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**Court : Karnataka**

**Decided On : Mar-09-1987**

**Reported in : ILR1987KAR1215**

**Judge : Rama Jois and Ramakrishna, JJ.**

**Acts : Karnataka Rent Control Rules, 1961 - Rule 4B(15); Karnataka Rent Control Act, 1961 - Sections 8(2)**

**Appeal No. : WA Nos. 1702 and 1703 of 1982**

**Appellant : Suresh Heblikar**

**Respondent : House Rent and Accommodation Controller**

**Advocate for Def. : S.V. Jagannath, Govt, Adv. for R1 and 2**

**Advocate for Pet/Ap. : Shivaraj Patil and ;L.S. Seshagiri Rao, Adv.**

**Disposition : Writ appeals allowed**

**Judgement :**

**Rama Jois, J.**

1. In these two writ appeals the following questions of law arise for consideration :

(1) Whether the registration under Explanation (3) of Sub-rule (15) of Rule 4(B) of Karnataka Rent Control Rules, 1961 (Rules for short) essential to claim allotment of residential house under any of the preferential categories?

and

(2) Whether a person who has registered earlier is entitled to priority in the matter of preference for allotment under Rule 4(B) of the Rules?

2. The facts of the case in brief are as follows :- The appellant in W.A. No. 1703/82 is the owner (hereinafter referred to as the Land Lord) of the premises bearing No. 405 (Ground floor), Diagonal Road, III Block, Jayanagar, Bangalore which consists of a ground floor and first floor. The ground floor of the premises became vacant. Thereafter, as required under the provisions of Section 4 of the Karnataka Rent Control Act, 1961 (the Act for short), the appellant reported the vacancy to the House Rent and Accommodation Controller, Civil Area, Bangalore. The appellant in W.A. No. 1702/1982 had suffered an order of eviction at the hands of his landlord and according to the order of the Court he was required to vacate the premises on or before 31-12-1982. He made an application before the Rent and Accommodation Controller, for allotment of the ground floor of the house for his occupation. The fourth respondent-landlord gave his consent as he was living alone and he wanted some assistance and the appellant in W.A. No. 1702/1982 was stated to be a person closely known to the owner and he and his wife would be of great assistance to him, for attending to his needs. Respondent-3 in W. A. No, 1702/82 and respondent-4 in W.A.No. 1703, 82 who had also suffered an order of eviction was required to vacate the premises in which he was living by June 1982, applied for allotment.

3. There is no dispute that respondent-3 had registered his name as required under Explanation-3 of Sub-rule (15) of Rule 4(B) of the Rules on 24-6-1981 earlier to the registration of the name of the appellant in W.A.No. 1702/1982 who had registered his name on 17-9-1981. The Rent Controller, however, made an order on 21-10-1981 in favour of the appellant in W.A.No. 1702/82. Aggrieved by the said order respondent No. 3 preferred an appeal before the Deputy Commissioner, Bangalore District, Bangalore, under Section 12 of the Act. The

appeal was dismissed by order dated 28-12-81. Aggrieved by the said order respondent-3 preferred W.P.No. 4141/1982 before this Court. Before the learned Single Judge, respondent-3 contended that in view of Rule 4(B)(5) read with second proviso, as he had registered his name earlier, he was entitled to the preference over the appellant in W.A.No 1702/1982. The third respondent contended that the view taken by the Rent Controller that the rules which prescribed priority of registration as a condition of eligibility for priority among the persons who were eligible for allotment on preferential basis was procedural in character and therefore he was not bound to follow it, was patently illegal. It was also the contention of respondent-3 that even registration of the name of appellant in W.A.No. 1702/82 was invalid as the registration was prior to the date on which he suffered an order of eviction. Both the contentions were accepted by the Learned Single Judge. The Writ Petition was allowed and a direction was issued to the Rent Controller to allot the house to the Writ Petitioner.

4. Questioning the correctness of the view taken by the Learned Single Judge, the two appeals are presented by the allottee and the owner of the premises.

