

(1997) 03 KAR CK 0034

In the Karnataka High Court

Case No : Civil Revision Petition No. 5606 of 1989

Venkataramana Bhatta (Since Deceased) by L.Rs.

APPELLANT

Vs

P.N. Balasubrahmanya Setty and Another

RESPONDENT

Date of Decision : 11-03-1997

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 31

Citation : (1997) 3 KarLJ 29

Hon'ble Judges : B. S. Sreenivasa Rao, J;S. Rajendra Babu, J

Judgement

B.S. Sreenivasa Rao, J.-This revision petition is filed by the petitioners/judgment-debtors questioning the correctness of the order dated 18-9-1989 made in Execution Case No. 104 of 1987 on the file of the second Munsiff and J.M.F.C., Mysore directing the issue of delivery warrant.

2. The facts leading to this revision petition, in brief, are as follows:

The decree-holders/L.Rs. filed Execution Case No. 104 of 1987 for possession against the judgment-debtors, L.Rs. of one Venkataramana Bhatta. The L.Rs. of the judgment-debtor filed their objections mainly contending that the second Munsiff, Mysore has no territorial jurisdiction to try the execution petition as Section 31 of the Karnataka Rent Control Act (for short "the Act") under which, the suit was based and decree obtained was struck down as unconstitutional by this Court in 1986, hence the decree is nullity and cannot be executed. Further it was contended that the L.Rs. of the judgment-debtor have continued to carry on hotel business since four decades and very huge moveables and other things worth lakhs of rupees are kept and this is the only source of income and the decree holders were to take possession of the petition schedule property except in due course of law, the L.Rs. of judgment-debtor. will be put to great hardship.

3. The points which arose for consideration before the learned Munsiff were whether that Court has territorial jurisdiction to try the execution petition and whether the decree under execution is nullity?

4. The learned Munsiff answered point No. 1 in the affirmative stating that the Court before which the petition was filed was the Executing Court and the contention that Court had no jurisdiction had no force and accordingly held that the Court had territorial jurisdiction to proceed with the execution case.

5. So far the execution of the decree was concerned that Section 31 of the Act was not void ab initio but invalid by efflux of time as declared by the Court and effective from the date so declared. The declaration in the decision in H. Padmanabha Rao v State of Karnataka, 1987(1) Kar. L.J. 176, is only prospective and not retrospective, it does not affect the decree or the order passed earlier to the declaration. The contention of the L.Rs. of the judgment-debtor have been overruled and order was passed for issue of delivery warrant on 18-9-1989. Aggrieved by the said order, the present revision petition has been filed.

6. Heard the learned Counsel on both the sides.

7. The main contention urged is that on the striking down of Section 31 of the Act by the Division Bench of this Court in the case of Padmanabha Rao's case, supra, even if regarded as purely prospective as on 1-7-1986, the exercise of power by the Court subsequent to that date for the purpose of depriving a tenant of his possession would be without jurisdiction, unless the landlord had obtained an order for eviction on satisfying the Court of the existence of any of the grounds mentioned in Section 21 of the Act.

8. The brief facts of this case are that the schedule premises was non-residential premises and hence suit was filed in the Court of the Munsiff, Mysore in Original Suit No. 244 of 1980 and later renumbered as Original Suit No. 502 of 1986 which was decreed for eviction of the tenant on 4-8-1984. Tenant preferred appeal in Regular Appeal No. 73 of 1984 which was dismissed on 23-9-1984. Second appeal was preferred in Regular Second Appeal No. 631 of 1985 which was also dismissed on 20-11-1985 granting time to the tenant till November, 1986. The landlord filed execution petition in Execution Case No. 104 of 1987.

9. The main contention of the learned Counsel for the L.Rs. of the judgment-debtor is that Section 31 of the Act was struck down as violative of Article 14 of the Constitution by this Court in H. Padmanabha Rao's case, supra, and the judgment was passed on 1-7-1986 holding that Section 31 of the Karnataka Rent Control Act is liable to be struck down on the ground that it is violative of Article 14 of the Constitution. The main ground of the tenants/L.Rs. is that in view of the striking down of Section 31 of the Act, the decree suffered on the original suit cannot be executed as the landlord should have maintained the petition under the Act even for a non-residential purpose satisfying the ingredients enumerated under Section 21 of the Act.

