

**D. Saraswathi Vs. Rent and Accommodation Controller**

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**Court :** Karnataka

**Decided On :** Apr-24-1992

**Reported in :** ILR1992KAR1706; 1992(2)KarLJ400

**Judge :** Hakeem, J.

**Acts :** Karnataka Rent Control Act, 1961 - Sections 5 and 8; Code of Civil Procedure (CPC) - Sections 151 and 152

**Appeal No. :** W.P. No. 9247 of 1992

**Appellant :** D. Saraswathi

**Respondent :** Rent and Accommodation Controller

**Advocate for Def. :** Nirmala Lingappaji, HCGP for R-1 and ;R.B. Sadashivappa, Adv. for R-2

**Advocate for Pet/Ap. :** C.N. Seshagiri Rao, Adv.

**Judgement :**

ORDER

**Hakeem, J.**

1. Issue rule.

2. By consent of the learned Counsel for the parties, the matter is heard for final disposal.
3. The petitioner has mainly sought for the following reliefs:-
  - (a) Issue a Writ of Certiorari quashing Annexure-B, the Warrant of Delivery issued by the first respondent in favour of 2nd respondent dated 4-2-1992;
  - (b) Direct the respondents to re-deliver the property which is more fully described in the schedule below to the petitioner and also return all her articles which were taken possession by the respondents 1 and 2 by dispossessing her in pursuance of the Delivery Warrant mentioned above.
4. On the vacancy report filed by one Sathyavatsala, the Rent Controller notified vacancy of the premises, viz., No. 19 (portion), situated in Gavipuram Circle, Bangalore-19. The case of the petitioner is that, in pursuance of that notification, she filed an application for allotment of the said premises. On 11-12-1991, the petitioner being the sole applicant as also having consent of the alleged landlord, the Rent Controller directed allotment of the premises in her favour. By virtue of the said order, a Delivery Warrant was issued and possession of the premises was delivered to the petitioner on 25-1-1992. It is alleged that on 4-2-1992 when the petitioner returned from her work at 5 P.M., she found the lock put on by her to the premises had been broken open and some other person was in possession of the same. On enquiry, she was told that the Rent Controller had issued afresh allotment order in favour of respondent-2. On further enquiry as to how the earlier allotment made in her favour was cancelled, she was not given a satisfactory explanation. Hence, having no alternative remedy open to her, she has invoked the writ jurisdiction of this Court to seek relief.
5. It is urged by Sri Seshagiri Rao, learned Counsel for the petitioner, that the cancellation of the allotment made by the Rent Controller without notice to her is highly arbitrary and wholly without jurisdiction and hence the petitioner is entitled to re-delivery of the premises as she has no other accommodation. She has also sought for return of the articles which were in the premises and now in possession of respondents-1 and 2. Sri Sadasivappa, learned Counsel appearing for

respondent-2, has filed counter. The stand taken by respondent-2 is that it is the real owner and landlord of the premises and Sathyavatsala, who had intimated the alleged vacancy of the premises has no manner of right or title in the property. Further, since respondent-2 had obtained possession of the premises by virtue of an order passed by the Court on the ground under Section 21 (1)(h) of the Karnataka Rent Control Act, 1961 ('the Act'), the Rent Controller had no jurisdiction either to notify the alleged vacancy or to allot the premises, The order of allotment being without jurisdiction, is a nullity and as such the Rent Controller could in his inherent jurisdiction cancel the order of allotment and restore possession to the real landlord. It is further contended by the learned Counsel that since the petitioner in collusion with the said Sathyavatsala had fraudulently secured the allotment order without disclosing the true facts, the question of notifying the petitioner did not arise.

6. As directed by the Court, the learned Government Pleader has produced the record of the proceedings. The order of the Rent Controller (which is neither produced, nor challenged by the petitioner herein) was passed in the proceedings No. HRC.WW.ALT.695/91 dated 4-2-1992. A perusal of the order discloses that the alleged vacancy of the premises was notified on the intimation given in Form-I by the said Sathyavathsala, as affirmed by the jurisdictional Revenue Inspector in his report to the effect that the premises is vacant. The petitioner being the only applicant present was allotted the premises. Later, on the application of the allottee, a Delivery Warrant was issued on 20-1-1992, directing the concerned Revenue Inspector to put her in possession of the premises, the said Warrant having been duly executed on 25-1-1992 'after completing the formalities'. However, what were the alleged formalities is not clarified. It transpires that on 3-2-1992 M/s.Vivekananda Kendra Yoga Anusadhana Samsthanam (respondent-2 herein) represented by its Managing Committee Member filed an application under Sections 151 and 153 read with Section 144 of the C.P.C. seeking restoration of possession of the premises on the ground that the Trust is the actual landlord and the premises is in its lawful possession in pursuance of the order of eviction passed in H.R.C. No. 2003 of 1991 under Section 21 (1)(h) of the Act. On that application, without issuing any notice to the petitioner, the Rent Controller proceeded to consider the claim of respondent-2. Holding that since the said

Sathyavatsala with whom the allottee was in hand in glove had suppressed material facts and played fraud upon the Court, the Rent Controller found it unnecessary to issue notice to the petitioner. On the basis of the averments in respondent-2's application, the Rent Controller cancelled the earlier order of allotment and directed the jurisdictional Revenue Inspector to put respondent-2 in possession of the premises by 4-2-1992.

