

CASE NO.:
Appeal (civil) 7588 of 1999

PETITIONER:
ABDUL SATTAR

RESPONDENT:
KHUTEJABI AND ORS.

DATE OF JUDGMENT: 01/05/2003

BENCH:
R.C. LAHOTI & B.N. AGRAWAL

JUDGMENT:
JUDGMENT

2003(3) SCR 1077

The Order of the Court was delivered by

A petition for eviction of the tenants on the ground available under clause (p) of sub-Section (1) of Section 21 of the Karnataka Rent Control Act, 1961 (hereinafter, 'the Act' for short) was allowed by the trial court and the order of eviction was confirmed by the revisional court under Section 50 of the Act. However, in the revision under Section 115 of the C.P.C. preferred by the tenants, the High Court has reversed the findings of the two courts below and held the petition liable to be dismissed. The aggrieved landlord has filed this appeal by special leave.

The admitted facts are that the appellant is the owner-cum-landlord of the suit premises. In the year 1955, the landlord inducted late Mohammed Gouse as tenant in the suit premises, which are residential. The tenant's family consisted of his wife and four sons, who have all been residing in the suit premises jointly with the tenant as members of his family. In the year 1984, a house came to be allotted by the Housing Board to one of the sons of the tenant, namely, Mohammed Ismail. Mohammed Gouse, the tenant, died in the year 1988 and the tenancy rights devolved upon the widow and the four sons including the son in whose name the house from the Housing Board had stood allotted in the year 1984. In the year 1990, the landlord initiated proceedings for eviction of the tenants (the five heirs of late Mohammed Gouse) on the ground that one of the tenants has been allotted a building suitable for their residence.

Section 21(1)(p) of the Act reads as under:

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:-

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(p) that the tenant whether before or after the coming into operation of this part has built, or acquired vacant possession of, or been allotted, a suitable building.

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In the opinion of the High Court, the allotment of house in the name of Mohammed Ismail, respondent No.4, was prior to their having inherited tenancy rights, that is, prior to a date when they became tenants and, therefore, the case was not covered by clause (p) above-said.

We have heard the learned counsel for the parties and we are satisfied that no fault can be found with the view of the law taken by the High Court. On a plain reading of the provision, it is clear that building of a house or acquisition of vacant possession or allotment of a suitable building must be to the tenant in his capacity as a tenant though such event may be referable to a point of time, whether before or after the coming into operation of this provision. In the year 1984, when the house was allotted to Mohammed Ismail, the son, the tenant was Mohammed Gouse, that is the father. We have asked the learned counsel for the landlord-appellant whether Mohammed Gouse, the then tenant, would have incurred liability for eviction under clause (p) above-said in the year 1984 because his son or a member of his family was allotted a house? The learned counsel, with all fairness, conceded that it could not have been so because in the year 1984, the allotment of house was not to the tenant.

However, the learned counsel for the appellant invited our attention to the definition of 'tenant', as contained in clause (r) of Section 3 of the Act, which reads as under:

'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."

The definition clearly indicates that the surviving spouse or any son or daughter or father or mother of tenant becomes tenant only after the death of the original tenant subject to the condition that they were living with the tenant in the premises as a member of the tenant's family upto the death of the tenant. It means that so far as clause (r) above-said is concerned, during the life time of the tenant, his spouse, son, daughter, father or mother was not included in the definition of 'tenant'.

Thus, the position which emerges is that on the date of acquisition of the house, that is, in the year 1984 the tenant did not incur liability for eviction under clause (p). The allotment of house was to a person who was not a tenant on the date of allotment. The rights of tenancy devolved on the widow and sons in the year 1988 and on the date of devolution of tenancy rights, the son was already holding the allotted house. There was no allotment of house after the devolution of tenancy rights on the respondents. Clause (p) cannot be applied in such circumstances to the present respondents rendering them liable to be evicted. If only the deceased tenant would have suffered a liability for eviction, even by reference to clause (p), the heirs, though falling within the definition of 'tenant', would have remained liable to the evicted inasmuch as the tenancy rights would have devolved upon them along with the liabilities and obligations incurred by the deceased. Apparently, that is not the case before us.

For the foregoing reasons, no fault can be found with the view taken by the High Court. The appeal is held liable to be dismissed and is dismissed accordingly, though without any order as to costs.