

PETITIONER:
K. SRINIVASA RAO

Vs.

RESPONDENT:
K.M. NARASIMHAIAH GOPAL KRISHNA

DATE OF JUDGMENT 09/02/1989

BENCH:
KANIA, M.H.
BENCH:
KANIA, M.H.
SHARMA, L.M. (J)

CITATION:
1989 SCR (1) 577 1989 SCC (1) 667
JT 1989 (1) 229 1989 SCALE (1) 325

ACT:
Karnataka Rent Control Act, 1961: Sections 21(1)(j), 27 and 28--Tenant's right to occupy a reasonably comparable shop in the reconstructed building.

HEADNOTE:

The appellant was one of the eight tenants in the building belonging to Respondent No. 1, who filed eviction petitions against all the 8 tenants on the ground that the building was bona fide required by him for immediate demolition and construction as contemplated under Section 21(1)(j) of the Karnataka Rent Control Act. In the petition against the appellant, it was specifically stated that he might occupy the premises corresponding to the original tenement in the new building after it was built. The application of Respondent No. 1 for deletion of the words "corresponding portion" and for leave to withdraw the offer made earlier, were rejected. Upon a memorandum filed by the appellant consenting to a decree being passed in pursuance of Section 21(1)(j) of the Act, the Court passed an order allowing the eviction petition against the appellant.

After the reconstruction work commenced, appellant gave a notice to Respondent No. 1 of his intention to occupy the corresponding shop in the new building, agreeing to pay the fair rent as contemplated under Section 27 of the Act. Meanwhile Respondent No. 1 who got the eviction decree, filed an appeal before the District Judge, challenging the eviction decree on the ground that the Court had no jurisdiction to pass any decree by consent under Section 21(1)(j) of the Act. The District Judge allowed the appeal. Immediately thereafter Respondent No. 1 inducted Respondent No. 2 as a tenant in a shop in the reconstructed building reasonably corresponding to the shop occupied by the appellant in the old building, and Respondent No. 2 started his business in the shop. The appellant preferred a Revision Petition to the High Court against the order of the District Judge, and in the Revision Petition the appellant impleaded the second Respondent also.

The High Court allowed the Revision Petition and held that the decree passed by the Munsiff under Section 21(1)(j) of the Act was not a

578

decree passed by consent but was a valid decree passed by a competent Court after application of mind. It was also held that the landlord was liable to place the tenants in vacant possession of the reconstructed building as provided in the Act, and that the rights of the second Respondent were subject to the rights of the original tenant conferred on them under Sections 27 and 28 of the Act.

After the High Court's order, the appellant filed an application under Sections 27 and 28 of the Act before the trial court seeking permission to occupy the shop premises which was in possession of Respondent No. 2. The trial court allowed the application. On revision, the High Court set aside the order of the trial court, taking the view that the appellant was not entitled to claim the shop occupied by Respondent No. 2 and Respondent No. 1 was required to give the appellant any tenement in the newly constructed building. Against this order of the High Court the appellant has filed this appeal by special leave.

On behalf of the appellant, it is claimed that he is entitled to be put in possession of the shop facing the Main Road and occupied by Respondent No. 2, whereas he was offered a shop not facing the Main Road.

Allowing the appeal,

HELD: 1.1 The appellant is entitled to be handed over the possession of the shop occupied by respondent No. 2. [585B]

1.2 Under the provisions of Section 28 of the said Act, the appellant became entitled to occupy a tenement in the new building. Although there is nothing specific in the language of sub-section (1) of Section 28 to that effect, a fair, commonsense reading of the provisions of subsection (1) of Section 28 would show that a tenant against whom eviction decree has been passed under Section 21(1)(j) and who has given notice as contemplated under Section 27 of that Act would be entitled to a tenement in the new building which could be said to be reasonably comparable to or to reasonably correspond to the tenement in respect of which the decree was passed. The High Court based its judgment on the consideration of a question which really was not material, namely, whether the appellant was entitled to get an identical shop in the new building, whereas the real question was as to whether he was entitled to a comparable shop. [583G-H; 584A-B]