7. The points that arise for consideration are :-

(1) Whether the Rent Controller having made an order of allotment under Section 5 read with Section 8 of the Act, had jurisdiction to cancel the said order and dispossess the petitioner;

(2) Whether this is a fit case for interference in the writ jurisdiction of this Court under Article 226 of the Constitution;

(3) To what relief is the petitioner entitled,

8. The Rent Controller had commenced the proceedings on the intimation of vacancy of the premises in Form-I filed by one Sathyavatsala, the alleged vacancy being confirmed by the Revenue Inspector's report. Thereafter, having followed the procedure as provided under Section 8 of the Act, he had passed an order directing allotment of the premises in favour of the petitioner. This was followed by a direction to put the allottee in possession of the premises by coercive process, although there did not appear to be any warrant for such a step, since the allotment itself was made with the tacit consent of the alleged landlord viz., Sathyavatsala, who had intimated the alleged vacancy of the premises. The Rent Controller, who is a quasi judicial authority is expected to act within the specified jurisdiction vested in him under the Act. In the circumstances, after having passed the final order on 11-12-1991, the authority had become functus officio. The question that arises is whether he is vested with any further jurisdiction to review his order. No such specific power is vested in the Rent Controller or any authority under the Act. Section 152 of the C.P.C. which is invoked by the Rent Controller obviously in view of the provisions of Rule 35 of the Karnataka Rent Control Rules, 1961 ('the Rules'), provides for correction of clerical or arithmetical mistakes in

judgments, decrees or orders or errors arising therein from any accidental slip or omission which may at any time be corrected by the Court either of its own motion or on the application of any of the parties. Assuming that the jurisdiction under Section 152 of the C.P.C. is available to the authority, the contingencies contemplated under the Section are not present for its application. Then remains Section 151 of the C.P.C. It is well settled that Section 151 of the C.P.C. invests inherent jurisdiction in the Court to make such orders as may be necessary in the ends of justice or to prevent abuse of the process of the Court. Having regard to the language of Rule 35 of the Rules, it seems to me that the Legislature could never have intended investing a quasi judicial authority under the Act with this extraordinary jurisdiction. Furthermore, there is a constraint even for the Civil Courts in invoking this jurisdiction when a specific provision is available to the party to seek relief. Hence, the authority had neither the powers of review nor inherent powers as prescribed under Section 151 of the C.P.C. not is it a case attracting the provisions of Section 152 of the C.P.C. If that be so, the Rent Controller clearly acted arbitrarily and without jurisdiction in entertaining an application for recalling his own order, Furthermore, it cannot be said that respondent-2 had no remedy under the Act for the alleged injustice done to it by virtue of the order Being an aggrieved party, it could have straight away approached the Appellate Authority under Section 12 of the Act and sought for the very same reliefs.

9. Sri Sadasivappa, learned Counsel for respondent-2, contends that the power of the Rent Controller to cancel the allotment order is traceable to Rule 29 of the Rules. Rule 29 of the Rules provides for procedure to set aside an ex parte order passed under the Act on sufficient cause being shown for non-appearance of the party and, for this purpose, the provisions of Order IX of the C.P.C. as far as may be and with necessary modifications are required to be followed. In view of the clear language of the rule, the argument is patently fallacious since respondent-2 was never a party to the allotment proceedings. It was never treated ex parte so as to invoke the authority's jurisdiction under the said rule.

10. It is further urged by Sri Sadasivappa that the petitioner could have availed the alternate remedy of an appeal under Section 12 of the Act. There is no merit in this

contention either. As stated earlier, the order of the Rent Controller is wholly without jurisdiction and as such nonest in the eye of law. In the circumstances, there is no impediment for the petitioner to invoke the writ jurisdiction of this Court to seek relief.

11. The learned Counsel took me through various documents and records to establish not only respondent-2's title and possession of the premises, but also to show that by virtue of the order passed by the Court under Section 21 (1)(h) of the Act, the Rent Controller had no jurisdiction to initiate proceedings for allotment. It is disputed as to when the tenant vacated the premises in pursuance of the said order. However, in these proceedings it is not appropriate to adjudicate upon these facts.

12. Then the question that remains for consideration is as to the relief that could be given in the circumstances, Respondent-2 being aggrieved by the order of allotment, is entitled to challenge the same in appeal under Section 12 of the Act, notwithstanding the fact that it was not a party to the proceedings. If such an appeal is filed within fifteen days from this date, the Appellate Authority shall entertain the same without regard to the delay which has occurred in the peculiar circumstances and to dispose of such appeal within two weeks thereof.

13. Since the petitioner has already been dispossessed, it does not appear to be proper at this stage to direct re-delivery of possession to her. However, that question is subject to the result of the appeal which shall be disposed of within the specified time. This, in my opinion, would meet the ends of justice.

14. Before parting with this case, the only other question that remains is regarding return of the articles found in the premises at the time of the petitioner's dispossession. There cannot be any valid objection and, in fact, there is no objection for granting this relief. The Rent Controller shall issue necessary orders for delivery of the moveables as per the mahazar found in the record to the petitioner within one week from this date. It is submitted by the learned Counsel for respondent-2 that the premises will be kept in the possession of respondent-2 until disposal of the appeal.

