

**Swamydas Vs. Krishnan**

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**Court :** Karnataka

**Decided On :** May-31-1985

**Reported in :** ILR1985KAR2367

**Judge :** Chandrakantaraj Urs, J.

**Acts :** Karnataka Rent Control Act, 1961 - Sections 3

**Appeal No. :** C.R.P. No. 1396 of 1985

**Appellant :** Swamydas

**Respondent :** Krishnan

**Advocate for Pet/Ap. :** K. Ramasubbaiah, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**Chandrakantaraj Urs, J.**

1. This is a tenant's Revision Petition under Section 115 C.P.C., seeking revision of the order of the District Judge at Mysore made in HRCRP. 148/82 on his file confirming the order of eviction passed against the Revision-petitioner-tenant by the II Additional Munsiff, Mysore in H.R.C. 552/79 on his file.

2. The Respondent in this Revision Petition is said to be an allottee of the premises in question by the Karnataka Housing Board. That the premises in question was leased by the Respondent to the petitioner is not disputed. At some point of time the petitioner failed to pay the rents agreed to be paid is also not in dispute. In any event, the said eviction petition which was filed in the Court of the Munsiff at Mysore both on the ground of non-payment of rents and on the ground that the landlord himself needed the house for his own use and occupation came to be allowed and he succeeded in making out his case in both the Courts.

3. What Sri K. Ramasubbaiah, Learned Counsel for the petitioner urged in this Court is that the Learned District Judge was in error in rejecting the plea made by way of an application to contend that the proceedings themselves were not maintainable against him as there was a prohibition under the provisions of the Karnataka Housing Board Act as well as the Rules made thereunder for allotment, for sub-leasing the premises allotted to an individual. As the present relationship between the Revision-petitioner and his landlord was a result of the violation of an express statutory prohibition, the Court should not assist the landlord who has violated the conditions of allotment in getting possession of the building from the tenant. Even otherwise, he has cited a number of authorities to support the proposition that the Courts should not become parties to enforcement of illegal contracts. However, he has drawn my specific attention to decision of the Supreme Court in the case of *Rahi - v. - Ram Chamberi* : [1984]2SCR290 . That is also a case decided under the Rent Control Act but in totally different circumstances. There the premises were allotted by Rent Controller on the joint representation made by the tenants as well as the landlord before the Rent Controller. Later the tenants who were the appellants before the Supreme Court admitted that the joint statement was collusive and incorrect. That they became\* : [1984]2SCR290 parties to such a collusive and incorrect representation on account of oppressive situation in which they were situated for want of accommodation and therefore resisted the eviction. It is in that circumstance, the Supreme Court has come to the rescue of a person who was placed in a weaker position and denied relief to the landlord. That is not the case here. Here knowingly that the premises in question was allotted by the Karnataka Housing Board to the landlord on lease-cum-sale basis, the petitioner-tenant had taken the premises on what is called sub-lease

from the allottee and therefore, he cannot be allowed to contend that there is no relationship of landlord and tenant between himself and the allottee of the Housing Board. I have already noticed that there is no dispute that rents were being paid to the landlord. The moment respondent receives rents from the tenant-petitioner, the relationship of landlord and tenant is created in terms of definition of the terms 'landlord' and 'tenant' under Section 3 of the Karnataka Rent Control Act. In such a situation, the tenant cannot be permitted to contend that the landlord to whom he has paid rents is not the landlord and more so on the reason that the real landlord is the Karnataka Housing Board. Nor has the tenant-petitioner pleaded in the first instance collusion of any kind by which he secured the right to occupy the premises as was made out in the Delhi case to which reference has been made earlier. Here, it is an act of volition of the tenant-petitioner in seeking possession by way of lease from a person whom he recognised as his landlord. Merely because it suits him to expose of the illegal act of his landlord, he cannot be permitted to raise such a plea that too at the stage of re-vision and not in the first instance when the petition was resisted before the Learned Munsiff. Therefore, the Learned District Judge was correct and justified in rejecting the same. I have already stated that the benefit of the law declared by the Supreme Court in the Delhi Case will not ensue to the petitioner and he cannot be stated to come under the weaker section even between the parties.

4. There is no reason calling interference of this Court with the orders of the Learned District Judge or that of the Munsiff. In the result, this Petition is dismissed.

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