

CASE NO.:
Appeal (civil) 2031 of 2000

PETITIONER:
LAXMIDAS BAPUDAS DARBAR AND ANR.

Vs.

RESPONDENT:
SMT. RUDRAVVA AND OTHERS

DATE OF JUDGMENT: 27/08/2001

BENCH:
S.P. Bharucha, Y.K. Sabharwal & Brijesh Kumar

JUDGMENT:

BRIJESH KUMAR, J.

The question that directly falls for consideration in this appeal is whether or not, a petition under Section 21 (1)(h) of the Karnataka Rent Control Act, for eviction of a tenant under a contractual fixed term lease, would be maintainable on the ground of reasonable and bona fide requirement of the landlord. On certain occasions earlier, the question has been considered by this Court as well as High Courts including Full Benches of the Karnataka High Court but there does not seem to be a cohesion of views.

The brief factual background giving rise to the point is that in the year 1905, the mother and guardian of one Gurappa Channabasappa Belaguri, holding a power of attorney, leased out his non-agricultural land to Anant Parashuram Nagaonkar for a period of 99 years, to establish a factory. In the year 1907, the lessee Nagaonkar aforesaid, assigned the lease in favour of Ramdas Vithaldas Darbar for a sum of Rs.8,500/- The original parties to the agreements have all died and their heirs have stepped into their shoes and they are parties to the present proceedings.

In the year 1986 the lessors served a notice to the lessees calling upon them to vacate the premises on the ground that the lessees did not pay rents for the period 1.3.85 to 31.3.86 and that the property was also bona fide required for their occupation. Reply to the notice is said to have been sent by the lessees denying default in payment as alleged and asserted inter alia that the lessors had no right to terminate the lease in view of the 99 years fixed term lease under the agreement. Thereafter, however, the lessors filed an application under Section 21(1)(h) and 21 (1)(p) of the Karnataka Rent Control Act 1961 on the ground that the premises were bona fide required by them for starting their own business.

The lessees contested the petition on the ground that the fixed term lease was subsisting which expires only on 29.2.2004. It was also pleaded that in fact it was a perpetual lease which could not be terminated.

The trial court, namely, the District Munsif allowed the petition and passed an order dated 2.3.1990 for eviction of the lessees under clause (h) of Sub-section (I) of Section 21 of the Act holding that it was not a permanent lease and that Section 21 of the Karnataka Rent Control Act would be applicable to the lease in question.

Both parties preferred revision before the District Court, the lessors against part of the order rejecting their petition under Clause (p) of Section 21(1) of the Karnataka Rent Control Act whereas the lessees against the part of the order of evicting them under Cl. (h) of sub-section (1) of Section 21 of the Act. The learned District Judge held that it is a lease of permanent nature. Section 21 (1) of the Karnataka Rent Control Act therefore will not be applicable. The order of the District Munsif was reversed except the part by which eviction under Section 21 (1)(p) of the Act was refused.

The respondent-lessors preferred a revision before the Honble High Court. It has been allowed, holding that the Distt. Court erred in finding that the lease was perpetual in nature. It is further observed that there cannot be any presumption in favour of perpetual lease since there should be clear and unambiguous language to infer such a lease. The provisions of the Karnataka Rent Control Act have been held to be applicable, de hors the contract of lease and, the lessor has been found to be entitled to move a petition for eviction of the lessee under Section 21 (1)(h) of the Act, even before the expiry of fixed term of 99 years.

A perusal of the judgment of the High Court indicates that one of the two contentions raised before it was that the finding of the District Court, holding that it was a perpetual lease is erroneous. According to the lessor, the lease was for a fixed period of 99 years. Alternatively, the submission was even if it was a permanent lease, provisions of Section 21 of the Karnataka Rent Control Act would be applicable for seeking eviction of the lessee on the basis of the provisions of the Statute. The High Court came to the conclusion that lease in question is fixed term contractual lease of 99 years with option of one renewal. It will however not be necessary, for us, to go into the question relating to perpetual or non-perpetual nature of lease in view of submission made on behalf of the appellant that their endeavour will be to show that the Karnataka Rent Control Act would not apply even for termination of a fixed term subsisting lease. Therefore, no submissions have been made before us to show that the lease is a perpetual lease. We would, therefore, proceed to examine the other question relating to applicability of Section 21 (1)(h) of the Karnataka Rent Control Act to a subsisting fixed term contractual lease, as in the case in hand.

