
(1992) 02 SC CK 0082

In the Supreme Court Of India

Case No : Civil Appeal No. 492 Of 1992

Vishnu Narayan Gadskari (Dead) by Lrs.

APPELLANT

Vs

Paralal Baladev Uza and Others

RESPONDENT

Date of Decision : 05-02-1992

Acts Referred:

Citation : (1995) 4 SCC 425 Supp

Hon'ble Judges : K. Ramaswamy, J;G. N. Ray, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Leave granted.

2. The respondents laid the proceedings under Section 21(h) and (j) of the Karnataka Rent Control Act, 1961, for short the Act for ejectment of the tenant, Vishnu Narayan Gadskari. The District Munsif, Belgaon granted a decree for ejectment and an appeal was filed and during its pendency the tenant died. Thereafter, the appellants came on record as his legal representatives. The District Judge held that the tenancy was not heritable. Accordingly, the appellants cannot maintain the appeal. On that finding, the appeal was dismissed and on revision the High court confirmed the order of the District Judge. Hence this appeal by special leave under Article 136.

3. Admittedly, the premises is a non-residential one. Section 3(r) defines the tenant:

(R) "tenant" means any person by whom or on whose account rent is payable for a premises and "includes" the surviving spouse or any son or daughter or father or mother of a deceased tenant who had been living with the tenant in the premises as a member of the tenant's family up to the death of the tenant and a person continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a premises, by its tenant or a person to whom the collection of rents or fees in a public market,

cart-stand or slaughter house, or of rents for shops has been framed out or leased by a local authority.

4. On a bare reading of this definition the High court concluded that the protection was given to the tenant and heirs only in respect of the residential premises and it does not cover non-residential premises. This question was considered by the Constitution bench of this court reported in *Gian Devi Anand v. Jeevan Kumar*. Dealing with the Delhi Rent Control Act, 1958, therein, the similar definition with *mutatis mutandis* defined tenant and the Act was silent, as regards commercial premises. While considering the provisions of the Act this court held:

"In the absence of the provision contained in Section 2(I)(iii), the heritable interest of the heirs of the statutory tenant would devolve on all the heirs of the "so-called statutory tenant" on his death and the heirs of such tenant would in law step into his position. This sub-clause (iii) of Section 2(I) seeks to restrict this right insofar as the residential premises are concerned. The heritability of the statutory tenancy which otherwise flows from the Act is restricted in case of residential premises only to the heirs mentioned in Section 2(I)(iii) and the heirs therein are entitled to remain in possession and to enjoy the protection under the Act in the manner and to the extent indicated in Section 2(I)(iii). The Legislature, which under the Rent Act affords protection against eviction to tenants whose tenancies have been terminated and who continue to remain in possession and who are generally termed as statutory tenants, is perfectly competent to lay down the manner and extent of the protection and the rights and obligations of such tenants and their heirs. Section 2(I)(iii) of the Act does not create any additional or special right in favour of the heirs of the "so-called statutory tenant" on his death, but seeks to restrict the right of the heirs of such tenant in respect of residential premises. As the status and rights of a contractual tenant even after determination of his tenancy when the tenant is at times described as the statutory tenant are fully protected by the Act and the heirs of such tenants become entitled by virtue of the provisions of the Act to inherit the status and position of the statutory tenant on his death, the Legislature which has created this right has thought it fit in the case of residential premises to limit the rights of the heirs in the manner and to the extent provided in Section 2(I)(iii). It appears that the Legislature has not thought it fit to put any such restrictions with regard to tenants in respect of commercial premises in this Act."

After elaborate discussion ultimately this court held in para 36:

"Accordingly, we hold that if the Rent Act in question defines a tenant in substance to mean "a tenant who continues to remain in possession even after the termination of the contractual tenancy till a decree for eviction against him is passed", the tenant even after the determination of the tenancy continues to have an estate or interest in the tenanted premises and the tenancy rights both in respect of residential premises and commercial premises are heritable. The heirs of the deceased tenant in the absence of any provision in the Rent Act to

the contrary will step into the position of the deceased tenant and all the rights and obligations of the deceased tenant including the protection afforded to the deceased tenant under the Act will devolve on the heirs of the deceased tenant. As the protection afforded by the Rent Act to a tenant after determination of the tenancy and to his heirs on the death of such tenant is a creation of the Act for the benefit of the tenants, it is open to the Legislature with provides for such protection to make appropriate provisions in the Act with regard to the nature and extent of the benefit and protection to be enjoyed and the manner in which the same is to be enjoyed. If the Legislature makes any provision in the Act limiting or restricting the benefit and the nature of the protection to be enjoyed in a specified manner by any particular class of heirs of the deceased tenant on any condition laid down being fulfilled, the benefit of the protection has necessarily to be enjoyed on the fulfilment of the condition in the manner and to the extent stipulated in the Act. The Legislature which by the Rent Act seeks to confer the benefit on the tenants and to afford protection against eviction, is perfectly competent to make appropriate provision regulating the nature of protection and the manner and extent of enjoyment of such tenancy rights after the termination of contractual tenancy of the tenant including the rights and the nature of protection of the heirs on the death of the tenant. Such appropriate provision may be made by the Legislature both with regard to the residential tenancy and commercial tenancy. It is however entirely for the Legislature to decide whether the Legislature will make such provision or not. In the absence of any provision regulating the right of inheritance and the manner and extent thereof and in the absence of any condition being stipulated with regard to the devolution of tenancy rights on the heirs on the death of the. tenant, the devolution of tenancy rights must necessarily be in accordance with the ordinary law of succession."

This court had, thus, concluded that on the termination of the tenancy based on contractual relations the statutory right springs into being and that statutory tenant is entitled to the protection provided under the Act. The statutory tenancy expressly covers the residential premises and to that extent the statute expressly restricts to the right to inheritance of tenancy rights to enjoy the protection afforded to the tenant under the Act. In the absence of statutory definition the question emerges whether the legal representatives of the erstwhile tenant are entitled to the benefit of the succession under the Hindu Succession Act as a tenant and vis-a-vis the statutory right created under the Act. In considering that question it is clear that the Act did not put any restrictions. After the determination of the tenancy, the tenant continues to have an estate or interest in the demised premises and the tenancy rights both in respect of residential premises and commercial premises are heritable. The heirs of the deceased tenant in the absence of any provision in the Act to the contrary will be entitled to succeed the deceased tenant and all the rights and obligations of the deceased tenant including the protection afforded to the deceased tenant under the Act will devolve on the heirs of the deceased tenant under intestate succession as per

personal law. Accordingly, the heirs are entitled to succeed to estate of the deceased in the demised premises as tenants. Under the Hindu Succession Act the appellants succeed as heirs to tenants' rights and the attendant obligations under the Act. They are entitled to remain in possession of the demised premises as tenants subject to the provisions of the Act until they are duly ejected as per the provisions of the Act. The High court has committed manifest error in law in concluding that the appellants are not entitled to the protection under the Act. Therefore the order of the High court and the District court are set aside and the matter is remitted to the District Judge for disposal in accordance with law.

5. There will be no order as to costs.