

Fernandis Vs. House Rent Controller

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Court : Karnataka

Decided On : Sep-11-1986

Reported in : ILR1986KAR3249

Judge : Hakeem, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 10A, 12 and 21(1)

Appeal No. : W.P. No. 41847 of 1982

Appellant : Fernandis

Respondent : House Rent Controller

Advocate for Def. : Appaji, HCGP for R-1 and 2, ;G. K. Shevgoor and ;U.L. Narayana Rao, Advs. for R-3

Advocate for Pet/Ap. : R.B. Sadashivappa, Adv.

Disposition : Writ petition allowed

Judgement :

ORDER

Hakeem, J.

1. This Writ Petition is directed against the order passed by Respondent-2 holding the petitioner to be an unauthorised occupant of the premises in question and

directing his eviction therefrom under Section 10-A of the Karnataka Rent Control Act, 1961 (the Act).

2. To appreciate the points involved in this case it is necessary to briefly state the facts of the case.

3. The petitioner has been in occupation of a portion of the premises bearing No. 11, Moyenville Road, Langford Town, Shantinagar, Bangalore-25, on a monthly rent of Rs. 150/-, having taken the same on lease from one Mrs. P.J. Middieton. He claims to be in occupation of the premise since the year 1976 He has further alleged having filed a declaration under Section 31-B of the Act for regularisation of his occupancy ; but so far no orders are passed thereon. Under a registered sale deed dated 9-10-1981 the said Mrs. P.J. Middleton sold the entire property, including the premises in question, to respondent-3. It is alleged that instead of seeking his eviction in accordance with the provisions of Section 21 of the Act, respondent-3 was adopting short cut methods to some how oust him from the premises and in furtherance of his intention allegedly initiated the Rent Controller that the petitioner is an unauthorised occupant of the premises. While the said allegation is denied and there is nothing to show that any such intimation was ever given by Respondeat-3, it transpires that on the report of the Revenue Inspector the Rent Controller initiated proceedings in H.R.C. Misc. No. 189 of 1981 against the petitioner as well as respondent-3 under Section 10-A of the Act. In response to the notice issued by the Rent Controller the petitioner appeared before the Rent Controller and urged that he is not an unauthorised occupant, and, in any event, since he has been in occupation of the premises from the year 1976 and has sought for regularisation of his occupancy by filing his declaration under Section 31-B of the Act, the proceedings should be dropped. Upon hearing the parties and upon consideration of the material on record and following the ruling of this Court in *Rajaiah v. H.R.C.*, 1964(2) Mys. L.J. Sh. N. Item No. 40 the Rent Controller dropped the proceedings holding that since the petitioner has been in occupation of the premises for five years, it will cause harassment to him if he is evicted. The proceedings against the owner (respondent-3) was also dropped holding that since he had not let out the premises to the petitioner there was no case against him.

4. Thereupon Respondent-3 preferred an appeal against the said order under Section 12 of the Act before the Deputy Commissioner. It was urged that he had purchased the premises in the year 1981 from the previous owner and that the petitioner has not been residing in the premises since 1976 as alleged. Further, he has also not recognized him as his tenant. In the circumstances it was contended that the Rent Controller was not justified in dropping the proceedings against the petitioner. On the other hand it was inter alia contended by the petitioner that Respondent-3 had no locus standi to file the appeal. However, the Deputy Commissioner (Respondent-2) rejected the petitioner's contention and held that the petitioner is an unauthorised occupant of the premises and he is liable to be evicted therefrom with immediate effect.

5. The main question that arises for consideration is whether Respondent-3/landlord is an 'aggrieved person' within the purview of Section 12 of the Act and whether the Deputy Commissioner was right in assuming jurisdiction to entertain the appeal ?

6. Mr. R.B. Sadashivappa, Learned Counsel for the petitioner urged that Respondent-3 / landlord being one of the parties against whom the proceedings had been initiated under Section 10-A of the Act and the said proceedings having been dropped, cannot be considered to be 'a person aggrieved' entitled to prefer an appeal under Section 12 of the Act. On the other hand Mr. U.L. Narayana Rao, Learned Counsel for Respondent-3 has urged that Respondent-3 being the owner and landlord was affected by the order since he is entitled to contest the status of the petitioner and the nature of his occupation of the premises. Elaborating his contention Mr. Narayana Rao strongly relied upon the provisions of Sub-section (3)(a) of Section 10-A of the Act which provides that upon summary eviction of the unauthorised occupant, the provisions of Sections 4, 5, 8, 9 and 10 become applicable to the building as if intimation of vacancy thereof was given to the Controller, in which event the landlord can press his claim for self occupation of the premises, and in that context he becomes an aggrieved person entitled to prefer an appeal against the order, which has adversely affected him.

7. To appreciate the points raised in the case it is necessary to refer to some of the relevant provisions of the Act.

'Section 4(2) Except as provided in this Part, no person shall let, occupy or otherwise use any building which becomes vacant without the landlord giving intimation under Sub-section (1) and for a period of fifteen days from the date on which the intimation is received by the Controller or within a period of one week after the termination of the proceedings under Section 8, if any, whichever is later :

* * * *(3) 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 :

xx xx xx xxSection 5 Order of leasing of vacant building -- (1) The Controller may, by order in writing served on the landlord, direct that any vacant building, whether intimation of its vacancy has been given by the landlord under Sub-section (1) of Section 4 or not, be given to the landlord for his use and occupation or on lease to such public authority or other persons as he may think fit.'

