

**Sajjan Raj Vs. House Rent and Accommodation Controller**

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**Court :** Karnataka

**Decided On :** Jul-02-1986

**Reported in :** ILR1987KAR776

**Judge :** K.A. Swami, J.

**Acts :** Karnataka Rent Control Act, 1961 - Sections 4, 5, 8, 9, 10A, 10A(3) and 104(3)

**Appeal No. :** W.Ps. No. 799 and 3547 of 1986

**Appellant :** Sajjan Raj

**Respondent :** House Rent and Accommodation Controller

**Advocate for Def. :** K. Munivenkatappa, Adv. for R-3 and ;Shivraj Patil, Adv. for R-4

**Advocate for Pet/Ap. :** C.R.V. Swamy, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**K.A. Swami, J.**

1. Writ Petition 799/86 is preferred by the occupant of the premises in question bearing No. 16, Eagle Street, Bangalore-1. Writ petition 3547/86 is preferred by the landlord of the premises in question. The allottee of the premises in question is respondent-4 in the first writ petition and respondent-3 in the second one. The petitioners have sought for quashing the order dated 16-10-1985 passed by the Rent and Accommodation Controller, Civil Area, Bangalore (for short, the 'Controller') in case No. HRC. ACC 499/85; and also the order dated 6-12-1985 passed by the Deputy Commissioner, Bangalore in HRC Civil Appeal Nos. 223 and 224 of 1985-86.

2. On a report made by the Revenue Inspector on 24-7-1985 that the premises in question was vacant as it was found locked, the Controller issued a notice to the landlord on 24-7-1985 to intimate the vacancy or to show cause as to why the vacancy should not be notified suo motu. The landlord by his reply dated 31-12-1985 informed the Controller that one Sri P.R. Sajjan Raj (the petitioner in W.P.799/86) has been in occupation of the premises and he is the Managing Director of the Chamundi Granites Private Ltd., that he has been paying the rent at the rate of Rs. 1,100/- per month; that the building is very old one and it is in a dilapidated condition and the repairs have to be undertaken on a very high cost; that as the tenant in occupation is in a position to spend his own money for effecting repairs, he is continued.

3. During the course of the proceeding, a lease deed dated 17-8-1985 and also the earlier one dated 31-5-1976 were also produced. The Controller prima facie was of the view that the premises was in unauthorised occupation ; therefore, he issued notice under Section 10A of the Karnataka Rent Control Act, 1961 (hereinafter referred to as the 'Act'), to Sri Sajjan Raj and simultaneously initiated a proceeding for allotment of the premises. Both the proceedings are clubbed together. On enquiry, the Controller, on the basis of the material on record, has come to the conclusion that Sajjan Raj has been in unauthorised occupation of the premises, therefore he is liable to be evicted. He has also come to the conclusion that the premises cannot be allotted to him even though he has made an application pursuant to notifying the vacancy, inasmuch as allotment of the premises in his favour would amount to putting premium on the unauthorised and

illegal act of Sajjan Raj and the landlord. He has come to the conclusion that respondent-4 in Writ Petition 799/86, who is also 3rd respondent in the connected Writ Petition, deserves to be allotted a premises as he has established he is in need of the premises. Accordingly, he has passed an order under Section 10A of the Act, against Sri Sajjan Raj and has allotted the premises in question in favour of Respondent-4, in W.P. 799/86.

4. Both the petitioners have gone in appeal before the Deputy Commissioner, who by the impugned order, has dismissed both the appeals and affirmed the allotment made in favour of the 4th respondent in Writ Petition 799/86 and also the eviction of Sri Sajjan Raj from the premises in question, as an unauthorised occupant. He has also confirmed the direction issued by the Controller for prosecuting the petitioner in Writ Petition 3547/86. It is the correctness of these two orders that is challenged in these petitions.

