

**Mohammed Kalemulla Khan Vs. House Rent and Accommodation Controller**

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**Court :** Karnataka

**Decided On :** May-24-1988

**Reported in :** ILR1988KAR2609; 1988(2)KarLJ269

**Judge :** Murlidher Rao, J.

**Acts :** Karnataka Rent Control Act, 1961 - Sections 21 and 21A

**Appeal No. :** W.P. No. 11329 of 1983

**Appellant :** Mohammed Kalemulla Khan

**Respondent :** House Rent and Accommodation Controller

**Advocate for Def. :** K. Srinivasa Gowda, HCGP for R-1 and ;C. Divakar, Adv. for R-2

**Advocate for Pet/Ap. :** Nigar Fathima Banu, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**Murlidher Rao, J.**

1. This petition is filed by the tenant who is in occupation of the premises bearing No. 458, Viveknagar, Bangalore-47. It is not disputed that he is occupying the

premises since 1971 by paying a rent of Rs. 200/- per month. The second respondent is the Landlord.

2. The second respondent who did not at one point of time, own any house made an application for allotment of house No. 19L-5th Street, Ashoknagar, Bangalore-25. The said house was allotted to him by the Rent Controller in the year 1964 on a monthly rent of Rs. 140/-. While he was continuing in this premises, he acquired the present premises No. 458, Viveknagar, Bangalore-47 in 1971. He leased it in favour of petitioner. The rent he was getting was more than the rent he was paying. As per Section 21A(1)(a), he was required to vacate the building within one year from the date of acquisition; admittedly, he did not do so and continued to stay in the allotted premises, and enjoyed the rents paid by the petitioner. It appears, that proceedings were taken up by respondent's landlord to evict him under Section 21A of the Act on the ground that he has acquired a house. An order of eviction appears to have been passed in HRC. Misc.No. 269/1979 on 1-1-1981. It is not known whether it is an order on compromise or after contest. Making this as a ground, the landlord filed the present petition on 4-2-1982 i.e., one year after the eviction decree under Section 21A(b) and (c) of the Act seeking summary eviction of the petitioner who was his tenant. By the time, this petition was filed, 11 years had elapsed since the date of acquisition and during this period, the petitioner was continued as a tenant and second respondent continued to stay in the allotted premises, as an allottee.

3. The Rent Controller, by Annexure-A has passed an order of eviction and directed the petitioner to vacate and deliver possession within two months from 6th April 1983. On 8-4-1982, the Rent and Accommodation Controller, Civil Area, Bangalore had issued a notice to the petitioner to show cause as to why he should not be evicted under Sub-section (2) of Section 10A i.e., treating him as an unauthorised occupant. It is pertinent to note that action under Section 10A can be taken only against a person who is inducted as a Tenant, in contravention of Section 4; that is by avoiding the allotment by the Rent Controller. Admittedly, the petitioner did not belong to that category. The order dated 6th April 1983 Annexure-A and the notice dated 8-4-1982 Annexure-B are challenged in this Writ Petition.

4. The questions that emerge for consideration are :-

1. What is the scope and ambit of Section 21A of the Rent Control Act?

2. When can the allottee tenant invoke the provisions of Clauses (b) and (c) of that Section?

3. Whether the Rent and Accommodation Controller has jurisdiction to pass an eviction order under Section 21A against an allottee who has not vacated the premises within one year as he was required to do and can such an order be made a basis for giving relief under Clauses (b) and (c) of that Section to evict his tenant?

5. The first two points are no longer resintegra. Explaining the legal position of Section 21A, a Division Bench of this Court in *SRINIVAS VAKIL AND ORS. v. STATE OF KARNATAKA AND ORS.* : AIR1980 Kant44 has laid down thus :

'All that Section 21A provides is that a person who is in occupation or possession of a building as tenant on allotment by the Controller, shall within one year from the said date vacate such building if he owns a residential building in the same City town or village, that such person shall, in turn, be entitled to recover possession of his own building in case it is let out to any other person and that he may apply to the prescribed authority for eviction of such other person. Thus it is seen that the benefit of allotment of a residential accommodation at controlled rent, conferred on such person by the provisions of the Principal Act, is taken away by Clause (a) of Section 21A (1) and such person in turn is enabled to obtain by means of a summary procedure, possession of his own house which he had let to another person. The Principal Act itself has provided for a landlord seeking eviction of his tenant from a house where former requires such house for his own bona fide and reasonable occupation or where the latter has acquired vacant possession of his own house. The change brought by Section 21A is to make it compulsory for a person who is in occupation or possession of allotted residential accommodation to vacate such accommodation if he has his own house in the same City, town, or village. Section 21A also contains the consequential provision for such person getting the aid of the prescribed authority for summary eviction

from his own house of his tenant instead of such person making an application under Clause (h) of the proviso to Section 21(1) of the Principal Act for eviction from his own house of his tenant. Section 21A merely brings about a modification of the provisions of the Principal Act in regard to certain class of persons who are tenants on one hand and are also landlords on the other hand. That Section does not bring about any further repugnancy with reference to the provisions of the Transfer of Property Act so as to require the assent of the President for the Amendment Act.'

