Central Tobacoo Co., Bangalore vs Chandra Prakash on 23 April, 1969

Equivalent citations: 1969(2)UJ432(SC)

JUDGMENT

Mitter, J.

1. This is an appeal by special leave from a judgment and order of the Mysore High Court on a Revision Petition filed under Section 50 of the Mysore Rent Control Act, 1961.

2. The facts are as follows. The respondent before us was the landlord (hereinafter referred to as the petitioner) of the appellant and had filed a petition for eviction of the tenant on the ground of bonafide and reasonable requirement. He was a partner of Chandra Bhavan Boarding and Lodging situate close to the premises in which the appellant was a tenant. He appears to have been carrying on a flourishing business as a hotelier. Formerly there were two businesses which were separated in 1962 According to the petitioner the hotel building though constructed recently had no space which could be used as a godown and the materials required to be stored for the purpose of running the hotel were being kept in the godown of Bombay Chandra Bhavan, Avenue Road. The appellant has been carrying on business in this premises for over twenty years. It was in possession of the entire building but in terms of a compromise it gave up the first and second floors of the building which are now in the possession of the landlord. There was evidence to the effect that these two floors were being used by the landlord for purpose of the hotel. There was further evidence that one room which had been vacated some six months before the present ejectment proceedings by a tin smith was being utilised as an additional kitchen. The portion in possession of the appellant measured approximately 60' x 17'. The learned Munsif who beard the petition in the first instance was unable to hold that the petitioner bonafide required the space occupied by the tenant and he dismissed the petition. On appeal, the District Judge was not satisfied that the petitioner had placed sufficient material before the court to satisfy that the premises which were already in his occupation was not sufficient for him to serve as a godown. He however observed that:

> "When the landlord wants to occupy a part of his own building. ..... there is nothing intrinsically malafide about it, But it is not enough if the bonafides are proved. The petitioner must further prove the reasonable requirement. . . . ."

On the evidence he held that the landlord had failed to satisfy the court that he reasonably required the premises. In the result he dismissed the appeal.

3. Section 50 of the Mysore Rent Control Act, 1961 (here in after referred to as the 'Act') gives the

High Court power to call for and examine the records relating to any decision given or proceeding taken by the District Judge for the purpose of satisfying itself as to the legality or correctness of such decision, order or proceeding and it further empowers the High Court to pass such order as it thinks fit. The learned Judge of the High Court examined the evidence and differing from the finding at the District Judge came to the conclusion that the landlord had proved that he reasonably required the premises for his own use and occupation. The High Court held that the burden of proving that eviction would cause greater hardship on the tenant lay on him and took the view that he had not discharged that burden. Counsel for the appellant contended first that it was not open to the High Court in exercise of its revisionary jurisdiction to differ from the concurrent view of the two lower courts and, secondly, it had wrongly placed that burden of proof of greater hardship on the tenant and this vitiated its ultimate conclusion. As the revisionary powers are couched in very wide terms we are not inclined to accept the first contention. To appreciate the second point urged, it is necessary to note provisions of the Act which are as follows :

> "21 (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 :--
>
> (a) to (g) xx xx xx
>
> (h) that the premises are reasonably and bona fide required by the landlord for occupation by himself or any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust, that the premises are required for occupation for the purposes of the trust :
>
> XX AX XX"
>
> Sub-section (4) of this section provides that "No decree for eviction shall be passed on the ground specified in Clause (h) of the proviso to Sub-section (1) if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant greater hardship would be caused by pass the the decree than by refusing to pass it.
>
> If the Court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only.
>
> Explanation ....."

In dismissing the petition the learned Munsif remarked "The petitioner is admittedly in possession of certain portion of the building used as a godown or a store room. The respondents are not in possession of any other building If they are evicted, it is they that will be put to greater difficulty to store a large quantity of articles..... His (the petitioner's) business can still be run while the respondent has to close down his business. We cannot lose sight of the fact that it is very difficult to secure premises for business purposes in a business locality. Therefore I say that greater hardship is likely to be caused to the respondent if they are evicted than to the petitioner."

The learned District Judge held that in the view taken by him the question of comparative hardship did not arise for consideration and even if it did he was inclined to concur with the trial court on the facts of the case that greater hardship would be caused by passing a decree for eviction. He said:

> "The petitioner makes a vague statement that he requires the premises for purposes of godown. He is already in possession of godown. He has been managing with it and he does not place any material as to how his business suffers or to what extent it suffers if the possession of the premises is not restored to him. On the other hand, the respondent has deposed that his business would suffer a great set back if the premises are changed."

In discussing the question of hardship the learned Judge of the High Court started with the observation that:

> "the respondent has not produced satisfactory evidence to prove that greater hardship would be caused to him than to the landlord if an order of eviction is passed. The evidence on record is meagre to sustain the findings of the courts below on this point."

Relying on an earlier decision of the High Court in Madhadevappa v. Mallavva he proceeded to consider the evidence on the basis that "the burden of proving that greater hardship would be caused to the respondent-tenant was on the tenant" and ultimately held that he had not discharged that burden.

4. In the earlier case the Act which came up for consideration was the Bombay Rents Hotel and Lodging Houses Rates Control Act, 1947. Section 13(2) of that Act contained a provision very similar to Section 21 of the Mysore Act. The said section provided that :

> "No decree for eviction shall be passed on the ground specified in Clause (g) of Sub-section (1) if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it."