5. In order to appreciate the contentions it is necessary to set out the relevant provisions of the Act and the Rules. Section 8 of the Act prescribes the procedure to be followed by the Rent Controller before ordering lease of any building in favour of public authority or in favour of any other person. In particular Sub-section (2) of Section 8 of the Act provides that in selecting the public authority or other person in whose favour an order may be made under this Section, the Controller shall observe such order of priority as may be prescribed. The order of priority in so far as it relates to residential building is concerned is prescribed under Rule 4(B) of the rules as follows :

'Rule 4 : x x x

Rule 4(B) In case of residential buildings:-- (1) The Government of Karnataka for providing accommodation to any Minister, Judge of the High Court or Tribunal, Members of the Legislature, Deputy Presiding Officers, Government Whips of both the Houses, Members of any Committee or Board or Corporation or its employees ;

- (2) Central Government for accommodating the employees of Central Government ;
- (3) Any person who vacates the Government residential accommodation or who has been evicted from Government Buildings ;
- (4) Any person who has been served with notice for termination of tenancy under the proviso to Clause (b) of Section-21-A ;
- (5) Any person who has been ordered to be evicted under Clause(h) of Sub-section (1) of Section 21 ;
- (6) Any other public authority for providing accommodation to its employees ;
- (7) Members of the State Legislature or Parliament ;
- (8) Officers employed under the State Government who are not in possession of any alternative accommodation ;
- (9) Officers employed under the Central Government who are not in possession of any alternative accommodation ;
- (10) Officers employed under any public authority who are not in possession of any alternative accommodation ;
- (11) Honorary Medical Officers employed in Government Hospitals in the area in which building is situate, if they are not in possession of any alternative accommodation ;
- (12) Part-time Professors or Lecturers employed in Government Colleges in the area, if they are not in possession of any alternative accommodation ;
- (13) Persons employed in any Bank, who are not in possession of any alternative accommodation ;

Explanation :-- In this clause 'Bank' means any Banking Company as defined in Clause (e) of Section 5 of the Banking Regulation Act, 1949 and includes --

- (a) the Reserve Bank of India constituted under Reserve Bank of India Act, 1934 ;
- (b) State Bank of India constituted under the State Bank of India Act, 1955 ;
- (c) a subsidiary Bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 ;
- (d) a corresponding new Bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 ;

(14) A member of any Committee, Board or Corporation constituted by the Government of Karnataka and who are not in possession of any alternative accommodation(as licensee, tenant, subtenant, mortgagee in possession or owner) and who is required by virtue of his position as such member, to reside in the area ;

(15) Any person employed in Indian Institute of Science, ICAR, CSIR who is not in possession of any alternative accommodation :

Provided that no person other than a public authority shall be entitled to priority unless he has registered his name as specified in Sub-rule (3) :

Provided further that where more than one person is eligible under the order of priority, the person who has registered his name earlier shall be preferred to the person who has registered his name later :

Provided also that no person shall be entitled for priority in respect of any residential building, the monthly rent of which is less than ten per cent of his monthly income.

Explanation :-(1) In computing the income of the applicant, the income of all the members of the family shall be taken into account.

(2) Any person who is eligible for allotment under Sub-rule (1) may make an application in Form 1-A to the Controller for registering his name specifying, his address, locality in which accommodation is required and the rent he is willing to pay.

(3) A fee of Rs. 5 shall be payable in respect of every application for registration and such fee may be paid in the form of Court-fee stamp affixed to such application.

(4) On receipt of the application, the Controller shall, if he is satisfied that the particulars contained in the application are correct and complete and the applicant is eligible under the Act and these rules for allotment, register his name.

(5) If the Controller is not satisfied that the particulars contained in the application are correct and complete or that the applicant is eligible for allotment, he shall reject the application.

(6) The Controller shall, if he is satisfied that the person registered has secured alternative accommodation either by way of allotment or otherwise, cancel the registration.

(7) The Controller shall cause to be maintained a register in which the particulars furnished in the application of the person whose name is ordered to be registered, are entered.

(8) The Registration by the Controller shall not dispense with the taking of an application in Form II as required by Sub-rule (5) of Rule 8, for allotment'

It may be seen from the above rules, that the order of priority to be observed by the Rent Controller in allotting residential buildings in favour of applicants are prescribed in proviso

(2) of Sub-rule

(15) of Rule 4(B) of the Rules. The second proviso to Sub-rule(15) of Rule 4(B) of the Rules expressly prescribes : that where more than one person is eligible under the order of priority, the person who has registered his name earlier shall be preferred to the person who has registered his name later. Explanation(2) of Sub-rule(15) of Rule 4(B) of the rules provides procedure for registration of the names of persons belonging to the preferential category on an application made by the concerned party. In particular, Explanation

(4) thereof provides that when an application is made in prescribed Form 1-A with a prescribed fee of Rs. 5/- the Controller shall, if he is satisfied that the particulars contained in the application are correct and complete and the applicant is eligible under the Act and these rules for allotment, on preferential basis, register the name of the applicant. Explanation

(5) provides that if the Controller is not satisfied that the particulars contained in the application made under Form 1-A are not correct, he should reject the application. Explanation

(6) further provides that even after registration the Controller, If he is satisfied, that any such applicant has already secured an alternative accommodation either by way of allotment or otherwise, to cancel the registration. The analysis of the Rules would indicate that in view of the first and second proviso to Sub rule (15), it is only the person who is eligible under any of the priority categories specified in Sub-rules

(1) to(15) who has registered his name in the prescribed manner who is entitled to claim priority. Among the persons who have so registered and who belong to the same category the person who has registered earlier is entitled to the preference over the person who has registered later. This furnishes the answer to the Questions, set out in the first paragraph of this order. This is the view taken by the Learned Single Judge. We respectfully agree. We now proceed to consider the facts of this case.