(Underlining is mine)

6. The emphasis given to the words 'such person' at two places in the above extract must be understood to mean a person who being an allottee is required to vacate the allotted building in one year or if he within the said period in compliance with the said requirement has vacated the allotted premises. The words 'such person' in Clauses (b) & (c) should receive the same connotation and meaning. It refers to an allottee who has complied with the requirement of Clause (a). The words 'such person' cannot include an allottee who is a wrong doer and who has contravened the provisions of Clause (a).

7. Following the above decision Justice Mr. S.G. Doddakale Gowda has observed thus in Dr. R. RAJASHEKAR v. S. NARAYAN : ILR 1987 KAR757 :

'Clause (a) of Sub-section (1) of Section 21A of the Act enjoins a person owning property not to remain or continue in possession of an allotted premises Clause (b) enables such owner to get his tenant evicted after issue of notice of less than four months as contemplated under proviso of this clause. Clause (c) provides for summary inquiry.'

8. The above enunciation makes it manifest that it is mandatory on the part of an allottee to vacate the building which has been allotted to him within one year from the date of his owning a house. The words 'shall within one year from the said date vacate such building' makes it explicit that the allottee has to vacate the allotted building irrespective whether he secures his house or not. It may be that in some circumstances, he may have to occupy some other house on lease. But that

consequence is immaterial in complying with the mandatory requirement of the provision. In the instant case, the second respondent was required to vacate the allotted house in 1972. Admittedly, he has not done so. Therefore, there is a clear contravention on his part of the mandatory provisions contained in Clause (a) of Section 21A (1) of the Act. He is not a 'such person' who can take benefit under Clause (b). In such a situation, the authorities are required to take action against the allottee under Sub-section (3) of Section 21A of the Act, that is the only machinery provided for compelling the allottee to obey the mandate in Clause (a).

9. As held in the above decisions, Clause (b) and (c) enable the allottee who has to vacate within one year or if he has vacated within that period to seek aid of the prescribed authority for summary eviction of his tenant. The words in turn in Srinivas Vakil's case<sup>1</sup> makes it clear that the allottee as a consequence of becoming a owner of a residential premises and having complied with the requirement of Clause (a) by vacating the allotted premises approaches the Rent and Accommodation Controller, seeking eviction of his tenant. The clear intention of the legislature in making such a provision is that such a person is not required to take recourse to the provisions of Section 21 of the Act as observed by the Division Bench. The fact that he has within one year vacated the allotted house, itself, in the opinion of the legislature is sufficient to seek summary eviction of his tenant who had been inducted by him at a time when he did not own or acquire any house. The above authorities also make it clear that it enjoins upon the allottee not to remain and continue in possession of the allotted premises after an year. The Unambiguous words in Clauses (a) and (b) leave no room for doubt that the allottee has to vacate the allotted premises and then seek aid of the Rent Controller for summary eviction of his tenant before the expiry of one year. Alternatively, he may issue four months notice to his tenant and may initiate proceedings under Clause- (b) provided he vacates the allotted premises before the expiry of one year. In the instant case, the petitioner admittedly has not complied with the requirement of Clause (a) of Sub-section (1) of Section 21 A. Therefore, he is not entitled to invoke Clauses (b) and (c) which are meant to assist an allottee who has complied with the requirement of Clause (a). Therefore, prima facie the petition filed by the petitioner was not maintainable and it had to be rejected. Thus understood the order of the Rent Controller at Annexure-A is clearly

without jurisdiction. It is made clear that while it is not possible to evict the petitioner summarily, under Section 21A, this will not affect the right of second respondent to initiate proceedings under Section 21 of the Act.

10. The next question is whether the Rent and Accommodation Controller, could have passed an eviction order dated 1-1-1987 in HRC.Misc.261/1979 under Section 21A. The learned Advocate for the respondent submitted that the Rent and Accommodation Controller had passed this order of eviction against the second respondent on the ground that he had acquired the premises. The learned Government Pleader was specifically asked to point out the provision under which the eviction order could be passed by authorities for contravening the mandatory provisions of Clause (a) of Sub-section (1) of Section 21A of the Act. The High Court Government Pleader in all fairness submitted that there is no provision enabling the Rent Controller to pass an eviction decree against an allottee if he fails to vacate the premises within one year from the date of owning a premises. He submitted in such a case, the only remedy was to take action under Sub-section (3) of Section 21 A. A clear reading of the entire Section 21A makes it clear that there is no provision to pass an eviction decree summarily for contravening the provisions of Clause (a) of Section 21A. In the absence of the legal provision, the eviction decree dated 1-1-1981 has no legal effect and it is inexecutable. In the eye of law it is non-est. The Rent Controller had no jurisdiction to pass an eviction decree and such a decree cannot be made a basis for summarily evicting a tenant like the petitioner.

11. The notice issued to the petitioner treating him as an unauthorised occupant under Section 10A is clearly illegal. Petitioner was inducted as a tenant by the second respondent. It is nobody's case that he was inducted in contravention of Sections 4 and 5 of the Act. It was represented that the building was new and was thus exempted from Part II of the Rent Control Act for five years. If that be so, the petitioner cannot be treated as an unauthorised occupant. If the petitioners initial possession was as a lawful tenant, he cannot become unauthorised occupant, on his landlord acquiring a right to seek summary eviction, in certain circumstances. Therefore, the notice issued to him is illegal and cannot be sustained.

12. For the aforesaid reasons, this petition is entitled to succeed. Hence, I make the following :

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