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SRI KEMPAIAH

v.

LINGAIAH AND ORS.

OCTOBER 31, 2001

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[R.P. SETHI AND S.N. PHUKAN, JJ.]

Rent Control and Eviction :

Karnataka Rent Control Act, 1961 :

C

Sections 21(1)(h) and 29(4)—Eviction petition—On ground of bonafide requirement—No evidence led to prove the same—Ground of default in payment of rent—Failure to show rate of rent—Held, the grounds of eviction not proved.

D

Section 50—Revisional power of High Court—Held, are wider than the powers conferred under section 115 CPC—Civil Procedure Code, 1908—Section 115.

Words and Phrases : 'Require'—Meaning of—In the context of Section 21(1)(h) of Karnataka Rent Control Act, 1961.

E

Appellant-landlord filed eviction petition on the ground of bonafide requirement and on the ground of arrears of payment of rent. During trial, the appellant himself did not appear as a witness and tried to prove the averments in the petition by production of PW 1, his son, as a witness. Rent controller allowed the petition on the ground of bonafide requirement but with regard to default in payment of rent, it observed that in the absence of any material regarding rate of rent self-testimony of PW 1 cannot be accepted.

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High Court allowed the revision petition holding that there was no bonafide requirement and the case was not a case where partial eviction could have been ordered; and that the appellant was not able to show as to what actual amount each tenent was liable to pay when he issued notice.

H

In appeal, this Court directed the respondents to pay arrears of rent. Respondents paid the rent as per their own calculation.

The appellant contended that findings of fact arrived at by the trial court could not be disturbed by the High Court in exercise of its revisional jurisdiction; and that the appellant landlord required the entire premises *bonafide*; and that since the respondents had failed to pay full arrears as per direction of this Court, they may be evicted in terms of Section 29(4) of the Karnataka Rent Control Act, 1961.

Dismissing the appeals, the Court

HELD : 1. Revisional powers of the High Court, under the Karnataka Rent Control Act, 1961 are wider than the powers conferred upon it under Section 115 of the Code of Civil Procedure. The High Court is not precluded to appreciate the evidence for arriving at the conclusion regarding the alleged reasonable *bonafide* requirement. There is no fault in the judgment of the High Court in so far as the scope of its powers under Section 50 of the Karnataka Rent Control Act, 1961 is concerned. [647-E-F]

Bhoolchand & Anr. v. Kay Pee Cee Investments & Anr., [1991] 1 SCC 343, relied on.

2. It may have been a wish or desire of the appellant to occupy the leased premises but he failed to prove the reasonable *bonafide* requirement as contemplated under Section 21(1)(h) of the Act. The word "require" used in clause (h) of sub-clause (1) of Section 21 of the Act implies something more than a mere wish or impulse or desire on the part of the landlord. Although the element of need is present in both the cases, the real distinction between "desire" and "require" lies in the insistence of the need. There is an element of "must have" in the case of "require" which is not present in the case of mere "desire". The ground mentioned in clause (h) of sub-section (1) of Section 21 of the Act emphasizes the genuineness of the requirement of the landlord. The terms "reasonable and *bonafide* requirement" are complementary and supplementary to each other in the context. [648-C-E]

Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde & Anr., [1999] 4 SCC 1, referred to.

3.1. The trial court, rightly held that "in the absence of any material regarding the rate of rent, the self-testimony of PW 1 cannot be accepted".

[647-H]

- A **3.2. The Memo of Calculations filed by the appellant himself shows that the respondents had made the payment of the rent as per their own calculations and even according to the appellant a meagre amount is stated to have not been paid. Without determining the quantum of rent, particularly when the appellant himself was not sure about the monthly rate of rent, the direction of the court stands substantially complied with not requiring the invoking of powers under Section 29(4) of the Act. [649-B-C]**
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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 15029-15033 of 1996.

- C From the Judgment and Order dated 9.8.96 of the Karnataka High Court in H.R.R.P. Nos. 121, 122, 123, 124, 125 of 1993.

S.N. Bhat for the Appellant.

E.C. Vidya Sagar for the Respondents.

- D The Judgment of the Court was delivered by

- E **SETHI, J.** The appellant-landlord prayed for eviction of the respondents-tenants on the ground of his *bonafide* personal requirement within the meaning of Section 21(1)(h) of the Karnataka Rent Control Act (hereinafter referred to as "the Act"). He submitted that he had a large family and was residing in a rented premises. He intended to convert the entire premises, in the occupation of the respondents-tenants and some other tenants, into one portion by making suitable alterations. It was further contended that the respondents were in arrears of payment of rent.

- F The Trial Court allowed the petition holding that the appellant required the premises for his *bonafide* use and occupation but in revision filed by the respondents-tenants, the order of the Trial Court was set aside vide the common order impugned in these appeals. The appellant submits that the High Court was not justified in allowing the revision petitions and setting aside the order passed by the Trial Court allegedly without looking into the fact that the entire premises in question was to be made as one unit as per plan Exhibit P-8. It is further contended that the High Court was not justified in holding that there existed discrepancies in the statements of the witnesses produced by the appellant or that he had no reasonable *bonafide* requirement of the premises in occupation of the respondent-tenants. The conclusions arrived at by the High Court are termed to be not based upon the evidence led in the case and the
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rejection of his prayer for eviction is causing great hardship to him. It is further submitted that the findings of fact arrived at by the Trial Court could not be disturbed by the High Court in exercise of its revisional jurisdiction.

