

C. Ramesh Vs. State of Karnataka

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Court : Karnataka

Decided On : Oct-03-1991

Reported in : ILR1992KAR276; 1991(3)KarLJ388

Judge : Shyamsundar, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 4 and 12

Appeal No. : W.P. No. 23708 of 1990

Appellant : C. Ramesh

Respondent : State of Karnataka

Advocate for Def. : Government Adv. for R-1 to R-3 and ;R.B. Sadashivappa and ;Umakanth, Advs. for R-4

Advocate for Pet/Ap. : K. Suresh and ;Manjula Devi, Advs.

Disposition : Petition allowed

Judgement :

ORDER

Shyamsundar, J.

1. This Writ Petition is today listed to hear the prayer by the 4th respondent for an early disposal and accordingly it is I propose to dispose it off finally.

2. Acceding to the prayer for grant of an early hearing, I have heard Smt. Manjuladevi for Mr. Suresh, appearing for petitioner and Shri Sadashivappa for respondent-4 and the learned High Court Government Advocate for R-1 to R-3.

3. This Writ Petition arises from a set of concurrent orders of the Rent Controller allotting a first floor premises bearing No. 38/F, 8th 'F' Main, III Block, Jayanagar, Bangalore-560 011 to respondent No. 4 herein. That order is at Annexure-A. Subsequently, it came to be affirmed by the Appellate Authority, namely the Deputy Commissioner of Bangalore by an order made in HRC DC (A) 103/89-90 dated 27-11-1990 as per Annexure-B. That order contains as many as 10 paragraphs. Paras 1 to 9 are devoted to setting out the facts of the case, the grounds of appeal and the arguments of either side. It is in the penultimate para the learned Deputy Commissioner has disclosed his mind while dismissing the petitioner's appeal which merits excerption. It reads:

'The order of the House Rent Controller has been perused and the available documents have been examined. It is seen that the contentions of the appellant before this Court are the same as those urged before the House Rent Controller. It is seen further that Form I has been filed for non-residential purpose. This fact has also been noted by the House Rent Controller. No new contention or evidence has been placed before this Court by the appellant which would enable this Court to reconsider the decision of the House Rent Controller. The reasoning and arguments of the House Rent Controller cannot be found fault with. On the other hand the respondent has produced rent receipts of former tenant etc. Hence the following order.

There is no ground for interfering with the order of the House Rent Controller, Hence the appeal is dismissed.'

4. I am aghast at the limitations with which this particular Appellate Authority appears to suffer from, He does not even know what an appeal implies and why under the Statute an appeal is provided to him from the order of the Rent Controller. All said and done the Rent Control Act, albeit being a welfare legislation, seriously curtails the right of the landlord to deal with his own property at his will and discretion. It may be the needs of today's Society has prompted

imposition of severe restrictions and limitations on the power of a landlord either to enjoy his own property by himself or in applying it in the manner he desires as is evident from the serious inroads the legislation makes into the right of a owner of a property as aforesaid. The law in its beningness provides for built-in-checks and balances so as to prevent arbitrary exercise of power under the Statute. That is the reason why the Rent Controller is enjoined by the Act to make an enquiry and for that purpose the procedure before him is regulated by the application of the C.P.C. The Act enjoins the issuance of proper notices to all the affected persons and of hearing them, if need be even of recording evidence on oath and thereafter it is expected of the Rent Controller to pass an order which must be objective in nature disclosing ex-facie the reasons that have impelled him to make a particular order in a given case. The Statute then provides an appeal to the Deputy Commissioner who in the hierarchy of Officers is superior to the Rent Controller. In that appeal, it is open to an aggrieved person to challenge the findings recorded by the Rent Controller and to urge the Deputy Commissioner not to accept those findings but to reverse them. Both, in the proceedings before the Rent Controller and before the Deputy Commissioner parties are entitled to the assistance of Counsel of their choice who could be engaged by paying a remuneration to present their case.

5. The authorities after having had the benefit of listening to the arguments, most part of which being oral and on many occasions, I find written arguments are also submitted in most cases, the Appellate Authority without making a pretence at considering the arguments submitted on either side and without even simulating an attempt at considering the controversy arising before it, goes on to make an order in desultory and mechanical fashion resulting not in a judicial order being passed by a quasi judicial authority but an order I must characterise as sheer skulduggery. It is amazing to find that in appeal after appeal these Deputy Commissioners masquerading as Appellate Authority, do not even raise their eyebrows and take the trouble of going into the core of the matter and the controversy before them. I must observe in these matters questions and issues involved cannot even remotely be dubbed as complex, in that all that is in issue before the Appellate Authority was whether the allotment had been refused properly or had been made properly, and whether considerations which had to be brought to bear

on those issues had been really focussed upon and whether the order suffers from any other inequities, whether it was done in transgression of principles of natural justice or whether it suffers for want of fair-play, which is a must for every adjudicatory body dealing with rights of parties. But regrettably I find these Deputy Commissioners are unable to deal with, unravel and dispose it off in a manner befitting an Appellate Authority. Take for instance this case, I have already excerpted what goes in the name of final orders passed by the Deputy Commissioner, who like a stoic philosopher remains quiescent all through and then finally says well the Rent Controller has considered all the aspects, no new contentions or evidence is placed before me and therefore I agree with the Rent Controller.

6. If that be the approach of the Appellate Authority, predictably he falls in line with the Rent Controller, the result would be the same as there being no appeal at all.

