

M. Jayaram Vs. House Rent and Accommodation Controller

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Court : Karnataka

Decided On : Jan-14-1992

Reported in : ILR1992KAR1915; 1992(2)KarLJ1

Judge : Shivashankar Bhat, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 4, 5 and 10A

Appeal No. : W.P. No. 21455 of 1990

Appellant : M. Jayaram

Respondent : House Rent and Accommodation Controller

Advocate for Def. : Nirmala Lingappaji, HCGP for R-1 and R-2 and ;Kiran S. Javali, Adv. for R-2

Advocate for Pet/Ap. : Padubidri Raghavendra Rao, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Shivashankar Bhat. J.

1. This Writ Petition is by the owner of the premises. The building comprised of two premises, i.e., premises No. 41 and premises No. 42. Earlier premises No. 41

was under the occupation of the tenant by name Ramanandan and the premises No. 42 is under the occupation of the tenant by name M/s. Ameer Iron Mart. The owner of the premises sought eviction of Ramanandan in the year 1975 by filing an eviction petition on the ground that he required the premises for his own business purpose. The premises in question, i.e., premise? No 41 was suitable to be used as a godown. The eviction petition filed in the Trial Court was unsuccessful. However, in the Revision Petition filed by the petitioner landlord, as per C.R.P. 116/1981, he succeeded. C.R.P was allowed on 14.11.1983. The tenant was granted three years time by this Court to vacate the premises. This was further extended unto 30th June 1987 subsequently, vide Annexure-D.1 am told that the tenant Ramanandan challenged the order of this Court by approaching the Supreme Court without any success. Thus, there was a hard fought litigation between the owner and the tenant and ultimately, proceedings started in the year 1975 resulting in the owner getting possession of the premises on 30.6.1987. According to the petitioner he occupied the premises thereafter. Meanwhile his son who was carrying on the business in the name of Graphic Circle in the business of screen printing and film development also needed some working place. His business was in Silver Jubilee Park Road but there was no sufficient space for working of the screen printing, etc. Therefore both petitioner and his son were using the premises obtained by the petitioner after evicting the tenant Ramanandan. According to the petitioner he expected the adjacent Ameer Iron Mart to vacate the premises No. 42 as promised by him. In view of this the petitioner had thought of putting up a new construction after demolishing the existing structure for which purpose he obtained that building license and the plan got sanctioned. Subsequently on 29.12.1988 a portion of premises No. 41 measuring 10' X 25' was sold as per Annexure-E in favour of Mohd. Ismail. There is no dispute that the said purchaser is in occupation of the said portion as will be seen from the notes of inspection recorded by the Rent Controller. When this was the position it seems the Revenue Inspector made a report to the Rent Controller on 14.12.1989 stating that premises No. 41 was vacant and the owner had not occupied it after getting possession, of it within two months from the tenant Ramanandan. In the meanwhile the owner also had advertised in the Deccan Herald newspaper stating that shops measuring 10' X 25' and 10' X 50' suited for

iron and steel and metal sheet business was available on 'to let' and the telephone No. 239448 was given for the purpose of contacting. This advertisement was repeated on 18th, 19th and 20th November 1989. In the report filed by the Revenue Inspector on 14.12.1989 he stated that the premises measuring 10' X 25' and 10' X 50' which are shops are vacant since June 1987. On the basis of this report action was taken suo moto to notify. In answer to this notification second respondent filed an application asserting that there is a direction in favour of him for allotment and the said direction was issued by the Government on 8.12.1989. The petitioner objected to the action initiated for allotment of the premises and asserted that he has been in possession of the premises and the same was being used not only by himself but also by his son. Before the Rent Controller the owner as well as his son Mohan Jayaram filed their affidavits asserting these facts. Later the owner was examined and he was also cross-examined by the second respondent. It seems there was an inspection of the premises on 2.2.1990 without notice to the landlord and the notes of inspection states that the premises in question was found locked and that one Sri Altaf was conducting business of scrapped hardware from a bunk shop put up in front of the shop and he was conducting the business since about one to one and a half years, since the shop in question (the premises) was always locked and was vacant and that the local enquiry revealed that the premises was never been in occupation. Since this inspection was without notice to the landlord a further inspection was held after due notice on 3.2.1990. Notes of inspection states that in the premises there was a table and two chairs with sanitary material like 3 Indian type commodes and 3 pipes and that the entrance of the shop was covered by bunk shop with only entrance enough for one person to move about. One Sri Altaf was conducting business in old scrapped hardware in the bunk shop and that one Sri Simon was found trying his hands with painting brush on a 'completed plan (architect)'. The said Simon stated that he was an employee on a salary of Rs. 850/- per month since two years; one other employee or casual worker was found in the premises, it also notes that there was a partition wall bifurcating the 'L' shape into two, and one premises measured 10' X 25' and another measured 10' X 50'. Premises measuring 10' X 25' was already in occupation of one Sri Ismail since 3 to 4 months as stated. The premises No. 42 occupied by M/s. Ameer Iron Mart was

also inspected but the tenant was not present. It is stated in the notes that it was inspected to see whether there was any traces of construction as contended by the landlord.