1.3 The original shop occupied by the appellant admeasured 579

17' x 9' and was facing the Main Road. The shop which respondent No. 1 offered to the appellant was admeasuring only 11' 6" X 8' 6" and was not facing the Main Road but was on the rear of the new building. This shop cannot be considered as comparable to the shop originally occupied by the appellant. Moreover, it is not as if comparable shops were not available. In fact, respondent No. 1 constructed several shops of 9' X 16' facing the Main Road, one of which he has given away in a hurried manner, to respondent No. 2, probably with a view to forestall the claim of the appellant. In these circumstances, the appellant could not be compelled to accept the shop offered by respondent No. 1, which is in no way comparable. The appellant was entitled to a shop reasonably corresponding to the original shop occupied by him as the circumstances would permit. It was not the appellant's case that he is entitled to an identical shop but that he was entitled to a comparable shop. It is not open now to respondent No. 2 to resist the claim of the appellant. Respondent No. 2 was joined as a party in the revision

petition wherein the High Court held that the rights of respondent No. 2 are subject to the rights of the original tenant conferred upon him under Sections 27 and 28. This decision has not been challenged by respondent No. 2 in any proceedings and has now become final as against him. [584C-E, G; 585A]

Sreenivasa Rao v. Narasimhaiah, [1972] 1 Mysore Law Journal, 490, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1017 of 1975.

From the Judgment and Order dated 10.10.1974 of the Karnataka High Court in Civil Revision Petition No. 187 of 1974.

N.B. Datar and Ravi P. Wadhvani for the Appellant.

P.R. Ramasesh, S.S. Padmaraj, Naresh Kaushik and Ms. Lalitha Kaushik for the Respondents.

The Judgment of the Court was delivered by

KANIA, J- This is an appeal against a judgment of a learned Single Judge of the Karnataka High Court by Special Leave granted under Article 136 of the Constitution.

Respondent No. 1 is the landlord and K. Gopal Krishna to whom notice was given by this Court and has appeared pursuant thereto is
580

the person who was inducted as a tenant by respondent No. 1 in the said premises immediately on an appeal by respondent No. 1 being allowed by the First Additional District Judge, Bangalore as set out hereinafter. We direct that K. Gopal Krishna be joined as respondent No. 2 in the appeal.

The appellant was one of the eight tenants in the building belonging to the respondent No. 1, in respect of a shop admeasuring 9' x 17'. The shop of the appellant was one of the four shops on the ground floor of the building facing Belepet Main Road, Bangalore City. The other premises in the said building comprised four office premises on the first floor. The respondent No. 1 filed eight eviction petitions in the Court of the 1st Munsiff, Bangalore seeking eviction of the tenants in the said building on the ground that the building was bona fide required by him for the immediate demolition and reconstruction as contemplated under Section 21(1)(j) of the Karnataka Rent Control Act, 1961 (hereinafter referred to as "the Karnataka Rent Act"). In the eviction petition against the appellant, respondent No. 1 specifically stated that the appellant might occupy the premises corresponding to the original tenement in the new building after it was built. It may be mentioned that subsequently, respondent No. 1 filed an application for amending the averment in the eviction petition to delete the words 'corresponding portion'. He also filed an application for leave to withdraw his offer set out earlier. Both these applications were rejected. The appellant and one other tenant filed memoranda consenting to a decree being passed in pursuance of Section 21(1)(j) of the Karnataka Rent Act. Pursuant to the memorandum filed by the appellant, wherein it was stated that the key was also handed over to the landlord, the court passed an order allowing the eviction petition against the appellant under Section 21(1)(j) of the Karnataka Rent Act. After the reconstruction of the building was commenced, the appellant gave a notice to respondent No. 1 of his intention to occupy the corresponding shop in the new building and stated that he was agreeable to pay the

fair rent in respect of the said shop as contemplated under Section 27 of the Karnataka Rent Act. It may be mentioned that, in the meantime, respondent No. 1 got the plans of the proposed new building altered from time to time and in these revised plans dimensions of the shops proposed to be constructed in the new building were altered. In the meantime, curiously enough, respondent No. 1 who had got the eviction decree filed an appeal in the Court of the First Additional District Judge, Bangalore, challenging the eviction decree in terms of section 21(1)(j) of the Karnataka Rent Act passed by the First Munsiff, Bangalore on the ground that the said

