

Supreme Court of India

G.Giriyappa vs Anantharail Parekh on 7 April, 1994

Equivalent citations: 1994 AIR 2307, 1994 SCC (3) 489

Author: M M.K.

Bench: Mukherjee M.K. (J)

PETITIONER:

G. GIRIYAPPA

Vs.

RESPONDENT:

ANANTHARAIL PAREKH

DATE OF JUDGMENT 07/04/1994

BENCH:

MUKHERJEE M.K. (J)

BENCH:

MUKHERJEE M.K. (J)

MOHAN, S. (J)

CITATION:

1994 AIR 2307

1994 SCC (3) 489

JT 1994 (3) 214

1994 SCALE (2) 640

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by MUKHERJEE, J.- The landlord-applicant in an application for eviction are the appellants in these three appeals. Facts leading to the filing of the appeals are as under.

2. Gangadharappa, the father of the appellants, was the owner of a vacant site bearing No. 207, situated at Srinivas Mandir Road, Balepet Cross, Bangalore. He executed a deed in favour of Respondent 1 herein leasing the said site for a period of 20 years commencing from 6-1-1966. The lease deed provided, inter alia, that the lessee would be entitled to construct a building at his own expense and use it for himself and for others at his instance. It further provided as follows :

"The lessee may let or sub-let any portion of the whole of the premises to anybody whomsoever he likes. But the lessee shall deliver possession of the same to the lessor or to his successor-in-interest at the expiry of the lease."

3. Pursuant to the said lease Respondent 1 took possession of the site, constructed a building thereon and inducted Respondents 2 to 8 herein as his tenants (hereinafter referred to as the 'sub-tenants'). Before the period of lease expired Gangadharappa died leaving behind the appellants as his heirs.

4. After the expiry of the period of lease, the appellants served notices upon Respondent 1 and the sub-tenants, calling upon them to hand over vacant possession of the demised premises; and on their failure to do so filed an application in the Court of Small Causes, Bangalore for recovery of possession on grounds mentioned in clauses (d),

(f), (h), (j) and (p) of Section 21(1) of the Karnataka Rent Control Act, 1961 ('Act' for short). On consideration of the materials placed before it, the court recorded a finding that the ground referred to in clause (p) of said section was only made out as the landlords had been able to prove that Respondent 1 had acquired another suitable building and shifted there to carry on his own business. As according to the court, 'tenant', as defined in Section 3(r) of the Act, did not include a person inducted by him after the coming into force of the Act it held that on proof of the above ground not only Respondent 1 but the other respondents also were liable to be evicted in view of Section 30 of the Act. Resultantly, the court passed an order directing eviction of all the respondents from the premises. Aggrieved thereby Respondents 2, 3 and 4 herein filed three separate revision petitions in the High Court. On an analysis of the various provisions of the Act as applicable to the facts of the case, the High Court allowed the revision petitions and dismissed the application for eviction with the following findings :

"I therefore hold that under the provisions of the Karnataka Rent Control Act, eviction of the tenant and sub-tenant can be claimed if the landlord establishes that the tenant has unlawfully sub-let the premises to the sub-tenant. A case of lawful sub-letting will not attract Section 21(1)(f) of the Act as a ground for ordering the eviction of the tenant and the sub-tenant. Having regard to the provisions of Section 21(1)(f) read with Section 21(3) and Sections 22 and 23 of the Act it must be held that a sub-tenant, who is inducted by a tenant with the prior written consent of the landlord is a lawful sub-tenant. Such a sub-tenant becomes a deemed tenant when the interest of the tenant is determined for any reason. The protection afforded to a deemed tenant under Section 22 of the Act is equally available to a lawful sub-tenant inducted after coming into force of the Act, upon determination of the interest of the tenant in the premises. Such a lawful sub-tenant can therefore seek the protection of the Act including those under Section 21 of the Act. In the instant case, therefore, the learned Judge erred in law in holding that since the ground for the eviction of the tenant was made out under Section 21(1)(p) of the Act, the sub-tenant could also be evicted having regard to the provisions of Section 30 of the Act. If the tenants acquired the status of a deemed tenant upon termination of the interest of the tenant in the premises, they acquired an independent title to such premises, and therefore Section 30 was inapplicable to their cases."

5. To comprehend the rival contention of the parties as put forward before us it will be pertinent to refer to some of the provisions of the Act. Section 3(r) defines 'tenant'; and, so far as it is relevant for our purposes, means any person by whom or on whose account rent is payable for a premises and includes some of the members of his family (as mentioned therein) but does not include a person placed in occupation of a premises by its tenant. Section 21(1), in its various clauses, enumerates the grounds on which only a tenant can be evicted; and clause (f) refers to unlawful subletting by the tenant. Section 22 runs thus :

"Where the interest of a tenant of any premises is determined for any reason, any sub-tenant to whom the premises or any part thereof has been lawfully sub-let before the coming into operation of this Act shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued." (emphasis supplied) and Section 23 reads as under:

"(1) Notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this Part, for any tenant to sub-let whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein;

(2) Any person who contravenes the provisions of sub-section (1), shall, on conviction, be punished with fine which may extend to one hundred rupees."

(emphasis supplied) The other section which is material for our purposes is Section 30 which is extracted below :

"Notwithstanding anything contained in any other law, where the interest of the tenant in any premises is determined for any reason whatsoever and any order is made by the court under this Act for the recovery of possession of such premises the order shall, subject to the provisions of Section 21, be binding on all persons who may be in occupation of the premises and vacant possession thereto shall be given to the landlord by evicting such persons therefrom:

Provided that nothing in this section shall apply to any person who has an independent title to such premises."

