

A

JOHN MATHAI ABRAHAM

v.

M/S. BRITISH PHYSICAL LAB. INDIA LTD.

OCTOBER 30, 2001

B

[SYED SHAH MOHAMMED QUADRI AND S.N. PHUKAN, JJ.]

*Karnataka Rent Control Act, 1961 :*

C

*S. 21(1)(h)—Landlord holding undivided share in building—Eviction of tenant sought on ground of bona fide requirement—Rent Controller ordering eviction—High Court allowing revision of tenant holding that the building being a huge one landlord's claim that he cannot pursue his professional activities in the premises was not substantiated—Held, being in occupation of a portion of a building and holding a fractional undivided share therein is no bar to invoke provision of s.21(1)(h)—Order of High Court set aside and that of Rent Controller restored.*

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5997 of 1999.

From the Judgment and Order dated 22.2.99 of the Karnataka High Court in H.R.R.P.No. 1256 of 1995.

E

M.S. Ganesh, S. Muralidhar and S. Vallinayagam for the appellant.

L. Nageshwar Rao, P.S. Sudheer, Jayanth Muth Raj, for K.K. John & Co. for the Respondent.

F

The following Order of the Court was delivered :

G

This appeal brings under challenge the validity of the order of the High Court of Karnataka at Bangalore in H.R.R.P. No. 1256 of 1995 on February 22, 1999 allowing the revision filed by the respondent (respondents 1 to 3 are avatars of the same company and are referred to as, 'the respondent') and dismissing the eviction petition filed by the appellant.

H

The appellant is the landlord of premises being number No. 12/1, Primrose Road, Bangalore (for short, 'the premises') of which the respondent is tenant on a monthly rent of Rs. 1800. The appellant filed eviction petition seeking eviction of the respondent on two grounds but only one ground under

Section 21(l)(h) of the Karnataka Rent Control Act, 1961 (for short 'the Act') survives—he reasonably and *bona fide* requires accommodation for his personal occupation, both for residence as well as for professional requirements. The respondent contested the petition denying the personal requirement of the appellant and taking the plea that the house in occupation of the appellant being a big house has enough accommodation for his residence and his professional activities.

On considering the evidence placed on record, the learned Rent Controller found that a case under Section 21(l)(h) was made out and ordered eviction of the respondent on July 5, 1995. Aggrieved by the said order of the learned Rent Controller, the respondent filed revision before the High Court which was allowed by the impugned order. It is against that order that the appellant is in appeal before us, by special leave.

Mr. M.S. Ganesh, learned senior counsel for the appellant, has contended that the appellant initiated proceedings for eviction of the respondent during the life time of his father and it had become impossible for him to get along with his step mother; the ground of *bona fide* requirement was established and the trial court gave effect to it but the High Court reversed the findings of fact recorded by the trial court which is unsustainable in law.

Mr. Nageshwar Rao, learned senior counsel for the respondent, argues that after the death of his father the house in occupation of the appellant is available to him both for personal as well as professional requirements and, therefore, it can not be said that he reasonably and *bona fide* requires the premises for his personal occupation. As the Rent Controller did not correctly appreciate the facts, the High Court on a proper consideration of the material placed before it reversed the findings taking the view that the need was not *bona fide* and this Court, under Article 136 of the Constitution, would not disturb such findings.

The only question that arises for consideration is : whether the appellant has proved reasonable and *bona fide* requirement of the premises to warrant eviction of the respondent under clause (h) of sub-section (1) of Section 21 of the Act.

The facts are not in dispute. The premises in question belongs to the appellant and that he let it out to the respondent sometime in 1976 on a monthly rent of Rs. 1300 which was subsequently enhanced to Rs. 1800 per month. The

A appellant, finding it difficult to get along with his father and the step mother on account of day to day disputes, invoked the jurisdiction of the Rent Controller under Section 21(1)(h) of the Act seeking eviction of the respondent. The trial court on appreciation of the evidence found that the need of the respondent was established. However, the High Court in revision took note of the facts that

B the building of the appellant's father, in which he is presently residing, is a huge building, that the step brothers and sisters are staying abroad; that the step mother had not demanded the respondent to vacate the premises. On that premise, it concluded that the appellant's claim that he cannot pursue his professional activities in premises in which he is presently living, was not substantiated. We are unable to agree with the conclusion arrived at by the High

C Court. The case set up by the respondent is that after the death of the father of the appellant, he became the sole owner of the premises and therefore he had enough accommodation available both for his residence as well as for professional requirements as such requirement of the premises is not real and *bona fide*. This was not admitted by the appellant. Nothing has been placed on

D record to show that the appellant has become the sole owner of that building in which he and his step mother are living. At the best the appellant might be having a share in it. Merely because the appellant is living in a room of the huge building which does not exclusively belong to him, it cannot be said that his requirement to occupy the premises for his residence and professional requirements is not reasonable and *bona fide*. In our view being in occupation

E of a portion of a building holding a fractional undivided share, is no bar to invoke the provision of Section 21(1)(h) of the Act. In this view of the matter, we set aside the order under challenge and restore the order of the learned Rent Controller, in H.R.C. No. 10541 of 1989 dated July 5, 1995.

F Learned counsel for the respondent seeks six months time to vacate the premises. Having regard to the fact that the respondent is business concern and has been in occupation of the premises for over 25 years, we consider it just and appropriate to grant time till 30th April, 2002. The respondent shall file usual undertaking within four weeks from today.

G The appeal is accordingly allowed with costs.

R.P.

Appeal allowed.