

M. Padmanabha Setty vs K. P. Papiiah Setty on 11 March, 1966

Equivalent citations: AIR 1966 SUPREME COURT 1824, 1967 SCD 184, 1967 2 SCJ 84, 1966 3 SCR 868, ILR 1966 MYS 1122

Bench: P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, J.C. Shah, S.M. Sikri

PETITIONER:

M. PADMANABHA SETTY

Vs.

RESPONDENT:

K. P. PAPIAH SETTY

DATE OF JUDGMENT:

11/03/1966

BENCH:

ACT:

Mysore House Rent and Accommodation Control Act (30 of 1951), s. 8(3)(a)(ii)-"Entitled to possession", meaning of.

HEADNOTE:

The appellant and the respondent were the tenant and landlord respectively, of the non-residential premises in dispute. The respondent's application under s. 8(3)(a)(ii) of the Mysore House Rent and Accommodation Control Act, 1951, for eviction of the appellant on the ground that the respondent required the premises for the purpose of shifting his business which he was carrying on in a rented building, was ordered, but the order was set aside by the appellate court. The High Court in revision set aside the appellate order and restored the order of eviction.

In appeal to this Court, it was contended that : (i) since the respondent was, within the meaning of s. 8(3)(a)(ii), "entitled to possession" of the building in his occupation he had no right to ask for the appellant's eviction; and (ii) the High Court should not have interfered in revision under s. 17 of the Act.

HELD (i) The High Court was right in ordering the eviction of the appellant from the premises.

The respondent, who was in occupation of a building as a tenant, and over which he had no absolute right of possession but only a right to remain in possession till

one of the conditions in s. 8(2) is satisfied. could not be said to be "entitled to possession" of that building. Those words are more akin to the right of possession which an owner has in respect of a building owned and occupied by him. [873 F-G]

(ii) In not following the decision of the High Court in Narayanappa v. Narasimhiah, [1962] Mys. L.J. 760, the appellate court acted with material irregularity and so the High Court could set aside the appellate order in revision. [874 B]

Thanappa Chetty v. Govindaswami Naicker, A.I.R. 1952 Mad. 553 overruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 756 of 1965. Appeal by special leave from the judgment and order dated April 9, 1965 of the Mysore High Court in Civil Revision Petition No. 1044 of 1962.

S. K. Venkatarangaiengar G. L. Sanghi, J. B. Dadachanji O. C. Mathur and Ravinder Narain, for the appellant. Mirle N. Lakshminaraynappa O. P. Malhotra, S. S. Khanduja Ganpat Rai, for the respondent.

The Judgment of the Court was delivered by Sikri, J. This appeal by special leave is directed against the judgment of the High Court of Mysore in Civil Revision Petition No. 1044 of 1962, filed under s. 17 of the Mysore House Rent and Accommodation Control Act, 1951 (Mysore Act 30 of 1951) hereinafter referred to as the Act—whereby the High Court set aside the order passed by the III Additional District Judge, Bangalore. The III Additional Judge had set aside the order of the First Munsiff, Bangalore, who had directed the eviction of the tenant from the premises in dispute.

The appellant before us, Padmanabha Setty, hereinafter referred to as the tenant, was the tenant of a non-residential premises No. 281, Old Tharagupet, Bangalore City. The tenant had installed some machinery in the premises. The respondent, K. P. Papiiah Setty, is the landlord. He had purchased the premises for his own use and occupation, namely, for the purpose of shifting his business which he was carrying on in a rented building to the premises in dispute. The landlord filed an application under s. 8(3)(a)(ii) of the Act for the eviction of the tenant on the ground that he required the premises in dispute for his own use and occupation. It is not necessary to give the other allegations made in the application as both the First Munsiff, Bangalore, and the III Additional District Judge, Bangalore, have found that the landlord required the premises for his bonafide use and occupation, namely, for shifting his business from the rented premises to the premises in dispute. The III Additional District Judge, however, held that under s. 8(3)(a)(ii) the landlord was not entitled to possession of the premises in dispute unless and until he was prepared to vacate the shops in which he was trading at the time. This finding of the learned Additional Judge was contrary to the decision of the Mysore High Court in S. G. Narayanappa and Bros. v. A. N. Narasimhiah⁽¹⁾. The landlord then filed a revision petition under s. 17 of the Act, and the High Court, following the decision in S.

G. Naravanappa and Bros. v. A. N. Narasimhiah(1) set aside the order of the Additional District Judge. The tenant having obtained special leave, the matter is now before us.

