Section 19 of the Act in the matter of deposit of the rent before the Trial Court.

15. Sri Amar Kumar had cited the following decisions in support of his case:

1. Damodaran Nair's case, *supra*;
2. Bhatia Co-operative Housing Society Ltd. Vs. D.C. Patel, ;
3. K.A. Dhairyawan and Others Vs. J.R. Thakur and Others, ;

16. In the light of the above arguments advanced by the Counsel for the contending-parties, the short question that arises for my consideration is whether it was just and proper for the Trial Court to pass the impugned order to reject the very petition filed by the petitioner-tenant u/s 19 of the Act or not.

17. It was vehemently argued by the learned Counsel for the petitioners-tenants that his party had become statutory tenant under the Act on expiry of the term of the contractual lease on 1-8-1998 and that Part IV of the Act since applicable to his parties and the petition schedule premises in view of provision in Section

2(3) of the Act, it was very much available for his parties to recourse to Section 19 of the Act in the matter of deposit of the rent lawfully payable on its being refused to be received by the respondents-landlords.

18. I have carefully applied my mind to the above contention of the petitioners-tenants. That I did in the light of the Full Bench decision cited by Sri Naganand in M/s. Bombay Tyres International Limited's case, supra, and B.S. Giridhar's case, supra, very well relied upon by him.

19. In M/s. Bombay Tyres International Limited's case, supra, the Full Bench of this Court in paras 14 and 16 thereof, had held as hereunder:

"When the Supreme Court has interpreted the provisions of Section 21 of the Rent Control Act as also the decision in Dhanapal Chettiar's case, supra, to the effect that the provisions of the Rent Control Act would operate de hors the contract, we are bound by the same. On a reading of the decision of the Supreme Court in Shri Lakshmi Venkateshwara Enterprises Pvt. Ltd. Vs. Syeda Vajhiunnissa Begum (Smt) and Others, , we have no hesitation to hold that their Lordships have held that the provisions of Section 21 of the Rent Control Act would operate, notwithstanding the provisions contained in the contract of lease".

20. In view of the above decision, I am convinced to hold that the petitioners-tenants having completed the statutory period of 35 years, 6 months as on 1-8-1998, they had become the statutory tenants u/s 21 of the Rent Control Act. no matter that u/s 31 of the Act there is restraint in the matter of application of Part V of the Act, wherein Sections 21 to 31 of the Act occur insofar as the same related to non-residential building, the monthly rent of which exceeded Rs. 500/- per month or the annual rental value of which exceeded Rs. 6,000/-.

21. In this context it is relevant to observe here that when the respondents-landlords had filed LA. No. 2 under Order 1, Rule 10 read with Section 151 of the CPC to permit them to implead Sri Ramalingeshwar Mutt, Haranahalli as a party respondent to the petition in question, the Trial Court while rejecting the same held that there was established relationship of landlord and tenant between the respondents-landlords and the petitioners-tenants.

22. In para 9 of the order passed thereon, on the said LA. No. 2 filed by the respondents-landlords, the Trial Court had held as hereunder:

"9. When there is an established relationship of landlord and tenant between respondents and petitioner, question would be how petitioner-firm would deny said status particularly in view of Section 116. Section 116 of the Evidence Act provides that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property. Possession and permission being established, estoppel would bind the tenant during the continuance of the tenancy and until he surrenders his possession. The words "during the continuance of the tenancy" have been interpreted to mean during

the continuance of the possession that was received under the tenancy in question D. Satyanarayana Vs. P. Jagadish, ".

23. It is pertinent to mention here that the above said order on I.A. No. 2 had reached its finality, inasmuch as the respondents-landlords appear to have not, challenged even the said order before this Court.

24. Therefore, in my considered view, it is futile for the learned Counsel for the respondents-landlords to argue now before this Court that there is no relationship of tenancy between the parties in view of the expiry of agreed period of lease of 35 years, 6 months as on 1-8-1998 under the registered deed of lease dated 1-2-1963.