While dealing with the aforesaid question, the High Court has relied upon a Full Bench decision of the Karnataka High Court reported in AIR 1997 Karnataka 311 M/s. Bombay Tyres International Ltd. versus K.S. Prakash, where it has been held that a proceeding for eviction under Section 21 of Karnataka Rent Control Act would be maintainable notwithstanding the fact that the lease under which tenant enjoys possession is an unexpired term lease. The relevant paragraph from the Full Bench decision aforesaid, is quoted below:

In view of what is stated above, we are clearly of the opinion that the decision of the Full Bench of this Court in Sri Ramakrishna Theatres case ILR (1992) Kant 1296: (AIR 1993 Kant 90), is no longer good law in the light of the decision of the Supreme Court in Sri Lakshmi Venkateswara Enterprises case ILR (1994) Kant 1659. Accordingly, we hold that a landlord is entitled to an order of eviction if he satisfies one or other conditions mentioned in S.21 of the Karnataka Rent Control Act notwithstanding the fact that the lease under which the tenant is in possession of the premises is for a term and that it has not expired on the date when the application for eviction is filed."

It is clear that the Full Bench in Bombay Tyres (supra) followed the decision of this Court in the case of Sri Lakshmi Venkateshwara Enterprises Pvt. Ltd. Versus Syeda Vajhiunnissa Begum reported in ILR (1994) Karnataka 1659.

Sri Lakshmi Venkateshwara Enterprises (supra) while holding that provisions of the Rent Control Act would be applicable to a fixed term contractual lease relied upon a decision reported in AIR 1979 S.C. 1745 Dhanpal Chettiar versus Yesodai Ammal & Anr. It is further observed in M/s. Bombay Tyres that interpretation of Dhanpal Chettiars case given by the Supreme Court in Sri Lakshmi Venkateshwara Enterprises (supra) is binding on it. It will be beneficial to peruse Paragraph 15 of the judgment in M/s. Bombay Tyres which is quoted below:

It was contended by the learned counsel for the tenants that the decision of the Supreme Court in Dhanpal Chettiars case AIR 1979 S.C. 1745 is confined only to a case of determination of a lease under S.106 of the T.P. Act and that the principles cannot be extended to cases where a term is provided for in the lease. Learned counsel also relied on various observations of the Supreme Court in the above decision in support of his case. But we are afraid that we cannot accept the contention of the learned counsel for the tenants. In Sri Lakshmi Venkateshwara Enterprises case (ILR (1994) Karnataka 1659), the Supreme Court has considered the very same decision and has stated that the above decision clearly holds that the provisions of the Rent Control Act would apply notwithstanding the contract. The effect of the decision in Dhanpal Chettiars case is stated by their Lordships of the Supreme Court and we are bound by the same. This Court cannot take a different view as to what was laid down in Dhanpal Chettiars case. What is decided in Dhanpal Chettiars case is stated by their Lordships in paragraph 11 of the Judgment of Sri Lakshmi Venkateshwara Enterprises

case. It is to the effect that the provisions of the Rent Control Act would apply de hors the contract. When the Supreme Court has laid down the law to that effect, this Court has necessarily to follow the same and we do so.

