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**Rathanakar M. Shetty Vs. House Rent and Accommodation Controller, North Range, Bangalore and Others**

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**Court : Karnataka**

**Decided On : Mar-11-1998**

**Reported in : ILR1998KAR3694; 1998(3)KarLJ1**

**Judge : G.C. Bharuka and ;Chidananda Ullal, JJ.**

**Acts : Karnataka Rent Control Act, 1961 - Sections 3, 4, 5, 6, 8, 9, 10-A and 12;  
[Constitution of India](#) - Article 300-A**

**Appeal No. : Writ Appeal No. 4887 of 1997**

**Appellant : Rathanakar M. Shetty**

**Respondent : House Rent and Accommodation Controller, North Range, Bangalore and Others**

**Advocate for Def. : Sri B.V. Acharya, Senior Advocate ;for Sri Basavarajappa and ;M/s. Jaypee Associates, Advs.**

**Advocate for Pet/Ap. : Sri Udaya Holla, Adv.**

**Judgement :**

**G.C. Bharuka, J.**

1. The facts of the present case is possibly one of the most telling examples of criminal maneuvering masterminded by the concerned officers, middle men and the beneficiaries in depriving the owners of their properties by flouting all norms set by way of constitutional guarantees, statutory safeguards and natural justice requirements. Possibly flooded with such atrocious acts on the part of the officers, of the State Government, quite advisedly, came out with the notification dated 24-4-1995 making the provisions of Sections 4, 5 and 10-A of the Karnataka Rent Control Act, 1961 (hereinafter the 'Act') inapplicable within the limits of Bangalore city and are within a radius of three kilometres from the limits thereof.

2. Here is a case where, as the facts will reveal hereinafter, the contesting respondent 3 with the help of the area revenue inspector and the police force had, by breaking open the locks forcibly, occupied the property of the appellant on the strength of an order passed in respect of some other building by the House Rent and Accommodation Controller (hereinafter the 'Controller') under Section 5 of the Act.

Property and its ownership history.-

3. Admittedly, the appellant, under a registered sale deed dated 17-6-1993, had purchased the outhouse situated behind Janardhan Nivas, 2nd Cross, Govinda Rao Street, Kumara Park West Extension, Bangalore-20 (hereinafter 'the house') from Smt. Dakshayani. The house comprises of ground and the first floor measuring approximately seven squares. Ground floor bears the number 1/1 and the first floor 2/1. Subsequent to the purchase of the house, the appellant, by way of abundant caution, under his letter dated 10-11-1993 (Annexure-E) intimated the Controller that he had purchased the house for self-occupation but it requires repairs and renovation for making it fit for residential purpose. It was also intimated that the building has come to his possession on owner to owner basis and was not meant for renting out. It was, accordingly, requested to clear the building for self-occupation of the appellant.

4. It is of material importance to note here that much earlier to the purchase by the appellant, the building was tenanted. But some time in 1992, the tenants vacated the premises. The said vacancy was reported to the Controller by the area

Revenue Inspector in his report dated 27-8-1992. Consequently, proceedings for leasing out the building, as provided under Sections 4, 5 and 8 of the Act, were initiated. But the Controller in a duly constituted enquiry, being satisfied with the bona fide of the request made by the erstwhile owner, smt. Dakshayani, by his order dated 17-4-1993 passed in case No. HRC(N) ALT 446 of 1992, released the premises for her self-occupation. A certified copy of said order has been placed on the record by the appellant through his affidavit dated 24-11-1997. The Controller has inter alia recorded that.-

'I inspected the notified premises along with the area revenue inspector on 23-3-1993. Smt. N.V. Dakshayani, landlady was present. She has stated that the notified premises is required for her own use and occupation. Household articles and furniture belonging to the landlady are kept in the premises. It was also observed that the landlady and her family is residing in the premises'.

5. According to the appellant, after purchasing the house he kept his furniture and other movables like repairing, sanitary electrical and plumbing materials and he went to Bombay but to his utter shock and surprise, on return, he found that the third respondent had entered the ground floor by breaking open the lock and is residing therein. On enquiry, it was revealed that he has entered the house under the guise of some order passed by the Rent Controller. Then the appellant obtained a certified copy of the said order Annexure-A and preferred an appeal under Section 12 of the Act. But the same was dismissed by the respondent-Special Deputy Commissioner. The writ petition preferred against the said order also met the same fate.

Facts revealing from the Records of the Controller.-

6. The records of the Controller reveal that his order dated 23-11-1993 (Annexure-A), on the strength of which the third respondent forced his entry in the house was passed in case No. HRC(N) ALT 245 of 1993. These leasing out proceedings were initiated on the basis of the report dated 28-9-1993 submitted by the area Revenue Inspector.

