

CASE NO.:
Appeal (civil) 2303 of 2001

PETITIONER:
KANDASWAMY

RESPONDENT:
Bd. OF MANAGEMENT H.S.I. SAID MOSQUE

DATE OF JUDGMENT: 22/03/2001

BENCH:
D.P. MOHAPATRA & BRIJESH KUMAR

JUDGMENT:
JUDGMENT

2001 (2) SCR 677

The Order of the Court was delivered by D.P. MOHAPATRA, J. Leave granted.

The decision in this appeal rests on the interpretation of Sec. 21(1)(i) of the Karnataka Rent Control Act, 1961 (hereinafter referred to as 'the Act'). The question to be considered is whether approval or permission of the local authority or other competent authority for erection of a new building is a condition precedent for filing an application by the landlord for eviction of the tenant under the said provision.

Being aggrieved by the judgment/order dated 6th August, 1999 of the High Court of Karnataka in House Rent Revision Petition (HRRP) No. 5238/ 91 the tenant filed this appeal by special leave assailing the said judgment/order. The respondent, Board of Management, Haji Sri Ismail Said Mosque, represented by its Secretary, is the landlord of the premises in question which is a piece of vacant land bearing site No. 60 in the city of Bangalore. The landlord sought eviction of the tenant on several grounds including the ground under Sec. 21(1)(i) which provides for eviction of a tenant for the purpose of constructing a new building. The grounds other than the one mentioned above are not in dispute in this proceeding.

The IVth Additional Judge of Small Causes ('the trial court' for short) by the order dated 10th February, 1989, allowed the petition for eviction. On the revision petition filed by the tenant the High Court set aside the order of the trial court by the judgment/order dated 9.2.1990 and remanded the case to him for fresh disposal. After remand, the trial court on reappraisal of the evidence on records, dismissed the petition for eviction vide the order passed on 22.7.1991. Challenging the said order, the landlord filed the revision petition under Section 50 of the Act which was allowed by the High Court by the judgment/order dated 6.8.1999 and a decree for eviction of the tenant was passed on the ground provided in Sec. 21(1)(i) of the Act. The said judgment is under challenge in the present appeal.

The main thrust of the submissions made by Mr. K.V. Viswanathan, learned counsel for the appellant is that the landlord did not have any order of local authority or other competent authority approving or permitting him to build on the vacant land of which eviction of the tenant was sought. No such order of approval or permission had been produced before the trial court till 25th June, 1990 when the proceeding was pending before him after remand by the High Court. In the circumstances, submitted the learned counsel for the appellant, the statutory condition precedent provided under Sec 21(1)(i) was not satisfied in the case and therefore the eviction petition had been rightly dismissed by the trial court; the High Court erred in interfering with the order passed by the trial court.

Per contra, Shri S.K. Dholakia, learned senior counsel appearing for the respondent contended that an order of a local authority or other competent

authority granting permission or according approval for construction on the site is not required before filing an eviction petition. It is sufficient compliance with the statutory provision if such order is produced before the order/ decree for eviction is passed by the trial court. Therefore, the High Court rightly set aside the order passed by the trial court.

On the rival contentions raised by learned counsel for the parties the question formulated earlier arises for determination.

The provisions in Section 21(1) and Section 21(1)(i) reads as follows.

"21. Protection of tenants against eviction - (1) Notwithstanding anything to the contrary 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. -

XXX

XXX

XXX

(I) that where the premises are land, such land is reasonably and bona fide required by the landlord for the erection of a new building which a local authority or other competent authority has approved or permitted him to build thereon; or"

In order to establish a case under Section 21(1)(i), the criteria to be proved are :

(i) the premises must be land;

(ii) such land is reasonably and bona fide required by the landlord for erection of a new building; and

(iii) for construction of which the local authority or other competent authority has approved or permitted the landlord to build on the land;

Each of the aforementioned elements is to be established by the landlord who seeks eviction of the tenant from the land for erection of a new building on it. The position is well accepted that the Rent Control Act is a piece of social legislation and is meant mainly to protect the tenants from frivolous evictions. This Court in the case of Kewal Singh v. Smt. Lajwanti, [1980] 1 SCC 290, observed at page 298 as under :

".....Before discussing the relevant provisions of the Act it may be necessary to observe that the Rent Control Act is a piece of social legislation and is meant mainly to protect the tenants from frivolous evictions. At the same time, in order to do justice to the landlords and to avoid placing such restrictions on their right to evict the tenant as to destroy their legal right to property certain salutary provisions have been made by the legislature which give relief to the landlord. In the absence of such a legislation a landlord has a common law right to evict the tenant either on the determination of the tenancy by efflux of time or for default in payment of rent or other grounds after giving notice under the Transfer of Property Act. This broad right has been curtailed by the rent control legislation with a view to give protection to the tenants having regard to their genuine and dire needs. While the rent control legislation has given a number of facilities to the tenants, it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also....."