6. It has been submitted on behalf of the appellants that having regard to the admitted fact that the tenancy in favour of Respondent 1 was created after the Act came into force, Section 22 cannot have any manner of application so as to entitle the sub-tenants to claim an independent right as 'deemed tenants' and, for that matter, protection from eviction when the tenant is liable to eviction on any of the grounds mentioned in Section 21(1). In other words, according to the appellants, a sub-tenant, even if lawfully inducted, after coming into force of the Act, is liable to be evicted in view of Section 30 of the Act. The High Court was, therefore, not justified in observing that the protection afforded to a deemed tenant was equally available to such a lawful sub-tenant.

7. In repelling the above contentions, it has been submitted on behalf of the respondents that the Act has been brought on the statute book as a piece of social legislation meant mainly to protect the tenant from frivolous eviction and, therefore, the provisions of the Act should be interpreted liberally to subserve the interest of the tenants to the extent possible; and in support of the contention reliance is placed on the judgments of this Court in *Kewal Singh v. Lajwantil and Gian Devi Anand v. Jeevan Kumar*². It has next been argued that when considered in the light of the propositions enunciated in the above cases, the High Court was fully justified in extending the protection of a 'deemed tenant' under Section 22 to a subtenant lawfully inducted after the coming into force of the Act in view of Section 23. Having given our anxious consideration to the relevant provisions of the Act, we are inclined to accept the contentions of the appellants in preference to those of the respondents.

8. Unlike the Delhi Rent Control Act and Rent Acts of some other States, the Act with which we are concerned has not defined 'tenant' to include a 'sub-tenant'. But then, the legislature thought it fit to protect the sub-tenants who were lawfully inducted before coming into operation of the Act by giving them the status of a 'tenant' by the deeming provisions of Section 22. Section 23(1), however, expressly prohibits a tenant from inducting a sub-tenant after the coming into force of the Act except in accordance with a contract permitting such sub-letting. In case of any sub-letting in breach of the above provision the tenant is liable not only for eviction under Section 21(1)(f) but also for conviction under Section 23(2) of the Act. On a conspectus of the above two sections it is, therefore, patently clear that they have been enacted for distinct and different purposes. While by Section 22 the legislature has conferred certain rights to lawful subtenants, by Section 23 it has curtailed the right of sub-leasing. By reading of Sections 22 and 23 it appears to us that the policy of the Act is to discourage sub-letting as seen from Section 23. However, where sub-tenants have been inducted lawfully prior to the coming into force of the Act, they are afforded certain protection under the Act. As these conclusions are inevitable from the plain language of the statute, the High Court was not justified in dovetailing Section 23(1) into Section 22 to equate the status of a sub-tenant inducted before the coming into force of the Act with that of the one inducted after coming into operation of the Act on the basis of assumed intention of the legislature in enacting the Act and liberal construction of the provisions thereof.

9. It is, of course, true that the Act is a piece of social legislation enacted primarily to protect the interest of the tenants as observed in the case of *Kewal Singh*¹ and, therefore, needs liberal construction. But then liberal 1 (1980) 1 SCC 290: (1980) 1 SCR 854 2 (1985) 2 SCC 683: 1985 Supp 1 SCR 1 construction has to flow from the language used for, an unnatural and unreasonable interpretation of words contained in an enactment is impermissible. As the language used in the relevant sections of the Act with which we are concerned herein does not permit the liberal interpretation given by the High Court, the case of *Kewal Singh*¹ does not further the cause of the appellants. In the case of *Gian Devi*² this Court had to answer the question whether tenancy of commercial premises, like that of residential premises, was also heritable under the Delhi Rent Control Act. In absence of any provision in that Act governing the same, the Court answered the question on the basis of the intention of the legislature. This judgment has also no manner of application in the facts of the instant case as we have found the relevant provisions of Act transparent and unequivocal. Besides, if we go by the intention of the legislature alone, it would not

support the case of the respondents herein for if really the legislature intended to club the subtenants inducted before and after the coming into force of the Act as 'deemed tenants' they could have done so by simply omitting the words 'before coming into operation of this Act' in Section 22.

10. Of course, the High Court is right in observing that a case of lawful sub-letting in accordance with Section 23 will not attract Section 21(1)(f) of the Act as a ground for eviction of the tenant and for that matter the subtenant, but the High Court failed to notice that the same principle will not apply to other grounds envisaged under Section 21 (1). While on this point it will be pertinent to refer to the provisions of Section 30 of the Act, quoted earlier. The said section clearly envisages that if an order is made by the court for recovery of possession in accordance with Section 21 of the Act it will be binding on all persons who may be in occupation of the premises and vacant possession thereof is to be given to the landlord by evicting them unless any of them can claim an independent title to such premises. Thus, if a tenant is liable to eviction on any of the grounds mentioned in Section 21(1) of the Act, a sub-tenant lawfully inducted by him before coming into force of the Act may not be ipso facto liable to be evicted thereby in view of his acquiring an independent right as a 'deemed tenant' under Section 22 of the Act; but lawful sub-tenant inducted after coming into force of the Act would be so liable as his occupation is coterminous with that of the tenant, in absence of any such, 'deemed right' and privity between him and the landlord. As Respondents 2 to 8 clearly fall under the latter category they are liable to be evicted pursuant to the order of eviction made against Respondent1.

11. For the foregoing discussion we allow these appeals, set aside the order of the High Court and restore that of the trial court. However, there will be no order as to costs.