Supreme Court of India
Shri Lakshmi Venkateshwara ... vs Syeda Vajhiunnisa on 3 March, 1994
Equivalent citations: 1994 SCC (2) 671, JT 1994 (2) 175
Author: S Mohan
Bench: Mohan, S. (J)

PETITIONER:
SHRI LAKSHMI VENKATESHWARA ENTERPRISES

Vs.

RESPONDENT:
SYEDA VAJHIUNNISA

DATE OF JUDGMENT03/03/1994

BENCH:
MOHAN, S. (J)
BENCH:
MOHAN, S. (J)
MUKHERJEE M.K. (J)

CITATION:
1994 SCC (2) 671 JT 1994 (2) 175
1994 SCALE (1)789

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by MOHAN, J.- The short facts leading to civil appeal are as under. The respondents executed a lease agreement on December 6, 1971 for a period of 32 years. The subject- matter of demise was a vacant site for the purpose of erection of cinema theatre by the tenant, appellant. He was put in possession. Thereupon, he applied for a licence for construction. The construction was not completed within a period of two years. The appellant made an application for renewal of licence. On objection by the respondents, the renewal was not granted. As a result, the construction of cinema theatre was not completed. The appellant defaulted in payment of arrears of rent. Therefore, the respondents filed an application under Section 21(1)(a) of the Karnataka Rent Control Act, 1961 (hereinafter referred to as 'the Act') and for bona fide requirement under Section 21(1)(h) of the Act. Pending the eviction proceedings, respondents filed an application under Section 29(1) and (4) of the Act because the appellant had not paid the rent in spite of notice.

+ From the Judgment and Order dated January 1, 1991 of the Karnataka High Court in C.R.P. No. 10618 of 1990

2. On August 18, 1990, the trial court passed an order on I.A. VI directing the appellant to pay the an-ears of Rs 3,69,000. For compliance of this, thirty days' time was granted. Inasmuch as the said amount was not paid on October 25, 1990, an order of eviction was passed. Against this order, Civil Revision Petition No. 725 of 1991 was preferred to the High Court of Karnataka. The said revision came to be dismissed on January 29, 1991. Hence, this civil appeal.

3. The only point that is argued by Mr N. Santosh Hegde, learned counsel for the appellant is that during the subsistence of the contractual tenancy for the period of 32 years under the registered deed, it is not open to the respondents/landlords to seek eviction under the Karnataka Rent Control Act, 1961. No doubt, Section 21 of the Act says 'notwithstanding'. But this does not mean that provision can be availed of by the respondents since this is the beneficial legislation in favour of the tenant. In support of this submission, reliance is placed on the Full Bench judgment of Karnataka High Court reported as Sri Ramakrishna Theatres Ltd. v. General Investments & Commercial Corpn. Ltd.1

4. This stand is opposed by the learned counsel for the respondents, Shri M. Qamaruddin. He would submit that insofar as Section 21 of the Act clearly postulates even the abrogation of the 'contract' and the statute, namely, Karnataka Rent Control Act, 1961 takes over in such a situation, the parties are governed only by the provisions of the Act. The civil court cannot have jurisdiction in view of the non-obstante clause contained under Section 21.

5. This Court in V. Dhanapal Chettiar v. Yesodai Ammal2 categorically laid down that contractual tenancy will lose its significance in view of the Rent Control Act. In that case, even the notice under Section 106 of the Transfer of Property Act was held to be a surplusage. It is, therefore, urged that if a landlord could found an action on any one of the enumerated grounds under Section 21 of the Act, the action would be maintainable notwithstanding the existence of a contractual lease.

6. Having regard to the above arguments, the only question that arises for our consideration is, whether during the subsistence of a contractual tenancy, it is open to the landlord to resort to proceedings under Rent Control Act?

7. We must first refer to Section 21 of the Act.

> "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:
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> 1 ILR 1992 Kant 1296 2 (1979) 4 SCC 214 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: [Clauses (a) to (p) are omitted as not necessary.

Clauses (a) to (p) enumerate the grounds enabling the landlord to recover possession of the premises from the tenant.]"

(emphasis supplied)

8. A careful reading of the said section shows that if anything contrary is contained in any contract that cannot prevail. The effect of non-obstante clause can be gathered from the Dominion of India v. Shrinbai A. Irani3. In this case, Bhagwati, J. speaking for the Court held as under "While recognising the force of this argument it is however necessary to observe that although ordinarily there should be a close approximation between the non-obstante clause and the operative part of the section, the non-obstante clause need not necessarily and always be co-extensive with the operative part, so as to have the effect of cutting down the clear terms of an enactment. If the words of the enactment are clear and are capable of only one interpretation on a plain and grammatical construction of the words thereof a non-obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non-obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the Legislature by way of abundant caution and not by way of limiting the ambit and scope of the operative part of the enactment."

