

CASE NO.:
Appeal (civil) 1338 of 2003

PETITIONER:
Bhimanagouda Basanagouda Patil

RESPONDENT:
Mohammad Gudusaheb

DATE OF JUDGMENT: 17/02/2003

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:

J U D G M E N T

(Arising out of SLPNo. 8972 of 2000)

SANTOSH HEGDE, J.

Leave granted.

Heard learned counsel for the parties.

Being aggrieved by the judgment of the High Court dated 12th January, 2000, the appellant is before us in this civil appeal.

The appellant purchased the suit schedule property on 3.1.1990 which was then occupied by the respondent as a tenant. On 6.10.1990, the appellant issued a notice to the respondent to vacate the premises in question as he required the same for his own bonafide use and occupation. Since the respondent did not vacate the premises, the appellant filed eviction petition under Section 21(1)(a) & (h) of the Karnataka Rent Control Act, 1961 for eviction on the ground of non-payment of rent and for personal use and occupation. In the said petition, the appellant had pleaded that he had no other premises in Bijapur City where the suit schedule premises is situated and he being a resident in the said town and doing business in the said city occupying a rented premises, himself with his family required the said premises for his own use and occupation. The respondent had denied the claim of the appellant. The trial court rejected the eviction petition. In revision, the learned District Judge though came to the conclusion that the claim of the appellant for self occupation was genuine still came to the conclusion that the respondent would suffer comparatively greater hardship than the appellant if eviction is ordered, hence, on the said ground dismissed the revision petition. The appellant challenged the dismissal of his revision petition before the High Court in H.R.R.P.No.695/1997, while the respondent filed H.R.R.P.No.738/1997 challenging the finding of the learned District Judge on the question of bonafide requirement of the appellant. Learned Single Judge of the High Court who heard the revision petition dismissed both the revision petitions thus confirming the findings of the District Judge on the question of genuineness of the claim of the appellant to seek possession of the suit premises for his own use and occupation and as also the findings of the District Judge in regard to comparative hardship. While dismissing the petition of the landlord, the High Court held : "Even if there exist bonafide need, the hardship that will be caused to the tenant would outweigh the bonafide need that would be gained by the landlord. In this view of the matter, the finding of the

Court below has to be confirmed. I do so. H.R.R.Ps. are dismissed." The respondent has not challenged the said dismissal of his revision petition, therefore, finding of the District Judge that the appellant requires the suit premises for his own use and occupation stands affirmed.

In this appeal, Mr. Ranjit Kumar, learned senior counsel appearing for the appellant contends that the courts below have erred in coming to the conclusion that greater hardship would be caused to the respondent if eviction is ordered inspite of the fact they came to the conclusion that the appellant landlord genuinely required the suit premises for his and his family's use and occupation. He contended that the appellant was doing business in Bijapur City and he had no property of his own where he could reside, therefore, with the said intention he had purchased suit schedule property. He also pointed out that the appellant with his family was residing in rented premises, therefore, the courts below have erred in coming to the conclusion that the comparative hardship was greater for the respondent. He also contended that the High Court erred in not applying the principles laid down in the earlier judgment of the said court in the case reported in (1969 (2) Mysore Law Journal 394) wherein it was specifically held that if the landlord who is residing in a rented property seeks eviction of a suit premises purchased by him, establishes that he requires the said premises for his bonafide use and occupation then the question of hardship should be decided in favour of the landlord. The learned counsel complains that the High Court has merely brushed aside the said judgment by stating that the said judgment cannot be applied to the facts of the case in hand.

Mrs.K.Sarada Devi learned counsel for the respondent, however, points out that the High Court though came to the conclusion that the claim of the landlord under Section 21(1)(h) of the Act was bonafide and reasonable, it also observed that landlord has secured the premises apparently in a game of speculation, therefore, the High Court was justified in holding that the comparative hardship was in favour of the tenant.