5. I have heard Learned Counsel for the petitioners and the respondents. The records of both the cases are also received. Having regard to the contentions raised by both the sides the following points arise for consideration:

1. Whether Sri Sajjan Raj can be considered to be in unauthorised occupation of the premises in question ?

2. Whether the order directing eviction of Sri Sajjan Raj is justified in law ?

3. Whether the direction as to prosecution of the petitioner in Writ Petition No. 3547 of 1986, is justified in law ?

4. Whether the allotment made in favour of Respondent-4 in WP 799 of 1986, is justified in law ?

6. POINT No. (1) : It is an admitted fact that the premises in question is very old one and it attracted the provisions of the Act, even before 1976. It is also not in dispute, on the contrary it is the case of the petitioners, that in the year 1976, pursuant to the lease deed dated 31st May, 1976 (Annexure-A), one Sri Jaisingh came to be inducted into the premises as a lessee. Along with him, Sri Sajjan Raj and one Smt. Manorama Rajatha were also permitted to reside either as tenants

of Sri Jaisingh or as permissive occupants or as sub-tenants. The case of the petitioners is that in course of time Sri Jaisingh left the premises and Sri Sajjan Raj alone has continued to remain in occupation of the premises; that subsequently, when he became the Managing Director of Chamundi Granites Pvt., Ltd. has entered into another lease dated 17-8-1985 to be effective from 1-4-1986, a copy of the agreement of lease is also produced in the proceeding. According to this document, Sri Sajjan Raj has to continue in occupation of the premises and has to effect certain improvements and pursuant to that it is the case of Sri Sajjan Raj that he has effected improvements. These facts are also not disputed before me. No doubt, the Controller has come to the conclusion that since the lease in favour of Sri Sajjan Raj is of the year 1985 and it is for the company, and as such he becomes a different tenant; therefore, there is unauthorised occupation. On the very facts, the Deputy Commissioner has come to the conclusion that from the beginning i.e., 1976, the premises in question has been in unauthorised occupation and it continues to be in unauthorised occupation of Sri Sajjan Raj; hence he is liable to be evicted under Section 10A of the Act.

7. Sri C.R.V. Swamy, learned Counsel for the petitioner in W.P. 799/86, contends that it was not the case made out at any stage of the proceeding that the act of letting out the premises in the year 1976 was an unauthorised act; that for the first time the Deputy Commissioner has made out a new case; that as far as the occupation of the premises in question by the petitioner - Sajjan Raj is concerned, it must be deemed to be from the year 1976 because the lease-deed dated 31-5-1976 itself permits that he can reside along with Jaisingh and accordingly, he has been residing. No doubt, the Controller has not approached the case from the angle from which the Deputy Commissioner has approached. But, the fact remains that the petitioner was asked to show cause as to why he should not be evicted as an unauthorised occupant and the facts which are relied upon by the Deputy Commissioner are stated in the preceding paragraph-6. These facts were neither disputed before the Controller nor before the Deputy Commissioner. That being so, when the facts remain the same, the approaches of the authorities may be different. Such a different approach cannot be held to affect or cause prejudice to, the charge as long as the basic facts remain the same. All that happens is that on the very facts, one authority has applied the law from a particular point of view and

another authority has applied the very same law from a different point of view, but the effect of both the approaches is that the occupant is held to be an unauthorised occupant of the premises, by both the authorities. Thus, Sri Sajjan Raj has been in occupation of the premises without an order of allotment. In view of these undisputed facts, the contention that Sri Sajjan Raj has been in occupation of the premises in question from the year 1976 ; therefore, he cannot at all be held to be in unauthorised occupation of the premises after a lapse of nearly nine years, is only stated to be rejected. Neither Section 4A of the Act, supports such a contention nor it can be sustained on any principle of equity. No principle of equity or expediency can be applied to sustain the unauthorised occupation of the premises in question. In the year 1976, the provisions of the Act, attracted to the premises in question ; and that it was so, was never disputed by either side and it is also not disputed before me. Learned Counsel for Sri Sajjan Raj, was specifically asked and time was granted to him to disclose as to what would have been the defence of the petitioner if he were asked by the Controller to show pause as to why he should not be held to be an unauthorised occupant on the basis of the aforesaid undisputed facts that the original occupant-Jaisingh was an unauthorised occupant. Learned Counsel for Sri Sajjan Raj was unable to put-forth any explanation or defence. Therefore, it is not possible to hold that the aforesaid approach to the case made by the Special Deputy Commissioner has caused any prejudice to the petitioner. It is also not possible to hold that the petitioner is not an unauthorised occupant of the premises.