Explanation :-- A building may be directed to be leased under this Section notwithstanding that it is subject to an agreement of lease or has been let or occupied in contravention of Sub-section (2) of Section 4.

(2) Any landlord who contravenes an order made under sub-section (1) shall, on conviction be punished with simple imprisonment for a term which may extend to three months or with fine or with both,'

Section 8 of the Act prescribes the procedure to be followed before issuing any such order. The Rent Controller shall call upon the landlord or any person who may be in possession of the building to show cause against ordering allotment of the premises to a public authority or other person. The Controller inter alia has to consider the claim of the landlord also for self-occupation of the premises.

'Section 10-A Eviction by the Controller :--

(1) Where in accordance with the provision of Section 4, the vacancy of any building 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 Sub-section (2) of Section 4 occupied the building 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 the Controller, why such person should not be evicted therefrom.

(2) If the person to whom a notice was issued under sub-section (1) fails to appear before the Controller, or having appeared, fails to satisfy the Controller that he is entitled to remain in occupation of the building, the Controller may, without prejudice to any other action which may be taken against him under this Act or under any other law for the time being in force, direct him by order in writing to vacate the building within such period as may be specified in the order and deliver possession thereof to the Controller.

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 person 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 provisions of Sub-section (2) of Section 10 shall apply to any action taken by the Controller under Clause (a).

Section 12 Appeal -- Any person aggrieved by an order passed by the Controller under the provisions of this Part may within thirty days from the date of communication of the order appeal --

(i) to the Deputy Commissioner, when the officer passing the order is an officer below the rank of a Deputy Commissioners and

(ii) to the Divisional Commissioner, when the officer passing the order is an officer not below the rank of a Deputy Commissioner, and the appellate authority may pass such order on the appeal as it deems fit.

Section 51-A Power to prosecute :-- The Controller or any other officer authorised by the State Government in this behalf, may prosecute any person for contravention of any of the provisions of this Act or any rule made thereunder.'

8. In *Adi Pherozshah v. H. M. Seervai*, : [1971]1SCR863 . Hidayatullah, C. J., on a review of various precedents has observed thus at page 12 :

'From these cases it is apparent that any person who feels disappointed with the result of the case is not a 'person aggrieved.' He must be disappointed of a benefit which he would have received if the order had gone the other way. The order must cause him a legal grievance by wrongfully depriving him of something. It is no doubt a legal grievance and not a grievance about material matters but his legal grievance must be (have) a tendency to injure him. That the order is wrong or that it acquits some one who he thinks ought to be convicted does not by itself give rise to a legal grievance.'

In *Bar Council, Maharashtra v. M. V. Dabholkar*, : [1976]1SCR306 the Supreme Court has observed thus :

'Where a right of appeal to Courts against an administrative or judicial decision is created by statute, the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words 'a person aggrieved' may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one 'a person aggrieved.' Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words 'a person aggrieved' is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in this background of statutes which do

not deal with property rights but deal with professional conduct and morality.'

9. The question in the instant case is whether the landlord who may be annoyed at the finding that the petitioner is not an unauthorised occupant and not liable to be evicted from the premises under the provisions of Section 10-A of the Act can be said to be a person aggrieved. As it is clear from the relevant provisions of the Act extracted above that not only the person who is held to be in unauthorised occupation but also the landlord is liable for prosecution. The entertaining of any complaint or report, the investigation of the same and the action warranted, including any penalty to be meted out to the person in this case including the landlord, who has contravened the provisions of the Act are all concern of the authority below viz., the Rent Controller. In the instant case it cannot even be said that the landlord was interested in seeing that the petitioner herein is punished for the alleged contravention to which his predecessor in title was a party. In fact he was called upon to show cause against the action to be taken against him if he has in fact let out the premises in contravention of Section 4 of the Act.

10. However, the contention of Mr. Narayana Rao is that in the event of the petitioner being evicted in pursuance of the action initiated against him and the vacancy of the premises being notified, he will have prospect of claiming the premises for his self-occupation.

11. In *Rajan v. Surender*, 1979 (1) KLJ Sh. N. 43 Page 14 it is held that mere chance of getting a house allotted would not constitute any legal right vested in a person. It is further held therein that even in case of sub-letting, although such sub-letting by virtue of Section 23 of the Act may amount to an offence punishable under Sub-section (2) thereof, the tenant continues to be a tenant under the landlord, who can seek possession of the premises under Section 21(1)(f) of the Act. Specific statutory remedy having been provided to the landlord under Clause (h) of Section 21(1) of the Act for recovery of possession of the premises for his bona fide use, it cannot be said that he is deprived of his legal right to recover possession of the premises in these proceedings. It is thus clear that the provisions of Section 10-A of the Act cannot be allowed to be used as a handle by the landlord to evict the tenant who has been in occupation of the premises for a

long time. It is well settled that the exercise of the power vested in the authority under the statute has to be done in a reasonable way and within a reasonable time.

12. For the reasons aforesaid the appeal filed by respondent-3 before the Deputy Commissioner being incompetent, the impugned order is without jurisdiction and cannot be sustained.

13. In the result, the Writ Petition is allowed. The order of the Deputy Commissioner dated 22nd November 1982 passed in H. R. C. Civil Appeal No. 62/82-83 (Annexure-B) is hereby quashed. No costs.

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