IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.7020-7021 OF 2005

SHAHWAR BASHEER & ORS. Appellant (s)

VERSUS

VEENA MOHAN Respondent(s)

With

CIVIL APPEAL NO.166 OF 2004

with

CIVIL APPEAL Nos.7022-7023 OF 2005

and

CIVIL APPEAL No.1923 OF 2006

O R D E R

Civil Appeal Nos.7020-7021 of 2005

Delay condoned.

Applications for substitution and setting aside abatement are allowed.

Heard learned counsel for the parties.

This appeal has been filed against the impugned judgment of the High Court of Karnataka at Bangalore dated 24.2.2003.

The appellants claim to be the tenant of the premises in dispute and the respondent is the landlady.

Admittedly, the original tenant died on 20.5.1994. The appellant No.1 is the widow of the original tenant

while other appellants are his children.

At the time when the original tenant died, the Karnataka Rent Control Act, 1961 (hereinafter referred to as "1961 Act") was in force. Section 3(n) of the 1961 Act reads as under:

> "Tenant" means any person by whom or on whose account rent is payable for a premises and

includes the surviving spouse or any son or daughter or father or mother of a deceased tenant who had been living with the tenant in the premises 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 premises 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 framed out or leased by a local authority."

Thus, a perusal of Section 3(n) of the 1961, Act shows that on the death of the original tenant, the appellants herein became the tenants in 1994 by operation of law.

It appears that a new rent control Act known as "The Karnataka Rent Act, 1999" (hereinafter referred to as the "1999 Act") came into force with effect from 31.12.2001. Section 5(1) of the 1991 Act reads as under:

"Inheritability of tenancy. - (1) In the event of death of a tenant, the right of tenancy shall devolve for a period of five years from the date of his death to his successors in the following order, namely:-

(a) spouse;

(b) son or daughter or where there are both son and daughter both of them;

(c) parents;

(d) daughter-in-law, being the widow of his pre-deceased son:

Provided that the successor has ordinarily been living or carrying on business in the premises with the deceased tenant as a member of his family up to the date of his death and was dependent on the deceased tenant:

Provided further that a right to tenancy shall not devolve upon a successor in case such successor or his spouse or any of his dependent son or daughter is owning or occupying a premises in the local area in relation to the premises let."

Learned counsel for the respondent submitted that in view of Section 5(1) of the 1991 Act, the appellants are not the tenants of the premises in dispute in view of the definition of Section 3(n) of the 1991 Act. We do not agree.

It may be mentioned that in almost all rent control statutes, the word "tenant" has been defined to include the heirs of the tenant. Section 5 of the 1991 Act makes a radical departure from the said legal position. Hence, in our opinion, it should be strictly construed and is prospective in nature. In our opinion, Section 5 of the 1991 Act applies only if two conditions are fulfilled:

(I)The death of the previous tenant takes place after 31.12.2001; and

(II)five years have expired from the date of death.

In the present case since the previous tenant died in 1994, the appellants had become tenants in 1994 itself. It is a well settled principle of interpretation that when rights have

accrued in favour of a party, ordinarily they should not be deemed to have been extinguished unless the statute clearly provides to that effect.

Learned counsel for the respondent has relied on Section 70(2)(b) of the 1999 Act which reads as under:

> "Notwithstanding such repeal and subject to the provisions of Section 69,-
>
> (a) xxx xxx xxx
>
> (b) all cases and proceedings other than those referred to in clause (a) pending at the commencement of this Act before the Controller, Deputy Commissioner, Divisional Commissioner, Court, District Judge or the High Court or other authority, as the case may be in respect of the premises to which this Act applies shall be continued and disposed off by such Controller, Deputy Commissioner, Divisional Commissioner, Court, District Judge or the High Court or other authority in accordance with the provisions of this Act."

On the strength of Section 70(2)(b), learned counsel for the respondent submitted that now the definition of "tenant" prescribed in the new Act will apply. We do not agree. In our opinion, the provision of Section 70(2)(b) is procedural. The said Section has nothing to do with substantive rights which had accrued before the 1999 Act came into force.

As already stated above, the appellants had become tenants when the original tenant died in 1994 and there is no clear provision in the 1999 Act which states that the tenancy rights which had accrued earlier will become extinguished on the coming into force of the 1999 Act.

For the reasons given above, the appeals are allowed.

5

The impugned judgment of the High Court is set aside and the matter is remanded to the High Court to go into the questions on merits which the High Court has not decided, namely:

(I)Whether the landlady has bonafide and reasonable need of the premises in dispute;

(II)Whether the tenant has sublet the premises in dispute.

The High Court is requested to decide the case as expeditiously as possible and preferably within six months after the date of receipt of a copy of this order.

The appeal are allowed. No order as to costs.

