

PETITIONER:
M/S MODERN TAILORING HALL

Vs.

RESPONDENT:
SHRI H.S. VENKUSA & ORS.

DATE OF JUDGMENT: 24/04/1997

BENCH:
M.M. PUNCHHI, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:
With C.A. Nos. 12711/96, 12712-12713/96
O R D E R

Leave was granted in these appeals limited to the question whether after demolition and reconstruction of the building, the appellants-tenants have a right of re-entry.

The Karnataka Rent Control Act, 1986 in its Section 21 (1) (h) confers on the landlord the right to claim eviction of a building bona fide required for his own occupation and Section 21(1)(j) confers on him the right to seek eviction to have the building demolished and reconstructed, but subject to the right of re-entry of the tenant. These two rights are encircled with corresponding obligations inasmuch as under the former provision the landlord is required to enter the premises himself within the statutory period failing which the tenant has a right of re-entry, and in the latter provision, the landlord is required to give an undertaking so as to ensure observance of the terms of re-entry on reconstruction of the building. The present cases are such in which the landlord has sought eviction of the tenants under Section 21(1)(h) of the Act on the ground that he bona fide requires the premises for his own use and occupation but after demolition and reconstruction. The point arising for consideration is whether the landlord's claim was rightly based under Section 21(1)(h) or was it founded under Section 21(1)(j)?

The consistent view of the Karnataka High Court in a series of decisions starting from the case titled as Smt. Rohinibai vs. Vishnumurty -1980 ILR Karnataka Series Vol.1 page. 340 (D.B.) is that the two provisions, i.e., Section 21(1)(h) and Section 21 (1)(j) are mutually exclusive and that demolition and reconstruction of a premises by the landlord for his own use and occupation, after getting an order of eviction, clearly falls under Clause(h) of Section 21(1) and not under Clause (j). It has been viewed that the plea of the landlord for bona fide requirement, for his own use and occupation of the premises under Section 21(1)(h), would include the occupation of the premises after making any alteration or a new construction on securing an order of eviction. This extended meaning was given by the Karnataka high Court on the basis of a decision reported in Ramnikal

Pitambardas Mehta Vs. Indradaman Amratlal Sheth- 1964 98) SCR Page.1, a decision by a three member Bench of this Court. Identical provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 were examined and it was held that the demolition of the existing building and subsequent erection of a new building were only intermediate steps in order to make the building fit of occupation by the landlord. A niche was thus carved that till the new building was altered or reconstructed to the satisfaction of the landlord, his obligation to enter the premises within the statutory provided period got extended. It was also held that the provisions relating to demolition and reconstruction saddled with the obligation to provide to the tenant re-entry could not possibly apply to the case where the landlord reasonably and bona fide requires the premises for his own occupation even if he had to priorly demolish the premises and erect a new building on it. And further it was viewed that qualitatively the eviction under the provision, such as provided under Section 21 (1)(j) of the Act presently in hand, would apply to cases where the landlord does not require the premises for his own occupation, but requires it for erecting a new building to be let out to the tenants. Thus, it is obvious that the Karnataka High Court has maintained the distinction between the two provisions sharply and has never let these provisions overlap with each other.

There is a lone voice however made by a learned single judge of the High Court in ILR 1990 Karnataka 4060 -P.K. Upadhyaya Vs. A. Venkatesh to rule that if there be with the Court an occasion to choose between Clauses (h) and (j) in directing eviction of a tenant, it will have to lean in favour of clause (j) rather than ordering eviction under Clause (h) of Section 21 (1) of the Act. This has been pressed into service to opt for eviction under Section 21 (1)(j). this attempt of the learned Single judge to demolish the exclusivity of the two sub-clauses (j) & (h) of Section 21 (1), well drawn by the Division Bench in Smt. Rohinibai Vs. Vishnumurthy - 1980 ILR Karnataka Series Vol.1 page 340 is uncalled for. The ground of eviction given in the two provisions being mutually exclusive have flowing therefrom separate individual rights and obligations and they cannot be permitted to overlap so as to confer on the Court the discretion of employing one provision over the other. An application of the landlord, if not falling under section 21 (1) (h), would on its own, merit dismissal. The court cannot treat it in its discretion as one under Section 21(1)(j) and order and unwanted eviction. The distinction qualitatively has to be maintained. We therefore decline to take a view to the contrary, even if it be possible, than the one taken by the High Court based as it is on the decision of this court in Ramnikal Pitambardas Mehta Vs. Indradaman Amratlal Sheth- 1964 (8) SCR page 1.

As a result, these appeals fail and are hereby dismissed. In passing however it need be added that Civil Appeal Nos. 12712-12713/96 would have otherwise to be dismissed because sub-letting was another ground of eviction as ordered by the High Court qua which leave has not been granted and that matter had been put to rest. No costs.