9. In Municipal Corpn., Indore v. Ratnaprabha4 scope of Section 138(b) of the Madhya Pradesh Municipal Corporation Act was dealt with. That section reads as under:

"The annual value of any building shall notwithstanding anything contained in any other law for the time being in force be deemed to be the gross annual rent at which such building, together with its appurtenances and any furniture that may be let for use or enjoyment therewith might reasonably at the time of assessment be expected to be let from year to year, less an allowance of ten per cent for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross annual rent." (emphasis supplied)

10. In Chettiar case2 it was held at page 222 as under : (para 11) "It is true that the Rent Act is intended to restrict the rights which the landlord possessed either for charging excessive rents or for evicting tenants. But if within the ambit of those restricted rights he makes out his case it is a mere empty formality to ask him to determine the contractual tenancy before institution of a suit for eviction. As we have 3 AIR 1954 SC 596: (1955) 1 SCR 206 4 (1976) 4 SCC 622: AIR 1977 SC 308 pointed out above, this was necessary under the Transfer of Property Act as mere termination of the lease entitled the landlord to recover possession. But under the Rent Control Acts it becomes an unnecessary technicality to insist that the landlord must determine the contractual tenancy. It is of no practical use after so many restrictions of his right to evict the tenant have been put. The restricted area under the various State Rent Acts has done away to a large extent with the requirement of the law of

contract and the Transfer of Property Act. If this be so why unnecessarily, illogically and unjustifiably a formality of terminating the contractual lease should be insisted upon?"

Again at page 227, it is held : (para 16) "Quoting from Manujendra case5 it was said at page 911 : (SCC p. 109, para 8) `We are inclined to hold that the landlord in the present case cannot secure an order for eviction without first establishing that he has validly determined the lease under the T.P. Act.' Why this dual requirement? Even if the lease is determined by a forfeiture under the Transfer of Property Act the tenant continues to be a tenant, that is to say, there is no forfeiture in the eye of law. The tenant becomes liable to be evicted and forfeiture comes into play only if he has incurred the liability to be evicted under the State Rent Act, not otherwise. In many State statutes different provisions have been made as to the grounds on which a tenant can be evicted and in relation to his incurring the liability to be so evicted. Some provisions overlap those of the Transfer of Property Act. Some are new which are mostly in favour of the tenants but some are in favour of the landlord also. That being so the dictum of this Court in Rai Brij Raj case+ comes into play and one has to look to the provisions of law contained in the four comers of any State Rent Act to find out whether a tenant can be evicted or not. The theory of double protection or additional protection, it seems to us, has been stretched too far and without a proper and due consideration of all its ramifications."

11. Therefore, this authority clearly holds that the provisions of Rent Control Act would apply notwithstanding the contract. However, what is sought to be relied on by the learned counsel for the appellant is the Full Bench judgment of Karnataka High Court in Sri Ramakrishna case'. In that ruling the decision of this Court in Dhanapal Chettiar case2 is sought to be distinguished as one relating to the necessity for issuance of notice under Section 106 of the Transfer of Property Act. On that basis, the other ruling of this Court namely Firm Sardarilal Vishwanath v. Pritam Singh6 is also 5 Manujendra Dutt v. Purnendu Prosad Roy Chowdhury,(1967)ISCR475:AIR 1967SC1419 + Rai Brij Raj Krishna v.S.K.Shawand Brothers,1951SCR 145:AIR 1951SC 115 6 (1978) 4 SCC 1: AIR 1978 SC 1518 distinguished. However, the Full Bench chose to rely on Modem Hotel v. K. Radhakrishnaiah7 wherein the term 'lease' was excluded from the ambit of the said Act.

12. We are of the view that the statement of Full Bench will have no application to this case. The appellant filed OS No. 1690 of 1990 on the file of City Civil Court, Bangalore in which he challenged the decree for eviction and for declaration. He also prayed for injunction. The suit was contested by the respondents. In that case, the plea of jurisdiction was also raised. The trial court dismissed the suit observing that it had no jurisdiction. For reasons best known, the appellant did not prefer any appeal or revision against the dismissal. Therefore, that judgment has become conclusive and binding between the parties. Hence, the effect of Section 21 of the Act on the contract entered into between the parties need not be gone into.

13. In Sardari Lal case6 it was held at page 1523 as under : (SCC p. 9,para 15) " Analysing the position it clearly emerges that the ratio in K.K.B. Capadia case8 is that where the lease determines by efflux of time and the tenant continues in possession under the protection of the Rent Restriction Act he acquires a status of irremovability unless there is something to show that he is a tenant holding over, mere payment of rent 'without necessary animus not being sufficient. Such a tenant

for the sake of convenience is described as a statutory tenant. It would not be open to such a tenant to urge by way of defence, in a suit for ejectment brought against him under the provisions of the Rent Restriction Act, that by acceptance of rent a fresh tenancy was created which had to be determined by a fresh notice to quit. This ratio is neither departed from nor controverted in any subsequent judgment of this Court."

14. Further, it is not correct to hold that the Rent Control Act is a beneficial enactment only to the tenant.

15. This is a case where the tenant in spite of the specific direction to deposit Rs 3.69 lakhs did not do so. The High Court had clearly pointed out that even at the revisional stage, he had not deposited the amount.

16. Accordingly, we conclude that there are no merits in this appeal which stands dismissed with costs. 7 (1989)2SCC686:AIR1989SC1510 8 Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden, AIR 1949 FC 124: 1949 FCR 262: 51 BLR 874