Two points are raised before us: (1) that the construction put upon s. 8(3)(a) (ii) of the Act by the Mysore High Court is erroneous and the construction put upon a similar provision by the Madras High Court in V. Thanappa Chetty v. Arcot Govindaswami Naicker(2) is correct; and (2) that the High Court was not right in setting aside the order of the Additional District Judge in a revision under s. 17 of the Act.

(1) [1962] Mys. L. J. 76).

(2) A.I.R, 1952 Mad. 553.

The Act was passed to regulate the letting of residential and non-residential houses and to control the rents of such houses and to prevent unreasonable eviction of tenants therefrom in the State of Mysore. The word "tenant" is defined as follows in sub-s. (9) of S. 2 of the Act:

" 'tenant' means any person by whom or on whose account rent is payable for a house and includes the surviving spouse or any son or daughter of a deceased tenant who had been living with the tenant in the house 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 house 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."

There is no doubt that the definition of the word "tenant" is wider than the ordinary meaning of the word and includes a person continuing in possession after the termination of the tenancy in his favour. Section 4 deals with the determination of fair rent and s. 5 with lawful increase of or addition to or reduction in fair rent. Section 6 prohibits the landlord from claiming or receiving anything in excess of fair rent or agreed rent. Section 7 deals with issue of receipts for rent. Sections 7A and 7-B deal with the right of tenant to deposit rent in certain cases and time for deposit and savings. Section 7-C deals with eviction of tenant in occupation of a house under an allotment order. Section 8 deals with eviction of tenants and provides that a tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of s.7-C or of this section. Sub-section (2) provides the circumstances in which a landlord would be entitled to seek eviction of a tenant in possession. For instance, a landlord is entitled to evict a tenant if the tenant has not tendered or paid the rent due by him in respect of the premises within the time fixed in the agreement of tenancy with the landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable; if he has transferred his right under the lease or sublet the entire premises or any portion thereof; or used the premises for the purpose other than that for which they were leased; or if the tenant has committed such acts of waste as are likely to impair materially the value or utility of the house; or if the tenant has without the landlord's consent in writing erected on the house or any portion thereof any permanent structure; or if the

tenant or any person residing with the tenant has been guilty of such acts and conduct as amounts to nuisance or annoyance to the adjoining or neighbouring occupiers or has been using the house or allowing the house to be used for immoral or illegal purposes; or 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; or that the house has not been used without reasonable cause for the purpose for which it was let for a continuous period of three months immediately preceding the date of application; or that the tenant, after the commencement of the Act, has built, acquired vacant possession of or been allotted a suitable house.

We have set out these conditions in detail because it would be relevant to consider whether in view of these conditions a tenant can be said to have a right to possession of the premises of which he is a tenant. Then we come to sub-s. (3) (a) which reads as follows:

"(3)(a) A landlord may, subject to the provisions of clause (d) apply to the court for an order directing the tenant to put the landlord in possession of the house-

(i) in case it is a residential building, if the landlord requires it for his own occupation or for the occupation of a member of his family and if he or such member, as the case may be, is not occupying a residential building of his own in the city, town or village concerned;

(ii) in case it is a non-residential building, if the landlord requires it for a business which he or a member of his family is carrying on and if for the purposes of the said business is not in occupation of a non-

residential building which is owned by or to the possession of which the landlord or such member, as the case may be, is entitled whether under this Act or otherwise."

It is not necessary to set out the Explanation or the first proviso but the second proviso is relevant and runs thus:

"Provided further that where a landlord has obtained possession of a house for his own use or occupation or for the use or occupation of a member of his family under this clause he shall not be entitled to apply again under this clause-

(ii) for possession of another non- residential building of his own, for himself or for the same member of his family, in case he has obtained possession of a nonresidential building."

The Madras High Court held in *V. Thannappa Chetty v. Arcot Govindaswami Naicker* (1) that the tenant under the Madras (1) A.I.R. 1952 Mad. 553 at p. 554-555.

Buildings (Lease and Rent Control) Act (Madras Act 15 of 1946) had a right to possession unless and until he was evicted under the provisions of the Madras Act, and, therefore, the landlord would not

be entitled to possession of a non-residential building if he was in possession of another non-residential building as a tenant, for in such a case he would be entitled to possession of those premises. The reasoning of Subba Rao, J., then a Judge of the High Court of Madras, was as follows:

"It will, therefore, be seen that the relationship between the landlord and tenant even in cases in which such relationship terminated under the provisions of the Transfer of Property Act, continues subject to the provisions of the Act. The rights of the tenants as well as the landlord are defined. The tenant under the Act has a right to possession unless and until he is evicted under the provisions of the Act. Under the provisions of the Act, a landlord will not be entitled to the possession of his non-residential buildings, if he obtains an order for eviction against another tenant in respect of another non-residential building, or if he is in possession of another non-residential building as a tenant; for in either case he is entitled to possession of that premises. The words used in the section, viz., "to the possession of which he is entitled" are wide and I do not see any reason why the latter category should be excluded from the express words used which in their ordinary meaning take in that class."