This Court, in the case of Dinanath and Anr v. Gopalakrishna (Dead) by Lrs., [1990] Supp. SCC 767, construing the provision under Section 21(1)(i) held that the expressions 'reasonably' and 'bona fide' require more than mere financial capacity and the sanction of the authorities. These two

expressions must be understood with reference to the evidence adduced by the landlord as to the reasonableness and the bona fide character of his requirements. In a case where a piece of vacant land in occupation of the tenant is required by the landlord for construction of a new building his 'reasonable' and 'bona fide' requirement must be established irrespective and independent of any sanction he may have obtained from the local authority. This Court further observed that the landlord has obtained the necessary sanction of the local authority and that he is financially capable of constructing a building will not by themselves mean that his requirements are reasonable and bona fide. Although his financial capacity may be one of the elements which may be taken into account, that by itself, would not be sufficient to establish the reasonableness and the bona fide character of his requirements.

The principle is well settled that while interpreting a provision of a statute which is couched in clear and unambiguous language, the Court should give meaning to the plain words of the Section and no external aid is to be taken for the purpose. On a plain reading of the provisions of Section 21(1)(i) it is clear that the landlord has to plead in the eviction petition that the new building for construction of which he is seeking eviction of the tenant from the land has been approved or permitted by a local authority or other competent authority. This position is clear from the words "a new building which a local authority or other competent authority has approved or permitted him to build thereon". The provision read in its entirety clearly shows that the approval or permission of a local authority or other competent authority forms a part of the cause of action for filing an application for eviction of the tenant under Sec. 21(1)(i). The same expressions are repeated in clause (m) of Section 21(1) which deals with a case where the premises are land in the nature of garden or grounds appurtenant to a building or part of a building such land is required by the landlord for the erection of a new residential building. There are also the words; "which a local authority has approved or permitted him to build thereon...", which is required to be pleaded and proved by the landlord. The bona fide purpose in insisting on an order approving or permitting the landlord to erect a new building on the new land is to extend the protection to the tenant against eviction in case the landlord merely wishes to construct a building but has not taken steps for obtaining necessary permission/approval by the local authority or other competent authority concerned. The provision is also intended to take care of the situation of long time lag between the filing of the petition for eviction and grant of approval/permission by the local authority or other competent authority concerned. It is our considered view that the provision in Section 21(1)(i) read and interpreted, as noted above, will alone serve the object and purpose of the statute.

The purpose behind the insistence on the order of approval or permission by a local authority or a competent authority before filing the eviction petition may be to leave no discretion with the trial court to consider the eviction petition in a case where the landlord has not even approached the competent authority for sanction of the proposed new building for which he has filed the petition for eviction of the tenant. By not vesting any discretion with the trial court in such case the legislature has made it clear that it is only after the landlord gets an order granting permission or approval for constructing the new building he should approach the trial court for eviction of the tenant. Section 21 of the Act only enumerates the grounds on which the authority can pass an order of eviction against a tenant. The use of the expression "has approved or permitted" leaves no manner of doubt that such an order by a competent authority must be with the landlord on the date of presentation of the petition for eviction of the tenant. It may not be necessary for the landlord to annex a copy of the order passed by the local authority or competent authority but a statement to that effect has to be made in the petition. If the contention raised by Mr. Dholakia is accepted and it is held that a petition for eviction cannot be thrown out on the ground since no order of approval or grant of permission by a local authority or a competent authority is necessary when

the petition for eviction is filed, then a part of the section will be rendered redundant. Such an interpretation cannot be accepted. If the legislature intended that production of such an order at any stage of the proceeding before a decree or order for eviction is passed would be sufficient compliance of the provision then it would not have used the expression "has approved or permitted him to build thereon".

In that view of the matter, the High Court was in error in setting aside the order passed by the trial court rejecting the eviction petition holding that filing of the order granting approval or permission by a local authority or other competent authority is not a mandatory statutory requirement for filing a petition for eviction under Section 21(1)(i) of the Act. The judgment/order passed by the High Court is unsustainable.

Accordingly, the appeal is allowed. The judgment/order passed by the Karnataka High Court on 6th August, 1999 in House Rent Revision Petition (HRRP) No. 5238 of 1991 is set aside and the judgment/order passed by the IVth Additional Judge of Small Causes Court on 22nd July 1991 in H.R.C. No. 10646786 is restored. Parties to bear their respective costs.