7. The above referred report pertained to some building bearing No. 1/3(2), Janardhana Nivas, Eastern Portion, Ground Floor, 2nd Cross, K.P. West, Bangalore. Pursuant to the said report, two notices under Section 8(1)(a) of the Karnataka Rent Control Act, 1961 (hereinafter the Act) were issued showing one Mr. Jagannath to be the owner thereof with the endorsement 'address not known'. The office copy of the said notices bears the following endorsement.-

Smt. Sarojini J. Shetty, wife of the landlord, has signed and taken the notice.

Sd/-

V. Srinivas

Official

Copy of service of notice has been submitted to the office.

Sd/-

Dated 28-10-1993

8. The records further reveal that pursuant to the vacancy notification, Sri C.S. Ravishankar (respondent 3) and one Sri K.N. Shankarappa filed their respective applications in Form II seeking allotment of the house as per Section 8(5)(i) of the Act. Ultimately, under the impugned order dated 23-11-1993, the building bearing No. 1/3(2) was allotted to the 3rd respondent fixing the rent at Rs. 650 per month with an observation that despite notice, the owner has failed to appear and file objections. As per the records of the Controller the said observation has been made on the basis of an endorsement made by one Sri V. Srinivas, an official of the Rent Controller's office, to the effect that since the owner Mr. Jagannath, after going through contents of the order, refused to accept the same, it was served by affixation on the door of the building. Thereafter, pursuant to the allottee's application dated 6-12-1993, delivery warrant dated 7-12-1993 was issued by the Rent Controller authorising the in-charge Revenue Inspector to take forcible possession of the building by breaking open the locks, if any, and put respondent 3 in possession thereof. The incharge Revenue Inspector had further been

directed to submit compliance report on 8-12-1993. However, on the following day, the in-charge Revenue Inspector requested for issuance of another delivery warrant on the ground that because of law and order problem, the police could not render assistance in execution of the said delivery warrant. Accordingly, another delivery warrant was issued on 8-12-1993 in terms of earlier delivery warrant directing the I/c Revenue Inspector to submit compliance report on 9-12-1993.

9. On 8-12-1993, the I/c Revenue Inspector with the help of police force broke open the lock of the house of the appellant and handed over the possession of the same and the articles (kitchen-wares, etc.) dumped therein to the 3rd respondent, who acknowledged the same by stating thus.-

'On 8-12-1993, I have taken possession of the house which has been allotted to me and I have also taken possession of the articles stored therein'.

Sd/-

C.S. Ravishankar

Advocate

10. As per the Mahazar placed on record, the kitchen wares, building materials etc., which were found stored in the house as detailed below.-

Sl. No.

Particulars

Quantity

01.

Old door

01

02.

Old plastic pipes (about)

11

03.

Old and short plastic pipes (about)

05

04.

Old iron pipe (about)

01

05.

Old and short iron pipes (1 feet)

10

06.

Boat shaped zinc sheet of 8 feet height

01

07.

Filter shaped steel vessel (drums)

02

08.

Brass vessel (tapple)

01

09.

Brass rail-jug

01

10.

A span-long brass vessel (kolaga)

01

11.

Brassidli vessel and idli plates

01

12.

Coffeefilter (spare parts)

04

13.

Old square-type iron box

01

14.

Vesselfor hastening sambar

01

15.

Brass plate (old)

02

16.

Cylindrical saucepan of aluminium (old)

01

17.

Cylindrical saucepan of brass (old)

01

18.

A span-long brass vessel (kolaga)

01

19

Brasscarrier containing 3 boxes

01

20.

Small steel cups (semi-old)

50

21.

Aluminium cups (old)

12

22.

Old steel cup (about)

12

23.

Iron pieces

4 to 5

11. Keeping in view the facts, situation, statutory provisions and the contentions raised before us, the legal issues that arise for our consideration are.-

(a) Whether under the provisions of the Act, had the Controller any competence to pass an order of leasing the house of the appellant to a third person like respondent 3?

(b) Whether the Controller had at all initiated any leasing proceedings in respect of the house in question?

12. In order to examine the questions involved herein, the relevant statutory provisions of the Act may be noticed. These are:

4. Intimation of vacancy by landlords.--(1) Every landlord shall, within fifteen days after the building becomes vacant by his ceasing to occupy it or by the termination of a tenancy or by the eviction of the tenant or by the release of the building from requisition, or otherwise, give intimation by registered post to the Controller.

5. Order for leasing of vacant building.--(1) The Controller may, by order in writing served on the landlord, direct that any vacant building, whether intimation of its vacancy has been given by the landlord under sub-section (1) of Section 4 or not, be given to the landlord for his use and occupation or on lease to such public authority or other persons as he may think fit:

Provided that where such building is a residential building no such order shall be made in favour of a person not being the landlord, who or any member of whose family owns a residential building in the same city or town or village in which the

vacant building is situated.