This necessarily leads us to see and find out the proposition of law as laid down in the case of Dhanapal Chettiar (Supra). It is a decision by a Bench of Seven Judges. The facts being that the land-lady moved an application for eviction of her tenant under the provisions of Tamil Nadu Rent Act on the ground of her personal need. The petition was dismissed. On appeal, though her case of bona fide requirement was upheld but eviction was refused due to lack of notice to quit in accordance with law. The High Court dealing with the matter in revision, held that notice to quit under Section 106 of the Transfer of Property Act was not necessary for seeking an eviction of a tenant under the provisions of the Rent Act. The question therefore, as was under consideration before this Court is mentioned in Para 1 of the judgment itself which is quoted below:-

.as to whether in order to get a decree or order for eviction against a tenant under any State Rent Control Act, is it necessary to give a notice under Section 106 of the Transfer of Property Act.

It has been held that the purpose of giving a notice under Section 106 of the Transfer of Property Act is only to terminate the contract of tenancy but it would not be necessary if the tenant incurs the liability of eviction under the provisions of the Statute. In such a case the notice under Section 106 of the Transfer of Property Act would only be a formality and a surplusage and it need not be given by way of any double protection to the tenant. It has been further observed that even though tenancy may be terminated by giving a notice under Section 106 of the Transfer of Property Act yet the landlord will not be in a position to initiate the proceedings for eviction in absence of any liability incurred by the tenant as provided in the Statute. Therefore, notice under Section 106 of the Transfer of Property Act loses significance. In the end of Para 18 of the judgment it has been observed as follows:

.But on the first assumption we have taken a different view of the matter and have come to the conclusion that determination of a lease in accordance with the Transfer of Property Act is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. That being so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceedings on the basis of the determination of the lease by issue of notice in accordance with Section 106 of the Transfer of Property Act:

It is to be significantly noted that in Para 5 of

the judgment in Dhanpal Chettiar case, this Court while generally referring to the different provisions of the Transfer of Property Act and the effect of the Rent Acts of different States observed thus:

But in all social legislations meant for the protection of the needy, not necessarily the so-called weaker section of the society as is commonly and popularly called, there is appreciable inroad on the freedom of contract and a person becomes a tenant of a landlord even against his wishes on the allotment of a particular premises to him by the authority concerned. Under Section 107 of the Transfer of Property Act a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. None of the State Rent Acts has abrogated or affected this provision. (emphasis supplied)

As a matter of fact the question of curtailment of fixed term contractual lease was not involved in the case of Dhanpal Chettiar (supra).

It has nowhere been held that by virtue of the provisions of the Rent Act the contract of term lease is completely obliterated in all respects. The effect of Rent Act on tenancy under contract has been considered only to a limited extent confining it to the necessity of giving notice under Section 106 of the Transfer of Property Act.

Next we may consider the decision in the case of Sri Lakshmi Venkateshwara Enterprises (supra). It was a case relating to a term lease of 32 years. In paragraph 5 it has been observed as follows:

This Court in V. Dhanpal Chettiar v. Yesodai Ammal categorically laid down that contractual tenancy will lose its significance in view of the Rent Control Act. In that case, even the notice under Section 106 of the Transfer of Property Act was held to be a surplusage. It is therefore urged that if a landlord could found an action on any one of the enumerated grounds under Section 21 of the Act, the action would be maintainable notwithstanding the existence of the contractual lease.

The above observations have been made by referring the decision in Dhanpal Chettiars case (supra) without taking into account the context in which the Chettiars case was decided. The Court then proceeds to consider Section 21 of the Act which reads as under:

21. Protection of tenants against eviction.- Notwithstanding anything contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any Court or other authority in favour of the landlord against the tenant.

Provided that the Court may on an application made to it , make an order for the recovery of possession of a premises on one or more of the following grounds only, namely:- .. (Emphasis supplied)

On the basis of the above provision it has been observed that anything contained to the contrary, in any contract cannot be prevail.

