

Girija Rudra Vs. the House Rent and Accommodation Controller, Bangalore City and anr.

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Court : Karnataka

Decided On : Oct-04-1977

Reported in : AIR1978Kant34; ILR1977KAR1502; 1977(2)KarLJ427

Judge : V.S. Malimath, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 4(1), 8, 8(4), 8(5), 9 and 14; Karnataka Rent Control Rules, 1961 - Rule 3; [Constitution of India](#) - Article 226 and 226(1)

Appeal No. : Writ Petn. No. 3504 of 1977

Appellant : Girija Rudra

Respondent : The House Rent and Accommodation Controller, Bangalore City and anr.

Advocate for Def. : H.N. Narayan, G.P.

Advocate for Pet/Ap. : B.S. Sundar Raj, Adv.

Judgement :

ORDER

1. The petitioner is the owner of premises No. 4, 9th Cross, Malleswaram, Bangalore-3 which consists of a ground floor and a first floor. With a view to let out the first floor portion of the premises for non-residential purposes, she approached the House Rent and Accommodation Controller, Bangalore City (hereinafter referred to as the 'Rent Controller'), who is the 1st respondent in this writ petition, for permission to convert the said first floor portion into a non-residential premises. The 1st respondent accorded the necessary permission. Thereafter, the petitioner notified the vacancy in respect of the first floor portion of the premises on 18-11-1976 in the prescribed Form-1, a copy of which is produced in the case as Exhibit-A. The Rent Controller notified the vacancy on the notice board of his office by Notification dated 19-11-1976, a copy of which is produced as Exhibit-B. Among the particulars stated in the said Notification, one pertains, to the rent of the premises notified, which has been indicated as Rs. 800 per month Exhibit-C is the copy of the order made by the Rent Controller, which does not bear any date, directing that the premises in question should be notified showing Rs. 800/- per month as the rent of the premises. Being aggrieved by the notification of the premises showing the rent of the premises at Rs. 800/- per month, the petitioner preferred an appeal before the Special Dy. Commr., Bangalore District Bangalore, which authority by his order dated 25th March, 1977, has dismissed the appeal. It is in this background that the petitioner has approached this Court for appropriate relief under Article 226(1)(b) of the [Constitution of India](#).

2. The principal contention urged by Sri. B. S. Sundar Raj, learned counsel for the petitioner is that the Rent Controller, functioning under the Karnataka Rent Control Act, 1961 (hereinafter referred to as the 'Act') and the Rules made thereunder viz. The Karnataka Rent Control Rules, 1961 (hereinafter referred to as the 'Rules'), has no competence to fix the rent of the premises notified under Sub-section (1) of Section 4 of the Act and to notify the rent so fixed in the notification published under Sub-rule (ii) of Rule 3 of the Rules. It was maintained that the only appropriate stage at which the rent of the premises can be specified is at the time of making the final order of allotment under Sub-section (4) of Section 8 of the Act.

3. Sub-section (1) of Section 4 imposes an obligation on the landlord to notify to the Rent Controller the vacancy within 15 days after the building becomes vacant.

Sub-rule (i) of Rule 3 requires such intimation to be given by the landlord in Form-I in triplicate. Sub-rule (ii) of Rule 3 prescribes the procedure to be followed by the Rent Controller after receiving the notice of intimation in accordance with Sub-section (1) of Section 4 read with Sub-rule (i) of Rule 3. Under Sub-rule (ii) of Rule 3, the Rent Controller, after receipt of intimation of vacancy has to specify the date of hearing for considering the causes, if any, shown by the landlord and other persons. He is also required to send a copy of the intimation of vacancy and report the date to which the case is posted for selecting the public authority or the person in whose favour an order may be made under Section 8. to the authority specified therein. Sub-rule (ii) of Rule 3 further requires the Rent Controller to notify on the notice board of his office the particulars of the building given in items Nos. 1, 2, 4 and 9 of Form-I and also to notify the date to which the case is posted. He is also required to keep a copy of the intimation in his office for inspection of all persons desiring to see it. The landlord is also required to be notified of the date of the first hearing as fixed by the Rent Controller.

4. Col. No. 9 of Form-I provides for information being given in regard to the monthly rent and if the building became vacant by the termination of a tenancy or eviction of a tenant, the monthly rent paid by the tenant. Section 8 (5) (ii) of the Act provides that no order under Sub-section (4) of Section 8 shall be made in favour of a person other than a public authority unless such person has deposited or deposits with the Rent Controller for payment to the landlord an amount equal to one month's rent of the building as advance. The said requirement of Section 8 (5) (ii) of the Act has been held to be mandatory by a Division Bench of this Court in *Rama Rao T. N. v. Deputy Commr. Chickmagalur* reported in (1977) 1 Kant. LJ 71.

5. Sub-section (4) of Section 8 of the Act provides that if after considering the causes if any, shown by the landlord or other person in possession of the building, the Rent Controller is satisfied that it is necessary or expedient so to do, he may, by an order in writing, direct the building to be leased to such public authority or other person specified in the notice under Sub-section (1) of Section 8 at such rent as shall be specified in such order and may make such further orders as appear to him to be necessary or expedient in connection therewith. The proviso to Sub-

section (4) of Section 8 states that the rent specified in the order made under Section 8 (4) of the Act shall not be less than:

(i) the fair rent, if any fixed for the building; or

(ii) if any fair rent has not been fixed for the building, the rent last paid for the building; or

(iii) if no rent was last paid, the rent determined by the Controller on the basis of the rent value of the building as entered in the property tax assessment book of the local authority; or

(iv) if no property tax has been assessed in respect of the building, the rent determined by the Controller on the basis of the prevailing rates of rent in the locality for similar buildings in similar circumstances.