Explanation.--(1) A building may be directed to be leased under this section notwithstanding that it is subject to an agreement of lease or has been let or occupied in contravention of sub-section (2) of Section 4.

(2) Any landlord who contravenes an order under sub-section (1) shall, on conviction, be punished with simple imprisonment for a term which may extend to three months or with fine or with both.

Section 8. Procedure to be followed before ordering leasing of any building for a public authority or other person.--(1) Before issuing any order under Section 5 or Section 6, the Controller.-

(a) shall call upon the landlord or any other person who may be in possession of the building by notice in writing to show cause, within seven days from the date of the service of such notice on him, why the building should not be ordered to be leased to a public authority or other person as may be specified in the notice; and

(b) xxx xxx xxx.(2) xxx xxx xxx.(3) xxx xxx xxx. (4) If, after considering the causes, if any, shown by the landlord or other person in possession of the building the 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) 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:

xxx xxx xxx. Section 9. Contents of the order directing leasing of a building to a public authority or other person.--Every order under Section 5 or Section 6 shall be in writing and shall specify.-

(a) the person to whom possession of the building should be delivered;

(b) the date on which such possession should be delivered, such date not being earlier than five days from the date of service of the order; and

(c) the rent, if any, as fixed by the Controller under subsection (4) of Section 8.

Re: Issue No. 1

13. Section 5 of the Act empowers the Rent Controller, inter alia, to give on lease any vacant building to other persons even contrary to the wishes of the landlord. Apart from the requirement of strict compliance with the procedural requirements envisaged under the Act, the said power of leasing a premises can be exercised only in respect of a building as defined under the Act and that too if it is vacant. Therefore, the two subsidiary questions of equally vital importance are whether on the facts of the present case, (i) the house in question can be said to be a 'building'?, and (ii) whether, on the date of initiation of the impugned proceedings, was it vacant

14. For the purposes of the Act, the word 'building' has been defined under Section 3(a) of the Act, inter alia, to mean any building or hut or part thereof, let or to be let for residential or non-residential purposes. Therefore, to be a 'building', a premises must be on lease or it should be available for being leased. In the present case, as noticed above, the Rent Controller himself, under his order 17-4-1993 passed in case HRC (N) ALT 446 of 1992, at the request of the previous owner Smt. Dakshayani, had released the premises for her self-occupation. Just two months thereafter, the appellant purchased the said house under a registered sale deed dated 17-6-1993 and stored his personal articles and effects therein. Therefore, on the date of initiation of the impugned proceedings, neither the premises was let nor was it meant to be let. Therefore, for the purposes of the Act, the premises was not a 'building' so as to authorise the Rent Controller to invoke his powers of leasing envisaged under Part II of the Act. A similar view has been taken by a learned Single Judge (G.P. Shivaprakash, J.) of this Court in the case of P. Rangaraj v House Rent and Accommodation Controller, North Range, Bangalore, which we respectfully approve.

Re: Issue No. 2

15. Now, coming to the second aspect pertaining to sine qua non, for invoking the statutory powers of leasing a 'building' under Section 5 of the Act, the 'building' must be shown to be vacant. A composite reading of Sections 4 and 5 of the Act clearly indicate that a building for the purposes of the Act can said to have fallen

vacant under four situations, namely.-

- (i) if the landlord ceases to occupy it,
- (ii) by termination of tenancy,
- (iii) by eviction of tenant, and
- (iv) by release of the building from acquisition.

16. In the present case, the last three situations have no bearing since admittedly, two months earlier to the purchase by the appellant, the house was released by the Controller himself for self-occupation of the erstwhile owner and the situation remained the same till passing of the impugned order by the Controller. Therefore, to ascertain whether the 'building' can be said to be vacant on the date of initiation of the impugned proceedings, it has to be found out whether the landlord had ceased to occupy the same at any point of time after its purchase.

17. A similar question had fallen for consideration before a three judges' Bench of the Supreme Court in the case of Smt. Bimla Devi v First Additional District Judge and Others. Their Lordships, by following their earlier judgment in the case of Babu Singh Chauhan v Smt. Rajkumari Jain and Others and referring to various dictionaries, have held in paras 11 and 12 of the judgment that.-

'This Court in the observations, extracted above, has clearly pointed out that 'possession' or 'occupation' may take various forms and it was expressly held that even keeping the household effects by the owner is an act of occupation.

It is therefore, manifestly clear that even if a landlord is serving outside or living with his near relations but makes casual visits to his house and thus retains control over the entire or a portion of the property, he would in law be deemed to be in occupation of the same'.