6. In the present case, the point raised by Respondent-3 in the Writ Petition was that the order of the Rent Controller suffered from patent illegality on two grounds- (i) The registration of the name of the appellant in W.P. 1702/82 was itself invalid as he had not, on the date of the registration of his name, suffered an order of eviction which alone entitled him to fall under preferential category under Sub-rule(5) of Rule 4(B) of the rules; and (ii) that in any event as the registration of the name of Respondent-3 was earlier to that of the said appellant, the Rent Controller ought to have preferred Respondent-3 in preference to appellant in W.P. No. 1702/82. Strangely, the Rent Controller brushed aside the provisions of the Rules holding that they were procedural rules and were not binding on the Rent

Controller in exercising the power conferred on him under the substantive provisions of the Act. The view taken by the Rent Controller, as held by the Learned Single Judge was patently perverse. In fact Sub-section (2) of Section 8 of the Act itself which confers power on the Rent Controller, expressly provides that in selecting the public authority or other person in whose favour an order may be made under this Section, the Controller shall observe such order of priority as may be prescribed. Therefore, the Rent Controller could not, in disregard of the Rules, proceed to make allotment.

7. In the present case, there is no dispute that on the date when the appellant in W.P. No. 1702/82 registered his name as falling under the preferential category specified in Sub-rule (5) of Rule 4(B) of the Rules, he had not suffered an order of eviction. Therefore his registration itself was invalid. Secondly, even if his registration could be regarded as valid the registration of the name of Respondent-3 was undisputedly earlier to that of appellant in W. P. No; 1702/82 Therefore, in view of the second proviso to Sub-rule (15) of Rule 4(B) of the Rules, the Rent Controller had no other alternative than to prefer the application of respondent-3 to that of the appellant in W.P. No. 1702/82.

8. The Learned Counsel for both the appellants however submit that in view of a subsequent event, namely allotment of another house to respondent-3 the order of the Learned Single Judge may be set aside and the order of the Rent Controller may be allowed, to remain undisturbed. The Learned Counsel submitted that on the very date on which the Learned Single Judge made the order, Respondent-3 was allotted another premises by the Rent Controller, (copy of the order is produced at annexure 'H'), allotting premises No. 579, First Floor, 'Shri Narasimha Krupa', 35th Division, 10th Main, 31st cross, 4th Block, Jayanagar, Bangalore-560011 and in view of this, the order of the Rent Controller may be allowed to remain undisturbed In support of the above submission, the appellant has produced a communication dated 6-7-1982 which clearly says that the Rent Controller passed an order on 29-6-1982 allotting the above premises to Respondent-3. The Learned Counsel also submitted that explanation (6) of Sub-rule (15) of Rule 4(B) of the Rules expressly provides that registration of the name of a person should be cancelled if subsequent to the registration he secured an

alternative accommodation by way of allotment or otherwise. We are of the view that Explanation (6) of Sub-rule (15) of Rule 4(B) of the Rules, has no application to the facts of this case for the reason that it is only after a person secures alternative accommodation the registration could be cancelled. In the present case, there is no dispute that on the date when the Rent Controller made the impugned order, there was no order of allotment in favour of Respondent-3 and therefore the Rent Controller was bound to give preference, in the matter of allotment, to Respondent-3. But irrespective of the above rule, it appears to us that when Respondent-3 has been allotted another premises as early as on 29-6-82 and for more than 4, years he has been in occupation of the premises and as it is also not in dispute that the appellant in W.P. No. 1702/82 has occupied the premises pursuant to the order of the Rent Controller and he is in occupation of the said house for the last more than 5 years, it is not expedient to disturb the order of the Rent Controller, though we strongly deprecate his perversity in making an allotment in contravention of the rules, saying that he was not bound by the rules in exercising his powers under Section 8 of the Act, when the Section itself requires him to be bound by the Rules.

9. In the result, we make the following :

## **ORDER**

(1) The Writ Appeals are allowed, and the order of the Learned Single Judge is set aside and the order of the Rent Controller dated 29-6-1982 is allowed to remain undisturbed only in view of the subsequent event set out in paragraph 8 of this order.