H. Shiva Rao And Anr. vs Cecilia Pereira And Ors. on 12 November, 1986

Equivalent citations: AIR1987SC248, 1986(2)SCALE909, (1987)1SCC258, 1987(1)UJ15(SC), AIR 1987 SUPREME COURT 248, 1987 (1) SCC 258, 1987 SCFBRC 71, (1988) 1 MAD LW 21, 1987 (1) UJ (SC) 15, ILR 1987 KANT 450, (1987) 1 RENCR 273, (1987) 1 SCJ 73, (1987) 2 SUPREME 145, (1987) 1 KANT LJ 182, (1987) 2 RENCJ 359

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Bench: K.N. Singh, Sabyasachi Mukharji

JUDGMENT

Sabyasachi Mukharji, J.

1. This is an appeal by special leave from the judgment and order of the High Court of Karnataka dated 4th June, 1985. In order to appreciate the controversy, it is necessary to bear in mind some brief facts. In this case judgment in Section 48A. No 835 of 1965 was passed on 27th August, 1970 for possession of the premises situated in Pandavu village. 30th June, 1972 appeals to be the date of the decree for possession. On 15th February, 1980 an execution petition was filed by the respondent in the Court of Munsif, Mangalore, Karnataka. On 6th December, 1980, objections to the Execution Petition were filed. At that time Pandavu village where the suit premises in dispute was situated was not within the Mangalore Municipality and as such Karnataka Rent Control Act, 1961 (hereinafter called the Act) was not applicable in Pandavu village. On 18th July, 1983 the said Act was amended by Karnataka Act 17 of 1983 whereby all areas within the limits of the cities under the Karnataka Municipal Corporation Act and an area of 3 kilometers therefrom were brought under the purview of the Rent Control Act, that is to say Parts IV and V of the Rent Act were applicable to the area in question. A notification was issued on 27th October, 1983 under Section 4(1) read with Section 501(A) of Karnataka Municipal Corporation Act, according to which the whole area comprising Pandavu Town Municipality was included in Mangalore City Corporation. On 23rd June, 1984 an order was passed by the Munsif, Mangalore for issue of delivery of warrant. Thereafter on 20th July, 1984 a Civil Revision Petition was filed in the High Court of Karnataka. In the said petition an order was passed on 4th June, 1985. A Review Petition filed against this order was dismissed by the High Court on 16th July, 1985. That is how the appellant has come up in this appeal.

2. The appellant was a tenant in the premises where he was residing and was also running a tea shop. The only short question which arises in this appeal is whether in view of Sub-section (1) of Section 21 of the Act the decree was executable, because subsequent to the decree for possession the

Act has been made applicable to the area in question. The facts are noted before. The provisions of Sub-section (1) of Section 21 upon which arguments were advanced before us are as follows:-

> 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.

3. Thereafter the provision of Sub-section enumerates the grounds upon which an order might be made for recovery of possession, inter alia, including arrears of rent, bona fide requirement of the landlord etc., being the usual grounds upon which such applications were permissible in various Rent Acts in the country. It was contended that the order under revision should not have directed the petitioners to deliver possession because the decree vested certain rights upon the landlord. It is, therefore, necessary to appreciate the significance of the effect of Section 21 of the Act. It is, therefore, necessary to properly construe Sub-section (1) of Section 21 of the Act. In this connection one has to bear in mind the definition of tenant. Sub-section (1) of Section 21 provides that no order or decree shall be made in favour of the landlord against the tenant. Section 3(r) defines the tenant as a 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 farmed out or leased by a local authority. It has to be borne in mind that the definition of tenant under the Act does not include any person against whom a decree for possession has been passed or against whom the decree for execution for possession has been executed. The High Court was of the view that Sub-section (1) of Section 21 prohibits the court from making any order or decree for recovery of possession in favour of landlord irrespective of any other law of contract between the parties. The High Court concluded that any order of eviction passed before the coming into operation of Section 21 of the Act does not become in operative after coming into operation of the Sub-section. It only prevented passing of any order or decree for eviction after coming into operation of the Act except on the specified grounds mentioned in the proviso to Sub-section (1) of Section 21 of the Act. The Sub-section does not prevent the execution of the order after coming into operation of the Act, of any order decree passed before the coming into operation of the Act.