581

decree had been passed by consent and the court had no jurisdiction to pass any decree by consent under Section 21(1)(j) of the Karnataka Rent Act. This appeal was allowed by the learned Additional District Judge. Immediately on the appeal being allowed, respondent No. 1 inducted respondent No. 2 as the tenant in a shop in the new or reconstructed building reasonably corresponding to the shop occupied by the appellant in the old building and respondent No. 2 started business therein in the name and style of Sri Cut-piece Centre. The appellant preferred a Revision Petition to the High Court against this decision. In the said revision petition, the appellant has joined as respondent No. 2, K. Gopal Krishna. The said revision petition was allowed by the High Court. The High Court *inter alia* held that the decree passed by the learned Munsiff under Section 21(1)(j) of the Karnataka Rent Act was not a decree passed by consent but was a valid decree passed by a competent court after application of mind. In respect of the objections raised by respondent No. 2, it was held by the High Court that since the demolition and reconstruction were in pursuance of an order of eviction passed under sub-clause (j) of Section 21(1) of the Karnataka Rent Act, there cannot be any doubt that the landlord is liable to place the tenants in vacant possession of the reconstructed building as provided in the Act. It was further held that since the lease in favour of the second respondent came into existence and the second respondent occupied the new building during the pendency of the proceedings arising out of the landlord's eviction petition under Section 21(1)(j) of the Karnataka Rent Act, the rights of the second respondent are subject to the rights of the original tenants conferred on them under Sections 27 and 28 of the Karnataka Rent Act. (See: *Sreenivasa Rao v. Narasimhiah*, [1972] 1 Mysore Law Journal p. 490).

Subsequent to this order of the High Court allowing the revision petition of the appellant, the appellant filed an application under Sections 27 and 28 of the Karnataka Rent Act before the Trial Court for permitting him to occupy the said shop premises which had been given by respondent No. 1 in the possession of respondent No. 2 as a tenant. The Trial Court allowed this application filed by the appellant and held that the appellant was entitled to get the said shop occupied by respondent No. 2 which admeasured 9' x 16' in place of the old one. On revision, by the impugned order, the High Court set aside the order passed in favour of the appellant, taking the view that the appellant was not entitled to claim the shop occupied by respondent No. 2 and respondent No. 1, the landlord, was only required to give to the appellant a tenement, that is, any tenement in the newly constructed

582

building. The appellant claims to be entitled to be put in

possession of the shop admeasuring 9' x 16' facing the Belepet Main Road occupied by respondent No. 2 whereas respondent No. 1 has offered to the appellant only a shop behind this shop admeasuring 11' 6" x 8' 6" which is not facing the main road, namely, the Belepet Main Road. It is this claim of the appellant which was accepted by the Trial Court but rejected by the High Court on revision. The order of the High Court is challenged before us in this appeal.

In order to appreciate the contentions raised by the appellant, we may set out the relevant provisions of the Karnataka Rent Act. Section 21 of the said Act protects tenants against eviction. The relevant portion of the said section runs thus:

"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:

X X X

(j) that the premises are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting a new building in place of the premises sought to be demolished:

X X X

Section 27 of the said Act runs thus:

"27. Tenant's right to give notice to the landlord of his intention to occupy tenement in new building.

Where decree for eviction has been passed by a Court

583

on the ground specified in clause (j) of the proviso to subsection (1) of Section 21 and the work of demolishing the premises and of the erection of a new building has been commenced by the landlord, the tenant may, within six months from the date on which he delivered vacant possession of the premises to the landlord, give notice to the landlord of his intention' to occupy the new building on its completion on the following conditions, namely:

(a) that he shall pay to the landlord the fair rent in respect of the building:

X X

The rest of the provisions of this Section are not material for our purpose.

Sub-section (1) of Section 28 of the said Act runs thus:

"28. Landlord to intimate the tenant, date of completion and tenant's right to occupy the new building.

(1) On receipt of notice from the tenant under section 27, the landlord shall, not less than three months before the date on

which the erection of the new building is likely to be completed, intimate the tenant the date on which the said erection shall be completed. On the said date, the tenant shall be entitled to occupy the building.

