

**Boramma Vs. Rent and Accomodation Controller**

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**Court :** Karnataka

**Decided On :** Aug-22-1988

**Reported in :** ILR1988KAR3029

**Judge :** Balakrishna, J.

**Acts :** Karnataka Rent Control Act, 1961 - Sections 8(1), 10A(2), 10A(3A) and 10(2)

**Appeal No. :** W.P. No. 1263 of 1986

**Appellant :** Boramma

**Respondent :** Rent and Accomodation Controller

**Advocate for Def. :** N.B.N. Swamy, Adv. for R-3

**Advocate for Pet/Ap. :** T.N. Manjula Devi, Adv. for ;R.B. Sadashivappa, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**Balakrishna, J.**

1. In this Revision Petition the order passed by the Rent Controller, Mysore, (Annexure-A) and the order passed by the Special Deputy Commissioner, Mysore

District, Mysore (Annexure-B) have been challenged.

2. The grievance of the petitioner is that on the mere allegation of existence of vacancy and without verification in accordance with law after due issue of notice as contemplated and without going through the due process of law in evicting the alleged unauthorised occupant in one of the tenements, the Rent Controller has proceeded to notify the alleged vacancy and allotted the premises to the 3rd respondent. The other grievance of the petitioner is that the Rent Controller is stated to have conducted a spot inspection which is not within the knowledge of the petitioner and that the petitioner was not notified of any proposed spot inspection.

3. In these circumstances, the question that arises for consideration in this petition is whether the impugned order passed by the Rent Controller vide Annexure-A which was confirmed by the order of the Deputy Commissioner, Mysore District, Mysore, vide Annexure-B deserve to be quashed.

4. Clause (a) of Sub-section (1) of Section 8 of the Karnataka Rent Control Act, 1961 (hereinafter referred to as 'the Act') provides thus :

'(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.....'

Clause (a) of Sub-section (3) of Section 10-A of the Act reads:

'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 there upon the provisions of Sections 4, 5, 8, 9 and

10 shall apply to the buildings as if intimation of vacancy of the building was given to the Controller on the date on which he took possession of it...'

Section 8(1)(a) of the Act deals with the procedure to be followed before ordering leasing of any building for a public authority or to any other person. This provision is mandatory in nature. According to this provision, the law warrants that the Rent Controller should call upon the landlord or any other person who is in occupation of the building, by a notice in writing, to show cause within the prescribed period of seven days from the date of receipt of the notice why the building should not be ordered to be let-out to public authorities or any other person as may be specified in the notice issued by the Rent Controller.

5. Whether according to this provision, the Rent Controller has issued a notice is in dispute, According to the petitioner, no such notice was even issued or served on the petitioner. But. in the order that is passed by the Rent Controller, it is stated that in accordance with Section 8(1)(a) of the Act a notice was sent calling upon the petitioner to appear before the Rent Controller on 13-9-1985 at 2.30 P.M. However, there is no indication on record of the date of notice so sent and the date of service of the notice on the petitioner. It cannot be said with certainty that such a notice was duly served on the petitioner and that despite such service, the petitioner did not appear before the Rent Controller. It is not enough if the Rent Controller merely sends a notice to the petitioner under Section 8(1)(a) of the Act. It must also be substantiated by means of an acknowledgement given by the petitioner for having received the notice from the Rent Controller. Mere sending is not service of notice and unless there is sufficient material to establish that the notice has been actually served on the petitioner, it is difficult to accept the observation made by the Rent Controller in his order under Annexure-A. I, therefore, hold that there is no due service of notice as contemplated under the provisions of Section 8(1)(a) of the Act.

6. The other question for consideration is whether the procedure contemplated under the Act has been followed by the Rent Controller in passing the impugned order allotting the premises in question to the 3rd respondent.

7. According to the provisions of Clause (a) of Sub-section (3) of Section 10-A of the Act, after an order has been served on the petitioner under Sub-section (2) of Section 10-A of the Act and consequent to the failure of the petitioner to appear before the Rent Controller, or having appeared, the petitioner fails to satisfy the Rent Controller that the petitioner is entitled to remain in occupation of the building, the person against whom the order is likely to be passed by the Rent Controller as well as every person claiming under such person shall vacate the building and deliver possession thereof to the Controller. If the building is not vacated and possession not delivered to the Controller within the specified period mentioned in the order, the procedure is that the Controller could proceed to summarily dispossess the person in occupation and to take possession of the building. This procedure does not appear to have been followed by the Rent Controller before passing the impugned order. I, therefore, hold that there is no compliance with the statutory requirement envisaged by Section 10-A of the Act.

8. As regards the spot inspection stated to have been made by the Rent Controller, except for a passing reference to the alleged spot inspection, there is no other material on record to hold that such a spot inspection was made by the Rent Controller and before making the inspection, the Rent Controller had served due notice on the petitioner intimating the date and time of the inspection. In the absence of such a material it cannot be said that the petitioner was duly intimated about the date and time of the inspection and that the petitioner remained absent. Therefore, it cannot be said that the inspection so made is within the realm of 'acting fairly.'

9. For the reasons stated above, I am of the opinion that the impugned order of the Rent Controller vide Annexure-A deserves to be quashed and so also the order passed by the Appellate Authority under Annexure-B. Accordingly, this Writ Petition is allowed. Rule issued and is made absolute. I quash the order dated 15-11-1985 bearing No. A.R.C.39-85/86 of the Rent Controller, Mysore City, Mysore and the order of the Special Deputy Commissioner, Mysore District, Mysore dated 13-1-1986 passed in Case No. HRA. 15:85-86, Annexures A and B respectively and I direct the Rent Controller, Mysore to fix a date of hearing, grant reasonable opportunity of hearing to the petitioner and all the parties concerned and dispose

of the case afresh on merits in accordance with law, within thirty days from the date of receipt of this order.

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