4. It was held by this Court in Mani Subrat Jain v Raja Ram Vohra 1980 (2) SCR 141 dealing with Section 2(1) of East Punjab Urban Rent Restriction Act which defines 'tenant' more or less in similar term as the present Act that in view of such a definition of the 'tenant' in Rent Control Act the fact that by the time the Act came into force a decree or any other process extinguished the tenancy under the general law of real property does not terminate the status of a tenant so long as he continues in possession and his possession cannot be terminated except as provided for in the Rent Control Act. It is well-settled legal principle that Rent Control legislations being beneficial to the tenant have to be given a liberal interpretation. While ordinarily substantive rights should not be held to be taken away except by express provision, or clear implication in the case of Rent Control Act, it being a beneficial legislation the provision which confers immunity to the tenant against

eviction by the landlord though prospective in form operates to take away the right vested in the landlord by a decree of a court which has become final, unless there is express provision or clear implication to the contrary.

5. It has to be borne in mind that Rent Control legislations are beneficial to the tenant and restrictive of the rights of the landlords-these legislations were passed to meet the problem of shortage of accommodation in cities and towns. Whether that is the best way to meet the problem of finding habitats for growing number of people is another iusse. Whether or not the problem could not be met by another way is also another question. Courts must find out the literal meaning of the expression in the task of construction. In doing so if the expressions are ambiguous then the construction that fulfils the object of the legislation must provide the key to the meaning. Courts must not make a mockery of legislation and should take a constructive approach to fulfil the purpose and for that purpose if necessary, iron out the creases.

6. Reliance was placed on behalf of the respondent on the decision of this Court in Konchada Ramamurty Subudhi and Anr. v Gopinath Naik 1968 (2) SCR 559. There the landlord had filed a suit for eviction of the respondent/tenant from the appellant's/landlord's house. The suit was dismissed by the trial court. In appeal, a compromise was entered into between the parties and a decree was passed in terms of the compromise. The compromise provided for the respondent's continuation of possession of the house for five years, but it enabled the appellant to execute the decree by evicting the respondent if the respondent failed to pay rent for any three consecutive months. When the appellant sought to evict the respondent, the latter claimed protection for eviction as a tenant under the Orissa House Rent Control Act. 1958, it was held that the facts that the appellant had filed a suit for eviction of the respondent and the compromise decree enabled him to execute the decree by evicting the respondent, showed the intention of the parties, which was the decisive test, was not to enter into the relationship of a landlord and tenant, in spite of the fact that the word 'rent' was used in the compromise. The respondent in this appeal cannot draw support from the said decision-there on the construction of the compromise decree the Court came to the conclusion about the intention of the parties taking into consideration the entire facts and circumstances of the case. In the instant appeal we are concerned with the finding out of the intention of the legislature in the view of the purpose of the legislation.

7. For the respondent it was submitted the provision of the section in question should not be read so literally as to rob the decree holder of his vested rights-permitting Peter to rob for feeding Paul was not social justice, it was urged. Where in a society of accute shortage of accommodation adjustment of rights between the parties is the purpose, we must ask ourselves two questions-does the argument of the appellant on the construction of the section further the purpose of the legislation, and secondly, whether the construction canvassed by the appellant does violence to the language or is contrary to the literal meaning. In our opinion the answers to the first question is in the affirmative and to the second in the negative. If so, in our opinion it must be so read, and the appeal must succeed.

8. In that view of the matter and in view of the facts and circumstances of this case, we are of the opinion that this appeal must be allowed and the judgment of the High Court must be set aside.

Accordingly the appeal is allowed with no order as to costs.