X X X
X"

In the case before us the decree against the appellant was passed under the provisions of Section 21(1)(j) of the Karnataka Rent Act. The appellant-tenant gave notice of his intention to occupy the tenement in the new building as required under the provisions of Section 27 of the said Act. This is the undisputed position. In view of this, under the provisions of Section 28 of the said Act, the appellant became entitled to occupy a tenement in the new building. The only question before us is as to what is the nature of the tenement to which he is entitled. There is nothing specific in this connection in the language of sub-section (1) of Section 28. However, a fair commonsense reading of the provisions of sub-section (1) of Section 28 would show that a tenant against whom eviction decree has been passed under Section

584

21(1)(j) and who has given notice as contemplated under Section 27 of the Act would be entitled to a tenement in the new building which could be said to be reasonably comparable to or to reasonably correspond to the tenement in respect of which the decree was passed. It appears to us that the learned Judge of the High Court who delivered the impugned judgment has based it on the consideration of a question which really was not material, namely, whether the appellant was entitled to get an identical shop in the new building, whereas the real question was as to whether he was entitled to a comparable shop. On the facts of the present case, it can be seen that the original shop occupied by him admeasured 17' x 9' and was facing the Belepet Main Road. The shop which respondent No. 1 has offered to the appellant was only admeasuring 11' 6" x 8' 6" and was not facing the Belepet Main Road but was on the rear of the new building. We fail to see how this shop can be considered as comparable to shop originally occupied by the appellant. Moreover, it is not as if comparable shops were not available. In fact, respondent No. 1 constructed several shops of 9' x 16' facing the Belepet Main Road, one of which he has given in a hurried manner, as set out earlier, to respondent No. 2, probably with a view to forestall the claim of the appellant. In these circumstances, we fail to see how the appellant could be compelled to accept the shop offered by respondent No. 1, which is in no way comparable. The provisions referred to earlier clearly suggest that, at the least, the appellant was entitled to a shop as reasonably corresponding to the original shop occupied by him as the circumstances would permit. It may be clarified here that it is not the appellant's case that he is entitled to an identical shop but that he was entitled to a comparable shop. It was submitted by Mr. Kaushik, learned counsel for respondent No. 2 that as far as the shop given to him is concerned, which is claimed by the appellant, he has already obtained tenancy of the said shop from respondent No. 1 and there is no reason why his tenancy should be disturbed. It is urged by him that there are a number of similar shops constructed by respondent No.1 landlord facing the Belepet main Road and there is no reason why his shop should be picked out for being given to the appellant. In our view, whatever might be the merits of this submission, it is not open now to respondent No. 2

to make this submission or resist the claim of the appellant. Respondent No. 2 was joined as a party in the revision petition disposed by a Division Bench of the Mysore High Court as set out earlier, which was between the same parties and which decision in which we have already discussed to in some detail earlier (reported in Sreenivasa Rao v. Narasimhiah, [1972] 1 Mysore Law Journal p. 490). In that case, the High Court held that the rights of respondent No. 2 are

subject to the rights of the original tenants conferred upon them under Sections 27 and 28. This decision has not been challenged by respondent No. 2 in any proceedings and has now become final as against him. In view of this, it is not open to him now to raise any of the contentions which he has sought to raise. It was open to him to make any submission which he wanted to make in that case or to file an appeal against the judgment in so far as it adversely affected him but he has not chosen to do so and it is not now open to him to raise these contentions. We are of the view that the appellant is entitled to be handed over the possession of the shop occupied by respondent No. 2.

Before parting with the case, we may mention that the learned counsel for the appellant referred to a couple of decisions given by High Courts holding that under provisions similar to those we have discussed earlier, a tenant is not entitled to identical premises in the newly constructed building, but in the view which we have taken, as set out earlier, these decisions are of no relevance.

In the result, the appeal is allowed with costs against respondent No. 1 and respondent No. 1 is directed to put the appellant in possession of the said shop occupied by respondent No. 2 as a tenant and respondent No. 2 is directed to hand over his shop for the aforesaid purpose. There will be no order as to costs as between the appellant and respondent No. 2.

G.N.
allowed.
586

Appeal al-