

(1982) 02 KAR CK 0016

In the Karnataka High Court

Case No : Civil Revision Petition No's. 2696, 3063 and 3064 of 1980

Venkatesha Prabhu and Others

APPELLANT

Vs

K. Thejappa Shetty

RESPONDENT

Date of Decision : 01-02-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Karnataka Rent Control Act, 1961 — Section 21 (1) (b), 21 (1) (h)
Karnataka Rent Control Rules, 1961 — Rule 14, 35

Citation : AIR 1982 Kar 319 : (1982) ILR (Kar) 830

Hon'ble Judges : N.D. Venkatesh, J

Bench : Single Bench

Advocate : A. Keshava Bhat, for K. Shiva Shankar bhat, for the Appellant; P. Viswanathashetty, for the Respondent

Judgement

1. Since common questions of law and facts are involved in these three petitions they were clubbed and heard together.

2. Sri Thajappa Shetty, the respondent in these three petitions, has filed five applications, all under Clause (h) of sub-section (1) of Section 21 of the Karnataka Rent Control Act, 1961 (the Act), against five of his tenants in occupation of the premises respectively mentioned in the said applications, for their eviction. The petitioners in these three petitions are respondents in three of those proceedings pending on the file of the Munsiff, Mangalore, Dakshina Kannada. The two petitioners in C. R. Ps. 2696 and 3063/80 respectively, and the petitioners in C. R. P. No. 3064/80 are respondents in H.R.C. Nos. 270, 269 and 267 of 1979 respectively on the file of the Munsiff.

3. On the ground that common questions are involved and that it would facilitate a fair trial if common evidence is recorded the landlord requested the Munsiff, to try these five proceedings after consolidating the same. These tenants, revision petitioners herein, raised objections for adopting that procedure. After hearing both the parties, by his order dated 19-8-1980, the learned Munsiff, conceding

the request of the landlord, directed that the aforesaid proceedings be clubbed and tried together.

4. Against that order, of these three sets of petitioners, two - petitioners in CRP. No. 3063/80 and petitioners in CRP No. 3064/80 approached the District Judge by way of revisions. Being unsuccessful before him they have preferred these petitions. The petitioner in CRP. No. 2696 of 1980 has been directly challenging the order of the Munsiff in his revision.

5. What was argued by the learned Counsel for the petitioners in all these cases was that the Court, constituted as it is under the Act, has to abide by the procedure laid down under the Act in the matter of trial of cases arising there under, and that there being no specific provision enabling the Court to consolidate or club separate proceedings together, the Munsiff could not have passed the impugned order purporting to exercise his inherent powers.

6. On the other band, the learned Counsel for the respondent supported the impugned order.

7. It is true that the Karnataka Rent Control Rules, 1961 (the Rules), which also provide for the procedure to be followed by Courts in dealing with the matters arising under the Act, do not provide for consolidation of proceedings. The two rules, Rr. 14 and 35, which are relevant may be noted:

"14. Procedure in applications made to the Court under the Act.- In application made under the Act to the Court, the Court shall follow, as far as may be and with the necessary modifications, the procedure applicable to small cause suits prescribed in Civil P. C., 1908, when such suits are tried by Courts invested with the jurisdiction of a Court of Small Causes under any law relating to Small Cause Courts in force in any area of the State.

35. The provisions of the CPC to be generally followed- In deciding any question relating to procedure not specifically provided for by these Rules, the Court shall as far as possible be guided by the provisions contained in the Code of Civil Procedure, 1908."

Taken together we may say the two Rules provide that in matters relating to procedure, if there is no specific provision, the Courts are to be guided, as far as possible, by the provisions contained in the Code of Civil Procedure, 1908 (Code).

8. It is also true that what is provided in the Rules relates only to the procedure to be followed by the Courts and not to its power. Section 151 of the Code, which recognises the inherent powers of the Civil Courts, cannot be invoked by the Court (constituted under the Act). It may be noted that the trial Court, while directing the clubbing of these proceedings, has not proceeded on any assumption that it had inherent powers analogous to such a power reserved to Civil Courts under S. 151, Civil P. C. The learned Munsiff states that what was asked by the landlord was not any substantial relief, but only an administrative order to club and try all these cases together, und that, in the interest of justice,

the Court can suo motu consider that request, and, taking this view of the matter, ordered consolidation of proceedings as stated above.

9. As is well known where a statute confers a jurisdiction on a Court or Tribunal it also impliedly grants the power of doing all such acts, or employing such means as art found necessary while administering the Act or in deciding cases arising under the Act. This is so in view of the fact that the legislature cannot envisage all contingencies that may arise when that law is executed or applied to Specific cases or when matters are tried following the procedure laid down in the Act or Rules. As observed by the Supreme Court in *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, , even Civil Courts, governed by the Code have inherent powers in them not because S. 151 is embedded in the Statute (the Code) but because - Courts have powers inherent in them by virtue of their duty to do justice between the parties litigating before them. This power lies in Courts because no law can be exhaustive enough to meet all situations, and, as their Lordships observe in that case, "for the simple reason that the legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing" the procedure for them". According to their Lord. ships the existence of such an inherent Power in Courts is merely recognized by the legislature by incorporating S. 151 in the Code.