6. The second proviso to Sub-section (4) of Section 8 of the Act makes it abundantly clear that specification of the rent under Sub-section (4) of Section 8 will not be final unless such specification is the fair rent of the building. If the landlord or the tenant is aggrieved by the specification of the rent and the same is not fair rent fixed for the building, it may be got fixed by making an application under Section 14 of the Act. What is contemplated by Sub-section (4) of S. 8 is specification of the rent while passing an order under Sub-section (4) of Section 8 of the Act. S. 9 (c) of the Act which prescribes the contents of the order directing leasing of a building provides that it should specify the rent, if any, fixed by the Rent Controller under Sub-section (4) of Section 8. It is clear from a reading of Sub-section (4) of Section 8 and Clause (c) of S. 9 of the Act that the Rent Controller has to apply his mind in regard to the rent payable for the premises at the stage when he makes the order under Sub-section (4) of Section 8 and not earlier. This conclusion of mine gets support from Sub-rule (ii) of Rule 3 of the Rules which provides that after notice of intimation of vacancy is received, what the Rent Controller has to notify on his notice board, is the information contained in items 1, 2, 4 and 9 of Form-I. The particulars specified in items 1, 2 and 4 of Form-I are not necessary for the purpose of disposal of this case. So far as item No. 9 is concerned, the same speaks about the rent which the landlord has to

specify in his intimation of vacancy to be given in Form-I. It is this information which the landlord furnishes in item No. 9 that the Rent Controller is required to notify on the notice board. The object is to notify the persons interested in taking the premises on lease what the landlord expects as the rent of the premises. Notwithstanding the notification of rent as stated by the landlord in Item No. 9 of Form-I, the Rent Controller, while passing the order under Sub-section (4) of Section 8 of the Act, is entitled to specify such rent as, in his opinion, is reasonable having regard to the factors which he is required to take into account under the proviso to Sub-section (4) of Section 8 of the Act. What clearly emerges from the scheme of the provisions of Sections 4 and 8 and Rule 3 is that the specification of the rent of the premises can be made by the Rent Controller only at the time of passing the order under Sub-section (4) of Section 8 of the Act, and not at any earlier stage.

7. Though what is required to be done under Sub-section (4) of Section 8 of the Act is the specification of the rent payable by the allottee of the premises, if there is any dispute in regard to the quantum of rent payable having regard to the stand taken by the parties, it is open to the Rent Controller to make a summary enquiry in this behalf while making a final order under Sub-section (4) of Section 8 by taking into account the requirements of the first proviso to Sub-section (4) of Section 8 of the Act. If the parties produce any material in support of their respective contentions, it is obvious that the Rent Controller has to take the same into account for the purpose of specifying the rent payable under Sub-section (4) of Section 8 of the Act.

8. What has been done in this case is clearly contrary to the procedure which the Rent Controller is required to follow. The Rent Controller, instead of notifying the rent specified in item No. 9 of form No. 1, has proceeded to fix the rent at Rs. 800/- per month and to notify the same in his notification dated 19-11-1976. What the Rent Controller should have done is to specify in his notification the rent mentioned by the petitioner in item No. 9 of Form-I. As such a procedure has not been followed, the petitioner has been deprived of the right to press at the stage of making an order under Sub-section (4) of Section 8 of the Act for the specification of the rent payable by the allottee at a rate which, according to the petitioner, is

justly payable as stated in item No. 9 of Form-I. Therefore, the illegality in the procedure followed by the Rent Controller has resulted in substantial failure of justice calling for interference under Article 226 of the Constitution.

9. It appears to me that though the information given by the petitioner in item No. 9 of Form-I (Exhibit-A) is capable of being understood as stating that the monthly rent is Rs. 2,935/-, having regard to the way in which item No. 9 has been filed, there is every likelihood of intending applicants being misled. Instead of stating the monthly rent in clear terms, what is stated in item No. 9 of Form-I is:

'Builtarea-- 1665 S.Ft.@1/60per 8 Ft.

2,665-00

Compound-- 900 S. Ft. 30 P. pet S. Ft.

270-00

Total -----

2,935.00'

In Item No. 10, the petitioner has not stated clearly the rental value of the premise's sought to be let out if the same has been entered in the books of the local authority. In order to avoid doubt in the minds of the intending applicants, it is more appropriate to give an opportunity to the petitioner to amend the particulars given in items Nos. 9 and 10 of Form-I in an appropriate manner. If such amendment is made to Form-I, further steps have to be taken by the Rent Controller treating the same as an intimation given as on the date of the amendment. If, however, the petitioner does not amend items Nos. 9 and 10 of Form-I, within a period of 10 days from today, the Rent Controller shall proceed to take further action in the light of the observations made in the course of this order on the basis of the information already furnished in items Nos. 9 and 10 of Form-I.

10. For the reasons stated above, this writ petition is allowed and Exhibits 'B' and 'C' are hereby quashed. The 1st respondent-Rent Controller is directed to permit the petitioner to amend items Nos. 9 and 10 of Form-I within a period of 10 days from today and proceed to take further steps in accordance with law in the light of the observations made in the course of this order. No costs.

11. Let a copy of this order be despatched to the 1st respondent-Rent Controller immediately.

12. Shri H. N. Narayan, learned Government Pleader, who entered appearance and submitted arguments in this case, is permitted to file his memo of appearance within two weeks from today.

13. Petition allowed.