7. Because the man had preferred an appeal and challenged the order of the Rent Controller it be have on the Deputy Commissioner to hearken to the arguments put forward in opposition to the orders of the Rent Controller and see whether it is good or bad. He cannot just run away or set his face against the appellant by simply saying well you had your innings before the Rent Controller and therefore it is not necessary to bat again before me. That is not the correct perspective to adopt and these Officers must realise that the right of appeal given to an aggrieved person under Section 12 of the Karnataka Rent Control Act, is not just to consign it to the dustbin. Such is not the intention of the makers of this Act. They wanted the appellate power to be a vibrant entity which could when exercised be a potent instrument serving as a panacea against imprudent orders of these Rent Controllers who seem to excel even the Chancellors of Yore.

8. If the above is the bane of the order of the Appellate Authority, the order passed by the Rent Controller allotting the premises to the 4th respondent seems to have thrown to the winds the requirements of law and jurisprudence by which he is certainly bound although proceedings before him are quasi judicial. Although Rent Controller primarily is an Executive Officer nevertheless has all the trappings of a Judge when he passes an order under the Act.

9. In this case, the petitioner asks for possession of the premises on the ground that he had taken the premises on mortgage from the owner under a registered mortgage deed which he produced, though Counsel who appeared on his behalf before the Rent Controller and contended that having taken the premises on mortgage which pre-supposes transitory possession both juridical and physical, he should be granted leave to occupy the premises himself, where he can quietly live during the period of mortgage. It is not denied the mortgage was supported by consideration of Rs. 10,000/-. There is nothing about that document which did not meet with the requirement of law, it has been registered and properly conveyed to the petitioner. But all this did not cut any ice with the Rent Controller who for reasons best known to him thought that the document itself was a make believe, one contrived to dodge the law i.e., Rent Control Act. It is astounding how he got that impression and how he could draw such an inference without as much as examining any witnesses in the case or at least allowing a statement of the petitioner to be recorded on oath. I am making this observation because I was told by Counsel on both sides that the Rent Controller did not record any evidence at all be it either on oath or without oath.

10. The petitioner asserts and the 4th respondent does not dispute that the owner of the house had mortgaged the premises to the petitioner. There is no kinsnip between them and there is nothing on record to show that they were not just strangers. If that is so, would any one invest Rs. 10,000/- and take the property on mortgage for the fun of it, A deed of registration is solemn evidence of a contract. Even if it appears to be sanctimonious, there is a presumption in law that recitals in the deed are true and correct subject of course to any rebuttal. The transaction is ex facie shown to be entered into by persons who may not even be prior acquaintances, can any one then possibly infer in such a situation that the deed is a collusive one entered into to hoodwink the law. Merely because the document had been executed after the Revenue Inspector from the Rent Controller's Office filed a report stating that the premises had become vacant, it does not mean the transaction of mortgage was a make believe one and nor can any one say it was just intended to be a false front to ward off the Rent Controller.

11. The mortgagor had in all probability mortgaged it to the petitioner with possession. Otherwise, a usufructuary mortgage has no meaning at all. The mortgage must be accompanied by possession.

12. Therefore the transaction of mortgage having been entered into after the premises became vacant on a stamp paper that it should have attracted the roving eye of the Revenue Inspector has no significance at all and from that circumstance the transaction cannot be dubbed a bogus one or something which was purely make believe. At any rate in the absence of evidence to possibly support such a conclusion, the Rent Controller's inference becomes a finding recorded in vacuum. It has therefore to be treated as honest factum and as something that does not exist at all. The fact that the petitioner had been residing elsewhere is again surrounded by controversy because the petitioner says the other place where he was staying was along with his parents and he had therefore sought out a premises where he could live by himself. That case is certainly plausible but why it should not have appeared plausible to the Rent Controller is something I am not able to appreciate unless it be he had taken a jaundiced view of the entire thing. The order of the Rent Controller can but be described as a futile epigram absolutely and totally vicious, conceived from start to finish to endanger the interest of the petitioner although he was bound under law to protect the interest of the petitioner if there were valid reasons for the same.

13. The Rent Controller has not obviously realised the implications of the findings recorded by him. The mortgage deed being a document conveying to the petitioner certain legal rights which if brushed aside in such a cavalier fashion as done by the Rent Controller would result in great harm to the interest of both the mortgagee and mortgagor in particular of the mortgagee who had taken the house on mortgage after paying valuable consideration. The seriousness and the gravamen of the finding he has recorded as aforesaid is suspect for he should have properly speaking restrained himself from recording such a finding on a mere whimsical and wayward consideration of a registered document and that is the hallmark of the order of the Rent Controller as also his Official Superior. The Deputy Commissioner who is the designated Appellate Authority found himself unable to correct it. Most of these orders made by the Rent Controller and the

Appellate Authority - the Deputy Commissioner, have very often proved to be epitomes of incompetence. I hope the emphatic observations made in this order will at least, now help them to stay awake while dealing with these matters i.e., by the Rent Controller at the first instance and thereafter by the Deputy Commissioner on appeal. Mainly for the reason that neither the Rent Controller nor the Appellate Authority have applied their mind to the case of the petitioner and on the other hand seem to have taken pleasure in committing an act of misfeasance, in not considering his case in the proper perspective, interference is called for with the offending orders of both the authorities.

14. For the reasons mentioned above, this Writ Petition succeeds and is allowed. The order of the Rent Controller at Annexure-A and the order of the Appellate Authority at Annexure-B shall stand quashed. The matter stands remitted to the Rent Controller for disposal of the petitioner's claim for self occupation of the premises in accordance with law and in the light of the observations made in this order. The petitioner is said to be in possession of the premises in question. He will continue in possession till the proceedings before the Rent Controller reach a terminus-quo. Rule issued and affirmed. No costs.

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