We have heard learned counsel for the parties and perused the records. Learned District Judge while dealing with the question of requirement of the landlord to occupy the suit schedule premises for his own use and occupation came to the conclusion that the claim of the appellant that he wants to reside in Bijapur has been established by him, therefore, considering the preferential right and the fact that the appellant has purchased the petition premises and there being no ulterior motive established, it has to be held that the appellant has established his need to occupy the premises for his personal use and occupation. This finding of the learned District Judge is affirmed by the High Court by dismissing the revision of the tenant-respondent on this point. In spite of the same while discussing the question of comparative hardship the High Court has come to the conclusion that the landlord has secured the premises apparently in a game of speculation. We are unable to reconcile these two findings of the High Court. While it confirms the finding of the learned District Judge as noted above, in regard to appellant's claim for bonafide occupation of the premises, still while considering the same question in the context of comparative hardship surprisingly the High Court contradicts itself by questioning the bonafide of the purchase of the suit schedule premises. If the High Court was right in holding that the purchase of the premises by the appellant was not bonafide then his claim under Section 21(1)(h) should have been dismissed. If the appellant's claim under Section 21(1)(h) was bonafide which we think it is, then the same cannot be otherwise for the purpose of Section 21(4) of the Act.

We have perused the material on record based on which the courts below have given the finding as to comparative hardship in favour of the respondent. The learned District Judge while coming

to the conclusion on this question held because the landlord has purchased the premises in question, he should be deemed to be an affluent person. While tenant who has a large family whose earning capacity is about Rs.20/- per day ought to be held to suffer greater hardship, if an eviction is ordered. Therefore, the learned District Judge held comparative hardship in favour of the tenant solely on the basis of affluence of the parties. If this is the correct approach then an affluent landlord can never get possession of his premises, even if he proves all his bonafide needs. The fact that a person has a capacity to purchase the property cannot be the sole ground to hold against the landlord while deciding the question of comparative hardship. If the purchase is pursuant to a genuine need of the landlord the said purchase has to be given due weightage unless, of course, the purchase is actuated by collateral consideration. In the instant case both the High Court and the District Court having upheld that claim of the landlord as to his bonafide need under Section 21(1)(h) they could not have denied the relief solely on the ground that he is an affluent person. In this case, it is on record which is accepted by the courts below that the landlord is residing in Bijapur City, doing business and is staying with his family in a rented house. It is also the findings of both the courts below that he has purchased the property for his own use and occupation and is now seeking eviction on that ground. Courts below having found his claim for occupation being genuine, while considering the question of comparative hardship they ought to have taken note of the hardship the landlord would have suffered by not occupying his own premises as against the hardship the tenant would suffer by having to move out to another place. This was not done by the courts below. The learned District Judge considered only the affluence of the landlord without considering the hardship of having to continue in a rented house, while the High Court took a contradicting view in regard to the bonafide of the purchase of the house by the landlord. It also did not really compare the hardship of the two parties. Therefore, we have considered that aspect of the case and we are of the opinion assuming there will be some hardship to the tenant by having to vacate the premises, same can be mitigated by granting a reasonable time to vacate, bearing in mind the fact that the tenant has been residing in the suit house for considerably long period of time and this litigation itself has consumed nearly 12 years and the tenant has not taken any steps to find out any alternate accommodation.

For the said reasons, we are of the opinion that the comparative hardship that may be suffered by the landlord will be greater than that of the tenant, and what little hardship that may be suffered by the tenant on facts of this case can be mitigated by granting him two years' time to vacate the suit schedule premises. In the said view of the matter, this appeal succeeds, the judgments impugned are set aside and the eviction petition filed by the landlord under Section 21(1)(h) of the Karnataka Rent Control Act is allowed. We, however, give time till 31st of March, 2005 to the tenant to vacate the suit schedule premises on the condition that he files the usual undertaking before the Registry of this Court within four weeks from today. The appeal is allowed.