2. After hearing learned Counsel for the petitioner and the allottee the Rent Controller proceeded to make the order of allotment after rejecting the contentions of the landlord. After stating the case pleaded by the landlord and the history of the litigation, the Rent Controller observes that the landlord has not filed any piece of evidence to show that he occupied the premises within two months of the ceasing of occupation of the erstwhile tenant as per the order of the Court:

'Not only the mandatory two months but has also failed to adduce any evidence of his occupation at all, which he has also admitted in the cross-examination rendered. As per Section 4 of the Act, the landlord is bound to give intimation to the Rent Controller within 15 days after the building becomes vacant, provided that this sub-section will not apply to such buildings which have been obtained under Section 21(1)(h). It has been further - prescribed in this Section that if the landlord has not occupied after its release within two months from the date of such order of release, as the case may be, the landlord shall immediately, after the said period of two months or within such further time as the Controller may allow, give intimation to the Controller in accordance with provisions of sub-section and for this purpose, the building shall be deemed to have become vacant on the date of the expiry of the said period of two months. As stated earlier, the landlord has not only not adduced any piece of evidence to show that he occupied the premises within two months after its release but has also failed to show that he is at least now in possession.'

Thereafter he refers to the advertisement in the Deccan Herald with regard, 'to let' referred already. The Rent Controller rejects the explanation of the landlord that the advertisement pertained to premises No. 42 and not premises No. 41. According to the Rent Controller there was nothing to prove that the premises No. 42 belonged to the landlord and further that premises No. 42 measured only 10' X 50' and not 10' X 25' + 10'.X 50' as advertised. Rent Controller further observes that the sanctioned plan was not renewed further from August 1984 and therefore

the landlord never intended to put up a new construction. In the entire area the nature of the business carried on was in hardware and therefore any new building to be constructed cannot be leased for a business in iron and steel and metal sheet. Thereafter from the notes of inspection he infers that the occupation by the landlord was a 'make believe arrangement' -'stage managed'. Thereafter he concludes that:

'The landlord has not tendered any evidence with regard to his occupation within two months of being ceased to be in occupation of the erstwhile tenant Sri Ramanand. Nor has he filed any evidence that he is in occupation even as on now.'

He further refers to the bill book produced by the landlord and the extent of the shop premises and ultimately, allotted the premises in favour of second respondent on a monthly rent of Rs. 1,500/-.

3. The landlord challenged this order without any success before the Special Deputy Commissioner. The reasoning of the Special Duty Commissioner is quite cryptic. The real reasoning reads thus:

'The arguments from both the sides were heard on 30.8.1990 and the Counsels of the respective parties repelled the averments made in the appeal memo and the objections statement. The copies of the documents filed of the Rule 2 herein along with the copies of the documents was also perused. Perused the records of the Controller. The Controller has inspected the disputed premises twice the enquired into the matter in detail. The documentary evidence available on the file, i.e., the paper publication, etc. will show that the premises was kept vacant and the landlord was intending to let out the same for a higher rent. The other contention of the appellant herein that the wanted to demolish the existing premises for constructing a new one also cannot be accepted since the idea of doing such thing was about 5 - 6 years back and the stand at this stage cannot be considered. As per the finding of the Controller, the suit premises was vacant in the eye of law and therefore, I find no merits in the appeal and the impugned order of the Controller is as per law and accordingly, I made the following.'

A reading of the order of the Rent Controller shows that he was mainly impressed by the fact that the landlord failed to establish that he occupied the premises within two months after he got possession of the premises from the previous tenant Ramanandan. From this he proceeds to appreciate the circumstances by considering the 3 advertisements found in Deccan Herald News Paper as governing the premises in question and thus infers that the premises in question has been vacant. Again in the concluding para he repeats the proposition formulated by him that the landlord did not tender any evidence that he occupied the premises within two months from the date of getting possession. This apart, he rejects the materials found when he inspected the premises by the remark that it was a stage managed. I do not find any material for this statement as to why the furniture materials found could be stigmatised as 'stage managed'. He found one of the employee Simon working on the plan but ignores his statement as noted by him in the notes of inspection.