"It was argued that a statutory immunity is different from a right to possession. But in my view a statutory immunity is not inconsistent with a right to possession. The statutory immunity itself creates a right in him to continue in possession till he is evicted under the provisions of the Act."

The Mysore High Court dissented from this decision of the Madras High Court, and the reasoning of Ahmed Ali Khan, J., in *S. G. Narayanappa and Bros. v. A. N. Narasimhiah*(1) is as under:

"After a careful consideration of the arguments advanced before me, I am of the opinion that the provision of the Act on the strength of which a tenant may resist the landlord's claim to evict him cannot be described as a right to possession, but only as a statutory immunity from eviction, as observed by the Federal Court in the case *Kai Khushrao v. Bai Jerbai* (2). It appears that his Lordship in the Madras case distinguished the said observations in the said case of the Federal Court by stating that a statutory immunity is not inconsistent with the right to posses-

(1)[1962] Mys.L.J.76 (2) A. I. R. 1949 F. C. 124 (128).

sion and that such immunity may itself create a right. The right to immunity from eviction involves a negative element in it. In other words it restricts the right of possession of the landlord. Hence, it cannot be construed to have an effect of creating a right of possession to a tenant. Though the statutory immunity from eviction may not be consistent with the right to possession, the fact remains in view of the inherent element involved in both the rights, that the immunity from eviction cannot be equated to the right to possession. Therefore, with great respect, I am of the view that we will not be justified in adopting the strict view while interpreting the words which occur in s. 8(3) (a)(ii) of the Mysore House Rent and Accommodation Control Act, as taken in the Madras ruling cited above."

In our opinion, with great respect to Subba Rao, J., Ahmed Ali Khan, J., arrived at the correct conclusion. A tenant who can be evicted under the conditions prescribed in s. 8(2) of the Act cannot be said, in our view, to be entitled to the possession of the premises of which he is a tenant. No doubt he cannot be evicted till one or more of the conditions prescribed by the section are fulfilled, but it is difficult to equate his right to stay in the premises till he is evicted to an entitlement of the possession of the premises. Section 8(3)(a)(ii) deals with two types of cases; first where the landlord is in occupation of a non- residential building which is owned by him, and secondly, a non-residential building of which he is in occupation not as a landlord but otherwise. The object of the Act is to prevent unreasonable evictions of tenants. Can it be said that the Legislature is considering it to be unreasonable for a landlord to shift to his own premises while he is in occupation of tenanted premises over which he has not an absolute right of possession but only a right to remain in possession till one of the conditions in s. 8(2) is satisfied, and over one of which he has no control. For instance, the landlord may require the premises for repairs or reconstruction or the neighbours may complain that the tenant is guilty of nuisance or annoyance, or the landlord may think that the tenant has committed some acts of waste as are likely to impair materially the value or utility of the house. If any of these conditions is proved, he is liable to be evicted. In our view, in the context the words "entitled to possession" have a more positive content and are more akin to the right of possession which an owner has in respect of the building owned and occupied by him. In conclusion we are of the view that the High Court was right in holding that the Additional District Judge erred in not following the decision of the Mysore High Court in *S. G. Narayanappa and Bros. v. A. N. Narasimhiah*.(1) (1) (1962) Mys. L.J. 760.

M12Sup.C.I.166-10 There is no force in the second point raised by the learned counsel of the tenant. It is true that the jurisdiction of a High Court under provisions similar to S. 17 of the Act is limited, but we cannot say that the High Court was wrong in holding that the Additional District Judge acted with material irregularity in not following the decision of the Mysore High Court when that decision had been rendered in a case arising from an earlier order of the same Additional District Judge. It may be that this decision was not pointed out to the Additional District Judge but we cannot, in exercise of our jurisdiction under Art. 136 of the Constitution, say that the High Court should not have set aside the order of the Additional District Judge on this ground.

In the result the appeal fails and is dismissed with costs. The tenant is granted two months' time from today to vacate and deliver possession of the premises in dispute to the landlord.

Appeal dismissed.