Section 50 of the Act provides:

“50. *Revision* (1) The High Court may, at any time call for and examine any order passed or proceeding taken by the Court of Small Causes or the Court of Civil Judge under this Act or any order passed by the Controller under Sections 14, 15, 16 or 17 for the purpose of satisfying itself as to the legality or correctness of such order or proceeding and may pass such order in reference thereto as it thinks fit.

(2) The District Judge may, at any time call for and examine any order passed or proceeding taken by the Court of Munsiff referred to in sub-clause (iii) or clause (d) of Section 3 for the purpose of satisfying himself as to the legality or correctness of such order or proceeding and may pass such order in reference thereto as he thinks fit. The order of the District Judge shall be final.

(3) The costs of and incidental to all proceedings before the High Court or the District Court shall be in the discretion of the High Court or the District Judge, as the case may be.”

It has been held in *Bhoolchand & Anr. v. Kay Pee Cee Investments & Anr.*, [1991] 1 SCC 343 that the revisional powers of the High Court, under the Act, are wider than the powers conferred upon it under Section 115 of the Code of Civil Procedure. The High Court is not precluded to appreciate the evidence for arriving at the conclusion regarding the alleged reasonable *bonafide* requirement.

We do not find any fault in the judgment of the High Court in so far as the scope of its powers under Section 50 of the Act is concerned.

Regarding non payment of rent, the High Court has found that the landlord had not been able to show as to what actual quantum of amount each tenant was liable to pay when he issued the notice. Despite showing the total amount allegedly payable by the tenants, the landlord failed to show the rate of rent of the leased premises in occupation of each of the respondents-tenants. The Trial Court, therefore, rightly held that “in the absence of any material regarding the rate of rent, the self-testimony of PW1 cannot be accepted”. It

A may be noticed that the appellant himself did not appear as a witness in the case and tried to prove the averments made in the petition by production of PW1, his son, as his witness. The aforesaid finding of fact was not disturbed by the High Court.

B Regarding the reasonable *bonafide* requirement of the appellant, the High Court, on appreciation of evidence, found that he had no *bonafide* reasonable requirement, the case was not a case in which partial eviction could have been ordered and if the eviction is ordered, greater hardships would be caused to the tenants who were all proved to be poor people.

C Though it was pleaded that the appellant was under compulsion to vacate the premises under his occupation as his landlord was insisting to vacate the same, yet no evidence was led in that behalf. It may have been a wish or desire of the appellant to occupy the leased premises but he failed to prove the reasonable *bonafide* requirement as contemplated under Section 21(1)(h) of the Act. The word "require" used in clause (h) of sub-section (1) of Section 21 of the Act implies something more than a mere wish or impulse or desire on the part of the landlord. Although the element of need is present in both the cases, the real distinction between "desire" and "require" lies in the insistence of the need. There is an element of "must have" in the case of "require" which is not present in the case of mere "desire". The ground mentioned in clause (h) of Sub-section (1) of Section 21 of the Act emphasizes to the genuineness of the requirement of the landlord. The term "reasonable and *bonafide* requirement" are complementary and supplementary to each other in the context. Dealing with a similar provision under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, this Court in *Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde & Anr.*, [1999] 4 SCC 1 held that when the Legislature employed the two terms together the message to be gathered is that requirement must be really genuine from any reasonable standard. Where eviction is sought on the aforesaid ground, a duty is cast upon the court to satisfy itself with the alleged requirement of the landlord. Even in a case where the tenant does not contest or dispute the claim of the landlord and the tenancy is governed by the Rent Control legislation, the court is obliged to look into the claim independently and give a specific finding in that regard.

H Learned counsel for the appellant took us through the evidence produced in the case and we have also perused the order of the Trial Court as well as the High Court. We find no ground to interfere with the findings arrived at by the High Court vide the order impugned in these appeals.

Learned counsel for the appellant also drew our attention to the orders passed by this Court in IA Nos.6 to 10 on 30th April, 2001 and prayed that as the respondents have failed to comply with the directions, eviction against them be directed in terms of Section 29(4) of the Act. The submission has no substance in view of the Memo of Calculations filed by the appellant himself which shows that the respondents had made the payment of the rent as per their own calculations and even according to the appellant a meagre amount is stated to have not been paid. Without determining the quantum of rent, particularly when the appellant himself was not sure about the monthly rate of rent, we are satisfied that the court order dated 30th April, 2001 stands substantially complied with not requiring the invoking of powers under Section 29(4) of the Act.

There is no merit in these appeals which are accordingly dismissed without any order as to costs.

K.K.T.

Appeals dismissed.