The learned Judge observed in that case that "a landlord was entitled to a decree for possession if he satisfied the court that he reasonably and bonafide required it for his own occupation. Section

13(1)(g) laid down the restriction on such right and Section 13(2) imposed a further restriction on his proprietary right and therefore that provision would have to be strictly construed." The court said further :

> "It must be remembered that the landlord is claiming possession of his own house, and that for his own use. Hence it is for the tenant to show (the burden being on him) that comparatively speaking greater hardship will be caused to him if a decree is passed than that would be caused to the landlord if no decree for possession is passed. It is for the party who contends that by passing a decree greater hardship w(sic) caused to him than what might be caused to the other side by refusing to pass a decree, to establish the circumstances justifying the rejection of the prayer for possession. "

We do not find ourselves able to accept the broad proposition that as soon as the landlord establishes his need for additional accommodation he is relieved of all further obligation under Section 21 Sub-section (4) and that once the landlord's need is accepted by the court all further evidence must be adduced by the tenant if he claims protection under the Act. Each party must adduce evidence to show what hardship would be caused to him by the granting or refusal of the decree and it will be for the court to determine whether the suffering of the tenant, in case a decree was made, would be more than that of the landlord by its refusal.

5. The whole object of the Act is to provide for the control of rents and evictions for the leasing of buildings etc. and Section 21 specifically enumerates the grounds which alone will entitle a landlord to evict his tenant. Clause (h) of Section 21 contains one of such grounds, namely, that the premises are reasonably and bonafide required by the landlord for occupation by himself. The onus of proof of this is certainly on the landlord, we see no sufficient reason for holding that once that onus is discharged by the landlord it shifts to the tenant making it obligatory on him to show that greater hardship would be caused to him by passing the decree than by refusing to pass it. In our opinion both sides must adduce all relevant evidence before the court; the landlord must show that other reasonable accommodation was not available to him and the tenant must also adduce evidence to that effect. It is only after shifting such evidence that the court must form its conclusion on consideration of ah the circumstances of the case as to whether greater hardship would be caused by passing the decree than by refusing to pass it.

6. Counsel for the respondent argued that a similar view as to the burden of proof in such a case was held by the courts in England. Our attention was drawn to the decision in Kelley v. Goodwin, 1947-1 All. E.R. 810 which turned on the interpretation of Section 3(1) of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 and schedule I, paragraph (h). Section 3(1) provided :

> " No order or judgment for the recovery of possession of any dwelling-house to which the principal Acts apply or for the ejectment therefrom shall be made or given unless the court considers it reasonable to make such an older or give such a judgment, and either-- (a) the court has power so to do under the provisions set out in sched. I to this Act. ....."

Schedule I provided:

> A court shall, for the purposes of Section 3 of this Act, have power to make or give an order or judgment for the recovery of possession of any dwelling house to which the principal Acts apply or for the "ejectment of a tenant therefrom without proof of suitable alternative accommodation (where the court considers it reasonable so to do) if.....(h) the dwelling-house is reasonably required by the landlord (not being a landlord who has become landlord by purchasing the dwelling-house or any interest therein after the eleventh day of July, 1931) for occupation as a residence for-- (i) himself .... Provided that an order or judgment shall not be made or given on any ground specified in para. (h) of the foregoing provisions of this schedule if the court is satisfied that having regard to all the circumstances of the case, including the question whether other ; accommodation is available for the landlord or the tenant, greater hardship would be caused by granting the order or judgment than by refusing to grant it.

7. The facts there were as follows. The landlord had let a Controlled dwelling-house to the tenant for the duration of the war: the tenancy having been determined by the landlord by notice to quit, the tenant became a statutory tenant of the premises. The landlord was living in one room and paving 30 Section a week rent, which was more than that paid to her by the tenant, who was earning about £l 000 a year. The tenant spent most of his time in London but the house was also occupied by his wife and daughter. He had adequate means to buy a house, but there was no evidence that he had attempted to do so or to find any other accommodation. The landlord required the premises for her own occupation, and had offered to let part of the house to the tenant after she had regained possession, but the offer was refused. Referring to its earlier decision in Smith v. Penny, 1946-2 All. E.R. 672 the court remarked "on the question of greater hardship, this Court has decided that the burden of proof that greater hardship would be caused - by granting the order than by refusing it is on the tenant." According to court the first question was whether there was evidence to support the finding that the landlord reasonably required the premises as a residence for herself. After a finding on this issue in favour of the landlord the next matter to be considered was whether there was evidence to come to the conclusion that there would be greater hardship in making the order than not making it. It was held on the evidence on a consideration of the relative position of the landlord and the tenant and for the fact that the tenant with means not only to rent a house but to buy one that the tenant had failed to discharge the burden which lay on him of proving that greater hardship would be caused by making an order for eviction than refusing to make it. The Court also observed that the landlord had not-been questioned at all about his means. It will be noted that both the County Court Judge and the Court of Appeal considered the entire evidence before coming to the conclusion that the tenant could not complain of greater hardship to him. It was argued before us that no exception ought to be taken to the dictum of the High Court Judge in this case which is supported by the earlier judgment based on a different but substantially similar Act and the dictum of the Court of Appeal in England.

8. In our view, the court was so obsessed with the question of onus that it failed to consider the entire evidence on the point. Sub-section (4) of Section 21 enjoins upon the court to consider all the

circumstances including whether "other reasonable accommodation was available for the landlord" as well as whether similar accommodation was available for the the tenant.

9. In this view of the matter, we allow the appeal and remand the matter to the High Court to come to its decision in terms of Sub-section(4) of Section 21 giving to the parties an opportunity of adducing further evidence if it so thinks fit. We also direct that the matter should be disposed of by the High Court within a month from the date on which the record is received by it. The costs of this appeal will abide by the decision of the High Court.