25. In view of the above discussion, I am of the considered view that the petitioners-tenants continued to be statutory tenants under the Rent Control Act on expiry of the contractual period of tenancy on 1-8-1998.

26. In the decision in B.S. Giridhar's case, supra, the Division Bench of this Court clearly held thereof that, notwithstanding the termination of tenancy u/s 31 of the Act, the tenants continued to be tenants for other purposes. In para 12 thereof, the Division Bench had held as hereunder:

"Notwithstanding the termination of tenancy, the person in possession of the premises would be a "tenant" and he would be liable to pay rent and exercise the rights given to him u/s 14 or Section 43 of the Act, His possession would not be unlawful. The fact that u/s 31. one class of tenants are not liable to be evicted under the provisions of the Act, does not take them out of the class of tenants for other purposes. The other rights, obligations and liabilities continue to operate, notwithstanding their immunity from eviction, under Part V of the Act".

27. In view of the above, I have got no hesitation to endorse the argument of the learned Counsel for the petitioners-tenants that his parties have got right to deposit rent u/s 19 (Section 19 occurs in Part IV of the Act) to deposit the rental lawfully payable to the respondents-landlords in respect of the premises in question.

28. The learned Counsel for the respondents-landlords Sri Arun Kumar had placed reliance on the decision in Damodaran Nair's case, supra. I did go through the said decision. Though the learned Single Judge of this Court in the said case held that in view of the dispute as to the very relationship of tenancy by the landlord, it was not permissible for the Court to embark upon adjudication of that dispute. It is difficult for me to follow the said decision, firstly, for the reason that under what set of facts and circumstances the Court had come to that conclusion is not forthcoming in the said decision and secondly, that the Division Bench in the above case had clearly held that u/s 31, though one class of tenants are not liable to be evicted, they continued to be tenants for other purposes. All the more, as argued by the learned Counsel for the petitioners-tenants, it is not as if the Trial Court had passed the impugned order after

holding any enquiry worth the name. That I say, having gone through the order sheet in the petition filed by the petitioners-tenants, very well secured by the Registry and produced before Court along with the records.

29. In this context, I feel it beneficial to advert to sub-section (3) of Section 19 of the Act. In the said provision of law, it is provided therein as follows:

"(3)(a) Where any bona fide doubt or dispute arises as to the person who is entitled to receive the rent for the premises the tenant may deposit such rent in Court in such manner as may be prescribed and may continue to deposit any rent which may subsequently become due in respect of the premises in Court in the same manner or until the Court makes an order under clause (b) or until the doubt is removed or the dispute is settled by the decision of a competent Court or by a settlement between the parties, as the case may be.

(b) If after such inquiry as it thinks fit the Court is not satisfied that a bona fide doubt or dispute exists in the matter, it shall forthwith order payment of the amount deposited to the landlord".

30. From the above it appears to me that the Trial Court has to hold an enquiry in the matter as it thinks fit. But, admittedly in the instant case in hand, the Trial Court did not do that exercise, much less, applied its mind to the above provision of law.

31. In that view of the matter. I am of the considered view that the instant matter has to be remitted to the Trial Court for an enquiry and for passing appropriate orders thereon, of course after setting aside the impugned order under challenge.

32. In the result, the impugned order dated 15-2-1998 in case No. HRC 1219 of 1998, passed by the Trial Court, hereunder challenge, stands set aside. The entire matter now stands remitted to the Trial Court with a direction to hold enquiry as it deems fit and to dispose of the original petition filed by the petitioners-tenants u/s 19 of the Act and further dispose of the matter in consonance with law; however, it is made clear that such an order in the petition in question will not come on the way of the respondents-landlords to recourse to law in the matter of dislodging the petitioners-tenants from the petition schedule premises in view of the provision in sub-section (3) of Section 20 of the Act.

33. In the circumstances that the original petition filed u/s 19 of the Act is of the year 1998, the Trial Court is directed to dispose of the same within 4 months from the date of communication of this order; if necessary by taking up the matter out of turn.

34. The instant revision therefore succeeds and accordingly stands allowed with the above direction to the Trial Court. No cost.