8. Having regard to the provisions contained in Section 10A of the Act, a person coming to occupy a premises governed by the provisions of the Act, without an order of allotment in contravention of Sub-sections (1) and (2) of Section 4 of the Act, cannot be either considered or held to be an authorised occupant merely because of the passage of time. He continues to be an unauthorised occupant. The Act has been appropriately amended by inserting Section 10A in order to enable the Controller to evict such unauthorised occupants. In fact, it appears to me and I cannot resist but to go on record that there are two laws which are violated to the maximum extent in the City of Bangalore - i.e. The Karnataka Rent Control Act, and the laws relating to construction of buildings. It is because of this, the Act does not prescribe any time limit for taking action for eviction of

unauthorised occupant. In fact, this Court had an occasion to interpret Section 10A of the Act, in Sameeulla Khan v. Deputy Commissioner, Bangalore, 1979 (2) KLJ 351. In which it has been held that the word 'may' occurring in Section 10A of the Act, has necessarily to be interpreted only as compulsive and not as permissive; in other words, whenever the Controller finds that a person has occupied a building in contravention of Section 4 of the Act, he is under a compulsive duty to evict such a person, take possession of the building and initiate proceedings for allotment of the building in accordance with the other provisions contained in Part-II of the Act. The word 'may' has been used in Section 10A of the Act, as a matter of pure convention and courtesy and is intended to be mandatory in character.

Accordingly, Point No. (1) is answered in the affirmative and it is held that Sri Sajjan Raj has been in unauthorised occupation of the premises in question.

9. POINT NO. (2) : It is contended that Sri Sajjan Raj has spent considerable sum for improving the premises and has also made an application for allotment, therefore, these circumstances, considered along with the fact that action under Section 10A of the Act, is taken nearly after a lapse of nine years, are sufficient to hold that the order directing eviction is not justified in law. In support of this plea, learned Counsel for Sri Sajjan Raj has placed reliance on an unreported Judgment of this Court in P.G. Raja Iyer v. The House Rent Controller, Bangalore City, CRP No. 433 of 1963 DD 21-11-1963. That case was decided under the provisions of Section 3A of the Mysore House Rent and Accommodation Control Act, 1951 [for short, 'Mysore Act']. Section 3A(1) of the Mysore Act, related to eviction by the Controller, of unauthorised occupants. It read thus :

'3-A(1) Where in accordance with the provisions of Section 3, the vacancy of any house is required to be intimated to the Controller and is not so intimated, and the Controller believes or has reason to believe that any person has in contravention of Section 3, occupied the house or any part thereof, he may, by notice in writing, call upon the person in occupation to show cause, within a time to be fixed by him, why he should not be evicted therefrom :

Provided that no notice under this sub-section shall be issued if the Controller is of opinion that there has been undue delay or it is otherwise inexpedient to issue

such notice.'

Relying upon the aforesaid proviso, this Court held that the proceedings commenced for eviction after a lapse of 8 years for transgression of the provisions of the Mysore Act, were inexpedient and amounted to harassment of a person. The relevant portions of the Judgment are as follows :

'In this case in which the occupation of the premises without intimation to the Controller happened seven or eight years before the proceedings commenced, even the commencement of a small tea shop in the premises also happened a long time before the commencement of the proceedings. In those circumstances what the Controller should have done to consider, as stated in the proviso to Section 3-A of the Act, whether this was a case in which at this long distance of time it was expedient to commence any proceedings against the petitioner. There can be no doubt that it would be a harassment for a person to be proceeded against under the provisions which happened eight years before the commencement of the proceedings. That is also what I should say in regard to the so called conversion of the residential premises into non-residential premises.

XX XX XX XEEven the District Judge committed a curious mistake in thinking that this was a case in which it was necessary to condone some unauthorised act of the petitioner, whereas what the District Judge should have considered was, whether it was expedient or necessary to initiate proceedings against the petitioner at this distance of time. The attention of neither of the two authorities below was focussed on this matter and that is why what is clearly a misuse of the power exercisable under the Act was made.'