10. It has been strenuously contended by the learned Counsel for the revision petitioners that the Supreme Court in the case of Motor General Traders and Another v State of Andhra Pradesh and Others, AIR 1984 SC 121, while striking down Clause 32(b) of the Andhra Pradesh Rent Control Law, gave a direction in

the following terms regarding proceedings in which decrees for eviction had been passed by the Civil Courts prior to the striking down of the provisions by it-

"We, however, make it clear that this declaration would not affect the validity of the proceedings in which the decree for eviction passed by a Civil Court has become final and the landlord has already taken possession of the building in question pursuant thereto".

It has been seriously contended by the learned Counsel for the revision petitioners that the crucial point to be considered is whether the decree made by the Civil Court prior to the striking down of the provisions was whether the possession of the building has been taken by the landlord prior to such striking down. It is contended in the present case on hand that the revision petitioners/L.Rs. are admittedly in possession on the date of the judgment of this Court striking down of Section 31 of the Act and even now they have continued to be in possession. The Rent Control Legislations are beneficial to the tenants and restrictive of the rights of the landlords. It is further urged that the Executing Court should have held that the decree sought to be executed was a nullity in view of the striking down of Section 31 of the Act by this Court on 1-7-1986.

11. The learned Counsel for the revision petitioners relied on the decision in *West Coast Paper Mills Limited v Mrs. Indira Rao*, 1991(2) Kar. L.J. 202, in which it has been held that the striking down of Section 31 of the Act will have its effect on the pending proceedings. However, the decrees which had become final and which had been executed were not to be reopened. It is clear that subsequent change in law has to be applied to the pending proceedings. It was held in the said decision that the distinction made in *M/s. Hameed and Hameed Enterprises v M/s. Nicky's Parlour*, 1990(1) Kar. L.J. Sh. N. 74, of the Supreme Court decision in *H. Shiva Rao and Another v Cecilia Pereira and Others*, 1987(1) Kar. L.J. 182 (SC), is not correct and the view taken in *Hameed's case*, supra, was overruled so far as it related to the decree being enforceable after striking down of Section 31 of KRC Act though such decree may have been passed earlier.

12. The learned Counsel for the revision petitioners has also relied on the decision in *Karigowda v Safdar Ali*, 1995(4) Kar. L.J. 293. It is held Bar operative at the stage of passing decree for recovery of possession-if bar non-existence jurisdiction to decree suit; Appellate Court cannot hold such decree illegal, null and void or without jurisdiction-decree passed prior to application of Act not without jurisdiction until expressly or by necessary implication so provided-"No decree or order for recovery of possession" means provisions applicable to pending suit at the stage of passing decree for eviction not where decree passed before 31-12-1982.

13. The learned Counsel for the respondents/L.Rs. of the landlord has contended that Section 31 of the Act was struck down on 1-7-1986 by this Court. So far as *West Coast Paper Mills Limited's case*, supra, is concerned, there was no finality to the decree already passed as appeal was pending, but in the present case on

hand, it has been seriously urged by the learned Counsel for the respondents that before the striking down of Section 31 of the Act, the decree for eviction was passed and it had become final as the tenants failed even in the second appeal in Regular Second Appeal No. 631 of 1985 which was dismissed on 20-11-1985 there was finality of proceedings but time was granted till November, 1986 to vacate and subsequently execution proceedings were filed in Execution Case No. 104 of 1987 and the tenants have taken up the contention that delivery warrant should not be issued in view of the fact that the provision of Section 31 of the Act has been struck down. The learned Counsel for the respondents has relied on the decision in Hameed and Hameed Enterprises case, *supra*, wherein it has been held by this Court that the effect of declaration of law made in Padmanabha Rao's case, *supra*, on the decree passed and its executability in respect of the cases covered by the main part of Section 31, Section 21 is not applicable because, the exemption clause in Section 31 opens with the expression "nothing contained in this part (Part-V) shall apply to the buildings" described therein. The provisions of Section 31 being clear, Section 21 which opens with a non-obstante clause has no application to cases covered by Section 31 of the Act. As long as Section 31 was on the Statute Book a decree could be validly passed either for eviction or ejection of a tenant notwithstanding Section 21 of the Act and does not come in the way or defeat the decree being executed in a suit excluded under Section 31 from the operation of the Act. There is no specific reference in Section 21 of the Act to inexecutability of decrees made or extending the definition of "tenant" to such persons as holding the premises even after the decree.

