

**Udayashankar Vs. House Rent Controller**

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**Court :** Karnataka

**Decided On :** Aug-29-1985

**Reported in :** ILR1986KAR981

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

**Acts :** Karnataka Rent Control Act, 1961 - Sections 17, 17(2) and 21A

**Appeal No. :** C.R.P. No. 937 of 1985 and WP No. 13508 of 1984

**Appellant :** Udayashankar

**Respondent :** House Rent Controller

**Advocate for Def. :** Kadidal Manjappa, Adv.

**Advocate for Pet/Ap. :** Gowrishankar, Adv. for ;C.S. Shanthamallappa, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

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

1. These two Petitions are filed by the tenant in occupation of the premises bearing No. 15 (Model House) Jayalakshmpuram, Temple Road, Mysore. The respondent in the revision Petition is also the second respondent in the Writ

Petition, and he is the landlord of the premises. He is hereinafter referred to as the respondent.

2. The respondent filed an application under Section 17(2) of the Karnataka Rent Control Act (hereinafter referred to as the Act) before the House Rent Controller, Mysore City praying that the dispute between him and the tenant regarding the increase of tax claimed under Section 17(1) of the Act be decided. He also filed another application under Section 21A(2) of the Act for eviction of the petitioner on the ground that he has secured an alternative suitable accommodation. The House Rent Controller has decided both the applications together by a common order dated 16th March, 1985. He has passed the following order :-

'(1) A fair rent of Rs. 377.80 from 1-4-1973 to 31-3-1976 and Rs. 599/- with effect from 1-4-1976 till the date of vacation by the respondent is fixed.

(2) The respondent shall vacate the house bearing No. 15 Model House, Temple Road, Jayalaxmipuram, Mysore within 30 days from the date of receipt of this order.

(3) Since the respondent has violated the provisions of Section 21A(1) and (2), a fine of Rs. 1000/- is levied by exercising powers under Section 21A(3) and 51-A. The respondent shall deposit the amount-immediately in this Court, failing which further action will be taken as per Rules.'

The Writ Petition is preferred against the part of the order by which a fine of Rs. 1000/- is levied under Section 21-A(3) read with Section 51-A of the Act. The Civil Revision Petition is preferred against the portion of the order by which a fair rent of Rs. 377-80 is fixed from 1-4-1973 and it has been enhanced to Rs. 599/- per month with effect from 1-4-1976.

3. The office has raised an objection that the Writ Petition is not maintainable. As the order passed under Section 21A of the Act by the House Rent Controller, is neither appealable nor Revisable under the Act by this Court or by any other Court, the Petition filed under Articles 226 and 227 of the Constitution, is maintainable. The office is directed to register the Petition. Both the Petitions are

heard on merits.

4. It is contended on behalf of the petitioner that the provisions of Section 21-A of the Act, are not available to the respondent/landlord because those provisions can be availed of only by the tenant who is in occupation of the premises on allotment and whose premises has been in occupation of another person as a tenant and it is against such tenant these provisions can be availed of by the owner of such premises who himself is a tenant of the premises. It is also contended that when the Petition under Section 17(2) is filed to increase the rent on the basis of increase in the house tax, the House Rent Controller can increase the rent only to the extent the tax is increased and cannot fix the fair rent to the premises. On the contrary, Sri Manjappa, Learned Counsel appearing for the Respondent landlord submits that earlier to these present proceedings, there was a proceeding under Section 10-A of the Act in Case No. RC. PR. 72/73-74 and ARC 66/73-74 in which after holding an enquiry the Rent Controller, Mysore City came to the conclusion that the possession of the petitioner-tenant was with the consent of the Respondent-landlord therefore it was not necessary to dispossess him and accordingly he closed the proceeding initiated under Section 10-A of the Act ; that, that order, according to Learned Counsel, amounted to regularising the tenancy and as such it amounted to allotment as otherwise there was no reason whatsoever to allow the petitioner to continue his unauthorised occupation. The validity of this contention is disputed by Learned Counsel for the petitioner. With regard to fixation of fair rent, it is submitted by Sri Manjappa, Learned Counsel that though the application is filed under Section 17 of the Act, what is determined is the fair rent and on the material on record the determination of fair rent is justified, therefore the order determining the fair rent does not call for interference.

5. Having regard to the aforesaid contentions, the points that arise for consideration are as follows :-

(1) Whether the order of the House Rent Controller fixing fair rent is valid in law ?

(2) Whether the order of the House Rent Controller directing eviction of the petitioner from the schedule premises and further imposing a fine of Rs. 1000/- is valid in law ?