There is no such proviso contained in Section 10A of the Act This only shows that the Legislature when it passed the Mysore Act, was of the view that in the event of there being undue delay or otherwise inexpedient, no action for eviction need be initiated. However, when it came to pass the Act, probably the experience might have made it to realise that such a proviso would result in defeating the very object of the Act therefore, it thought it fit to delete such a proviso or not to incorporate such a proviso to Sub-section (1) of Section 10A of the Act. Thus, it is not possible to hold that as per the provisions contained in Section 10A of the Act, the action

taken by the Controller to evict Sri Sajjan Raj, is either an harassment or inexpedient. The action is definitely in public interest as the premises becomes available for allotment in accordance with the provisions of the Act. The Act is passed to serve and advance public interest and the enforcement of it without any doubt serves public interest. Fortunately, at least after 9 years, the authorities have been able to discover unauthorised occupation of the premises. There may be several thousands of such cases in the City of Bangalore, which are yet to be noticed and action taken, as otherwise the occupants will continue to remain in unauthorised occupation of the premises, inspite of the specific mandatory provisions contained in Section 10A of the Act. Consequently, the very object of the Act will be defeated.

Accordingly, Point No. 2 is answered in the affirmative and against the petitioners-

10. POINT NO. (3) : It is contended on behalf of the landlord that the question of unauthorised letting out of the premises will arise only after an order under Sub-section (3) of Section 10A of the Act, is passed and the premises is let out. Section 10A(3) of the Act, reads thus :

'10A. EVICTION BY THE CONTROLLER.-

(1)xx xx xx(2)xx xx xx(3) (a) Upon service of an order under Sub-section (2), the person against whom an order is made and every person claiming under him shall vacate the building and deliver possession thereof to the Controller. If the building is not vacated and its possession delivered to the Controller within the period specified in the order, the Controller may summarily dispossess the persons in occupation and take possession of the building and thereupon the provisions of Sections 4, 5, 8, 9 and 10 shall apply to the building as if intimation of vacancy of the building was given to the Controller on the date on which he took possession of it.

(b) The provision of Sub-section (2) of Section 10 shall apply to any action taken by the Controller under Clause (a).'

It only provides for passing an order against a person who is in unauthorised occupation of the premises directing him to vacate the premises and take possession of the premises and there upon apply the provisions of Section 4, 5, 8 and 9 of the Act. Therefore, Sub-section (3) of Section 10A of the Act, has nothing to do with the prosecution that has been ordered against the landlord for contravention of Sub-section (2) of Section 4 of the Act. Sub-section (3) of Section 4 of the Act, specifically provides that any landlord who contravenes the provisions of Sub-section (1) or (2) shall, on conviction, be punished with fine which may extend to one thousand rupees, provided that such fine shall not be less than fifty rupees. As per the finding recorded on point No. (1), there is unauthorised letting of the premises in question in the year 1976, which is continued and consequently the provisions of Subsection (1) and (2) of Section 4 of the Act, have been contravened by the landlord; therefore, the Controller is justified in directing prosecution of the landlord for the contravention of these provisions. Having regard to the fact that the landlord is a Senior Member of the Bar, enjoys a status in the society, it was suggested to him to avoid prosecution, whether he would be able to put the allottee immediately in occupation of the premises in question. Time was also granted to him in this regard. However, learned Counsel for the landlord submitted that it was not possible. Under these circumstances, it is not possible to relieve him from the direction of the Controller to prosecute him for the contravention of the provisions of Section 4 of the Act. Accordingly Point No. 3 is answered in the affirmative.

11.1) POINT NO. (4) :- It is contended on behalf of the petitioners that allotment of the premises in question in, favour of the 4th respondent is not justified. Firstly because there is no vacancy and secondly Sajjan Raj ought to have been preferred to 4th respondent, as the landlord has given the consent in his favour. It is not possible to accept both the contentions. The first contention is based on the fact that admittedly the premises has been in occupation of Sajjan Raj and on the date the vacancy was notified it was in occupation of Sajjan Raj ; therefore, factually there was no vacancy. This contention is no more res integra. This Court, had an occasion to consider this aspect in Sharadha Bai v. House Rent Controller & Ors, 1980(1) KLJ 373. After discussing the position that was obtaining before the insertion of Section 10A by the Amending Act 14 of 1969, and on considering

the scope and effect of Section 10A of the Act, it has been summed up as follows :

'6. To sum up, it may be stated that before the incorporation of Section 10A by Amending Act 14 of 1969, the procedure for summary eviction of a person who enters the building in contravention of Section 4(2) had not been provided. Now Section 10A provides for such procedure. It also authorises the Controller to evict such person and take possession of the building. Before the amendment, the possession of a building could be taken from an unauthorised occupant only after its allotment, but after the said Amendment, the illegal occupant could be evicted even before the allotment. But then, the Act does not require that the Controller should be in possession of the vacant building before it is notified or allotted to any applicant. After the allotment of such building, he could call upon the landlord to give vacant possession and upon his failure, the Controller shall take possession by using such force as may be required. In the circumstances, the allotment of the building to Respondent-3 cannot, therefore, be regarded as illegal.