This is not a case where Section 31 is void ab initio but become invalid by efflux of time and is so declared by a Court. Therefore, it is reasonable to hold that such declaration is effective from the date when it is made. Hence, it cannot be said that Section 31 was not in the Statute Book on the day the decree was passed in this case. If the decree is valid on the day it was passed and a right had accrued by the law which included both Sections 21 and 31 of the Act, it cannot be said that Section 21 of the Act can override such a decree to render it inexecutable. Any other view would affect the operation of Section 31 of the Act when it was applicable and was valid. When this Court declared Section 31 of the Act as invalid, not from its inception, its operation prior to such declaration remains unaffected.

From the above decision, it is seen the striking down of Section 31 of the Act is only prospective in effect. Even so, this decision cannot be relied upon in as much as the same has been annulled by the decision in West Coast Paper Mills case, *supra*.

14. The learned Counsel for the respondents relied on the decision in C.K. Mohammed Kunhi v State of Karnataka and Others, 1989(1) Kar. L.J. 109, wherein it has been held that the provision declared as unconstitutional in Padmanabha Rao's case, *supra*, does not affect decrees/orders passed earlier to

the declaration. Declaration is only prospective and not retrospective.

15. The main contention of the learned Counsel for the revision petitioners/tenants/L.Rs. is that when the L.Rs. filed execution petition, the provision under Section 31 of the Act had been struck down and hence the landlord cannot recover possession unless application has been made under the provisions of Section 21 of the Act under any of the grounds and order has to be obtained. This contention will have to be examined with reference to the decision in Shiva Rao's case, *supra*, and ruling in *Ranga Rao v Kamlakant*, 1995 Supp. (1) SCC 271.

16. In *Ranga Rao's* case, *supra*, the landlord/appellant had filed a suit for possession which ended in a compromise decree. Subsequently, the notification exempting certain categories of buildings from the purview of C.P. and Berar Letting of Houses and Rent Control Order, 1949 issued under Clause 30 of the said order came to be struck down on the ground that it was violative of Article 14 of the Constitution. When the decree was sought to be executed, the tenant albeit the compromise raised an objection that the decree became unexecutable since the Civil Court had lost jurisdiction to pass an order of eviction in view of the decision. That objection, although overruled by the lower Courts, was upheld by the High Court. Allowing the landlord's appeal, the Supreme Court held—When the compromise memo fruited into a decree on 3-1-1985, the Civil Court had every jurisdiction to pass such a decree. It is true the notification issued under Clause 30 of C.P. and Berar Letting of Houses and Rent Control Order, 1949 came to be struck down as violative of Article 14 of the Constitution. This was on 19-6-1985. The decision rendered thereunder cannot have any effect of rendering the decree passed on 3-1-1985 a nullity which decree has become final. No judgment of any Court can have any retrospective operation because that is the plenary power of Parliament (Legislature as well). The Courts do not have such power. If that be so, the High Court had clearly gone wrong in holding that the decree on the date of execution is a nullity. This view though in conflict with the view expressed in *Shiva Rao's* case, *supra*, having been expressed in a last decision prevails on the same and hold the view.

17. Following the principles laid down in the decision in *Ranga Rao's* case, *supra*, and applying the same to the facts in the present case on hand, it must be held that the order of eviction passed had become final and subsequently declaration of Section 31 of the Act as void is effective only from the date of the order passed, the right which had already accrued to the landlords would not be divested though they had not taken possession in execution proceedings for the reason that even the second appeal preferred by the tenants/L.Rs. was dismissed and the decree had become final for eviction and also it is to be noted that the landlord need not seek for eviction under Section 21 of the Act as he had already obtained the right to evict the tenants which had become final. In the view which we have taken as above, the order passed by the learned Munsiff overruling the objections has to be upheld.

18. For the reasons mentioned above, this revision petition has to fail and the same is dismissed.