18. From the above pronouncement of the Apex Court, it should be taken to be the law that if the owner of the premises is found to have kept his household effects and other articles in the premises, then the same has to be held in his occupation and not vacant for the purposes of Sections 4 and 5 of the Act.

19. In the present case, admittedly, when pursuant to the purported execution of the delivery warrant of the Controller, the area Revenue Inspector broke open the locks of the house with the help of police force, it was found that the appellant, as the owner, had stored his articles therein. Therefore, the house was admittedly in the occupation of the appellant and not vacant authorising initiation of impugned proceedings, even if it was intended to be so.

20. The above grounds by itself are sufficient to annul the entire proceedings including the impugned order but we would like to delve upon the other aspects as well to highlight the high handedness on the part of the respondents in depriving the appellant to possess and enjoy his house despite constitutional right engrafted in Article 300-A of the [Constitution of India](#) to the effect that no person shall be deprived of his property save by authority of law.

Re: Other aspects peculiar to the facts:

21. The records of the Controller reveal that the proceedings were initiated on the basis of the report dated 28-9-1993 of the area Revenue Inspector under which he had reported that house No. 1/3(2), Janardhana Nivas, Eastern Portion, Ground Floor, 2nd Cross, K.P. West, Bangalore-20 belonging to one Mr. Janardhana was lying vacant since 15 to 20 days. On the basis of the said report, vacancy notification was issued and two applications in Form II including one by the respondent 3 were received seeking allotment of the building in their favour. Thereafter, notice was issued to the said Mr. Jagannath with the remarks 'address not known' describing him to be the owner of the said premises. The said notice was got delivered on Smt. Sarojini J. Shetty, who incidentally happens to be the mother-in-law of the appellant. It may be stated here that the name of the father-in-law of the appellant is also Jagannath Shetty. The service report as extracted above shows that the notice was served on Smt. Sarojini J. Shetty as the wife of Sri Jagannath Shetty and not for or on behalf of the appellant. Moreover, since the said lady or her husband had nothing to do with the building No. 1/3(2) or 1/2(2) in respect of which the impugned proceedings had been initiated, they did not enter appearance in the proceedings to contest the same. This led to passing of the expert impugned order by the Controller culminating in

forceful entry into house of the appellant.

22. It is of importance to notice here that, as is evident from the order dated 17-4-1993, admittedly the area Revenue Inspector and the Controller both had personally visited the house in question in order to ascertain the correctness of the claim made by the erstwhile owner Smt. Dakshayani regarding release of house for self-occupation. Therefore, identity, number and description of the house was very much within their knowledge but the area Revenue Inspector, by getting the proceedings initiated in respect of another premises, took forceful possession of the house of the appellant with the help of the police force and handed over the same to respondent 3 by flouting all the statutory provisions and constitutional guarantees. This only demonstrates how a revenue inspector, even being at the lowest of the administrative hierarchy, can play havoc with the property rights of the citizens.

23. Though the facts stated above had not been disputed by the contesting respondent before the learned Single Judge, but still the order of the Controller was upheld on taking a rather compassionate view on the grounds that (i) the parties had participated in the proceedings with the full knowledge of the identity of the property involved and therefore giving of wrong house number was only a technical error, and (ii) the service of notice on the mother-in-law of the appellant was a valid since she also held a power of attorney on behalf of the appellant. In our opinion, none of the said two grounds can salvage the impugned order inasmuch as the question of knowledge of the identity of the property involved in the proceedings cannot be attributed to the appellant since neither he nor any representatives of his had any occasion to participate in the said proceedings which had been initiated in respect of some other house. Therefore, there is no occasion for applying the doctrine of prejudice and identity of the premises. So far as the service of notice on the mother-in-law of the appellant is concerned, even if it held to be good, again, since it was in respect of a premises with which the appellant had no concern, the service thereof is wholly inconsequential for the present purposes.

24. For the aforesaid reasons, we set aside the order of the learned Single Judge, quash the order of the Controller and appellate authority. We also direct the 3rd respondent to vacate the house in question and handover peaceful possession of the same within two months from today without causing any damage to it. For one or the other reason since the 3rd respondent had not paid any rent so far which was fixed at Rs. 650/- per month, by the Controller, he is directed to remit the entire arrears within one month from today by a crossed bank draft and future rent will be paid in a similar manner on or before the 7th day of the following month. We also award a cost of Rs. 10,000/- out of which Rs. 5,000/- will be paid by the 3rd respondent and the remaining Rs. 5,000/- will be paid by the State Government through its secretary to the appellant through a bank draft within a month from today which will be recovered by the Government from the salary of the Revenue Inspector by fixing appropriate monthly instalments.

25. In the result, with the aforesaid directions and observations, the writ appeal is allowed.

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