The facts necessary to decide the aforesaid points are not in dispute.

6. Point-1: The landlord has filed a Petition under Section 17(2) of the Act. The said Petition reads thus :

'On 10-3-1972 the respondent took the schedule premises on lease from the petitioner, on a monthly rent of Rs. 200/- and has executed a rent deed dated 10-3-1972 in favour of the petitioner. The said rent deed is produced in the H.R.C. Proceedings on the file of the First Munsiff Court, Mysore and the same will be summoned from the said Court.

According to the terms of the above said lease deed and according to Section 17(1) of the Karnataka Rent Control Act, 1961 the petitioner is entitled whenever the rate of tax payable by him in respect of the schedule premises to the local authority is enhanced to claim such excess amount from the respondent/tenant in addition to the rent payable.

At the time the respondent occupied the schedule house, and till the year 1978 the annual municipal tax payable by the petitioner for the schedule house was Rs. 377.80. From 1-7-1978 the house tax was increased to Rs. 599/- per year. Thus there was an increase in the amount of tax payable by Rs. 221.20.

The respondent was informed about such increase and he was asked to pay the sum of Rs. 221.20 per year with effect from 1-7-1978 upto date amounting in all Rs. 1,327,20.

The respondent is legally bound to pay the said excess amount to the petitioner.

In spite of several demands from 1-7-1978 the respondent has refused to pay the said sum to the petitioner. Hence, this Petition under Section 17(2) of the Karnataka Rent Control Act.'

From the contents of the petition, it is clear that the petition is filed only on the basis of increase in the house tax. Even the contents of the application do not bring the case under Section 14 of the Act, Therefore, what the respondent landlord wanted was to have the rent of the premises increased to the extent there

was increase in the house tax. That being so, the House Rent Controller ought to have confined his enquiry as per the prayer made in the application. He could not have determined the fair rent of the premises as it was not the case of any one of the parties before him. Therefore the order determining the fair rent ignoring the contents of Section 17 of the Act and the contents of the application cannot be sustained. It is therefore, liable to be set aside and the application is liable to be remitted for fresh consideration. Point-1 is answered accordingly.

7. Point-2: It is not possible to accept the contention of Sri Manjappa, Learned Counsel for the respondent-landlord that the order dated 13th April, 1974 passed by the House Rent Controller in Case No. R.C.P.R. 72/73-74 and ARC 66/73-74 amounted to an allotment of the premises in favour of the petitioner-tenant or at any rate regularising the unauthorised occupation of the petitioner of the premises. At the time when the order dated 13th April, 1974 was passed, Part V-A of the Act was not on the statute book. There was no power vested in the House Rent Controller to regularise the unauthorised occupation. As per the findings recorded in the said order, the premises in question, was leased to the petitioner when it was more than five years old. Therefore, it could not have been leased out and it could have been only allotted through the Rent Controller. Therefore, the Rent Controller even after coming to the conclusion that the provisions of Chapter IT of the Act were attracted, and violated nevertheless took a compassionate view in the matter on the ground that the petitioner-tenant was a student and the respondent-landlord was a Superintendent of Police and he was led to believe that the premises was not more than five years old and on that basis he declined to pass an order directing dispossession of the petitioner from the schedule premises. Such an order cannot be held to have regularised the unauthorised occupation, that too, when there was no such provisions in the Act enabling the House Rent Controller to regularise the unauthorised occupation. Thus the occupation of the premises by the petitioner was on the basis of the lease granted to him by the respondent and not on the basis of an order of allotment. Secondly, the provisions of Section 21-A of the Act cannot be availed of by the respondent landlord against the petitioner-tenant in the instant case because the occupation of the petitioner of the premises in question is not on allotment. Therefore there was no justification whatsoever to pass an order of eviction and levy penalty under

Section 21A(2) and (3) and Section 51A respectively of the Act. The order is without jurisdiction. Point-2 is answered accordingly and against the respondent.

8. For the reasons stated above, the Civil Revision Petition and the Writ Petition both are allowed. The order dated 16-3-1985 passed in Case No. FRC 1/84-85 by there House Rent Controller, Mysore City, directing eviction of the petitioner under Section 21-A of the Act and imposing penalty of Rs. 1000/- under Sections 21-A(3) and 51-A of the Act is quashed.

9. The portion of the order which fixes the fair rent of the premises is also set aside and the Petition filed by the respondent-landlord under Section 17(2) of the Act is remitted to the Rent Controller, Mysore City, Mysore with a direction to decide the same afresh, in accordance with law and in the light of the observations made in the order.

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