

P. Gowrishankar Gupta Vs. the House Rent and Accommodation Controller, Bangalore and anr.

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Court : Karnataka

Decided On : Mar-16-1981

Reported in : AIR1982Kant231; ILR1981KAR118; 1981(2)KarLJ70

Judge : K.A. Swami, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 4, 10A and 12

Appeal No. : Writ Petn. No. 4280 of 1981

Appellant : P. Gowrishankar Gupta

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

Advocate for Pet/Ap. : B.T. Chabbria, Adv.

Judgement :

ORDER

1. In this petition under Articles 226 and 227 of the Constitution, the petitioner has sought for quashing the order dated 18-12-1980 passed by the Special Deputy Commissioner, Bangalore, in Appeals Nos. HRCA (CITY) No. 5/80-81 and HRCA (City) No. 394/79-80. By the said order the 2nd respondent has directed the first respondent to initiate a proceeding under Section 10A of the Karnataka Rent

Control Act, 1961 (hereinafter referred to as 'the Act') against Sri Tekehand Tilumal and also to initiate a proceeding to prosecute the landlord the appellant in Appeal No. 394/79-80. This writ petition is filed by the landlord and he is aggrieved only in respect of the order passed by the 2nd respondent directing the Rent Controller to prosecute the petitioner.

2. The contention of Sri Chabbria, learned counsel for the petitioner, is that while dealing with the appeal against the Order of allotment, the 2nd respondent does not get jurisdiction to direct the first respondent to initiate a proceeding for prosecution especially when the appeal filed by the petitioner is prayed to be dismissed as not pressed, After the premises in question became vacant, the petitioner had intimated the vacancy to the first respondent. After intimating the vacancy and before it was allotted to any applicant, the petitioner had admittedly let out the premises in question to one Sri Tekchand Tilumal who is one of the applicants before the 1st respondent. There were two applications before the first respondent viz., one by Tekchand Tilumal and another by Sri T. Narendra Kumar, Advocate. During the course of the proceeding before the 1st respondent, it was not disputed that the premises in question was let out to Sri Tekchand Tilumal after the vacancy was reported and he was put in occupation of the same. In fact, the case of the petitioner was that, since he had let out the premises in question to Tekchand Tilumal during the pendency of the proceeding, the same be allotted to him (Sri Tekchand Tilumal). However, the petitioner and Sri Tekchand Tilumal both had agreed before the 1st respondent that the premises in question would be vacated and the possession would be given to a person to whom the first respondent would allot.

3. The first respondent came to the conclusion that Sri T. Narendra Kumar, Advocate, was entitled to be allotted the premises in question. Accordingly, he passed an order allotting the premises in question to Sri Narendra Kumar, Advocate, and directed the landlord to put him in possession of the premises by 7-3-1980. This order of the 1st respondent was challenged before the 2nd respondent in H.R.C. Appeal No. 5/80-81 and H.R.C. Appeal No. 394/79-80 preferred by Sri Tekchand Tilumal and the petitioner respectively. Both the appeals were heard together. During the course of hearing of the appeals Sri

Narendra Kumar, Advocate, filed a memo stating that he was not interested in the premises; therefore, he did not wish to contest the appeal, as such the appeal may be allowed. On that basis the petitioner also submitted before the 2nd respondent that the appeal preferred by him may be dismissed as withdrawn. As far as the appeal preferred by Sri Tekchand Tilumal was concerned, the same was not withdrawn and it was argued on merits. The 2nd respondent came to the conclusion that the petitioner was not entitled to let out the premises to Sri Tekchand after he intimated the vacancy, therefore, the occupation of Sri Tekchand was illegal and as such, the action under Section 10A of the Act, was required to be taken. Similarly, the 2nd respondent came to the conclusion that the petitioner also acted illegally in violation of the provisions contained in Section 4 of the Act, therefore, he was liable to be prosecuted. Accordingly, the 2nd respondent by the impugned order dated 18-12-1980 has directed the first respondent to initiate a proceeding under Section 10A of the Act, against Sri Tekchand and also to initiate a proceeding to prosecute the petitioner.

4. The contention of the learned counsel for the petitioner that when the appeal is not pressed by the petitioner appellant, it is not open for the 2nd respondent, to issue a direction to the 1st respondent to prosecute the petitioner, cannot at all be accepted. The fact that the premises in question is illegally let out during the pendency of the proceeding in question is not in dispute. Therefore, the illegal letting out formed part of the subject matter of the proceeding. Further, even though the appeal preferred by the petitioner was not pressed, but there was an appeal filed by Sri Tekchand which was argued on merits. That being so, it is not possible to hold that in view of the fact that the petitioner has stated before the appellate authority (2nd respondent) that he does not press the appeal, the appellate authority has lost the jurisdiction to pass or issue the necessary orders or directions consequent upon the conclusions arrived at by him. Further, the provisions of Section 12 of the Act read with Rule 15 of the Rules, make it clear that it is open for the appellate authority to pass such orders as are required to be passed having regard to the facts and circumstances of the case. When the appellate authority is convinced of the fact that the landlord has let out the premises illegally contrary to the provisions contained in Sec. 4 of the Act, while disposing of the appeal preferred against an order of allotment, he is entitled to

issue a direction to the original authority (Rent Controller) to take action in the matter, in accordance with law.

5. The appellate authority can also exercise the powers of the original authority and in that capacity, the appellate authority is competent to direct the original authority to take action against the petitioner for the contravention of the provisions of the Act. Therefore, having regard to the undisputed facts of the case, I do not think that the 2nd respondent has acted illegally or without jurisdiction in directing the first respondent to initiate a proceeding under Section 10A of the Act and also to prosecute the petitioner. Such a power is available even when the appeal is not pressed. The appellate authority while dismissing the appeal whether it be on merits or otherwise, can issue such a direction, provided it is established that the premises is let out contrary to the provisions of Sec. 4 of the Act. Therefore, I do not see any merit in this writ petition. No ground to issue Rule. Hence, the writ petition is rejected.

6. Petition dismissed.