It may have to be scrutinized as to what extent the provisions of Section 21 of the Karnataka Rent Act shall have an overriding effect over any other law or a contract. The Rent Acts have primarily been made, if not wholly, to protect the interest of tenants, to restrict charging of excessive rent and their rampant eviction at will. In that view of the matter Section 21 of the Karnataka Rent Act provides that notwithstanding anything to the contrary contained in any contract, no order for eviction of a tenant shall be made by Court or any other authority. Undoubtedly, it is a provision providing statutory protection to the tenants as it is also evident from the heading of Sec.21 of the Act. This prohibition is however relaxed under the Proviso saying that an order for recovery of possession of the premises can be made on an application made on that behalf only on the grounds as enumerated in clauses (a) to (p) to the Proviso. The non obstante clause contained under Section 21 of the Act, will override any condition in any contract which may provide a ground for eviction other than those enumerated in Clauses (a) to (p) of Sub-section (1) of Section 21. Such an additional ground in a contract shall be rendered ineffective. The use of the word 'only in the Proviso is significant to emphasise that it relates to grounds alone which cannot be added over and above as provided. The whole contract or other conditions not related to eviction or grounds of eviction shall not be affected. So far a fixed term lease is concerned, it shall be affected only to the extent that even after expiry of period of the lease the possession cannot be obtained by the lessor unless one or more of the grounds contained in Section 21 of the Act are available for eviction of the tenant. There is nothing to indicate nor it has been held in any case that in view of Section 21 of the Karnataka Rent Act a contract of fixed term tenancy stands obliterated in totality. As indicated in the earlier part of this judgment in the case of Dhanapal Chettiar it has been observed in Paragraph 5 that none of the State Rent Acts have abrogated or affected the provisions of Section 107 of the Transfer of Property Act which provides for lease of immovable property from year to year or for a term more than a year or reserving a yearly rent. As indicated earlier, the Proviso to sub-section (1) of Section 21 of the Karnataka Rent Act limits the grounds on which landlord can seek eviction of a tenant. Nothing has been indicated by reasons of which it can be concluded that a contract of tenancy loses significance on coming into force of the Karnataka Rent Act. The effect of non obstante clause, in our view has been rightly explained in the Full Bench decision in the case of Sri Ramakrishna Theatres Ltd. versus General Investments and Commercial Corporation Ltd. & Ors. AIR 1993 Karnataka 90 In one of the decision of this Court reported in 1989 (2) S.C.C. 686 Modern Hotel versus V.K. Radhakrishnaiah, it has been held that period of a subsisting lease for fixed term could not be curtailed in

absence of a forfeiture clause in the lease. The effect of the non-obstante clause contained under Section 21 of the Karnataka Rent Act on the fixed term contractual lease may be explained as follows:-

(i) On expiry of period of the fixed term lease, the tenant would be liable for eviction only on the grounds as enumerated in Clauses (a) to (p) of Sub-section (1) of Section 21 of the Act.

(ii) Any ground contained in the agreement of lease other than or in addition to the grounds enumerated in Clauses (a) to (p) of Sub-section (1) of Section 21 of the Act shall remain inoperative.

(iii) Proceedings for eviction of a tenant under a fixed term contractual lease can be initiated during subsistence or currency of the lease only on a ground as may be enumerated in Clauses (a) to (p) of Sub-section (1) of Section 21 of the Act and it is also provided as one of the grounds for forfeiture of the lease rights in the lease deed, not otherwise.

(iv) The period of fixed term lease is ensured and remains protected except in the case indicated in preceding paragraph.

With great respect therefore, in our view, the decision in the case of Dhanapal Chettiar (supra) has not been correctly construed in the case of Sri Lakshmi Venkateshwara Enterprises Pvt. Ltd. (supra) and it no more holds good nor the Full Bench decision following it, in the case of Bombay Tyres International Ltd. (supra). The earlier judgment of the full Bench of the High Court in the case of Sri Ramakrishna Theatres Ltd. (supra) lays down the law correctly.

As a result of the discussion held above, the impugned judgment of the High Court cannot be sustained. The appeal is allowed and the judgment and order passed by the High Court is set aside.

In the facts and circumstances of the case, there would however be no order as to costs.

-----J.
(S.P. Bharucha)

-----J.
(Y.K. Sabharwal)

-----J.
(Brijesh Kumar)

August 27, 2001

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