10. Though the Court, constituted the Act, is a Court of limited jurisdiction it cannot be said that that Court is completely hide-bound, under all circumstances, in the matter of trial of applications coming up before it, by the rules of procedure prescribed and cannot act even in such minor details like consolidation of proceedings pending before it. Such a restricted approach, as to the powers of the Court constituted under the Act, will, instead of advancing the cause of justice, hamper it. Though we may not concede to them (the Courts constituted under the Act) the amplitude of the inherent powers envisaged u/s 151 of the Code, such a power, on a limited scale, is required to be conceded to this authority. Such limited power has to be exercised by this authority when rules are silent and do not provide for a contingency of this type arising in a case.

11. Counsel for the petitioners argues that unless parties agree the Court has no power to consolidate the proceedings. In his connection he relies on a decision of the Supreme Court in *Mitthulal and Another Vs. The State of Madhya Pradesh*, wherein it is held that unless parties agree the evidence recorded in one case cannot be treated as the evidence in the other case. The question here is not that. Here we are concerned as to whether the proceedings pending cannot be consolidated by the Court even if it feels that it would be in the ends of justice to have a common trial. The ratio in *Mitthulal*'s case cannot be applied to the facts of this case.

The High Court of Bombay had occasion to consider the question as to whether the Rent Controller, a statutory authority under the C. P. and Berar Letting of Houses and Rent Control Order, 1949, had inherent powers to restore to his file an application he had dismissed for default. In that context a Division Bench of

that Court also examined the question as to whether he had implied authority, if not inherent powers, to so act. In *Zakeria Suleman Vs. The Collector, Yeotmal and Others*, vtheir Lordships are of the view that that authority had so inherent powers as is contemplated u/s 151, C. P. C., but had implied powers or authority to dismiss the petition for default and to restore the same to the file even though the rules of procedure expressly had not conferred such power. The observations of their Lordships may be noted

"(a) CPC (1908), S. 151 -Inherent Powers - Implied only in Civil Courts having general jurisdiction -- Special Authorities, under Special Statute cannot invoke them.

Inherent Powers can only be implied in the Civil Courts having general jurisdiction; buy where special authorities are constituted under a special statute and for specific object, it is not possible to imply inherent powers in them. (Para-4).

(b) Houses and Rents - C. P. and Berar Letting of Houses and Rent Control Order (1949), Clause 13 (3) - Application for permission to eject the tenant - Rent Controller can dismiss it for default of appearance and also restore it on good cause shown.

In the discharge of his functions under Clause 13 (3), the Rent Controller acts in a quasi-judicial manner and even though there is no express provision in the Order regarding dismissal for defaults or restoration of application under it, it must be held by necessary implication that such a power exists in him and consequently the Rent Controller has power to dismiss for default an application of a landlord under Clause 13 (3) of the Order and to restore the same to file, if he is satisfied that good cause exists for such restoration. (Para-4)

(c) Interpretation of Statutes -- Enabling Statute - Power of Court - Omission of important detail - Doctrine of Implied Authority.

If a Statute is passed for the purpose of enabling something to be done, but omits to mention in terms some detail, which is of great importance - if not actually essential - to the proper and effectual performance of the work which the statute has in contemplation, the Courts are at liberty to infer that the statute by implication empowers that detail to be carried out." (Para-4)

In *The South India Insurance Co., Ltd. (Head Office) Bombay Vs. Lakshmi and Others*, the Madras High Court has gone a step further observing that the principle of Section 151, C. P. C. has an intrinsic application to all judicial or quasi-judicial Tribunals. In that case the learned single Judge was dealing with the powers of the Claims Tribunals constituted under the Madras Motor Accidents Claims Tribunal Rules (1961). The learned Judge observes that a Tribunal constituted under the aforesaid Rules had inherent powers to permit a party to file an additional written statement though there may be no explicit reference conferring such powers on that authority to so permit a party to file such a

statement.

12. Suits or proceedings may be consolidated for a variety of reasons. Even, *soul motu*, in appropriate case the Court or the Tribunal may direct clubbing of proceedings provided it is necessary in the ends of justice and to avoid multiplicity and duplication in the matter of recording of evidence. This is resorted to where the subject matter in issue in more than one suit or proceeding is similar or identical, and where the contesting parties or at least some of them are common. But, if, in a given case the Court is made aware that by such consolidation any party suffers or prejudice would be caused to any of the parties, the Court will not compel the parties to have a common trial. All this depends on the facts of each case.

13. In the instant case the landlord is the same person though the tenants are different. He is seeking eviction of the premises involved in all these cases for self-occupation under S. 21(1)(b) of the Act. The evidence that the landlord has to adduce in all these cases, it appears, will be common. It is possible that there may be variation in the defence that may be put forward by each of these tenants. Even if all these proceedings are consolidated, the trial will have to be conducted in such a fashion that none of these tenants would suffer prejudice in their individual pleas. That can easily be done. The landlord's evidence may be common. Each tenant may be permitted to adduce his evidence. Each claim may be considered separately, though by a common order. It was argued by the counsel for the petitioners that some of the tenants may take sides with the landlord and that may prejudice his client's case. But in view of what is stated above there need not be any such apprehension.

14. For the reasons stated above, these petitions are dismissed. The Court below will proceed with the common trial in the light of what is stated above and in accordance with rules, and dispose of the applications expeditiously.

15. Parties are directed to bear their own costs.

16. Petitions dismissed.