11.2) Of course, there is a passing reference in the aforesaid Sameeulla Khan's case, 1979 (2) KLJ 351 that in order to initiate a proceeding for allotment of a premises in accordance with the provisions of Part-II of the Act, the possession of the premises must be obtained from the occupant. In that case, this point was not specifically raised for consideration. The point raised for consideration was whether the power of initiation of action under Section 10A of the Act, was discretionary or mandatory. The decision in Sharada Bai's case, 1980(1) KLJ 373, is squarely on the point. Therefore, I am of the opinion that it is not necessary that the allotment proceedings should await until the unauthorised occupant is evicted. Both the proceedings can go on simultaneously and on the eviction of the occupant, the allottee can be put in possession of the premises.

11.3) In this connection, it is also contended on behalf of the petitioners that the Revenue Inspector, who has reported the vacancy has not been examined in the case ; therefore, the proceeding is bad in law. Reliance is placed on a decision of this Court in B. Seethamma v. The Special Deputy Commissioner & others., 1983 (2) KLC 384. This is not a case in which the facts necessary for the purpose of deciding whether the petitioner-Sajjan Raj is in unauthorised occupation of the

premises in question or not, are disputed. As it is already pointed out, the necessary facts are not in dispute and those facts are also not disputed before me. That being so, the examination or no examination of the Revenue Inspector has no bearing on the case on hand.

11.4 On the undisputed facts it is found that Sri Sajjan Raj has been in unauthorised occupation of the premises, According to his case, he has spent certain sum for improvement of the premises in question, and has also been preferred by the landlord. Therefore, it is contended that he ought to have been preferred to the other applicant. In that event, it only means that what was so far an unauthorised occupation, would now be made an authorised occupation which the law does not permit. The law specifically directs that person in unauthorised occupation, must be evicted. Therefore, if an allotment is made in favour of the petitioner-Sri Sajjan Raj, it would clearly contravene the provisions contained in Section 10A(3) of the Act. It also amounts to putting a premium on the unauthorised occupation of the premises and results in encouraging such unauthorised occupation. As far as the allotment made in favour of the 3rd respondent in Writ Petition 3547 of 1986, who is also respondent-4 in W.P. 799/86, is concerned. I have no reason to differ from the findings recorded by the two authorities below. Accordingly Point No. 4 is answered in the affirmative and against the petitioners.

12. For the reasons stated above, these petitions fail and the same are dismissed.

13. It is submitted on behalf of Sri Sajjan Raj that he may be granted one year's time to vacate the premises in question. He has been in unauthorised occupation since 1976 or at any rate after Jaisingh, who was also in unauthorised occupation, vacated the premises. Therefore, it is not possible to grant one year's time to Sajjan Raj to vacate the premises. But, at the same time, it is just and necessary to grant him a reasonable time, to enable him to secure alternate accommodation. He has also filed an undertaking, dated 3-7-1986, in the form of an Affidavit, which reads thus :

'I, P.R. Sajjan Raj, Managing Director, Chamundi Granites Pvt. Ltd., No. 16, Eagle Street, Langford Town, Bangalore, the petitioner above named solemnly begs to

state on oath as follows :

1. I am the petitioner in the above case and fully conversant with the facts of the case and hence I am swearing to this affidavit.

2. I submit that I undertake to voluntarily vacate and deliver vacant possession of the premises in question viz., No. 16, Eagle Street, Langford Town, Bangalore to the fourth respondent-allotted immediately after expiry of three months from to-day i.e., on 4-10-1986 without recourse to further proceedings of execution.'

14. The aforesaid undertaking is placed on record. In view of the undertaking, Sri Sajjan Raj is granted time to vacate and deliver vacant possession of the premises in question bearing No. 16. Eagle Street, Langford Town, Bangalore, to the allottee-4th Respondent in W.P. 799/86 and 3rd respondent in W.P. 3547 of 1986, till 4th October, 1986 without compelling the allottee to take recourse to the proceeding for execution. Similarly, the landlord is also directed to see that the allottee is put in possession of the premises in question, on the 4th of October, 1986.

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