4. The proceedings are initiated under Sections 4 and 5 of the Karnataka Rent Control Act ('the Act' for short). The authority under the Act can clutch at the jurisdiction if the building is only vacant. It has been repeatedly stated by this Court on several occasions that the burden is entirely on the authority to establish the fact that the building has been vacant entitling the authority to take an action for allotment of the premises. In the instant case the landlord had obtained possession after a very hard fought litigation and the tenant was in possession upto 30th June 1987. That is the date given to the tenant for vacating the premises. The authority expected the landlord to prove, in December 1989, that the landlord had occupied the premises within two months of 30.6.1987, It should be noted here that it is not the case of the authority or that of the second respondent that the landlord had in fact leased the premises to any one else. It is not a case of any one found in unauthorised occupation of the premises. Therefore it cannot be inferred by any stretch of imagination that the landlord had parted with the legal possession of the premises. The advertisement issued in Deccan Herald on 18th, 19th and 20th November 1989 refers to two shops but there is no dispute that as far as premises No. 41 is concerned shop measuring 10' X 25' has been sold to a third party on 29.12.88 as per Annexure-E. Therefore the said advertisement would not in any way throw any doubt about the bonafides of the

landlord that he intended to lease out premises No. 41, Here, the action is not taken because there is an attempt to lease the property unauthorisedly without notifying the vacancy of the premises. The material on which the Revenue Inspector based, his report is not forthcoming. The tenant of the premises could not have been evicted in June 1987 because Ramanandan was in occupation till the end of June 1987.

5. When the authority under the Act seeks to allot the premises it is entirely for the said authority to establish first that the landlord did not occupy the premises before the end of August 1987. On the other hand if the landlord had occupied the premises then from the fact that subsequently there was some advertisement pointing out that the shops are to be let out, it cannot be said that the premises became vacant immediately. In case the building is unauthorisedly let out there are other provisions such as Section 10-A of the Act which could be resorted for illegal leasing of the premises. The mere fact of advertisement regarding same premises as 'to let' cannot give rise to the conclusion that the landlord intended to lease the particular premises in question i.e., premises No. 41.

6. Admittedly this is a commercial locality and there are several shops. The authority could have examined some of the neighboring shop owners to find out whether the owner had occupied the premises or kept it vacant in the sense that he never exercised any power of possession over the premises. The concept of occupation has been explained by this Court so as to include juridical possession. In *NAGARATHNAMMA v. SPECIAL DEPUTY COMMISSIONER*, : ILR 1991 KAR813 a Bench of this Court held at page 822 thus:

'Therefore, the whole case proceeds on the basis for the failure to occupy within two months from the date of vacancy as required under the second proviso to Sub-section (2) of Section 4. This is where the plea of the landlady that after she took possession on 30th June 1984, she was effecting repairs becomes very relevant. Unfortunately, this aspect of the matter has been completely lost sight of by the learned single Judge. He proceeded to view the matter only from the point of view of Sub-section (1) of Section 4; that was not the case of any one. At the risk of repetition we may state that that was not the case of the landlady called

upon to meet. Once we come to the conclusion that the second proviso the Sub-section (2) of Section 4 applies, then what is meant by occupation? It is actual physical occupation or juridical possession or occupation? We consider that juridical possession of dominion over possession would be good enough. Here was a landlady who, having regard to the bad use of the premises by the previous tenant, namely, the Corporation, wanted to effect repairs. It should also be carefully borne in mind at this stage that it was let out for non-residential purpose to the said Corporation. Thereafter, she wanted to effect repairs and renovation to make it residential premises. Therefore, the report of the Revenue Inspector dated 10.1.1985 that the premises had not been occupied is totally incorrect and proceeds on a wrong conception that what is required is physical occupation.'

Occupation does not mean being residing or staying physically. It involves what is called juridical possession in the sense that the owner can exercise his right to physically reside or occupy the premises at any point of time without earlier parting with the said rights to any one else. When a person intends to use the premises for his occupation, it may be found locked on several occasions and the actual user in the sense of the landlord visiting it may be of temporary duration intermittently and not continuously. This will not result in the premises becoming vacant for the purpose of Sections 4 or 5 of the Act. It is also quite possible that the landlord would have removed the things stored in the particular premises but may be waiting for some more goods to arrive at to be kept in the premises. From the fact that Ramanandan fought the litigation and had to vacate on 30.6.1987 normally would give rise to an assumption that landlord took possession of the same and occupied it. It cannot be assumed that for nearly two and a half years the landlord has been keeping the premises vacant in this busy commercial locality.

7. In the instant case the finding given by the Rent Controller as affirmed by the Deputy Commissioner is the result of a wrong approach in the sense that burden was cast on the landlord to prove that he had occupied the premises within two months after obtaining the possession of the same from Ramanandan. The burden was certainly on the authorities and not on the owner. Since the finding is the result of a wrong approach this Court is entitled to correct the same in the exercise

of Writ Jurisdiction. Consequently I am of the view that the Writ Petition is entitled to succeed. Impugned orders are accordingly set aside. Writ Petition is allowed. Rule made absolute.

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