

## **Misrilal Parasmal vs H.P. Sadasiviah And Anr. on 20 March, 1964**

**Equivalent citations: AIR1965SC553, (1964)2MYSLJ~(SC), AIR 1965 SUPREME COURT 553**

**Author: J.R. Mudholkar**

**Bench: A.K. Sarkar, M. Hidayatullah, J.R. Mudholkar**

### **JUDGMENT**

J.R. Mudholkar, J.

1. The respondents are the landlords of a house situate on Mamulpet Road, Bangalore in a portion of which the appellant firm is running a cloth shop as a tenant. That house, bears three Nos. 135, 136 and 120. The portions numbered 135 and 136 are entirely in its possession. In, so far as the portion No. 120 is concerned, it is admittedly in a dilapidated condition, and the appellant is in possession or only one room therein. The respondents made an application in the court of the First Munsiff at Bangalore under Section 8(2) (ix) and (xii) of the Mysore House Rent and Accommodation Control Act 1951 (hereafter referred to as the Act) for the eviction of the appellant on the ground that the house was reasonably and bona fide required by them for carrying out the reconstruction which cannot be carried out without the house being vacated and also upon the ground that the appellant has alternative accommodation of his own for locating his shop. Their application was allowed by the Munsiff who granted two months' time to the appellant to vacate the premises and deliver possession to the respondents. An appeal preferred by the appellant before the District Court was dismissed. Thereupon it preferred an application for revision before the High Court under Section 17 of the Act. The main ground upon which the revision application was based was that the portion of the house bearing Nos. 135 and 1136 did not require reconstruction at all and that the object of the respondents in making the application for eviction was to reconstruct the building in such a way that the appellant would not be able to obtain the same kind of accommodation in the new building which it now has. The argument advanced in support of the contention was that under Section 8 (2) (ix) of the Act what the landlord has to establish was that it was essential for him to reconstruct the house and that the mere desire on his part to deconstruct a new building after demolishing the existing one is not a relevant circumstance. The decision of the Punjab High Court in Labbu Ram v. Ram Prakash, was relied upon on its behalf in support of this contention. The High Court, however, preferred the view taken in an earlier decision of the same High Court reported in Ram Chancier v. Kidar Nath, which had accepted the view taken by the Calcutta High Court in Bhulan Singh v. Ganendra Kumar Roy, . The argument advanced before the High Court is repeated before us.

2. We think that that was not a matter which was open to the appellants to raise in a revision petition under Section 12 of the Act before the High Court and consequently cannot be canvassed

before us. That section runs thus :

"(1) Except in respect of orders under Section 23, the High Court may, at any time, call for and examine the records relating to any decision given or proceeding taken by the District Judge or any order passed or proceeding taken by the court or the Controller under this Act, for the purpose of satisfying itself as to the legality or correctness of such decision, order or proceeding and may pass such order in reference thereto as it thinks fit."

Provided that the powers conferred by this sub-section shall not be exercisable in any case in which an appeal lies under Section 15, unless the Controller or the court or the District Judge appears :--

(i) to have exercised a jurisdiction, not vested in him or it; or

(ii) to have failed to exercise his or its jurisdiction so vested; or

(iii) to have acted in the exercise of his or its jurisdiction illegally or with material irregularity."

No doubt, Sub-section (1) of Section 17 would indicate that the High Court has wide powers in dealing with revision applications, but the proviso to it which was added by Act 22 of 1954, restricts the powers of the High Court in any case in which an appeal lies under Section 15 of the Act to the District Court. It is not disputed that the proviso applies to this case. Now, under the proviso it is clear that the powers of the High Court while dealing with an appeal (a revision?) from the order of the District Court are exactly the same as those conferred on it by Section 115 of the Code of Civil Procedure. That is to say, it can interfere with an order of the subordinate court only if there is an error pertaining to jurisdiction in that order. The High Court thus has no power to reverse the order of a District Court merely on the ground that it was vitiated by an error of law or upon the ground that a question of fact, however vital it may be, was erroneously decided by the District Court. This is how a similar provision under the East Punjab Urban Rent Restriction Act, 1949, was interpreted by this Court in *Neta Ram v. Jiwan Lal*, . In *Wora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai*, C. A. No. 470 of 1963 D/- 22-10-1963: the question which arose for consideration was whether the High Court has jurisdiction to set aside the order of the District Court in a matter arising under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, on the ground that the District Court had taken an erroneous view of the ambit of Section 12 (3) (b) of that Act and held that the requirements of that provision were complied with. Dealing with the question, Shah, J., who delivered the judgment of the Court, has observed:

"The High Court had, in exercise of its powers under Section 115 Code of Civil Procedure, no authority to set aside the order merely because it was of the opinion that the judgment of the District Court was assailable on the ground of error of fact or even of law ..... The High Court may exercise its powers in revision only if it appears that in a case decided by a subordinate court in which no appeal lies thereto the subordinate court has exercised a jurisdiction not vested in it by law or has failed to

exercise a jurisdiction so vested or has acted in the exercise of its jurisdiction illegally or with material irregularity." In support of this view the observations of the Privy Council in *Balakrishna Udayar v. Vasudeva Aiyar*, 44 Ind App 261 : (AIR 1912 PC 71) that Section 115 of the Code of Civil Procedure applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it, were relied upon. The provisions of Section 17 of the Act were considered by this Court in *A. Batchamain Sahib and Co. v. A.N. Channiah*, C. A. Nos. 452 and 487 of 1962 D/- 19-10-1962 (SC). In that case, the High Court had reversed the Order of the District Judge upon the ground that the words "said business" in Section 8 (3) (a) (ii) of the Act were wrongly interpreted by him. This Court reversed the High Court's decision and pointed out:

"The provision under which the two revisions were taken to the High Court has two parts. The first part authorises the High Court to call for the record of any case in order to satisfy itself as to the legality and propriety of the order passed by the courts below but there is a proviso to the effect that if there 'has been an appeal then the powers of the High Court are the same as are contained in Section 115 of the Code of Civil Procedure. The language of the proviso is almost identical with that section. The power of the High Court to interfere in revision under the Code of Civil Procedure has been decided by this Court as well as by the Privy Council and it has been held that where a subordinate court has jurisdiction to decide the question before it and it does decide it the High Court cannot reverse the decision in exercise of its revisional jurisdiction merely because the High Court is of opinion that the subordinate court has come to an erroneous decision on a question of law or fact."

This view has also been reiterated in *Hari Shanker v. Girdhari Lal*, AIR 1963 SC 698.

3. Mr. Ganapathy Iyer who appears for the appellant, however, contended that since the respondents in their application under Section 8 (3) (a) (ii) of the Act had stated that the accommodation in the house after reconstruction may not be suitable for the appellant clearly shows that the respondents wanted to reconstruct the house solely with the idea of keeping the appellant out of the premises and that this was sufficient to show their mala fides. Since it was essential for the respondents to establish their bona fides so as to be able to take advantage of the statutory provision, the question of jurisdiction was according to him involved and that therefore it was open to the High Court to go into that question. Sub-section (1) of Section 8 provides that notwithstanding anything contained in any agreement or law to the contrary, a tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or those of Section 7-C. Sub-section (2) provides that a landlord who seeks to evict a tenant in possession shall apply to the court for a direction in that behalf. This section empowers the Court to grant such permission if it is satisfied that one of the several circumstances set out in that subsection exists. One of those circumstances is set out in Clause (ix) of that section, which run thus :

"That the house is reasonably and bona fide required by the landlord for carrying out repairs or "reconstruction which cannot be carried out without the house being vacated;

Thus jurisdiction is conferred upon the Court to order eviction of the tenant upon its satisfaction as regards the bona fide requirement of the landlord to obtain possession of the house. Thus the condition 'which confers jurisdiction upon the Court is its satisfaction about the bona fide requirement of the landlord. If the Court is not satisfied about such requirement of the landlord it will have no jurisdiction to make an order with the aid of that clause. If, however, it says that it is satisfied it cannot be regarded as having committed an error pertaining to jurisdiction merely because it may have formed a wrong conclusion as to the bona fides of the landlord in requiring possession of the house. No illegal assumption of jurisdiction is involved in arriving at a wrong finding on the matter. The argument of Mr. Ganapathy Iyer therefore must be rejected. In the circumstances, we dismiss this appeal with costs.