Civil Appeal No.166 of 2004

Heard learned counsel for the parties.

In view of the interpretation of Section 5 of The Karnataka Rent Act, 1999 in the order pronounced by us in Civil Appeal Nos.7020-7021 of 2005, this appeal is allowed. The impugned judgment of the High Court is set aside and the matter is remanded to the High Court for a fresh decision in accordance with law. All questions of law and facts are left open to be taken in the High Court including the question that the appellant has vacated the premises and has not paid the rent.

The High Court is requested to decide the case as expeditiously as possible and preferably within six months after the date of receipt of a copy of this order.

The appeal is allowed. No order as to costs.

Civil Appeal Nos.7022-7023 of 2005

Heard learned counsel for the parties.

6

In view of the interpretation of Section 5 of The

Karnataka Rent Act, 1999 in the order pronounced by us in Civil Appeal Nos.7020-7021 of 2005, these appeals are allowed. The impugned judgment of the High Court is set aside and the matter is remanded to the High Court for a fresh decision in accordance with law. All questions of law and facts are left open to be taken in the High Court including the question that the appellant has vacated the premises and has not paid the rent.

The High Court is requested to decide the case as expeditiously as possible and preferably within six months after the date of receipt of a copy of this order.

The appeal are allowed. No order as to costs.

Civil Appeal No.1923 of 2006

Heard learned counsel for the parties.

In view of the interpretation of Section 5 of The Karnataka Rent Act, 1999 in the order pronounced by us in Civil Appeal Nos.7020-7021 of 2005, this appeal is allowed. The impugned judgment of the High Court is set aside and the matter is remanded to the District Judge as the District Judge has not decided the matter on merits.

The District Judge is requested to decide the case as expeditiously as possible and preferably within six months after the date of receipt of a copy of this order.

The appeal is allowed. No order as to costs.

.....J.

7

(Markandey Katju)

.....J.
(Asok Kumar Ganguly)

New Delhi;
October 28, 2009.

8

ITEM NO.102 COURT NO.7 SECTION IVA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 7020-7021 OF 2005

SHAHWAR BASHEER & ORS. Appellant (s)

VERSUS

VEENA MOHAN Respondent(s)

(With appln(s) for bringing Lrs on record and c/delay in filing appeal for bringing LRS on record and setting aside an abatement and c/delay in setting aside an abatement and with office report)

WITH
Civil Appeal NO. 166 of 2004
(With appln.(s) for exemption from filing O.T. and directions)

Civil Appeal NO. 7022-7023 of 2005
Civil Appeal NO. 1923 of 2006

Date: 28/10/2009 These Appeals were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Appellant(s) Mr. P. Vishwantha Shetty, Sr. Adv.
Mr. V. Balakrishna, Adv.
Mr. E.C. Vidya Sagar,Adv.

Ms. Rajani K. Prasad, Adv.
Mr. C.V. Subba Rao, Adv.

Mr. G.K. Bansal, Adv.
Mr. Reepak Kanshal, Adv.
Mr. Mullapudi Rambabu, Adv.

Mr. R.S. Hegde, Adv.
Mr. Chandra Prakash, Adv.
Mr. Rahul Tyagi, Adv.
Mr. J.K. Nayyar, Adv.
Mr. Ashwani Garg, Adv.
Mr. Kamal Kishore Joshi, Adv.
Mr. P.P. Singh, Adv.

For Respondent(s) Mr. M.N. Rao, Sr. Adv.
Mr. I. Venkatnarayana, Sr.Adv.
Mr. T.N. Rao,Adv.

Ms. Manjeet Kirpal, Adv.
Mr. Amit Pandit, Adv.
Mr. Miten Mahapatra, Adv.

Mr. G.V. Chandrashekhar, Adv.
Mr. N.K. Verma, Adv.
Mr. P.P. Singh, Adv.

Mr. S.P. Singh, Sr. Adv.
Mr. R.J. Gouley, Adv.
Mr. S.K. Sabharwal, Adv.

Mr. Girish Ananthamurthy, Adv.
Ms. Vaijayanthi Girish, Adv.
Mr. T.N. Rao, Adv.

UPON hearing counsel the Court made the following

O R D E R

C.A. Nos.7020-7021 of 2005

Delay condoned.

Applications for substitution and setting aside abatement are allowed.

The appeals are allowed in terms of the signed order. No order as to costs.

C.A. No.166 of 2004

The appeal is allowed in terms of the signed order. No order as to costs.

C.A. Nos.7022-7023 of 2005

The appeals are allowed in terms of the signed order. No order as to costs.

C.A. No.1923 of 2006

The appeal is allowed in terms of the signed order. No order as to costs.

(K.K. Chawla)
AR-CUM-PS

(Indu Satija)
Court Master

[Common signed order is placed on the file]